

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7384 of 2020

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Santosh Kumar Suman Son of Shri Ram Prasad Gupta, Resident of Ward No. 13, Near Masjid, Main Road, Singheshwar Asthan, Madhepura, P.S.-Singheshwar Asthan, District-Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Government of Bihar, Patna.
4. The State Health Society, Bihar, Family Welfare Building, Sheikhpura, Patna, through its Secretary, Health-Cum-Executive Director.
5. The District Magistrate-cum-Chairman, District Health Society, Madhepura.
6. The Civil Surgeon-cum-Member Secretary, District Health Society, Madhepura.
7. The Superintendent, Sadar Hospital, Madhepura.
8. The Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.
9. The Chairman, Bihar Technical Service Commission, 19 Harding Road, Patna.
10. The Deputy Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pramod Kumar
For the Respondent/s	:	Mr. Pankaj Kumar, SC-12
		Mr. Kamlesh Kishore, AC to SC-12

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 09-02-2021

The present writ petition has been filed to direct the respondents to consider the case of the petitioner for selection on the post of Physiotherapist, as advertised by the respondent no. 10 in the month of March, 2020, after giving age relaxation



to the petitioner.

In this connection, the learned counsel for the petitioners has referred to an order dated 16.10.2020 passed by a coordinate Bench of this Court in ***CWJC No. 7220 of 2020 (Krishna Murari vs. The State of Bihar & Ors.)***, relevant portion whereof is reproduced herein below:-

“In ***All India Groundnut Syndicate Vs. Commissioner of Income Tax***, reported in ***AIR 1954 Bom. 232***, Hon'ble Mr. Justice Chagla, Chief Justice has laid down the principle that one cannot take advantage of his own default, which reads as follows:-

"But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under Sub-section (2) of Section 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person we take it that the Income-tax Department is included in that definition can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

Similar view was expressed by the Apex Court in the



case of *State of Maharashtra Vs. Jagannath Achyut Karandikar* reported in *AIR 1989 SC 1133* where the Apex Court held out that one cannot suffer on account of lapse of the respondents in holding the examination regularly.

In view of the admitted fact that the petitioners are working on contractual basis as Physiotherapist/ Occupational Therapist from the date when they were below the age of 37years, the State is obliged to consider their cases for regular appointment by granting one time age relaxation.

Accordingly, the writ application is allowed. The respondents are directed to consider the case of the petitioners for regular appointment granting one time age relaxation having regard to the fact that they were appointed on contractual basis as Physiotherapist/ Occupational Therapist from the date when they were below the age of 37 years and they are still continuing on the post.

Necessary corrective measures must be adopted by the respondents at the earliest so that the petitioners may not be adversely affected in the selection process.”

The learned counsel for the parties are in agreement that the present petition stands squarely covered by the aforesaid judgment rendered in the case of Krishna Murari & Anr. (supra), hence I deem it fit and proper to dispose off the present writ petition in terms of the order dated 16.10.2020 passed by a



coordinate Bench of this Court in the case of Krishna Murari (supra), however, with a caveat that the case of the petitioners shall be considered for regular appointment by granting one time age relaxation, only in case the selection process pertaining to the advertisement issued in the month of March, 2020 is not yet over.

The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.02.2021
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