

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8690 of 2020

1. Mohammad Yusuf Ali @ Md. Yusuf Ali Son of Md Seraj Uddin Resident of Mohalla- Millat Nagar (Baoli), P.S.- Phulwari Sharif, District- Patna, Bihar.
2. Rameshwar Pratap Singh Son of Sri Hira Lal Singh Resident of Ahirouli, P.S.- Industrial Area Buxar, District- Buxar.
3. Anil Kumar Singh Son of Sri Hridaya Narayan Singh Resident of Village- Chhotka Rajpur P.S.- Simari, District- Buxar.
4. Md Shahid Hasan Son of Khalid Hasan Resident of- Bhikhanpur, Dhewai, P.S. Mehandia, District- Arwal, Bihar.
5. Sunil Kumar Son of Late Shahjanand Sharma Resident of Chihunta Beni Bigha, P.S.- Bikram, District- Patna.
6. Om Prakash Son of Shatrughan Prasad Singh Resident of Prabhunath nagar, Society Colony, P.S.- Moffasil, District- Saran.
7. Aslam Hassan Son of Late Noorul Haque Resident of Husepurnand, P.S.- Basatpur, District- Siwan.
8. Prakash Kumar Jha Son of Late Kamalnath Jha Resident of Ward No- 34, Miyanchak, P.S.- Begusarai, District- Begusarai.
9. Rajesh Kumar Singh Son of Baidehi Sharan Singh Resident of Korjana, P.O.- Basahi, P.S.- Cheria Barityarpur, District- Begusarai.
10. Gajendra Kumar Son of Late Raja Singh Resident of Jihuli, P.S.- Patahi, District- East Champaran, Bihar.
11. Md. Ashraf Son of Late Shamsul Haque Resident of Mahima Gopinathpur P.S. Motipur, District- Muzaffarpur, Bihar.
12. Suman Kumar Mishra Son of Late Pratap Narayan Mishra Resident of Laluchak Angari, P.S.- Lodipur, District- Bhagalpur, Bihar.
13. Devdatta Sharma Son of Kishori Lal Sharma Resident of Hasanpur Road, P.S.- Hasanpur, District- Samastipur, Bihar.
14. Punit Kumar Jha Son of Shyama Dutt Jha, Resident of Q.No- L/4, Cross Road No- 10, Agrico Jamshedpur, District- Singhbhum, Jharkhand.
15. Md. Imteyaz Alam Son of Late S.K. Nayeem Resident of Mohalla- Salempur, P.O.- Nauranga, P.S. Moffasil, District- Gaya, Bihar.
16. Narendra Kumar Son of Late Krishn Nandan Singh Resident of Maya Dham, West Tilha, Dharamshala Road, P.S.- Civil Line, District- Gaya, Bihar.
17. Ashok Kumar Singh Son of Dharam Deo Singh Resident of Village- Kathej, P.S.- Mohania, District- Kaimur (Bhabua) Bihar.
18. Vinay Kumar Pandey Son of Late Bishwamver Dayal Pandey Resident of Village- Basini, P.S.- Sabar, District- Kaimur (Bhabua) Bihar.
19. Diwan Haroon Rashid Khan Son of Gulam Kibria Khan Resident of Village- Naughara, P.O.- Chainpur, P.S.- Chainpur, District- Kaimur (Bhabua), Bihar.

... .. Petitioners

Versus



1. The State of Bihar through the Principal Secretary, Health and Family Department, Bihar, Patna.
2. The Principal Secretary, General Administration Department, Bihar, Patna.
3. The Secretary, Bihar State Technical Service Commission, 19, Harding Road, Patna.

... .. Respondents

Appearance :

For the Petitioners : Mr. Mrigank Mauli, Senior Advocate
Mr. Prince Kumar Mishra, Advocate
For the Respondent State: Mr. Md. N.H.Khan, S.C.-1
Mr. Md. Irshad, AC to SC-1
For the Respondent Commission: Mr. Nikesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 25-10-2021

Heard Mr. Mrigank Mauli, learned Senior Counsel appearing on behalf of the petitioners, Mr. Md. N.H.Khan, learned Standing Counsel No. 1 and Mr. Nikesh Kumar, learned counsel for the Bihar Technical Service Commission.

2. The Bihar Technical Service Commission has invited applications for recruitment against the posts of Ayurvedic Medical Officers/Unani Medical Officers vide advertisement Nos. 4/2020 to 9/2020. The upper age limit for Open Category candidates has been prescribed as 37 years; 42 years for Scheduled Caste and Scheduled Tribe category candidates and 40 years for Backward/Extremely Backward Class candidates. Clause 3(v) of the advertisement extends a maximum of 12 years of age relaxation in upper age limit, category-wise, for such persons only



who are working on contractual basis. The said relaxation has been granted with reference to letter No.212 dated 23.01.2006 of the General Administration Department, Government of Bihar. This is not in dispute that the letter of the General Administration Department dated 23.01.2006 contemplates grant of age relaxation for all such eligible candidates, who become over aged for a post because of absence of any recruitment process for selection in the meanwhile.

3. Some of the candidates, who were not working as contractual employees, had approached this Court by filing a writ petition giving rise to C.W.J.C. No. 8888 of 2020 raising a grievance that age relaxation should not be confined only to contractual employees. Taking note of the stipulation in the General Administration Department's letter No. 212 dated 23.01.2006, this Court had disposed of the writ application with following directions and observations : -

“13. In view of the admitted fact that the petitioners became ineligible to apply against the post because of non-publication of advertisement for years together, in my opinion, it would be arbitrary and discriminatory for the respondents to deny them benefit of age relaxation in the light of the General



Administration Department's letter dated 23.01.2006.

14. In the facts and circumstances, this application is allowed with the following directions : -

(i) The petitioners shall be granted age relaxation for maximum of 12 years.

(ii) While determining as to how much relaxation in age can be allowed to them, the respondents shall take into account the date of acquisition by them of their requisite educational qualification.

(iii) They shall be treated to be eligible for appointment in the year when they acquired requisite educational qualification. The difference of number of years from the date of acquiring the minimum educational qualification and the year of publication of the present advertisement shall be the maximum age relaxation in upper age limit, which the petitioners shall be allowed.

iv) The respondents are directed accordingly to accept the application forms of these petitioners, if they are found to be eligible after granting them age relaxation in terms of the present order."

4. The petitioners, in the present writ application, are seeking direction to the respondents to grant at least 16 years of



age relaxation for those working on contractual basis as Ayush Doctors (Rashtriya Bal Suraksha Karyakram). It is their case that such relaxation has been granted in case of appointment of Specialist Medical Officers and General Medical Officers in advertisement Nos. 3/2019 to 16/2019 dated 28.08.2019 issued by the Commission. Further, for Dentist Doctors, vide advertisement No.4/2015 issued by the Bihar Public Service Commission, and Allopathic Doctors as General Medical Officers vide advertisement No.15/2014 issued by Bihar Public Service Commission and Veterinary Doctors vide advertisement No.4/2015 issued by the Bihar Public Service Commission, 16 years' age relaxation in the upper age limit has been granted.

5. A counter affidavit has been filed on behalf of General Administration Department, Government of Bihar, stating therein that matter of grant of age relaxation comes within the purview of the Department concerned and the Department concerned is competent to take a suitable decision regarding age relaxation. Reference has been made to the aforesaid circular issued vide letter No.212 dated 23.01.2006 by the General Administration Department, whereby it has been communicated to all concerned that the Department can give one time opportunity to the over aged candidates in particular examination, if the



advertisement for the said examination was not published in the period between last examination and the present examination.

6. Rejoinder has been filed by the petitioners to the counter affidavit filed on behalf of the General Administration Department bringing on record a chart to demonstrate that the petitioners were eligible in terms of age when the last advertisements for regular appointment were issued in the year 1991, 1997 and 1998. The fact that the last advertisement for Ayush Doctors (Ayurvedic) was issued in 1997 and Ayush Doctor (Homeopathy) in the year 1998 and Ayush Doctor (Unani) in 1991 has not been disputed. The respondents have not disputed the petitioners' contention that they have been working on contractual basis for more than 12 years and in the absence of any advertisement for regular appointment from the last advertisement, they have become over aged. The petitioners have brought on record an order of this Court dated 16.10.2020 passed in C.W.J.C. No. 7220 of 2020, which was filed by such persons who are working on contractual basis and were aspirants for the posts of Physiotherapist/Occupational Therapist. A coordinate Bench of this Court has disposed of the said writ application by an order dated 16.10.2020 with following direction : -

“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.”

7. A counter affidavit has been filed on behalf of the Commission, wherein it has merely been stated that the Commission is acting on the direction of the Health Department, which has allowed 12 years of age relaxation only. Another counter affidavit has been filed, sworn by the Under Secretary, Health Department, Government of Bihar, stating in paragraph 8 that considering all aspects of the matter, a reasonable age relaxation of 12 years has been granted uniformly for the candidates working on contractual basis. It has further been stated that it has been mentioned in proviso to Rule 2(ii)(3) of the Bihar District Medical/State Ayush Medical Service Conditions (Regular/Appointment on Contract Basis and Service Conditions) (Amendment) Rules, 2017, that the administrative department is competent to take decision in the matter of age relaxation for



persons appointed on contractual basis. It has further been stated that in the matter of age relaxation, vide Health Department's memo No.1044 dated 04.12.2012, necessary clarification was sought from the General Administration Department, Government of Bihar. It has, however, been submitted in the counter affidavit that determination of eligibility criteria and other conditions for appointment against any Government post squarely falls within the domain of the State employer and no one can claim, as a matter of right, for making change in the eligibility criteria fixed by the State employer.

8. It is true that it is purely within the domain of the State, as an employer, to lay down eligibility conditions in terms of age, qualification, experience etc. for appointment to a public post in consonance with the nature of duties to be discharged by a person to be appointed against such post. It is the own decision of the State Government in its circular issued vide letter No.212 dated 23.01.2007, which permits grant of age relaxation in the upper age limit, where the recruitment process for a particular post could not be undertaken according to the schedule and in the meanwhile the aspirants for the post become over aged. Further, the respondents have not disputed the specific stand taken by the petitioners that 16 years age relaxation has been allowed for



Allopathic, Dentist and Specialist (Allopathic) Doctors in the matter of their regular appointed, taking recourse to the said letter No.212 dated 23.01.2006 of the General Administration Department. All those posts are under Health Department, Government of Bihar. In case of Physiotherapist/Occupational Therapist, this Court, by order dated 16.10.2020 in case of ***Krishna Murari and Another vs. State of Bihar and Others*** (supra), has directed the respondents to consider the cases by granting one time relaxation having regard to the fact that they were appointed on contractual basis from respective dates when they were below 37 years of age and were still continuing.

9. Considering the admitted facts and circumstances of the case, this writ application is disposed of with a direction to the Principal Secretary, Health and Family Welfare Department, Government of Bihar, to take a final decision in respect of grievance of these petitioners for grant of 16 years age relaxation in upper age limit for the posts in question in the light of the fact that similar age relaxation has been allowed in case of Allopathic Doctors and Dentist Doctors as asserted in the writ petition. Final decision must be taken in this regard within a period of one month from the date of receipt/production of a copy of this order.



10. In case, the Principal Secretary is of the opinion that 16 years age relaxation cannot be granted to the petitioners, as has been done in case of Allopathic/Dentist Doctors, he will have to pass an order recording reasons how the case of Ayush Doctors is distinguishable from that of Allopathic/Dentist Doctors.

11. This writ application is disposed of with the aforesaid observations and direction.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.10.2021
Transmission Date	N/A

