

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14770 of 2019

Niky Kumari Pandey Daughter of Shri Chandeshwar Pandey Resident of
Village- Papaur, P.O.- Papaur, P.S.- O.P. Sarai, District- Siwan.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Human Resources Development Department, Govt. of India, New Delhi.
2. The Senior Director, National Eligibility cum Entrance Test (U.G.) 2019, Ministry of Human Resource Development.
3. The All India Institute of Medical Science through its Secretary, New Delhi.
4. The State of Bihar through the Chairman Bihar Combined Entrance Competitive Examination Board under Graduate Medical Admission Conselling- 2019 IAS Associate Building Near Patna Airport Patna- 19.
5. The Director, Health Department, Govt. of Bihar, Patna.
6. The Principal, J.L.M.N.C., Bhagalpur.
7. The State of Bihar through the Principal Secretary, Health Department, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Ghosarvey, Advocate Dr.Mankeshwar Tiwari, Advocate
For the State	:	Mr.Anirudh Kumar Singh, AC to GP 25
For BCECE	:	Mr. Prasoon Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

9 25-02-2021 Heard learned counsel for the petitioner, State and

the Bihar Combined Entrance Competitive Examination Board.

Earlier the writ petition was dismissed by this Court on the ground of disability of upper limbs. The matter was taken to the LPA Bench and the LPA Court allowed the appeal vide judgment dated 13.11.2019 in LPA No. 1083/2019 relying on the decision of the Apex Court vide orders dated 24.8.2018 in Writ Petition © 6 69 of 2018.

In view of the above, the matter has come up for fresh hearing and the matter was heard at length on different dates.

Learned counsel for the petitioner submits that the



case of the petitioner is covered by the decision of the Apex Court dated 24.08.2018 which is disputed by Mr. Prasoon Sinha, learned counsel appearing on behalf of the Bihar Combined Entrance Competitive Examination Board on the ground that the Apex Court has specifically clarified that the aforesaid decision should not be treated as precedent and as such this Court should not issue direction particularly when academic sessions has already expired.

Mr. Prasoon Sinha, learned counsel for the Bihar Combined Entrance Competitive Examination Board placed reliance on the amended notification dated 4th February, 2019 to contend that the decision dated 24th August, 2018 was based on notification dated 22nd January, 2018, whereas, the subsequent amendment in the notification dated 4th February, 2019 specifically states about the eligibility and disability of physically challenged category people in the matter of admission to medical courses. He submits that for good reasons the Medical Education Council has excluded upper limb disability for consideration in the matter of admission in medical courses.

Counsel for the petitioner submits that the subsequent amendment will not govern the case of the petitioner as the



selection process commenced with the advertisement in 2018 itself, whereas the notification dated 24th of August, 2018 was in place, it was held by the Apex Court in Purswani Ashutosh (Minor) (supra).

The aforesaid submission of learned counsel for the petitioner is well founded in view of the aforesaid judgment of the Apex Court.

Considering the rival submissions of the parties and also the judgment of the Apex Court, the Court is constrained to review the order dated 29.07.2019 and consequently allow the writ petition.

Accordingly, the order dated 29.07.2019 is reviewed/ recalled and the writ petition is allowed.

The respondents are directed to act in accordance with the decision of the Apex Court and pass appropriate order on the claim of the petitioner within a maximum period of three months from the date of receipt/production of a copy of this order.

(Anil Kumar Upadhyay, J)

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