

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.259 of 2019

In
Civil Writ Jurisdiction Case No.9981 of 2016

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Rakesh Ranjan, Son of Sri Man Mohan Pandey, resident of Village- Deokali,
Police Station-Dhanarua and District-Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health,
Govt. of Bihar, Patna
2. The Director, Indigenous Medicine Directorate Bihar, Patna
3. Bihar Staff Selection Commission, Post- Veterinary College, Patna-14,
Through its Secretary Patna
4. The Chairman , Bihar Staff Commission , Veterinary College Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar, Advocate
For the Respondent/s : Mr. S.D. Yadav, AAG-9

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 22-12-2022

Heard the learned counsels for the parties.

2. In the instant L.P.A., the appellant has assailed
the order of the learned Single Judge dated 10.12.2018 passed in
C.W.J.C. No. 9981 of 2016. The appellant in C.W.J.C. No. 9981
of 2016 has prayed for the following reliefs:-

*(i) Issuance of appropriate writ in the na-
ture of certiorari for quashing the Adver-
tisement No. 05010116 dated 06.05.2016
contained in Annexure-4 by which 42 posts
of Ayurvedic Compounder / Pharmacists
have been advertised in which minimum*



Education Qualification has been fixed as Intermediate (Biology) with minimum 50% marks in violation of statutory provisions and Rules which are in force till date.

(ii) Issuance of appropriate writ in the nature of mandamus commanding/directing the Respondents to Re-advertise the said post of Ayurvedic Compounder / Pharmacists and fill up the said posts from eligible candidates as per the prevailing Statutory Provisions and Rules for appointment of Ayurvedic Compounder / Pharmacists and not otherwise.

(iii) Any other relief of reliefs to which the petitioner may be deemed entitled under the law in the facts and circumstances of the case.”

3. The Respondent, Bihar Staff Selection Commission issued Advertisement on 06.05.2016 inviting applications from the eligible candidates for the post of Ayurvedic Compounder (for 42 posts). The appellant is aggrieved by fixation of qualification of intermediate (Biology) with 50%, such qualification has not prescribed in the manner known to the law like framing Rules of recruitment under Article-309 of the Constitution or issuing executive order under Article 166 of the Constitution. Merely decision taken by the Government, the Government, Director and Commission proceeded to recruit 42 posts of Ayurvedic Compounder with reference to advertisement dated 06.05.2016. Prior to the year 2016, the post of Ayurvedic Compounder was governed by the government decision issued in the



year 1983 even such 1983 decision is not supported by Rules of recruitment or executive order. In other words, method of recruitment to the post of Ayurvedic Compounder has not attained finality in the Department of Health, Government of Bihar from the inception in other words recruitments are being undertaken only with reference to government decision in the absence of Rules of recruitment or executive order.

4. Learned Single Judge has failed to apprise whether Rules of recruitment governing the post of Ayurvedic Compounder or executive order is existing in the eye of law or not? In other words, he has taken note of Rules called Bihar Pharmacist Cadre Rules, 2014. Rules-2014 is in respect of only Pharmacist and it does not cover Ayurvedic Compounder posts. The action of the government insofar as recruitment of Ayurvedic Compounder is not in accordance with Article 309 of the Constitution or Article 166 of the Constitution. Merely taking government decision on 27.01.2015 further action taken by the official respondents cannot be held to be legal. In other words recruiting Ayurvedic Compounder posts are in violation of rule of law. No doubt, we could have set aside the complete selection and appointment of Ayurvedic Compounder pursuant to the Advertisement dated 06.05.2016, the same cannot be done



for the reasons that such of those selected persons are not before this Court in C.W.J.C. No. 9981 of 2016 and the present L.P.A. Obviously the appellant has not arrayed such of those selected candidates as a party for the reasons that advertisement was issued on 06.05.2016 and the writ petition was filed on 07.06.2016 by that time the process of selection and appointment to the post of Ayurvedic Compounder was still under consideration. Even, State in all fairness could have taken contention before the learned Single Judge stating that process of selection and appointment to the post of Ayurvedic Compounder is completed and appellant was required to implead such of those persons as necessary and proper parties.

5. At each and every stage, the State government have not taken timely action which has resulted in violation of rule of law insofar as the process of recruitment to the post of Ayurvedic Compounder in the Health Department. Even to this day, Rules of recruitment governing under Article 309 or executive order under Article 166 has been issued insofar as Ayurvedic Compounder. Even prior to 27.01.2015, the date on which government took decision there were no Rules of recruitment and executive order governing the post of Ayurvedic Compounder. In the light of these facts and circumstances, the appellant has not made out



statutory right to claim over the post of Ayurvedic Compounder in the absence of Rules of recruitment or executive order. At the same time due to non-impleadment of such of those selected and appointed candidates, process of selection pursuant to the advertisement dated 06.05.2016 cannot be nullified.

6. Apex Court in a Constitution Bench in the case of *D.C. Wadhwa (Dr.) vs. State of Bihar* reported in 1987 (1) SCC 378, it is held as under:-

“The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority should be within the constitutional limitations and if any practice is adopted by the executive, which is in flagrant and systematic violation of its constitutional limitations, Petitioner 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice”.

7. The State government- First respondent is hereby directed to pay litigation cost of Rs. 25,000/- to the appellant. Further, cost of Rs. 10,00,000/- (Rs. Ten Lakh) shall be paid to the Prime Minister relief fund for the reasons that State Government is continuing to fill up the post of Ayurvedic Compounder



from the year 1983 & from time to time in the absence of executive order or Rules of recruitment framed under Article 166 & 309 of Constitution of India. The aforesaid cost shall be paid within a period of three months from the date of receipt of this order.

8. In the light of these facts and circumstances, the L.P.A. is dismissed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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