

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4882 of 2022

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1. Dr. Ras Bihari Tiwari Son of Late Hargovind Tiwari Resident of Village and P.O. - Baraki Nainijore, P.S. - Nainijore Brahmpur, District- Buxar.
 2. Dr. Bachaspati Upadhyay Son of Dhrub Narain Upadhyay Resident of Ward No. 10, Veer Kunwer Singh Colony, Kashi Bazar, Chhapra, P.S. and District- Chhapra, Saran.
 3. Dr. Amar Nath Sharma Son of Baijnath Sharma Resident of Ward No. 2, Baro, P.S. - Barauni, District- Begusarai.
 4. Dr. Beerendra Mahto Son of Deonandan Mahto Village - Najeerpur, P.S. - Ahiyapur, Shekhpura, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Health Department, Bihar, Vikash Bhawan, Bailey Road, Patna.
2. The Principal Secretary, health Department, Bihar, Vikash Bhawan, Bailey Road, Patna.
3. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
4. The Director (Ayurveda, Unani, Homeopathy) Deshi Chikitsa Department of Health, Govt. of Bihar, Pata.
5. The Chairman of Bihar Technical Service Commission, 19 Harding Road, Patna.
6. The Secretary, Bihar Technical Service Commission, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Haridayal Kumar, Advocate
For the State	:	Mr.Ajay Behari Sinha (Ga8)
For BTTSC	:	Mr. Nikesh Kumar, Advocate
		Mr. Praveen Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 05-04-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioners have prayed
for following reliefs:-

“(i) For issuance of an
appropriate writ/s, order/s, direction/s



commanding and directing the Respondents Authorities to allow the petitioners, to apply online forms to participate in the process of regular appointment going under an advertisement 04/2020 to 09/2020 published by the Bihar Technical Service Commission (in short BTSC) undersigned by the Secretary dated 28.09.2020 completely relaxing the over age bar who could not apply online form only on the ground of over age. Instantly it is very important and pertinent to mentioned here that the present petitioners have never availed a single opportunity to participate in the process of regular appointment because in between 1998 and 2020, the Respondent Authorities never published a single advertisement for regular appointment in which present petitioners could have been participated, as well as second important thing about the present petitioners is that they have been appointed on contract basis under an advertisement dated 26.03.2008 on the very post of Ayush Medical Officers on sanctioned posts which have been sanctioned before more than 12 years but the Respondent Authorities did not regularize their service for which the petitioners fully deserves in accordance with, vide General Administration Department Memo No. 10/परी०- 1401/74-1408- का० Dated 13 June 1974.

(ii) For issuance of an appropriate writ/s, order/s, order/s, direction/s commanding and directing the respondent authorities to give proper/lawful weightage in the selection under regular appointment on the post of Ayush Medical Officer in accordance with the Memo No. -3/एम०- 13/2018-12534 dated 17.09.2018 issued from General Administrative Department. (Annexure-4).



(iii) For issuance of an appropriate writ/s, order/s, direction/s directing the Respondents for any other relief(s) for which the petitioners are entitled for in the facts and circumstances of the case.”

3. Petitioners intend to participate in the process of selection and appointment to the post of Ayush Medical Officer. Advertisement No. 04 of 2020 to 09 of 2020 notified by the Bihar Technical Service Commission while assigning the last date for submission of application as 28.10.2020.

4. Undisputedly, all the four petitioners were over aged for the recruitment. Pursuant to the advertisement, they are not entitled for age relaxation. The petitioners were aware that if application is made though online with reference to the last date, i.e. 28.10.2020 their applications would not be accepted by the system having regard to the fact that petitioners were over aged. Petitioners should have approached this Court seeking for a direction to the concerned authority to accept petitioner's application for selection and appointment to the post of Ayush Medical Officer with reference to age relaxation policy of the State Government. Whereas the present petition is presented in the year 2022. Therefore the last date prescribed in the advertisement dated 28.10.2020 cannot be extended beyond 28th March, 2022. Under Article 226 of the Constitution of



India Courts have no power to prescribe cut off date for the purpose of selection and appointment. It is a policy decision of the State to stipulate the cut off date.

5. In the light of these facts and circumstances, petitioners had cause of action prior to 28.10.2020 in seeking a direction to accept their applications read with age relaxation. Therefore, petitioners have not made out a case.

6. Accordingly, the present petition stands dismissed.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.04.2022
Transmission Date	

