

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1071 of 2019

In
Civil Writ Jurisdiction Case No.15461 of 2019

=====

Amit Kumar, Son of Sri Krityanand Thakur, resident of village-
Hanumannagar, P.O.- Chandour, P.S. Sour Bazar, District- Saharsa.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, health Department, Bihar, Patna.
2. The Director - in - Chief, health Services, Government of Bihar, Patna.
3. The Principal Secretary, General Administrative Department, Government of Bihar.
4. The Secretary, Health Department, Government of Bihar.
5. Officer on Special Duty (OSD), Health Department, Government of Bihar.
6. The Chairman, Bihar Staff Selection commission, Bihar, Patna.
7. The Secretary, Bihar Staff Selection commission, Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 20067 of 2019

- =====
1. Amit Kumar, Son of Sri Krityanand Thakur, resident of Village-
Hanumannagar, P.O.- Chandour, P.S.- Sour Bazar, District- Saharsa.
 2. Md. Fakhir Usmani, Son of Md. Salim, resident of Mosque Dumduma,
Darbhanga, District Darbhanga.
 3. Manoj Kumar, Son of Late Ram Babu Singh, resident of Village-
Lagurawan, P.S.- Mahua, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Government of Bihar, Patna.
2. The Joint Secretary, Secretary, Health Department, Government of Bihar,
Patna.
3. The Director-in-Chief, Health Services, Government of Bihar, Patna.
4. The Officer on Special Duty (OSD), Health Department, Government of
Bihar, Patna.
5. The Chairman, Bihar Staff Selection Commission, Veterinary College
Campus, Patna- 14.
6. The Secretary, Bihar Staff Selection Commission, Veterinary College
Campus, Patna- 14.



... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1071 of 2019)

For the Appellant/s : Mr.Nafisuzzoha

For the Respondent/s : Mr.S. D. Yadav (Aag9)

(In Civil Writ Jurisdiction Case No. 20067 of 2019)

For the Petitioner/s : Mr.Nafisuzzoha

For the Respondent/s : Mr.Lalit Kishore (Ag)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 08-12-2022

Heard CWJC No. 20067 of 2019.

2. In the instant petition, petitioner has prayed for the following relief(s):-

“(i) For holding and declaring second part of Rule-6 of the "Bihar O.T. Assistants Cadre Rules, 2014" contained in Health Department Notification No.144(4) dated 13.02.2014 to the extent "it shall be necessary to have passed O.T. Assistants Diploma Course from a Government recognized institutions" ultra vires to Article 14 and 16 of the Constitution of India.

(ii) For setting aside the required technical qualification of obtaining diploma course from institution recognized by the state government in the advt. Dated 21.06.2015.

(iii) For a direction on the respondents to consider the case of petitioners and other similarly situated who have obtained Diploma in O.T. Assistant from institutions of national repute/central universities not recognized by the State Government for appointment on the post of O.T. Assistant in the light of advertisement dated 21.06.2015 for appointment to the post of O.T. Assistants issued from Bihar Staff Selection Commission, Patna.



(iv) For grant of any other relief/reliefs to which the petitioners are found entitled in the facts and circumstances of the case.”

3. As on the date of writ petition was filed on 25.09.2019 whereas the Rules called “Bihar O.T. Assistants Cadre Rules, 2014” which was notified on 13th February 2014 has been amended by issuing amended Rules Called “Bihar O.T. Assistants Cadre (Amendment) Rules, 2019”. In the light of the amended Rules 2019 grievance of the petitioner insofar as challenge to the portion of the Rules, 2014 do not survive for consideration.

4. On the other hand, learned counsel for the petitioner vehemently contended that portion of the Rules 2014 which is the subject matter of the present petition is set aside. In that event, petitioner would be having right to participation in the process of recruitment to the post of O.T. Assistants notified on 21.06.2015.

5. Having regard to the dates and events that Rules 2014 was issued on 13.02.2014 and advertisement for the post of O.T. Assistants was issued on 21.06.2015. The petitioner was well aware that what is the mode of recruitment to the post of O.T. Assistants that it is restricted to such of those Diploma holders from a Government recognized institution. Government recognized institution means State of Bihar as defined under Rule 2(i)-Government means State Government. The petitioner obtained



Diploma course certificate from outside the State of Bihar. Therefore, he had a cause of action insofar as challenge to portion of Rules 2014. In the year 2015 as and when the post of O.T. Assistants was notified he was unsuccessful in the writ petition CWJC No. 20067 of 2019. Thereafter, he has presented the present petition in challenging the portion of Rules, 2014.

6. Having regard to the conduct of the petitioner insofar as challenging portion of 2014 Rules. It is evident that he is fence-sitter. Moreover, there is a delay and laches on his part in not questioning portion of the Rules, 2014 within a reasonable period of time from the date of advertisement on 21.06.2015.

7. In the light of amendment Rules 2019 the petitioner has a right to participate in the process of O.T. Assistants with Diploma course certificate obtained even outside the State of Bihar. Amended Rules 2019 is prospective in nature. Therefore, amended Rules issued on 17.09.2019 is not applicable to the advertisement dated 21.06.2015. In view of these facts and circumstances the petitioner has not made out a case so as to interfere with the prayer sought in the present writ petition.

8. Accordingly, writ petition stands dismissed.

9. At this stage, learned counsel for the petitioner submitted that the petitioner is stated to have been working as a



O.T. Assistant on contract basis for more than 10 years and his contract appointment was prior to 13.02.2014. Therefore, rightly he is not eligible in terms of Rules 2014 issued on 13.02.2014 for regular recruitment.

10. LPA No. 1071 of 2019 is disposed of in the light of decision passed in CWJC No. 20067 of 2019. There is no infirmity in the order of the learned Single Judge dated 06.08.2019 passed in CWJC No. 15461 of 2019. Accordingly, the present LPA No. 1071 of 2019 stands dismissed while affirming the order of the learned Single Judge.

11. Further, it is submitted that the petitioner is holder of a Diploma certificate from Jamia Hamdard (Hamdard University), the university is a deemed University and such deemed University recognition has been given by the Central Government. Therefore, the State Government cannot ignore the certificate issued by the deemed University for the purpose of O.T. Assistants selection and appointment. The aforesaid contention cannot be appreciated for the reasons that Apex Court in the case of ***Nair Service Society Vs. Dr. T. Beermasthan & Ors.*** reported in (2009) 5 SCC 545 at para 48 held as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with



reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

12. In the light of the judicial pronouncement and principle laid down in the aforesaid decision learned counsel for the petitioners contention that deemed University certificate is required to be accepted by the selecting and appointing authority of the State of Bihar is hereby rejected.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

abhishekk/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.12.2022
Transmission Date	

