

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.386 of 2023

Prashant Kumar Jha S/o- Ramchandra Jha, R/o- Balua Bazar, At- Nathpatti,
P.S.- Balua Bazar, District- Supaul.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
2. The Director-in- Chief, Health Services, Govt. of Bihar, Patna.
3. Bihar Technical Service Commission, through its Secretary, Patna.
4. Deputy Secretary, Bihar Technical Service Commission, Bihar, Patna.
5. National Institute of Health Education and Research, IDH Colony, East of NMCH Hospital, Gulzarbagh, Patna - 800007.
6. Faiz Ahmad Faiz S/o Mohammad Yaqoob, Resident of Stadium Road, Badikarbala Road, P.S.-Muzaffarpur Town, District Muzaffarpur, Bihar, PIN-842001.
7. The State Vigilance Department, Bihar

... .. Respondents

Appearance :

For the Petitioner/s	:	Ms.Nivedita Nirvikar, Sr. Advocate
		Mr.Somesh Kumar, Advocate
For the State	:	Mr.Nagendra Pd. Yadav (SC-23)
For the respondent no.5	:	Mr. Shekhar Singh, Advocate
For the Commission	:	Mr.Nikesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 27-04-2023

In the facts of the present case, while considering the writ application at this stage, it seems necessary to add the Vigilance Investigation Bureau, Department of Vigilance, Government of Bihar as party respondent no. 7 to the writ application. Learned counsel for the petitioner shall add party respondent no. 7 in course of the day.

2. This Court has heard learned senior counsel for the petitioner, learned counsel for the Bihar Technical Service



Commission, learned SC-23 for the State and learned counsel for respondent nos. 5 and 6 at length.

Reliefs prayed

3. This writ application has been filed for the following reliefs:-

“I. To issue an appropriate order/s, direction/s preferably in the nature of Certiorari for quashing of the final merit list dated 07.12.2022 contained in letter 3173 issued by the Secretary, Bihar Technical Service Commission, Patna whereby and where under a final result has illegally and arbitrarily been issued for the selection of and appointment for the post of Physiotherapist in pursuance of advertisement no. 02/2020 wherein petitioner has arbitrarily and unconstitutionally been declared as unsuccessful candidate for selection and appointment for the post of Physiotherapist.

II. For issuance of writ in the nature of Mandamus, directing and commanding the responsible Respondent authorities to stay the operation of selection and appointment process for the post of physiotherapist in pursuance of advertisement no. 02/2020 issued by the Secretary, Bihar Technical Service Commission, Patna.

III. For commanding the respondents to include the name of the petitioner for appointment to the post of physiotherapist against advertisement no. 02/2020 dated 07.11.2019.

IV. For any other appropriate relief/reliefs to which the petitioners are found entitled in the facts and circumstances of this case.”



Brief facts of the case are as under:-

4. The petitioner claims that he obtained Diploma in Physiotherapy from National Institute of Health Education and Research, Gulzarbagh, Patna affiliated to Magadh University (hereinafter referred to as the 'Institute/ respondent no. 5'). It is his case that he successfully completed three years Diploma course in Physiotherapy (in Paragraph '4' of the writ application, it has been wrongly stated as 'Degree of Bachelor in Physiotherapy') in May 2007 and one year Abridge course in July, 2013 from the said Institute with First Class marks.

5. It is the further case of the petitioner that after obtaining Diploma in Physiotherapy, he joined Bihar Education Project, Banka on the post of *Paribhrami Sansadhan Shikshak* (Traveling teacher) under *Sarva Siksha Abhiyan*. His employment is on contractual basis. It is stated that during his employment in Bihar Education Project, Banka, during the period 02.11.2007 and 10.02.2020, the petitioner completed his one year Abridge course from the Institute/ respondent no. 5. It is his submission that he completed one year Abridge course from the Institute in the year 2013. According to the petitioner, he had obtained permission for taking admission in this course from the District Program Officer, *Sarva Siksha Abhiyan*, Banka.



6. It is stated that the Institute/respondent no. 5 issued certificate vide letter no. 233 of 2020 dated 13.02.2020 giving a declaration that classes of all batches of the Abridge course have been conducted during evening hours. The petitioner takes a stand that one year Abridge course had a flexy mode of imparting course wherein the entire course should be completed in 1500 hours.

7. The Bihar Technical Service Commission (hereinafter referred to as the “Commission”) issued Advertisement no. 02/20 dated 07.11.2019 inviting online application for the post of Physiotherapist for 126 seats. The petitioner applied for the same as according to him, his three years Diploma in Physiotherapy+ one year Abridge course make it equivalent to Bachelors of Physiotherapy which is the requisite qualification for the post of Physiotherapist. Although this submission of learned senior counsel for the petitioner as to equivalence of the Diploma + one year Abridge course to that of Bachelors Degree, it being seriously contested, in the facts and the issues involved in the present case, the said question is not required to be gone into.

8. It is stated that pursuant to the application submitted by the petitioner, he was shortlisted and was called for counselling vide Annexure ‘6’ to the writ application. The petitioner was



awarded combined point of 68.7085 whereas the cut off marks of the General category was 67.1371.

9. As the petitioner was expecting his selection, he received a notice vide Memo No. 2137 dated 05.09.2022 under signature of Respondent no. 4 whereby he was asked to explain in the light of a complaint lodged against him with regard to his completing Abridge course without due permission from Bihar Education Project, Banka and the show cause notice alleged that the petitioner had obtained the certificate of Abridge course from an Institute which was situated at hundreds of kilometers away and during the same period, the petitioner was receiving his honorarium under the contractual employment. The petitioner replied to the said show cause notice. He explained that he had obtained prior permission for taking admission in this course and he had completed the course by attending the extra classes.

10. The grievance of the petitioner is that the Commission declared final merit list of selected candidates for the post of Physiotherapist vide Memo No. 3173 dated 07.12.2022, however, the candidature of the petitioner was rejected as his name did not figure in the merit list.

11. The petitioner raised an objection against the rejection of his candidature but his objection has been rejected by



the respondents saying that he did the regular Abridge course from Patna while he was posted at Banka. The petitioner was disqualified from being selected on the post of Physiotherapist.

Submissions on behalf of the petitioner

12. When this writ application was taken up for consideration on 13.03.2023, taking note of the submissions of learned senior counsel for the petitioner, this Court passed the following order:-

“The contention of learned Senior Counsel for the petitioner is that the petitioner had attended the classes conducted by National Institute of Health Education and Research at Patna while rendering his services as traveling teacher at Banka. It is her submission that the Abridge course conducted by the institute requires altogether 1,500 hours of compulsory class attendance and this could have been done by the petitioner by attending the classes on holidays also. In this regard, reliance has been placed on a certificate issued by the Executive Director of the Institute as contained in Annexure ‘3A’ to the writ application.

Let National Institute of Health Education and Research, IDH Colony, East of NMCH Hospital, Gulzarbagh, Patna- 800007 be added as respondent no. 5 to this writ application in course of the day.

Issue notice to newly added respondent no. 5. Learned Senior Counsel for the petitioner submits that the petitioner may be given an



opportunity to serve the notice on respondent no. 5 by *Dasti*.

Permission is granted.

Let the requisites for issuance of *Dasti* notice be filed by day after tomorrow whereupon the office shall provide a copy of the *Dasti* notice to learned counsel for the petitioner and, thereafter, step shall be taken by learned counsel for the petitioner to serve the same on the Institute (Respondent No. 5). An affidavit showing service of notice on respondent no. 5 be filed within one week from today.

Respondent No. 5 shall file a short affidavit stating clearly as to whether the petitioner has attended the classes and completed his course properly while serving at Banka. Such averments shall be supported by documentary evidences which may be available with the institute.

The appointments made in the meantime from the merit list shall be subject to result of the writ application.

List this matter on 29.03.2023 under the same heading maintaining its position.”

13. Pursuant to the aforesaid order, respondent no. 5 has entered appearance and filed a short counter affidavit. At the same time, one intervention application being I.A. No. 01 of 2023 was filed by one Mr. Faiz Ahmad Faiz (respondent no. 6) seeking to be added as a party respondent in the writ application. His contention was noticed by this Court and having found that those are relevant for adjudication of the present case, this Court permitted intervener



to be added as respondent no. 6. In this connection, the order dated 04.04.2023 passed by this Court may be referred to.

14. In today's hearing, learned senior counsel for the petitioner has given much emphasis on her submission that this Abridge course could have been attended by the petitioner in the extra classes which were held by the Institute/respondent no. 5 and all that was required for the petitioner was to complete 1500 hours of the course of study. Learned senior counsel is, however, not able to demonstrate from any material on the record that one year Abridge regular course which the respondent no. 5 claims to be conducting could have been done by a candidate who was working at Banka by attending extra classes alone. It is the submission of learned senior counsel that the petitioner obtained his admission in one year Abridge course during the session 2012-13, however, in support of his having attended classes in the Institute, no material has been placed before this Court.

15. The respondent no. 5 has, in its short affidavit stated that "so far as petitioner's Abridge physiotherapy course of one year is concerned, the same is correct. It is relevant to the point out that for such course evening classes were also permissible in all faculties including Physiotherapy." It is further stated in the counter affidavit of respondent no. 5 that 75% attendance is



mandatory for appearing in the Abridge course examination and those who had completed 75% attendance were allowed to fill up the form for appearing in the examination conducted by Magadh University.

16. Mr. Shekhar Singh, learned counsel for the Institute/ respondent no. 5 was called upon to say as to whether the Institute had got permission/ approval from the Magadh University and the Government for taking admission in the Abridge course during the session 2012-13. Learned counsel has admitted at the Bar that he has no material in hand to take a plea that the Institute had got permission for the year 2012-13. Learned counsel has further submitted that on this issue infact he has got no instruction. So far as the counter affidavit of the respondent no. 5 is concerned, it is completely silent on this issue.

17. As regards the specific query of this Court in its order dated 13.03.2023 as to whether the petitioner has attended the classes and completed his course properly while serving at Banka, the Institute/ respondent no. 5 has not made any statement at all. A general and vague statement has been made that all those who have attended 75% class were given to appear in the examination. This Court had specifically directed the Institute/respondent no. 5 to support its averments by producing



documentary evidences but all that is stated in the affidavit of respondent no. 5 is that the record of that period could not be located.

18. Learned counsel for the intervener- respondent no. 6 has once again pointed out to this Court the judgment and order dated 16.05.2018 passed by a learned Coordinate Bench of this Court in CWJC No. 16553 of 2017 (National Institute of Health Education and Research versus The State of Bihar and Others). The Institute/ respondent no. 5 in this case happen to be the petitioner in the said writ application. The learned writ court had occasion to look into the various aspects of the matter whereupon certain directions were also issued to all the Universities in this regard.

19. This Court has been informed that the Institute/ respondent no. 5 who was petitioner in the said writ application has preferred a Letters Patent Appeal being LPA No. 754 of 2018. It is further stated that in the LPA filed by the Institute/ respondent no. 5, no interim order has been passed staying the operation of the order of the learned writ court, however, in respect of the others who had obtained the degree from the Institute/ respondent no. 5 and who have gone in LPA No. 770 of 2018, the Hon'ble Division Bench has passed an interim order that no adverse action or order



shall be passed against the appellants of the said appeal in pursuance to the order passed on 16.05.2018 in the writ petition and implementation of the said order shall kept in abeyance till the next date.

Plea of the Commission

20. Learned counsel for the Commission has defended its action by filing a counter affidavit. It is stated that one Sanjay Prasad Yadav had filed a complaint against different candidates including this petitioner and the Commission had scrutinized those complaints. The Commission gave proper notices to all the applicants against whom those complaints were made and considering their replies, the Commission took a decision in its meeting held on 26.10.2020. As regards the petitioner, it is stated that it was found that while he was working at Banka on contract basis on the post of *Paribhrami Sansadhan Shikshak* (Traveling teacher) he had upgraded his educational qualification for one year program for the post of BPT (Abridge) as regular course from the Institute/ respondent no. 5 and against him it has been alleged that he had received salary for his work during that period while working on contract basis on his place of posting at Banka. Considering this aspect of the matter, the Commission has not accepted his PPT (Abridge) course and consequently thereupon he



has been declared unsuccessful. The copy of the proceeding of the Commission dated 26.10.2022 has been brought on record as Annexure 'B' to the counter affidavit of respondent nos. 3 and 4.

Submissions of respondent no. 6 (Intervenor-Respondent)

21. Learned counsel for respondent no. 6 has also opposed the writ application. It is submitted that the writ petitioner is claiming to have obtained the Diploma of Physiotherapy course from the Institute/ respondent no. 5 during the year 2012-13 for which no permission was given by the University and if his certificate is validated it would adversely affect the career of several students who have obtained their degrees from well reputed and duly recognized Institutions.

Consideration

22. Having heard learned counsel for the parties and on perusal of the records, this Court finds that the specific case of the writ petitioner is that he had done his one year Abridge course in Physiotherapy during the Academic Session 2012-13 from the Institute/respondent no. 5 situated at Patna. During this period, the petitioner was serving at Banka and in this regard, while seeking permission from the District Programme Officer, *Sarva Siksha Abhiyan* vide Annexure '3' to the writ application, he did not disclose the fact that the one year Abridge course of the Institute is



a regular course, it is situated at Patna and he would be required to attend classes regularly.

23. The fact remains that as regards the permission to the Institute to take admissions in this course during the Academic Session 2012-13 neither the petitioner nor Institute/ respondent no. 5 is able to place any material before this Court to show that such permission was granted. In any case, the petitioner has no answer as to how while serving at Banka he could attend the regular classes of the course at Patna. The only lame defence of the petitioner is that he had attended extra classes. So far as this Court understands, extra classes are conducted only for those regular students who for certain special reasons miss out on some of the classes or for purpose of completing the syllabus, if so required. The extra classes alone is not a recognize mode of attending the regular course. Even in this regard, the counter affidavit of the Institute/ respondent no. 5 is completely silent. There is no statement in the counter affidavit that this petitioner had attended the regular classes or extra classes. The Institute/ respondent no. 5 has taken a convenient plea that they do not have any record of this period. Thus, as on date, the Institute has neither admission register showing the admission of the petitioner in the course nor any attendance sheet or any other kind of document to show that



the petitioner had been a regular student of the Institute in this course and he had attended the classes by any mode. This raises a serious doubt over the conduct of the petitioner as well as the Institute.

24. Prima-facie, this Court is of the opinion that the conduct of the petitioner in obtaining the certificate of the Abridge course from the Institute/ respondent no. 5 and the manner in which the Institute/ respondent no. 5 has granted the certificate are required to be investigated by an Investigating Agency.

25. This Court finds from the submissions recorded hereinabove and the materials on the record that the Commission has duly examined the complaint received with regard to the certificate of the petitioner and after giving an opportunity to the petitioner to explain the same, a conscious decision has been taken in the meeting held on 26.10.2022. Annexure 'B' to the counter affidavit of respondent nos. 3 and 4 considers the facts of the case and the materials available on the record as also the defence of the petitioner. In the opinion of this Court Annexure 'B' which is the decision of the Commission needs no interference.

26. In the facts of the present case where the conduct of the Institute/ respondent no. 5 has been found to be reasonably suspicious in the matter of grant of certificate to the petitioners,



this Court is of the opinion that it is required to be investigated. This Court, therefore, directs Vigilance Investigation Bureau, Department of Vigilance, Government of Bihar (Respondent No. 7) to conduct an Inquiry into the matter and on the basis of the materials collected in course of such inquiry, appropriate action be taken in accordance with law.

27. It is made clear that respondent no. 7 shall conduct an independent inquiry and the observations of this Court are only for purpose of this case which shall not prejudice either the case of the petitioner or the Institute/ respondent no. 5 in the matter of investigation/ inquiry by respondent no. 7.

28. Let this order be communicated to respondent no. 7 at the earliest.

29. This writ application is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Tusharika/-
Sushma/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.04.2023
Transmission Date	

