

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2936 of 2023

Dr. Dharmendra Kumar @ Dharmendra Kumar Son of Sri Vijay Das R/o Village Chandannagar, P.S. Muffasil, Munger District-Munger Presently Posted at Jawahar Lal Nehru Medical College and Hospital in P.M.R. Deptt, Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of health, Govt. of Bihar, Patna.
2. Addition Chief Secreary, General administration Department, Patna.
3. Director, Health Services, Bihar, Patna.
4. Bihar Technical Service Commission through its Secretary
5. Chairman, Bihar Technical Service Commission, Patna.
6. Secretary, Bihar Technical Service Commission, Patna.
7. Sri Shiv Shankar Ashutosh Son of Basudev Maharaj Reg. No. BR00150210002321, P.S - Fuparas ,District-Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. Swapnil Kumar Singh, Advocate
For the State	:	Mr. Birju Prasad, GP- 13
		Mr. Ravi Kumar, AC to GP- 13
		Mr. Ajit Anand, AC to GP- 13
For B.T.S.C.	:	Mr. Nikesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 29-08-2023

Heard learned counsel for the petitioner and the learned counsel representing respondent-State as well as the learned counsel for respondent-Commission.



2. The petitioner has participated in the process of selection for selection of physiotherapist. He is applicant in the Scheduled Castes (for brevity 'S.C.') Category. Advertisement is of the year 2020, and the petitioner has emerged unsuccessful in the process of selection. He has thus, sought a direction to the respondents to consider his case for appointment.

3. Learned counsel for the petitioner submits that based on Clause- 4 (iv) and 6 (i) and (ii), of the Advertisement, in response to which the petitioner has applied. Petitioner was not required to upload all the documents/certificates showing proof of experience, and payment received during the period claimed as experience, at the time of submission of online application form.

4. From bare perusal of the provisions, relied upon by the petitioner's counsel, it is evident that an opportunity to submit the original is to be given at the time of counseling . He, submits that vital experience gained by the petitioner, which he has duly mentioned in the online application form has been ignored to his prejudice; and therefore, he has been underrated in the process of selection. Instead of 6 years 7 months, he has been allowed experience only from 30-07-2019 to 16-03-2020, being the cut-off date.



5. Learned counsel for the respondent-Commission has referred to online application, submitted by the petitioner, copy of which has been enclosed to the counter affidavit. It is apparent that the online application form had a menu option for uploading/attaching the documents, in support of experience as well as proof of payment with respect to the experience claimed by candidates. Petitioner had uploaded a payment certificate issued by the Superintendent on 22-02-2021, and one experience certificate issued on 01-04-2021. He, however, apparently has not uploaded documentary proof in support of the other experiences, which he has claimed in the preceding column of the online application form at Column H.

6. It is apparent from the Clauses in the advertisement which are relied upon by the petitioner, as also from the online application form, that uploading of documents was mandatory. In fact, the petitioner himself has uploaded the document in proof of experience for a period of 30.07.2019 to 16.03.2020 and payment for this period, but is claiming benefit in excess of the proof attached, which cannot be granted in terms of the Advertisement.

7. Adherence to the terms of the Advertisement can only ensure a fair recruitment process. The Authorities do not



have any discretion beyond the advertisement, or Rule under which the selection process is being conducted. If such discretion was to be allowed, the same would be opposed to equality and fairness in the selection process. The requirement of uploading the documentary proof is to be enforced uniformly.

8. Since the petitioner has not complied with the requirement of uploading the documentary proof, he cannot be permitted to claim any acknowledgment or weightage with respect to the period of 6 years and 7 months. The period has thus rightly been excluded by the authorities. The petitioner rejection, therefore, does not require any interference.

9. Accordingly, writ petition is dismissed.

(Madhuresh Prasad, J)

Raj kishore/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04-09-2023
Transmission Date	N/A

