

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3477 of 2023

1. Dr. Kundan Suman Son of Mr. P.N. Suman, Resident of Kamalpur, Ward No.- 13, P.O.- Kamalpur, P.S.- B. Kothi, District- Purnia.
2. Dr. Jitendra Kumar, Son of Sidhnath Saw, Resident of Village- Ebrahimpur, P.O. and P.S.- Shakurabad, Amain, District- Jehanabad.
3. Dr. Abhilasha Smriti, Daughter of Prof. Dinanath, Resident of English Block, N.H.- 82, J.J. College, Manpur, P.O. and P.S.- Buniyadganj, District- Gaya.
4. Dr. Priya Ranjan, Daughter of Raj Kumar Choudhary, Resident of Mohalla- I.T.I. Hostel Road, Bans Kothi, Digha Ghat, P.S.- Digha, District- Patna.
5. Dr. Priya, Daughter of Ramwir Choudhary, Resident of N/346, Police Line, Near Manoram Maternity Surgical Home Pvt. Ltd., Police Line, P.S.- Rampur, District- Gaya.
6. Dr. Santosh Kumar Bagesh, Son of Ramashray Prasad Sinha, Resident of Mohalla- Teli Tola, Saida Bazar, Near Kali Asthan, P.S.- Hilsa, District- Nalanda.
7. Dr. Amit Kumar, Son of Dinesh Kumar Sharma, Resident of Village- Bangla Kothi, Feri Road, Barari, P.O. and P.S.- Barari, District- Bhagalpur.
8. Dr. Anshu Singh, Daughter of Ashok Kumar Singh, Resident of Village- Alampur, P.S.- Parabigha, District- Jehanabad.
9. Dr. Papu Kumar Safi, Son of Rajveer Safi, Resident of Village- Koilakh, P.O.- Koilakh, P.S.- Rajnagar, District- Madhubani.
10. Dr. Neha Fatima, Daughter of Mohammad Amir Afzal, Resident of Dadar Mandi, Near Masjid, P.O.- Gulzarbagh, P.S.- Alamganj, District- Patna.
11. Dr. Alok Kumar, Son of Sushil Kumar Singh, Resident of Mohalla- Nehru Colony, P.O. and P.S.- Banka, District- Banka.
12. Dr. Priyanka Kumari, Daughter of Ramawtar Mistry, Resident of Village- Mahuri, Goti Bandh, P.S.- Dumaria, District- Gaya.
13. Dr. Trinetri Kumari, Daughter of Suresh Prasad, Resident of Braj Bhawan, 7, Vishwamitra Marg, North Shri Krishnapuri, Boring Road, P.S.- Shri Krishnapuri, District- Patna.
14. Dr. Brajesh Kumar, Son of Upendra Prasad Yadav, Resident of Village- Barmasia, Near Middle School, Mirchaibari, P.O. and P.S.- Katihar, District- Katihar.
15. Dr. Kshamta Kumari, Daughter of Satyendra Paswan, Resident of Mohalla- Ambedkar Chowk, Chitkohra, P.O.- Anishabad, P.S.- Gardanibagh, District- Patna.
16. Dr. Ramchandra Kumar, Son of Arbind Prasad Choudhary, Resident of Mohalla- Rajendra Nagar, P.O. and P.S.- Naugachia, District- Bhagalpur.
17. Dr. Vinod Kumar, Son of Murari Prasad Barnwal, Resident of Mohalla- Bajrang Chowk, P.S.- Sono, District- Jamui.
18. Dr. Santosh Kumar, Son of Ram Kishun Prasad, Resident of Mohalla- Dahiyawan Tola, Chapra, P.S.- Chapra Town, District- Saran.



19. Dr. Priyanka Kumari, Daughter of Ramanand Prasad, Resident of Village- Chandi, P.O.- Chandi, P.S.- Chandi, District- Nalanda.
20. Dr. Arvind Kumar, Son of Akhilesh Singh, Resident of Village- Kheduapur, P.O.- Hussepur, P.S.- Bhorey, District- Gopalganj.
21. Dr. Kumar Sharat Chandra Chandan, Son of Late Sudhanshu Shekhar Prasad Singh, Resident of Bairo, P.O.- Bairo, P.S.- Supaul, District- Supaul.
22. Dr. Ashutosh Kumar Singh, Son of Baban Prasad Singh, Resident of Mohalla- Gandhi Nagar, Ward No.- 5, Kochas, P.S.- Kochas, District- Rohtas.
23. Dr. Kunal, Son of Bishweshwar Prasad Yadav, Resident of Khargama, P.O.- Amauza, P.S.- Phulparas, District- Madhubani.
24. Dr. Tarkeshwar Kumar, Son of Surendra Yadav, Resident of Village- Dilarpur, P.O.- Dilarpur, P.S.- Manihari, District- Katihar.
25. Dr. Nehal Hyder, Son of Hyder Ali, Resident of Brahumpur Pul, Near Gramin Bank, P.O. and P.S.- Bhagwan Bazar, Chapra, District- Saran.
26. Dr. Shashi Ranjan Roy, Son of Ram Nandan Roy, Resident of Village- Kalyanpur Shishabanni, P.O.- Klayanpur, P.S.- Bibhutipur, District- Samastipur.
27. Dr. Brajesh Kumar, Son of Ramdeo Singh, Resident of Village- Sapaha, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
28. Dr. Jitendra Kaji, Son of Bishwanath Kaji, Resident of Village- Bairiya Khurd, P.O.- Harnatand, P.S.- Laukariya, District- West Champaran.
29. Dr. Viddya Nand Pal, Son of Permeshwar Pal, Resident of Village- Rupahi, P.O.- Kathar, P.S.- Dhanha, District- West Champaran.
30. Dr. Rajesh Ranjan Sinha, Son of Jainendra Kumar Sinha, Resident of Village- Meyar, P.O.- Kairi Meyar, P.S.- Noorsarai, District- Nalanda.
31. Dr. Santosh Kumar, Son of Ramprawesh Singh, Resident of Village- Bara, P.S.- Arwal, District- Arwal.
32. Dr. Pappu Kumar, Son of Tula Prasad, Resident of Village- Matihani, P.O.- Itwan, P.S.- Mohanpur, District- Gaya.
33. Dr. Md. Khalid Tanweer, Son of Md. Seraj Uddin, Resident of Village- Moghal Kuan, P.O. and P.S.- Sohsarai, District- Nalanda.
34. Dr. Ashish Kumar, Son of Ranjeet Prasad, Resident of Mohalla- House No.- 5, Opposite Lions Club, Isri Bazar, P.S.- Nimiyaaghat, District- Giridih, Jharkhand.
35. Dr. Raj Kishore, Son of Ganga Prasad Sah, Resident of Village- Arniya, Via- Jandaha, P.S.- Jandaha, District- Vaishali.
36. Dr. Saroj Kumar, Son of Jagannath Goit, Resident of Village- Hathiyahi, P.O.- Biraul, P.S.- Khajauli, District- Madhubani.
37. Dr. Alok Kumar Jha, Son of Bipin Bihari Jha, Resident of Village- Gamhariya, Manpaur, P.S.- Benipatti, District- Madhubani.
38. Dr. Sujeet Kumar, Son of Sri Shyamdeo Mishra, Resident of Mohalla- Behind Rangila Hotel, Sohban Hata, Janta Chowk, P.S.- K. Hat, District- Purnea.



39. Dr. Kamal Kant Nath, Son of Kedar Nath Paswan, Resident of Mohalla- Bhikhna Pahari, Lal Bagh, Kun Kun Singh Lane, P.S.- Pibhor, District- Patna.
40. Dr. Mujtaba Ashraf, Son of Md. Abdul Kalam, Resident of Village- Moulanapur, Via- Barsoi Ghat, P.S.- Barsoi, District- Katihar.
41. Dr. Savita Son of Jageshwar Prasad, Resident of Village- Jolahabigha, P.O.- Hati, P.S.- Kako, District- Jehanabad.
42. Dr. Bhavana, Daughter of Nawal Kishor Paswan, Resident of Bokaro Steel City, P and T Colony, Sector- 6, P.S.- Bokaro, District- Bokaro.
43. Dr. Rafat Perveen, Daughter of Syed Nasim Ahmad, Resident of Aftab Manzil, Sadique Colony, Dargah Road, P.O.- Mahendru, District- Patna.
44. Pankaj Kumar, Son of Ghanshyam Prasad Singh, Resident of Village- Narayanpur, P.O. and P.S.- Sultanganj, District- Bhagalpur.
45. Dr. Sunil Kumar, Son of Late Mahendra Yadav, Resident of Village- Bhatra Ghat, P.O.- Bhatra Ghat, P.S.- Bisfi, District- Madhubani.
46. Dr. Md. Asif Iqbal, Son of Md. Akhtar Hussain, Resident of Flat No.- 405, Mahamaya Apartment, Ramna Road, P.S.- Pibhor, District- Patna.
47. Dr. Vibha Rani, Daughter of Arjun Prasad, Resident of Village- Ram Murti Nagar, P.O. and P.S.- Hilsa, District- Nalanda.
48. Dr. Preeti Sinha, Wife of Dr. Saurabh Singh, Resident of Mohalla- Barari Road, Opposite Government Bus Depot, Tilka Manjhi, Jagdishpur, P.S.- Tilka Manjhi, District- Bhagalpur.
49. Dr. Kumar Kaushalendra, Son of Devendra Prasad Sharma, Resident of Road No.- 6B, Near Silver Rahman Residency, Rajendra Nagar, P.S.- Kadamkuan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Secretary, Department of Health, Government of Bihar, Patna.
4. The Special Secretary, Department of Health, Government of Bihar, Patna.
5. The Additional Secretary, Department of Health, Government of Bihar, Patna.
6. The Deputy Secretary, Department of Health, Government of Bihar, Patna.
7. The Joint Secretary, Department of Health, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Jagjit Roshan, Advocate
For the Respondent/s	:	Mr.Ajay Behari Sinha, GA-8
		Mr. Suryakant Kumar, AC to GA-8



CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 11-04-2023 Heard learned counsel for the petitioners and learned
counsel for the State.

Petitioners in the present case are seeking the
following reliefs:-

“I. Issuance of Writ or Writ in the nature of
Certiorari or Order/direction in the nature of
Certiorari to quash the order passed by Respondent
No.-7 vide Memo No.106(17) to 110(17), 112(17)
to 116(17), 118(17) to 119(17) dt. 31.01.2023
(Annexure-17 Series) by which Petitioners
(Petitioner No.-1 to 46) who have completed Post
Graduation Degree from different Government
Medical Colleges of the State of Bihar were posted
as Medical Officer under Compulsory Bond
Service without considering the fact that the
Petitioners have completed their Post Graduate
Degree and are Specialist Doctors and also without
considering their own Policy decision and further
without asking from them their choice and without
considering the fact that similarly situated persons
(earlier batch) were appointed as Senior
Resident/Tutor/Specialist Medical Officer and also
without considering the vacant Post of Senior
Resident in different Medical Colleges, which
resulted in discrimination with the Petitioners.

II. Issuance of Writ in the nature of Mandamus
directing the Respondents to appoint the Petitioners
as Senior Resident/Tutor/Specialist Medical
Officer on the basis of Merit cum Choice method



as adopted by the Respondent in the light of judicial direction in the earlier batches, so, that Petitioners should not face discrimination.

III. For issuance of direction to stay the process of Memo No. 106(17) to 110(17), 112(17) to 116(17), 118(17) to 119(17) dt. 31.01.2023 (Annexure-17 series) issued by Respondent No.-7 by which petitioners have been appointed as Medical Officer in an arbitrary manner that shall be stayed till the final adjudication of the present Writ Petition.

IV. Issuance of such other order/orders, direction/directions, relief/reliefs to which the petitioner may found entitled to be passed as your Lordships may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

When this writ application was taken up for consideration on 02.03.2023, learned counsel for the petitioners prayed for an interim order allowing the petitioners to fill up their forms for senior residents/tutor post notified by Advertisement No. BCECEB/Health/2023/02 dated 22.02.2023 as contained in Annexure- ‘I/7’ to the Interlocutory Application. It was submitted that the petitioners are specialist doctors but they have been forced to work as Medical Officers and they were not being allowed to apply for the posts under the said advertisement.

Considering the submissions advanced on behalf of



the petitioners, this Court vide order dated 02.03.2023 directed the respondents to allow the petitioners to apply under Advertisement No. BCECEB/Health/2023/02 dated 22.02.2023 subject to result of the writ application.

A counter affidavit has been filed on behalf of the respondents. In paragraph '17' of the counter affidavit, it is stated that vide Departmental Letter No.91(17) dated 27.01.2023 all those students covered under the bond who have not been posted as Senior Resident/Tutor in the Medical Colleges of Bihar have been given permission to submit their application for three years tenure post of Senior Resident/Tutor in the Medical Colleges of the State.

Mr. Ajay Behari Sinha, learned GA-8 submits that the grievance of the petitioners in so far as it relates to their not being allowed to appear under the advertisement in question has already been redressed.

At this stage, learned counsel for the petitioners has made endeavour to take this Court through the policy decision of the government as contained in Annexure- '1' to the writ application with regard to three years compulsory service to be provided by the post graduate students who have signed the bond. Learned counsel for the petitioners submits that these



petitioners have signed the bond and they are ready to serve under three years compulsory service scheme but the difficulty with the petitioners is that they are not being posted on suitable posts. Learned counsel submits that this scheme was brought only to get rid of the dearth of the specialist doctors. Learned counsel further submits that vide Annexure- '3' to '5' decisions were taken at different points of time with regard to the posting of the graduates and post graduates medical students.

Learned counsel has relied upon an order of this Court passed on 21.01.2021 in CWJC No.8269 of 2020 (Dr. Shanker Bharti & Ors. Vs. The State of Bihar & Ors.) to submit that earlier this Court has issued directions to the respondents to adopt corrective measures and in case any person lower in the merit list has been preferred in the matter of posting as Senior Residents/Tutors in the Medical Colleges by the respondents, the corrective measure is to be taken.

Learned counsel for the State submits that the petitioners have moved this Court in a hurry. If at all they have any grievance with respect to their postings, they could have represented before the competent authority and all those materials which are being brought to the notice of this Court could have been considered by the competent authority and an



appropriate decision would have been taken by this time, but instead of doing so the petitioners have chosen to move this Court in its writ jurisdiction.

Having heard learned counsel for the petitioners and the State and upon finding that the petitioners have moved this Court even as they have not made a single representation or grievance petition before the competent authority as regards their posting, this Court is not inclined to entertain this writ application.

It is well settled that for purpose of a writ in the nature of a writ of mandamus, the petitioners would be obliged to show that they have approached the competent authority prior to moving of this Court. So far as the prayer for issuance of a writ of certiorari is concerned, in the matter of posting of the petitioners, this Court finds no reason to interfere with the order of posting. In a writ of certiorari, this Court exercising its power under Article 226 of the Constitution of India is not sitting in appeal and unless any perversity is shown no interference is required to be made.

This writ application is, thus, disposed of with liberty to the petitioners to submit their representation before the competent authority within one month from today and bring all



such materials which they want, to the notice of the competent authority. The competent authority shall consider the same keeping in view the policy decision from time to time and an appropriate order shall be made within a period of three months from the date of receipt/production of a copy of the representations.

(Rajeev Ranjan Prasad, J)

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