

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.273 of 2019

In

Civil Writ Jurisdiction Case No.13489 of 2017

Dr. Kaushlendra Kumar Son of Arvind Kumar Sinha Resident of village Jalalpur, P.S. Warsaliganj, District - Nawada at present posted as Lecturer in Rajkiya RBT Homeopathic Medical Collage and Hospital, Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Special Secretary Govt. of Bihar, Health Department, Patna
3. The Director Deshi Chikitsa Deshi Chikitsa Directorate, Health Department, Bihar, Patna
4. The Principal Rajkiya RBTS Homeopathic Medical College and Hospital, Muzaffarpur
5. The Secretary Bihar Public Service Commission, Bailey Road, Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Sanjay Prasad, Advocate
For B.P.C.S.	:	Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kumar Jha, Advocate
For the Respondent/s	:	Mr.Suryadeo Yadav (AAG-9)
		Mr. Anil Kr. Verma, AC to AAG-9

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-09-2023

The appellant is aggrieved with the impugned judgment which rejected both the prayers in the petition. The first prayer was to amend the Advertisement No. 34 of 2017 dated 09.08.2017 so as to enable the unreserved male candidates to apply for the post. The second prayer was for regularisation of the services of the appellant, who had been working on



contractual basis from January 2015; especially since he satisfies the requisite qualifications in Advertisement No. 34 of 2017, which calls for applications to the very same post, in which the appellant is continuing.

2. On the brief facts, it is to be noticed that the appellant applied under advertisement of the year 2013 and got empanelled for being appointed to the post of Lecturer in the Practice of Medicine (PM) in the Government Homeopathic College. He was successful and was empanelled, as also appointed on a contractual basis in the RRBTS Homeopathic Medical College & Hospital, Muzaffarpur. While he was continuing on contractual employment, the advertisement was issued, upon which the challenge was made, since his application to one of the posts advertised was rejected for reason of no vacancies existing for unreserved male candidates.

3. Learned counsel for the appellant argued that first of all, the advertisement violated the 50% rule for reservation. Further, it is contented that there was no reason to reserve the present vacancy for females from the unreserved category, since even as per the circular issued by the State Government, only the third unreserved vacancy would be conceded to females on a particular reservation. The appellant also seeks for



regularisation of his services since he had been appointed after a due selection and he satisfies all the requisite qualifications.

4. Admittedly, the appellant was appointed on a contractual basis and despite his satisfying all the qualifications, he cannot be appointed to the sanctioned post without a selection carried out from the general public and inviting applications from similarly qualified persons; otherwise it would be in violation of Articles 14 and 16 of the Constitution of India. Merely because the appellant was appointed on a contractual basis, after empanelment pursuant to a selection conducted, he cannot claim regularisation. The right of the appellant is to only apply for a post when it is advertised, provided he satisfies the requirements regarding age, qualification and others prescribed. We find absolutely no reason to fault the findings of the learned Single Judge rejecting the claim for regularisation.

5. As far as the violation of the Rule of 50% reservation, the learned Single Judge specifically noticed that one post has been reserved for the females, by way of vertical reservation and there is no question of the selection to the two posts having violated the Rule of 50% reservation. We are in absolute agreement with the conclusion.



6. The next contention is with respect to the vacancy not being available for vertical reservation of females. There is no material produced before us to establish that the vacancy now advertised, for the purpose of filling up qualified persons from amongst the female general candidates, is not the third vacancy under the unreserved category. The attempt of the learned counsel was to seek a direction to the State to specify as to whether the vacancy is one which could have been reserved for females. We do not think that such an enquiry is warranted, since the advertisement has been made specifically for vertical reservation of females to the one post advertised and it has to be assumed that the State Government had made such reservation, after looking at the roster points. It was incumbent upon the appellant to establish by way of sufficient materials or at least pointing out the appointments made to the vacant posts earlier in the very same department, that the post advertised was not one enabling the vertical reservation.

7. On above reasoning, we find absolutely no valid ground to interfere with the judgment of the learned Single Judge. Learned counsel for the appellant, then pointed out that the person who was selected for being appointed under the female category did not join. This does not give a right to the



appellant to seek appointment to the said post nor even claim regularisation in that post. It would be incumbent upon the Government to again advertise for the post as per the reservation policy of the Government; or appoint the next rank holder, if permissible.

8. The L.P.A. stands dismissed with the parties directed to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

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