

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.943 of 2023

In

Civil Writ Jurisdiction Case No.23238 of 2018

Manoranjan Thakur, X- Ray Technician, Govt. Medical College, Bettiah West
Champaran, Son of Mahendra Thakur, Resident of Ward no. 10, Kailashpuri
Dumara, P.S- Dumra, District- Sitamarhi, Bihar-843301.

... .. Appellant/s

Versus

1. Shiv Shankar Kumar, Son of Late Upendra Sharma, Resident of Village Madhaipur, P.S- Dalsinghsarai, District- Samastipur.
2. The State of Bihar.
3. The Principal Secretary, Health Department, Government of Bihar, Patna.
4. The Director, Health Services, Bihar, Patna.
5. The District Magistrate, West Champaran, Bettiah.
6. The Civil Surgeon cum Chief Medical Officer, West Champaran.
7. The Principal, Government Medical College Bettiah, West Champaran.
8. The Superintendent, Government Medical College Bettiah, West Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shivajee Singh, Advocate
For the Respondent/s : Mr. S.D. Yadav, AAG 9

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-08-2023

The appeal is filed by the 8th Respondent in the writ petition. The petitioner in the writ petition, who is impleaded as the 1st Respondent herein, challenged the denial of full marks for the higher qualification possessed by him in the selection carried out to the post of X-ray Technician from within the Extremely Backward Class category. The learned Single Judge found that based on the higher qualification, he was entitled to 10



marks while the Selection Committee granted him only five marks.

2. Learned counsel for the appellant argued that the selection was carried out for appointment on a contractual basis and the cadre rules at Annexure-1, hence is not applicable. Annexure-2 is relied on to say that there were specific guidelines issued as per Annexure-2, wherein the higher qualifications were specifically stated to have absolutely no relevance in the selection. Annexure-4 is the advertisement dated 28.08.2018 under which the selection was carried out.

3. We also heard the learned Government Advocate, but in the nature of the orders to be passed, we are of the opinion that no notice be issued to the 1st respondent, who was the petitioner in the writ petition.

4. Annexure-1 is the cadre rules, which would apply for every recruitment to the post coming under the rules, even if it is contractual in nature. Annexure-2 is with respect to the contractual appointment of doctors and para-medical personnel under the State. It specifically speaks of the higher qualification not having any relevance when making contractual appointment. In fact, insofar as the subject post is concerned, the cadre rules specifically provide for marks for the higher qualification and the guidelines cannot change the rules framed by the Executive



Government. We also have to see Annexure-4 wherein the stipulation in the cadre rules has been brought in where the higher qualification is given 10 marks. The appellant applied under the advertisement and now cannot turn around and challenge the marks awarded for a higher qualification.

5. We see from Annexure-13 that the 1st Respondent was awarded 35.24 marks and the appellant was awarded 37.42 marks. For the higher qualification only five marks have been awarded to the 1st Respondent. In fact, there can be no award of five marks since the specific marks to be awarded for the higher qualification is 10 as per the advertisement and also the cadre rules. The higher qualification of the 1st Respondent has to be verified and the marks awarded, as indicated in the advertisement.

6. We find no reason to interfere with the judgment of the learned Single Judge and reject the appeal *in limine*.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

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