

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2295 of 2015

In
Civil Writ Jurisdiction Case No.16937 of 2015

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1. Dr. Md. Balal Son of Md. Idrish Ansari Resident of Gokhula, P.S- Chiraiya District- East Champaran Motihari
 2. Dr. Madhukar, Son of Ramesh Chandra Sharma, Resident of 301, Atul Vilas Kunj, Kidwaipur, P.S.- Kotwali, District- Patna.
 3. Dr. Prasanna Kumar Mishra, Son of Anand Mohan Mishra, Resident of Village-Kharajpur, P.O- DMC, District- Darbhanga.
 4. Dr. Manoj Kumar, Son of Manohar Prasad Singh, Resident of at and P.O- Tetrabad, Tola- Chandanpura West, District- Khagairai.
 5. Dr. Vijay Das, Son of Late Kapileshwar Das, Resident of House No.- 24, Road No.- 2 East Patel Nagar, Near, Gandhi Murti, P.S.- Shastri Nagar, District- Patna.
 6. Dr. Zakir Hussain, Son of Md. Hakim, Resident of Katiya, P.S.- Katiya, District- Gopalganj.
 7. Dr. Maqsood Alam, Son of Md. M. Rahman, Resident of Flat No.- 403, Hightech Archieve, Opposite C.D.A. Building, Rajendra Path, Station Road, P.S.- Kadamkuan, District- Patna.
 8. Dr. Md. Aftab Alam, Son of Abbas Ansari, Resident of Mohalla Dumduma, Laheriasarai, District- Darbhanga.
 9. Dr. Anil Kumar Singh, Son of Sri Bhagwan Singh, Resident of Kalyanpur, P.O.- Silari, P.S.- Karaghar, District- Rohtas.
 10. Dr. Chandrajit Kumar Das, Son of Anand Narayan Lal Das, Resident of Pardi, P.S. Pardi, District- Darbhanga.
 11. Dr. Sanjeev Kamal, Son of Upendra Pandey, Resident of Hela Bazar, P.S.- Sadar Hajipur, District- Vaishali.
 12. Dr. Navin Kumar, Son of Om Prakash Gupta, Resident of Pirpaiti Bazar, P.S.- Pirpaiti, District- Bhagalpur.
 13. Dr. Dhiraj Kumar, Son of Ram Awatar Sahu, Resident of Village- Sangi, District-Madhubani.
 14. Dr. Anil Kumar, Son of Shambhu Lal Yadav, Resident of Manika Patha, P.S- Banka, District- Banka.
 15. Dr. Manish Kumar, Son of Mahavir Prasad Singh, Resident of Mohalla- Malighat, P.S- Mithanpura, District- Muzaffarpur.
 16. Dr. Vijay Kumar Yadav, Son of Yamuna Prasad Yadava, Resident of Village- Brahmpur, P.S.- Brahmpur, District- Buxar.
 17. Dr. Rajeev Ranjan, Son of Sri Suresh Choudhary, Resident of Village and P.O.- Silao, P.S.- Silao, District- Nalanda.
 18. Dr. Amrendra Kumar Amar, Son of Maheshwari Prasad Yadav of Villagae- Pipra District- Supaul.
 19. Dr. Rafat wife of Dr. Syed Neraj Hussain, Resident of Hussain Nursing



Home, Khan Bahadur Road, P.S.- Jehanabad, P.O- Jehanabad, District-
Jehanabad.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Bihar Public Service Commission, Patna through its Chairman.
4. The Secretary, Bihar Public Service Commission, Patna
5. The Union of India through Secretary, Ministry of Health and Family Welfare Govt. of India, New Del
6. The Medical Council of India through the Chairman.
7. The Secretary, Medical Council of India, New Delhi.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Jagjit Roshan, Advocate
For the State	:	Mr. Sarvesh Kumar Singh (AAG-13)
		Mr. Arya Achintya, Advocate
For the BPSC	:	Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kumar Jha, Advocate
For the N.M.C.	:	Mr. Kumar Priya Ranjan, Sr. S.C.
		Mr. Vibhuti Kumar Advocate
For the U.O.I.	:	Mr. Sujit Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-03-2023

In the instant L.P.A., appellants have assailed the order
of the learned Single Judge dated 08.12.2015 passed in C.W.J.C.
No. 16937 of 2015.

02. Brief facts of the case are as under:

The appellants were holders of MBBS Degree and Post
Graduate Degree/Diploma Courses and such diploma were
acquired from various Government Medical Colleges of State of



Bihar. They were working as Medical Officer/Specialist Medical Officer with the Government of Bihar through the State Health Society on contract basis. The State Government issued Regulation called as 'Bihar Health Services (Appointment and Service Condition) Regulation, 2013 (for short 'Regulation, 2013). The Regulation consisting of method of recruitment to the post of General Doctors as well as Specialist Medical Officer. The Regulation also prescribes the education qualification. Later on Regulation, 2013 was amended while altering certain education qualifications like candidate must have acquired Diploma Courses with a relevant subject and that particular institution must be recognized by the Medical Council of India (MCI). The State Government intended to fill up the post of Specialist Medical Officer through the Bihar Public Service Commission (BPSC). BPSC proceeded to issue advertisement 01 of 2014 and 12 of 2014.

03. Appellants were candidate for recruitment to the post of Specialist Medical Officer pursuant to the advertisement issued in the year 2014. The post of Specialist Medical Officer was governed by the Regulation, 2013. Thereafter, it was amended on 25.09.2014 insofar as certain qualifications prescribed for the post. The State Government proceeded to recruit Specialist Medical Officer through the Bihar Public Service Commission. Method of



recruitment to the post of Specialist Medical Officer reads as under:-

Annexure-3

बिहार सरकार
स्वास्थ्य विभाग

(66)

अधिसूचना

पटना दिनांक 25 / 09 / 2014

संख्या-2/एम-77/06-1050(2)/स्वा. भारत के संविधान के अनुच्छेद 309 के परनुक द्वारा प्रदात शक्तियों का प्रयोग करते हुए, बिहार के राज्यपाल "बिहार स्वास्थ्य सेवा (नियुक्ति एवं सेवा शर्त) नियमावली, 2013" में संशोधन करने हेतु निम्नलिखित नियमावली बनाते हैं :-

- नाम, विस्तार एवं प्रारम्भ 1-(1) यह नियमावली बिहार स्वास्थ्य सेवा (नियुक्ति एवं सेवा शर्त) (संशोधन) नियमावली, 2014 कही जा सकेगी।
(2) इसका विस्तार सम्पूर्ण, बिहार राज्य में होगा।
(3) यह राजपत्र में प्रकाशन की तिथि से प्रवृत्त होगी।
- उक्त नियमावली, 2013 का नियम-2(क) निम्नलिखित द्वारा प्रतिस्थापित किया जायेगा :-
(क) "स्नातकोत्तर डिग्री" से अभिप्रेत है भारतीय चिकित्सा परिषद् से मान्यताप्राप्त स्नातकोत्तर डिग्री, एम-एन.डी.एम.एस. अथवा समकक्ष या समतुल्य डिग्री अथवा डिप्लोमा/डी.एन.पी.डी डिग्री।
- उक्त नियमावली, 2013 के नियम-7 का प्रयोग पारा निम्नलिखित उप नियमों द्वारा प्रतिस्थापित किया जायेगा :-
(1) विशेषज्ञ उप-संपर्न में नियुक्ति के लिए न्यूनतम वैधानिक अर्हता किसी मान्यता प्राप्त विश्वविद्यालय से संबंधित विषय में स्नातकोत्तर डिग्री/डिप्लोमा या डी.एन.पी.डी डिग्री होगी।
(2) विशेषज्ञ उप-संपर्न में विशेषज्ञ टैड-II के पदोन्नति में नियुक्ति हेतु स्नातकोत्तर डिग्री/डी.एन.पी.डी डिप्लोमा/डी.एन.पी.डी डिग्री के लिए कम से कम तीन एवं पांच वर्षों का कार्यभार योग्यता होगा। संपूर्ण कार्यभार वाले उम्मीदवारों की अनुपलब्धता की स्थिति में, वे विशेषज्ञ टैड-II में स्नातकोत्तर योग्यता वाले सामान्य चिकित्सकों के समकक्ष मूलपदोन्नति- (अतिरिक्त पदोन्नति के साथ) में नियुक्त होंगे और आवश्यक संपूर्ण कार्यभार होने के बाद, विशेषज्ञ टैड-II का पदोन्नति के लिए पात्र होंगे।

बिहार राज्यपाल के आदेश से

80/-
(मनोज कुमार)
सरकार के संयुक्त सचिव

पटना दिनांक 25 / 09 / 2014

संख्या-2/एम-77/06-1050(2)

प्रतिलिपि, अप्रीक्षित सचिवालय मुद्रातलब मुद्रातलब, पटना के बिहार राजपत्र की अधिसूचना प्रकाशित करने के प्रकाशनार्थ प्रेषित।

सरकार के संयुक्त सचिव

D-2506-Addisuchna

04. One of the qualification is relating to Diploma in the concerned subject and it should be recognized by the MCI. The appellants were possessing Diploma in particular subject like Diploma in Tuberculosis and Chest Diseases (DTCD) and



Diploma in Gynaecology and Obstetrics (DGO) from the Patna Medical College and Darbhanga Medical College and Hospital. As on the last date of submission of application for the post of Specialist Medical Officer in the year 2014, some of the courses in the aforesaid medical institution were not recognized by the MCI like DTCD and DGO etc. Such recognition was ordered by the Government of India by its notification dated 29.12.2017. In the light of retrospective recognition of the aforesaid medical institution for the courses mentioned supra, the appellants are claiming that their names could be considered pursuant to the advertisement issued in the year 2014.

05. It is not disputed that the diploma courses undergone by the respective appellants were not recognized by the MCI as on the last date of submission of application for the post of Specialist Medical Officer pursuant to advertisement issued in the year 2014 and not even the date on which CWJC No. 16937 of 2015 was decided on 08.12.2015. In other words, the appellants were not eligible to apply for the post.

06. The Apex Court in the case of ***Union Of India vs Mahendra Singh [Civil Appeal No. 4807 of 2022 (arising out of SLP (Civil) No. 19886 of 2019)]*** decided on 25.07.2022 held that last date of submission of application is relevant for



the purpose of considering application for any post. In other words, as on the last date of submission of application one must be eligible. In the present case, appellants were not eligible as on the last date of submission of application in the year 2014 for the post of Specialist Medical Officer and their Diploma in the respective subject was recognized by MCI only on 29.12.2017 and by that time selection and appointment to the post of Specialist Medical Officer was over.

07. In the light of these facts and circumstances, the appellants have not made out a *prima facie* case, so as to interfere with the order of the learned Single Judge dated 08.12.2015. Hence, the present L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
balmukund/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.03.2023
Transmission Date	NA

