

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17152 of 2022

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1. Saloni Kumari @ Saloni Devi Daughter of Baliram Singh Resident of Village-Bagauchha, P.O. Pipra, P.S. Maharajganj, District-Siwan.
 2. Reena Kumari Daughter of Shyamnath Pandit Resident of Village-Jafrabad, P.O. Desari, District-Vaishali.
 3. Sandhya Kumari Daughter of Ajeet Pandit, Resident of Village-Jafrabad, P.O. and P.S. Desari, District-Vaishali
 4. Geeta Kumari D/o Kashinath Singh Resident of Village-Jalalpur, P.S. G.B. Nagar Tarwara, District-Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Executive Director, State Health Society, Bihar, Patna.
3. The Principal Secretary, Health Department, Bihar, Patna.
4. The Executive Director, State Health Society, Bihar Patna.
5. The Deputy Secretary-Cum-Incharge, Human Resources Department, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Sinha, Advocate
For the State	:	Mr. Binod Kr. Yadav, SC- 18
For the Society	:	Mr. K. K. Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 09-10-2023

1. Heard learned counsel for the petitioner and learned counsel for the respondent-State.

2. The petitioners in the instant case have approached this Court for various relief with respect to the process of selection for Auxiliary Nurse Midwifery (for brevity 'A.N.M.') pursuant to Advertisement No. 05 of 2021, including a direction



restraining the respondents from making selection in the process.

3. The admitted facts which have emerged during course of the proceedings is that petitioner No. 2 has since been appointed, and as such the writ petition insofar as the petitioner No. 2 is concerned has become infructuous.

4. Insofar as petitioner Nos. 1, 3 & 4 are concerned, it is submitted by learned counsel that the petitioner No. 1 was an applicant under the criteria of grand-daughter grand-son of ex-freedom fighter. Petitioner No. 3 was applicant under the Most Backward Class (for brevity 'M.B.C.') and petitioner No. 4, an applicant under the Economically Weaker Section (for brevity 'E.W.S.') category. The cut-off marks, which have been declared against the respective categories of petitioner Nos. 1, 3 & 4 is 34.32 (ex-freedom fighter), 44.19 (MBC) and 38.5 (EWS). The petitioner Nos. 1, 3 & 4, however, have obtained 32.61, 39.68 and 32.4 marks respectively.

5. Learned counsel for the petitioners submits that sufficient vacancies are remaining against which if this Court directs, the petitioners may be considered.

6. The submission is objected to by the learned counsel for the respondent-Health Society, by submitting that



the nature of relief in the instant writ petition without impleading the selected candidate is not maintainable.

7. It is further submitted that whatever vacancies remain are against the respective reserved category, and there is no provision in the Rule or the advertisement under which selection is being made for preparation of wait list for filling up the vacancies remaining due to non joining or otherwise.

8. It is also submitted that having obtained less marks than the cut-off in their respective categories, the petitioner Nos. 1, 3 and 4 are not in a position to seek any direction from this Court for their appointment, let alone cancellation of the entire selection process of the result.

9. On consideration of rival submissions, this Court would find that the marks of petitioner Nos. 1, 3 and 4 are below the cut-off marks in the respective categories. There is no specific allegation of *mala fide* against any individual in the process of selection. The process of selection is also based on two fold assessment. One is marks obtained in the Computer Based Test (CBT), and the other is emerging successful in the document verification. Assessment in the first stage is the CBT, having no human interventions. The petitioners have not qualified in the said assessment having emerged unsuccessful in



the process of selection. The petitioners are thus estopped from alleging infirmity in the selection process.

10. Further this Court would find that the petitioners have not impleaded any selected candidate/s. They have relied upon the decision of this Court in case of *Harendra Kumar Pandey v. State of Bihar*, reported in *1995 (1) PLJR 254*, wherein this Court upheld challenge to the selection process, even though all the selected candidates had not been impleaded as party respondent. The essential distinguishing feature between the case of *Harendra Kumar Pandey* (supra), and the present case is that in case of *Harendra Kumar Pandey* (supra), twelve selected candidates have been impleaded in a representative capacity. In the instant case, not a single selected candidate/s has been impleaded as party respondent. The writ petition thus is fit to be rejected on this ground also.

11. Insofar as petitioner no. 2 is concerned, in view of her appointment during pendency of the writ petition, the writ petitioner insofar as petitioner no. 2 is concerned is dismissed as infructuous.

12. This Court, in view of above consideration, finds that the writ petition insofar as petitioners no. 1, 3 & 4 are



concerned, is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

Raj kishore/
Mayank/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.10.2023
Transmission Date	N/A

