

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.305 of 2022

In
Civil Writ Jurisdiction Case No.1188 of 2022

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1. Nausad Anasri S/o Md. Zafar Ansari Resident of Village- Bhakhra, P.S.- Masaudhi, District- Patna.
 2. Anjali Kumari D/o Satyendra Prasad, Resident of Q. No. 478/EF Rampur Colony, P.S.- Jamalpur, District- Munger.
 3. Anjan Kumar Rajak, S/o Jai Prakash Rajak Resident of Village- Maharshi Nagar Dobha, P.S.- Rupauli, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Health Department, Government of Bihar, Patna.
3. The Secretary, Health Department, Government of Bihar, Patna.
4. Bihar Technical Service Commission, 19, Harding Road, Patna through its Chairman.
5. The Chairman Bihar Technical Service Commission, 19, Harding Road Patna.
6. The Deputy Secretary Bihar Technical Service Commission, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Ms. Nivedita Nirvikar, Sr. Advocate
		Mr. Arya Achint, Advocate
For the Opposite Party/s	:	Mr. S.D. Yadav(AAG - 9)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 17-03-2023

Heard Ms. Nivedita Nirvikar, learned Senior

Advocate for the petitioners and the learned Advocate for
the State.



The review petitioners had approached this Court *vide* CWJC No. 9848 of 2021, seeking setting aside of Clause-5 (ii) of the Bihar Ophthalmic Assistants Joint Cadre (Recruitment & Service Conditions) Rules, 2011 as well as Clause-5 (ii) of the Bihar Ophthalmic Assistant Cadre (Recruitment & Service Conditions) Rules, 2019 (as amended). The further prayer of the review petitioners was to set aside the communication made by the Director-in-Chief, Health Services, Government of Bihar, Patna rejecting the representation of the National Ophthalmic Association Bihar, Patna.

The review petitioners had taken admission in Ophthalmic Assistant Diploma course on the basis of Entrance Test conducted by Bihar Combined Competitive Examination Council. At the time of their taking admission, the eligibility criteria for admission in Diploma Course was 10+2 with Physics, Chemistry, English and Mathematics or Biology as an option. The petitioners had Mathematics as an option who were admitted in the course. Later, from



21.09.2011 on instructions from the Health Department, the eligibility was changed and it was compulsory for an aspirant to have Biology in his +2 in the Science stream and not Mathematics.

Later, the Bihar Ophthalmic Assistant Cadre (Recruitment & Service Conditions) Rules, 2011 (as amended on 06.03.2019) was also framed under Article 309 of the Constitution of India, prescribing the eligibility criteria for recruitment in the State Government on the post of Ophthalmic Assistants to be Diploma in Ophthalmic Assistant with Physics, Chemistry, English and Biology as an option at +2 level (Intermediate Science).

An Advertisement No. 1 of 2021 was issued by the Bihar Technical Service Commission for appointment on the Post of Ophthalmic Assistants. The eligibility criteria fixed was Diploma in Ophthalmic Assistant Course with Intermediate (Science) with the subject combination of Physics, Chemistry, English and Biology.



The Division Bench of this Court, on finding that the review petitioners had taken admission in the course but with Mathematics as an option and therefore Diploma course would become redundant, came to the opinion that excluding such persons from participating in such appointment process against the Advertisement No. 1 of 2021, who had Mathematics as their optional subject at +2 level was arbitrary as it did not stand their test of reasonableness and fairness.

While coming to such conclusion, the Bench also took note of the fact that during the pendency of the writ petition, the prospectus for Entrance Examination, 2021 had been issued, where optional subject of Biology or Mathematics was permitted. In the earlier appointment process in the year 2006 also Mathematics as an optional subject at +2 level had never been excluded.

The basic qualification thus remained the Diploma in Ophthalmic Assistants Course.



Considering that aspect of the matter, the Division Bench had declared that the review/writ petitioners, who had been admitted in the Diploma Course in Ophthalmic Assistants Course before the framing of Recruitment Rules, 2011 would be eligible to be considered for appointment on the post of Ophthalmic Assistant. Since there was already a direction issued by this Court to accept the application forms of candidates passing I.Sc. with Physics, Chemistry, English and Mathematics, therefore the Bihar State Technical Service Commission was directed to prepare the merit-list, treating the petitioners to be eligible for appointment on the post of Ophthalmic Assistants.

From the perusal of the order sought to be reviewed, it is absolutely clear that the Bench had observed, in the solitary instance of the case of the writ petitioners, that they would be considered eligible for appointment as they were admitted in the Diploma Course of Ophthalmic Assistant before framing of the Recruitment



Rules of 2011. It did not make any distinction between the candidates who were admitted in the Course prior to the Recruitment Rules of 2011 or the ones who had completed the Course prior to the Recruitment Rules of 2011.

If the ineligibility sought to be created with respect to candidature of the writ petitioners was done away with, that cannot again be a ground later for non-suiting them only on the ground that they had completed the Diploma Course after the framing of the Recruitment Rules of 2011.

Ms. Nirvikar, learned Senior Advocate for the review petitioners has submitted that the petitioners have been declared to be unsuccessful only because of the reason that they have completed the Diploma Course after the Recruitment Rules of 2011.

However, this statement is not supported by any document whatsoever.



We do not know whether the petitioners have been rendered unsuccessful because they have not crossed the benchmark in the merit-list.

Nonetheless, we find that the judgment passed by the Division Bench is absolutely clear and does not require any clarification or review.

The natural consequence of this order is that if the petitioners are otherwise successful, they ought not to be declared unsuccessful only for the reason that they have completed their Diploma Course after the Recruitment Rules of 2011 came into existence.

The review petition stands disposed of accordingly.

(Ashutosh Kumar, J)

(Partha Sarthy, J)

krishna/Saurabh

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.03.2023
Transmission Date	NA

