

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.419 of 2023

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Umesh Kumar Son of Bindeshwari Rajak, Resident of Village - Chain, P.S.-
Jhajha, District - Jamui.

... .. Petitioner

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.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Ms.Nivedita Nirvikar, Sr. Advocate Mr. Somesh Kumar, Advocate
For the Respondent/s	:	Mr.Nagendra Pd. Yadav (SC-23) Mr. Sudhir Kumar Singh, AC to SC-23
For the BTSC	:	Mr. Nikesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 06-04-2023 Petitioner in the present case is seeking the
following reliefs:-

“a) For setting aside clause 5(i) of Bihar
Ophthalmic Assistant Cadre (Recruitment and
Service Condition) Rules, 2019.

b) For setting aside clause 5(ii) of Bihar
Ophthalmic assistance Joint Cadre Recruitment
and Service Condition) Rules, 2011.

c) For issuance of an appropriate
writ/writs/orders/directions to the respondents for
including mathematics in I.S.C. as eligibility for
appointment on the post of ophthalmic assistant



in response to the Advertisement no. 1/2021 issued under the signatures of the Deputy Secretary, Bihar Technical Service Commission, dated 06.04.2021.

d) For directing the respondents to consider the petitioner on the post of Ophthalmic Assistant in the light of the order passed by Hon'ble High Court dated 18/10/2022 in CWJC No. 9848/2021, 21242/2021, 1188/2022.

e) For directing the Respondent Bihar Technical Service Commission to not to declare result/ postings in pursuance of the counseling held in response to Advertisement No. 01/2021 issued under the signature of the Deputy Secretary, Bihar Technical Service Commission, Patna dated 01-07-2022.

f) For any other relief/ reliefs/ order/ orders for which the petitioner is found to be entitled in the facts and circumstances of the case.”

On the last date i.e. on 23.03.2023, this Court had passed the following order:-

“At the outset, learned Senior Counsel for the petitioner submits that she would not press her reliefs in paragraph 1(a), (b) and (c).

Let the prayers made in paragraph 1(a), (b) and (c) be expunged and the rest of the prayers under paragraph '1' be rearranged as 1(a), 1(b) and 1(c). Learned counsel shall do so in course of the day.

Heard learned Senior Counsel for the



petitioner, learned counsel for the State and learned counsel for the Bihar Technical Service Commission.

Learned Senior Counsel for the petitioner points out that this case would be squarely covered by the judgment of the Hon'ble Division Bench in CWJC No. 9848 of 2021 and other analogous cases. It is for the reason that the petitioner had been admitted in the Diploma Course of Patna Medical College and Hospital, Patna in the Session 2010-2012. It is submitted that on the date the Recruitment Rules came into existence, the petitioner had already been admitted and was pursuing his Diploma Course in Ophthalmic Assistant, therefore, in the case of the petitioner as well, the judgment of the Hon'ble Division Bench will come to his rescue.

The counter affidavit on behalf of the Respondent nos. 2 and 3 is available on the record. The counter affidavit nowhere answers the specific submission of the petitioner that the judgment of the Hon'ble Division Bench would cover the case of the petitioner also. Only a vague submission has been made in paragraph '13' that the parity claimed by the petitioner in the light of the judgment of the Hon'ble Division Bench in CWJC No. 9848 of 2021 is not permissible to be extended to the petitioner.

Let this matter be tagged with CWJC No. 759 of 2023 and be listed on 06.04.2023.

This Court has been informed that at least 11 posts are vacant. Let one post be kept



reserved for this petitioner as well. The Additional Director, Health Department, Government of Bihar who has sworn the affidavit shall be present with the records to explain his stand. ”

Pursuant to the order dated 23.03.2023, today the Director-in-Chief, Health Department, Government of Bihar and the Additional Director, Health Services, Bihar are present with Mr. S.D. Yadav, learned AAG-9 for the State. Both the officers have stated that they have committed a wrong but it was unintentional and perhaps because of lack of sound advice from the panel advocate attached with the department. They have submitted that they will take remedial measures immediately.

Mr. S.D. Yadav, learned AAG-9 has submitted that the case of the petitioner has been covered by the Hon’ble Division Bench judgment in CWJC No. 9848 of 2021.

In the aforesaid view of the matter, the impugned Memo No. 971 dated 04.11.2022 as contained in Annexure ‘8’ to the writ application is hereby set aside. The Director-in-Chief (respondent no. 4) shall pass a fresh order in the light of the Division Bench judgment of this Court in CWJC No. 9848 of 2021 disposed of vide order dated 18.10.2022(Annexure ‘9’), within a period of two weeks from today. The petitioner shall be considered accordingly.



This Court has already directed them to keep one post vacant and learned AAG-9 has given this Court to understand that he will ensure that upon consideration, in accordance with the judgment of the Hon’ble Division Bench, if the petitioner is to be appointed, he will get appointment within a reasonable period.

This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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