

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 759 of 2023

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Ranjeet Kumar S/o Basudeo Paswan Resident of Village-Fazallichak, P.O. Bankipur Machhariyama, P.S.-Fatuha, District-Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
2. The Joint Secretary, Department of Health, Government of Bihar, Patna.
3. The Additional Secretary, Department of Health, Government of Bihar, Patna.
4. The Director-In-Chief, Health Service Department, Department of Health, Government of Bihar, Patna.
5. The Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.
6. The Deputy Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.
7. The Special Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Parmeshwar Vishwakarma, Advocate Mr. Ashok Kumar Singh, Advocate
For the Respondent/s	:	Mr.S.D. Yadav (AAG- 9) Mr.Braj Bhushan Mishra, AC to AAG-9
For the BTSC	:	Mr. Nikesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 06-04-2023 Petitioner in the present case is seeking the following reliefs:-

“(a) Issuance of writ in the nature of certiorari for quashing/setting aside the memo no. 971 dated 04.11.2022 (contained in Annexure-8) has passed by the Director-in-Chief, Health Department, Govt. of Bihar, Patna whereby and whereunder the Director-in-Chief has rejected the representation and grievance of the petitioner on ground that he had passed I.Sc



with Mathematic and as such he is not eligible for appointment on the post of Ophthalmic Assistant as per eligible criteria in Advt. No. 1/2021 which has published by Bihar Technical Service Commission, as per Bihar Ophthalmic Assistant Cadre (Recruitment and Service Conditions) Rules, 2011 and amended Rules, 2019.

(b) Issuance of writ in the nature of mandamus commanding and directing the respondent authorities to prepare merit list treating petitioner to be eligible for appointment on the post of Ophthalmic Assistant, in the light of order dated 18.10.2022 passed by the comprising Division Bench of Hon'ble Chief Justice and Hon'ble Mr. Justice S. Kumar in C.W.J.C. No. 9848 of 2021(Contained in Annexure-9).

(c) To grant any other relief/reliefs for which the petitioner is entitled to 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:-

“Let the counter affidavit be taken on the record. Learned counsel for the petitioner submits that in the light of the direction of this Court in CWJC No. 5289 of 2022, the petitioner approached the authority concerned i.e. respondent no. 4 namely, the Director-in-Chief, Health Services Department, Department of Health, Government of Bihar, Patna but the representation of the petitioner has been rejected on the solitary ground that he had passed



Intermediate in Science with Mathematics, Physics, Chemistry and English in the year 2005. According to the respondents, as per the advertisement, the candidate must have done Intermediate in Science with Biology, Physics and Chemistry with English and he should be having Diploma in Ophthalmic Assistant Course. It is not in dispute that the petitioner has obtained Diploma in Ophthalmic Assistant Course during the period 2003-05.

Learned counsel further submits that an identical question had fallen for consideration in some of the writ petitions which were heard and disposed of by a Hon'ble Division Bench of this Court in CWJC No. 9848 of 2021 and other analogous matters wherein the respondents were directed to consider the case of those petitioners also who were admitted in the Diploma course in Ophthalmic Assistant before framing of Recruitment Rules, 2011.

The Division Bench order has been passed on the reasoning that once the State Government has permitted the students passing Intermediate in Science with Mathematics or Biology for admission in Diploma Course of Ophthalmic Assistant and they have obtained diploma certificate, the State cannot deny their appointment on the ground that they have passed Intermediate (Science) Examination having Physics, Chemistry, English, and Mathematics and not Biology.

Learned counsel submits that in the light of the order passed in CWJC No. 5289 of 2022, he had submitted his representation.

Learned counsel for the petitioner submits that by the time, the representation of the



petitioner came to be considered, the Hon'ble Division Bench judgment in CWJC No. 9848 of 2021 had already come, therefore, it was all the more necessary for the competent authority to pass an appropriate order looking into the judgment of the Hon'ble Division Bench but that has not been done.

Learned counsel has produced a copy of the receipt showing submission of his application vide Registration No. BR00150280000805. It is submitted that the impugned order is in the teeth of the judgment of the Hon'ble Division Bench of this Court.

At this stage, this Court is informed that the respondents have come out with the final merit list on 13.01.2023. A copy of the same has been brought on record with the Interlocutory Application No. 1 of 2023.

A counter affidavit has been filed on behalf of the respondent nos. 1 to 4. It has been sworn by one Dr. Surendra Kumar Chaudhary, who is Additional Director, Health Services, Bihar, Patna. It appears on perusal of the counter affidavit that the same and one plea which was subject matter of consideration by the Hon'ble Division Bench in CWJC No. 9848 of 2021 and has already been decided, has once again been raised in the counter affidavit of this case. The counter affidavit has been filed on or about 17.03.2023 and not a single line is stated about the impact of the judgment of the Hon'ble Division Bench.

This Court, therefore, prima facie finds that the counter affidavit contains averments in complete conflict and disobedience to the judgment of the Hon'ble Division Bench of this Court.

To this Court, it appears that in a very



casual manner, counter affidavit has been filed taking a stand which is in the teeth of the judgment of the Hon'ble Division Bench, the same is contemptuous and only an attempt towards harassing the petitioner whose case stands on similar footing with that of the petitioners in CWJC No. 9848 of 2021.

In the circumstances, this Court calls upon the Additional Director, Health Services, Bihar, Patna to appear in person with his show cause as to why a proceeding for contempt be not initiated against him.

In the meantime, the case of the petitioner shall be considered in the light of the judgment of the Hon'ble Division Bench and appropriate view shall be taken. Finding a prima facie case for consideration, this Court directs that one post shall be kept vacant.

List this matter on 6th April, 2023 under the same heading maintaining its position.”

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.

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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