

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1404 of 2019

In
Civil Writ Jurisdiction Case No.17100 of 2019

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1. Banwari Lal Sharma @ Banawari Lal Sharma S/o Sri Kailash Chandra Sharma Resident of Village- Kundal, P.S.- Kolwa, District- Dausa (Rajasthan). Presently posted as Staff Nurse Grade A at Sadar Hospital Bhabua at Kaimur, District- Kaimur.
 2. Shiv Shankar Sharma S/o Chiranjee Lal Sharma Resident of Village- Kundal, P.S.- Kolwa, District- Dausa (Rajasthan) Presently posted as Staff Nurse Grade 'A' at Sadar Hospital Bhabua at Kaimur, District- Kaimur.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health Government of Bihar, Patna.
2. The Secretary, Bihar Technical Service Commission, Patna.
3. The Deputy Secretary, Bihar Technical Service Commission, Patna.
4. The Chairman, Bihar Technical Service Commission, Patna.
5. Director in Chief (Nursing), Health Department, Govt. of Bihar.
6. The Civil Surgeon Bhabua, Kaimur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ranjay Kumar Patel, Advocate
For the Respondent/s : Mr. S.D. Yadav, AAG 9

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 12-07-2023

1. Heard learned counsel for the parties.

2. The instant appeal has been preferred against the judgment dated 18.9.2019 whereby the learned Single Judge was pleased to dismiss C.W.J.C. no. 17100 of 2019 along with other writ applications.

3. The case of the two appellants in brief is that



they did their B.Sc. Nursing Regular Degree Course from the Rajasthan University of Health Science Jaipur in the years 2010 and 2013 respectively. They applied to get themselves enrolled to the Bihar Nurses Registration Council at Patna for better job prospects. Both the appellants were selected by the State Health Society, Bihar as Staff Nurse Grade-A on contractual basis.

4. It is the case of the appellant that the Bihar Technical Service Commission came out with Advertisement no. 2 of 2019 inviting online applications for a total of 9130 Grade-A nurse in which the essential qualifications mentioned that a candidate must possess a GNM (General Nursing Midwifery) certificate from the Indian Nursing Council / Health Department, Bihar along with registration from Bihar Nursing Council. The appellants could not apply for the reason that the online application form was not having any option for B.Sc. Nursing as essential qualification. As such they filed representation and not having got relief filed C.W.J.C. no. 17100 of 2019 for commanding the respondents to include and modify the essential qualification to include B.Sc. (Nursing) in their online application format for application to Staff Nurse Grade-A as advertised vide Advertisement no. 02/2019 by the respondent Commission to enable the appellants to apply through online for



the advertised post of Nurse Grade-A. A counter affidavit was filed in the writ application on behalf of the Bihar Technical Service Commission bringing on record along with the said counter affidavit a copy of the judgment dated 29.8.2018 passed in C.W.J.C. no. 11096 of 2018 (Md. Asif Hussain and Ors. Vs. The State of Bihar Power (Holding) Company Limited and Ors. and analogous cases) by the learned Single Judge, the judgment dated 18.12.2018 passed in L.P.A. no. 1416 of 2018 (The State of Bihar Power (Holding) Company Limited and Ors. Vs. Md. Asif Hussain & Ors.) by the learned Division Bench and the order dated 22.1.2019 passed by the Hon'ble Supreme Court in SLA (C) no. 1187 of 2019 (Md. Asif Hussain and Ors. Vs. The Bihar State Power (Holding) Company Limited and Ors.).

5. By judgment dated 18.9.2019 the learned Single Judge was pleased to dismiss CWJC no. 17100 of 2019 along with other writ applications. It is against this order that the instant appeal has been preferred.

6. It is submitted by learned counsel appearing for the appellants that the respondent authorities came out with a fresh Rule in the name of Bihar Nurse Cadre Rules, 2019 (the Rules of 2019 in short) giving higher weightage of marks being



60 for the candidates having done GNM course. It was submitted that section 6 of both the Rules of 2013 as also 2019, the minimum qualification for Grade-A nurse is GNM course but by a rider it was made essential for candidate to possess having passed GNM course or else making them ineligible to apply by virtue of section 7(2)(a) of the Rules. It was submitted that the learned Single Judge has failed to appreciate the case of the appellants in the right perspective and the judgment impugned was not sustainable.

7. Learned counsel appearing for the respondents Bihar Technical Service Commission referring to the orders of the Division Bench and the orders of the Hon'ble Supreme Court as referred to hereinabove submitted that there is no error or illegality in the order of the learned Single Judge. There is no merit in the instant appeal and the same be dismissed.

8. Having heard learned counsel for the parties and having perused the material on record, it transpires that the respondents came out with the Rules of 2019. Rule 6 thereof deals with qualifications and the same is quoted hereinbelow for ready reference:-

“6. Qualifications-(1) For appointment by direct recruitment to the basic category posts, minimum educational qualifications shall be pass in General Nursing Midwifery training course of the



period as determined by the Indian Nursing Council, from time to time, from a recognised institution and a certificate related thereto shall be necessary. Registration of candidates from Bihar Nurses Registration Council shall also be necessary. (2) For direct recruitment, minimum age limit shall be 21 years and maximum age limit shall be the same as determined reservation categorywise, from time to time, by the Government (General Administration Department):

Provided that, for the purpose of giving opportunity of appointment to the Grade 'A' Nurse appointed and working on contractual basis in the Government Health Institutions of Bihar State, being requisite on qualifications determined under sub-rule(1). the maximum age limit may be relaxed, from time to time.

(3) For the purpose of determining age, 1" August of the concerned year shall be deemed to be the cut off date."

9. Further Rule 7 of the Rules of 2019 deals with the procedure of Recruitment. The Rule 7 is quoted hereinbelow for ready reference:

*"7 **Procedure of Recruitment.**-(i) The appointing Authority, after calculating the vacancy on the basis of position as on 1" April of the year and getting roster cleared, shall send reservation categorywise requisition to the Commission by 30 April.*

(2) In view of the requisition, the Commission shall invite applications by advertising vacancies and shall prepare a merit list on the following basis-



(a) For marks obtained in GNM course examination -60 marks.

(b) For higher course(if any) -15 marks

(c) For working experience in Government hospitals of Bihar state (5 marks per year. maximum 25 marks) -25 marks

Total 100 marks

Explanation: *The marks to be given to a candidate for GNM course examination shall be determined by multiplying the percentage of total marks obtained in the aforesaid examination by the multiple of 0.6 For example, if a candidate has obtained 50% marks, then he will be given $50 \times 0.6 = 30$ marks.*

(3) The Commission shall send merit list prepared on the basis of aforesaid sub-rule(2), and reservation categorywise recommendations in accordance with requisitioned vacancies to the Department. The Department will make the appointments after scrutiny of certificates of recommended candidates, conducting health check-up, verification of antecedents etc and after complying guidelines regarding appointment issued by the government (General Administration Department) from time to time.

10. The case of the appellants is that Rule 7 of the Rules of 2019 deals with the procedure of recruitment. A candidate to have passed GNM course has been made an essential qualification in the advertisement and for which 60 marks has been allocated. So far as the appellants are concerned



they do not have a certificate of having completed GNM course but have a higher degree ie of B.Sc. Nursing. So far as the 2019 Rules are concerned, on perusal thereof more particularly Rules 6 and 7 which are quoted hereinabove, it transpires that for appointment by direct recruitment to the basic category post the minimum educational qualification is GNM and further Rule 7 it has been provided that while 60 marks will be given for a candidate having GNM course, for higher course 15 marks shall be given. [There also is no doubt with respect to the legal position that it is the employer who is the best person to decide the qualification for the post against which appointments are being made.]

11. At this stage it would be relevant to refer to the judgments relied upon on behalf of the respondent Commission and which have been annexed to their counter affidavit in the writ application. The learned Single Judge in his order dated 29.8.2018 while disposing of the batch of the writ applications was considering the case of the petitioners therein who were degree holder in B.Sc. Engineering and the respondent Board in appointment of Junior Electrical Engineer had excluded them from participating them in the selection process. The Board permitted the participation of only persons



holding Diploma and the candidates having qualification of degree were declared ineligible. The learned Single Judge allowed the prayer of the writ petitioners which was challenged by the Bihar State Power (Holding) Company Limited in L.P.A. no. 1416 of 2018 . The learned Division Bench of this Court vide judgment dated 18.12.2018 reversed the decision of the learned Single Judge and dismissed the prayer made in the writ application in the following terms:-

“On the other hand, the appellants have relied on the judgments in the case of State of Punjab and Ors. vs. Anita & Ors. reported in (2015) 2 SCC 170, P.M. Latha & Anr. vs. State of Kerala & Ors. reported in (2003) 3 SCC 541, Yogesh Kumar and Ors vs. Government of NCT, Delhi & Ors. (2003) 3 SCC 548. The said issues have been thrashed out time and again and in the instant case what we find that in the case of Jyoti K.K. (supra) the relevant Rule applicable in that controversy provided for such of those higher qualification which presupposes the acquisition of the lower qualification prescribed for the post. In the instant case, we do not find any such Rule and even otherwise on facts the higher qualification of Degree does not presuppose the acquisition of the lower qualification of Diploma.

Thus, it was open to the appellant employer to prescribe the qualifications and if an alteration was made as against the earlier policy the same cannot be said to be suffering from any act of arbitrariness or violation of the law laid down by



the Hon'ble Apex Court. The judgments therefore relied on by the learned counsel for the respondent- petitioners clearly prescribes the Rules which permitted a presupposition whereas in the present case no such Rule exists. The issue at hand came to be decided by a learned Single Judge of the Allahabad High Court in the case of Alok Kumar Mishra vs. State of U.P. in Service Single No. 6655 of 2016 decided on 2 of May, 2016 and it was held after following the decisions of the Supreme Court, and consideration of the same judgments that have been cited here in the present case, that the presumption was misplaced as in order to possess a Degree in Engineering it would not be necessary to pass or possess a Diploma in Engineering. Accordingly, the proposition that the same was an in line qualification or was subsumed, was repelled. The aforesaid judgment was upheld by a Division Bench in an Intra Court Special Appeal No. 229 of 2016 decided on 31st of May, 2016. Special Leave to Appeal filed against the aforesaid judgment before the Apex Court vide Special Leave to Appeal (C) No. (s) 17219/2016 came to be dismissed on 25th of July, 2016.

Thus, in view of the conclusions drawn hereinabove and the judgments cited at the Bar, we find that the judgment of the learned Single Judge cannot be sustained. We, accordingly, allow the appeal and set aside the impugned judgment dated 29.08.2018 and dismiss the writ petition”

12. The writ petitioners being aggrieved by the judgment dated 18.12.2018 challenged the same before the Hon'ble Supreme Court in SLA (C) no. 1187 of 2019 which



was dismissed by the Hon’ble Supreme Court by its order dated 22.1.2019.

13. Taking into consideration the judgment of the Hon’ble Division Bench dated 18.12.2018 passed in L.P.A. no. 1416 of 2018 affirmed by Hon’ble Supreme Court together with the provisions of Rules 6 and 7 of the Bihar Nurse Cadre Rules, 2019, the Court finds no illegality in the action of respondents / employer whereby they have made GNM training course as a mandatory qualification under the Advertisement for the purpose of appointment. The Court finds no error in the order of the learned Single Judge nor any merit in the appeal filed by the appellants.

14. The appeal is dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Spd/-

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CAV DATE	
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