

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.226 of 2020

-
1. Shashank Shekhar @ Shashank Son of Uttam Prasad Keshri, Resident of Village- Bhatta Durga Bari, Purnea, Police Station- Purnea, District- Purnea.
 2. Priyadarshi Kumar, Son of Sri Vinay Kumar, Resident of Village- Uteshra, Police Station- Salkhua, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary of Health Department.
2. The Superintendent of Jawaharlal Nehru Medical College and Hospital, Bhagalpur.
3. The Principal of Jawaharlal Nehru Medical College and Hospital, Bhagalpur.
4. The District Magistrate, Bhagalpur.
5. Civil Surgeon, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amar Nath Yadav
For the State	:	Mr. Ajay Behari Sinha, GA 8
		Mr. Upendra Kumar Singh, AC to GA 8

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

4 01-02-2023 1. The petitioner by way of this writ petition challenges the final merit list for appointment dated 24th July, 2019, whereby two posts of Physiotherapist in J.L.N. Medical College, Bhagalpur were filled by conducting a walk-in interview system wherein the petitioner participated but failed to come within the merit for selection.

2. Learned counsel for the petitioner submits that the person who has been selected and placed at first position in the merit list was ineligible as he had crossed the age limit.



Further, it is stated that so far as petitioner no. 2 is concerned who has been placed at number 2 in the merit list of general category was required to be given four marks more as there was no provision for deducting marks on the ground of failure/attempts in the advertisement. Learned counsel for the petitioner further submits that the age criteria as laid down under the rules has to be followed and no different criteria could have been followed by the college for making appointments.

3. I have reflected on these submissions, this Court finds that the petitioner after having participated in the selection process and having failed to come up to the merit has challenged the said merit list. He has not impleaded anyone as a party to the writ petition. In absence of those who have been placed in the select list and who have been offered appointments, no orders can be passed for directing of quashing such a select list. The Supreme Court in the case of **State of Rajasthan Vs. Uchhab Lal Chanwal** as reported in **2014(1) SCC 144** has held as under:

12. After so stating this Court referred to the decision in Indu Shekhar Singh v. State of U.P. [(2006) 8 SCC 129 : 2006 SCC (L&S) 1916] wherein it has been held thus: (Vijay Kumar Kaul case [(2012) 7 SCC 610 : (2012) 2 SCC (L&S) 491]



, SCC p. 620, paras 37-38)

“37.... ‘56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority. (Indu Shekhar Singh case [(2006) 8 SCC 129 : 2006 SCC (L&S) 1916] , SCC p. 151, para 56)’

38. In *Public Service Commission v. Mamta Bisht* [(2010) 12 SCC 204 : (2011) 1 SCC (L&S) 208] this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: (SCC pp. 207-08, paras 9-10)

‘9.... in *Udit Narain Singh Malpaharia v. Board of Revenue* [AIR 1963 SC 786] wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the



Code of Civil Procedure, 1908 (hereinafter called "CPC") provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat [AIR 1965 SC 1153] , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [(1974) 2 SCC 706] and Sarguja Transport Service v. STAT [(1987) 1 SCC 5 : 1987 SCC (Cri) 19] .)

10. In Prabodh Verma v. State of U.P. [(1984) 4 SCC 251 : 1984 SCC (L&S) 704] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] , it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties. ”

13. In J.S. Yadav v. State of U.P. [(2011) 6 SCC 570 : (2011) 2 SCC (L&S) 140] it has been held as follows: (SCC p. 583, para 31)

“31. No order can be passed behind the back of a person adversely affecting him and such an order



*if passed, is liable to be ignored being not binding
on such a party as the same has been passed in
violation of the principles of natural justice.”*

4. Similar view has been consistently being taken by the Supreme Court in the case of **Prabodh Kumar Verma & Ors. Vs. State of U.P. & Ors.** as reported in **1984 (4) SCC 251**, as well as **Arun Kumar Tewari & Ors. Vs. Zila Mansavi Shikshak Sangh & Ors.** reported in **1998(2) SCC 332**.

5. In view of above the writ petition is dismissed.

(Sanjeev Prakash Sharma, J)

Suraj/-
Item No. 11

U			
---	--	--	--

