

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6780 of 2024

Dr. Nishant Son of Rameshwar Nath Pandey R/o K79, PC Colony,
Hanumannagar, Kankarbagh Colony, Police Station-Patrakar Nagar, District-
Patna, Bihar- 800020.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary General Administration Department,
Government of Bihar, Patna.
3. The Additional Chief Secretary Health Department, Government of Bihar,
Patna
4. The Director in Chief, Health Department, Government of Bihar, Patna
5. The National Medical Commission through the Chairman, Pocket 14, Sector
8, Dwarka Phase 01, New Delhi 110077
6. The Chairman, National Medical Commission, Pocket 14, Sector 8, Dwarka
Phase 01, New Delhi 110077

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Kumar Kaushik, Advocate
For the State	:	Mr. P.K. Shahi, Advocate General Mr. Amish Kumar, AC to AG
For NMC	:	Mr. Kumar Priya Ranjan, Sr.SC Mr. Sandeep Kumar, Advocate Mr. Vibhuti Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-04-2024

The writ petition seeks striking down of Rule-7(iii)(d) of Chapter-4 of the Senior Resident/Tutor and Bihar Medical Education Service Recruitment, Appointment and Promotion Rules, 2008.

2. The objectionable rule prescribes the maximum age limit for appointment to the post of Assistant Professor to be 45 years for unreserved category, 50 years for Scheduled Castes/Scheduled Tribes and 48 years for the other reserved category. The contention is that the rule is in conflict with teacher's eligibility qualifications in the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 as amended by the National Medical Commission in exercise of powers conferred by Section-57 of the National Medical Commission Act, 2019.

3. Learned Counsel appearing for the petitioner also relied on a decision of the Hon'ble Supreme Court in ***Dr. Professor Rajendra Chaudhary Vs. State of Uttar Pradesh; (2020) 13 SCC 278.***

4. The Rules of 2008 provide for 45/48/50 years as the maximum age for the various categories; unreserved and



reserved and the petitioner's contention is that it has to be brought in consonance with the regulations of the National Medical Commission which prescribes maximum age as 70 years.

5. In fact Schedule-1 of the regulations as produced at Annexure-P5 specifically provide for the maximum age limit up to which a person can be appointed, to be 70 years. Hence, it cannot be said that the prescription is mandatory that every State should prescribe 70 years as the maximum age.

6. In this context, we would look at the decision cited by the learned Counsel for the petitioner. Therein the rules in the State of Uttar Pradesh provided the maximum age limit of 45 years for appointment by direct recruitment to the post of Professor in Medical Colleges. An advertisement was published enhancing the upper age limit from 45 years to 65 years, which was questioned in the writ petition on the ground that it was in violation of the Medical Colleges Teachers Services Rules-2005, which prescribed the maximum age limit of 45 years. The Hon'ble Supreme Court approved the decision of the High Court which found the decision to increase the upper age limit from 45 years to 65 years to be not vitiated for reason of the regulations framed by the MCI prevailing over the Service



Rules. The Government Order dated 06.02.2015 which permitted such enhancement only supplemented the Rules and does not supplant it was the finding.

7. More significant is the High Court's observation regarding the enhancement of age, having been necessitated for reason of shortage of teachers in medical institutions, qualified to be appointed as Professors. The relaxation of the upper age limit was made applicable only to those departments where 25 per cent or more posts were vacant. We also have to emphasize that despite the age prescribed by the MCI to be 70 years the High Court and the Hon'ble Supreme Court approved the enhancement to 65 years. This indicates that the prescription only permitted the State to relax the maximum age limit upto 70 years; which motivated us to emphasize the word upto with underlining, when we noticed the prescription from the Regulations.

8. In the instant case the Rules provided for 45/48/50 years for the various categories as maximum age limit. The Government did not think it fit to adopt the relaxation permitted by the MCI; which is not a mandate. It is trite that the regulations of the MCI prescribe the minimum standards and a dilution shall not be made by the State but a rigor can definitely



be applied. The State would be prohibited in providing a maximum age beyond 70 years but not in providing a lesser age as the maximum age. The Rule applied by the State would be perfectly in order.

9. We find no reason to entertain the writ petition and it is, accordingly dismissed.

(K. Vinod Chandran, CJ)

I agree.
(Harish Kumar, J)

(Harish Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	29.04.2024
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