

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9633 of 2023

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Srikant Kumar Son late Vishwanath Mishra, R/o Vill- Kharauna, P.O.-
Lalganj, P.S.- Lalganj, Dist- Vaishali, Pin code-844121.

... .. Petitioner/s

Versus

1. The State of Bihar through general administration and personnel department
new Secretariat, Patna.
2. Principal Secretary, Health Department, Patna.
3. Special Secretary to the Government Health Department, (Ayush), Bihar,
Patna.
4. Additional Secretary to the Government of Bihar, New Secretariat, Bihar,
Patna.
5. Director Homeopathy Ayush Directorate Prabhari Prashakha 16 Health
Department, Bihar.
6. Principal of R.B.T.S. Govt. Homoeo Medical College and Hospital,
Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Md. Shahnawaz Ali, Advocate Mr. Padmanabh Kashyap, Advocate
For the Respondent/s	:	Mr. AAG-9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 09-01-2024

The petitioner has preferred the present
petition for the following relief:

*(i) for declaring the advertisement no-
03/2023 dated 12.06.2023 Issued by*



*Special Secretary Health Department
Bihar, Patna as the same was advertised
contrary to the rule framed in Bihar
Ayush(Ayurvedic, Unani & Homeopathy)
Medical Teaching Service Rule 2017
notified by the seal and signature of
Additional Secretary to Government of
Bihar vide its notification no-152(Ayush
Chikitsah) dated 09.02.2017 and contrary
to the provision of Bihar
Ayush(Ayurvedic, Unani & Homeopathy)
Medical Teaching Service Rule 2017 and
also contrary to the Central Council to
the Homeopathy regulation, 2013 being
excess of power to the Constitution and
various other central enactment as
illegal, arbitrary, unconstitutional and
ultra-virus and ultra- virus to the
constitutional of India as enshrined in
Part-3 of the Constitution of India and
framed ignoring the Principal of Natural
Justice (annexure-1), be issued;*



(ii) for declaring the advertisement no-03/2023 dated 12.06.2023 issued by Special Secretary Health Department, Bihar, Patna as the same was advertised contrary to the rule framed in 'Sankulp' for appointment of contractual Niyojan, Regular Teacher/Promotion against the vacant post of Associate Professor and professor in Bihar Ayush (Ayurvedic, Unani & Homeopathy) Medical collages for grant of recognition as per MSR in the Ayush Homeopathic Collages of Health Department Government of Bihar vide its memo no-167 Ayush Chikitsa dated 15.02.2023 notified by the seal and signature of Joint Secretary to Government of Bihar that the condition mentioned in the advertisement no-3/23 is also contrary to the rules framed and published by the Central Council of Homeopathy Principle Regulation Published in Gazette of India



extraordinary on dated 08.03.2013 wherein it is specifically stated in schedule IV for minimum teaching staff for degree course and schedule V for minimum teaching staff in PG course separately but in advertisement UG & PG courses is not mentioned and not advertised separately rather both UG & PG post are mixed in advertisement, for appointment of teachers in RBTS Homeopathic College Muzaffarpur;

(iii) for quashing the advertisement no-03/2023 dated 12.06.2023 that the condition mentioned in the advertisement no-3/23 is also contrary to the rules framed and published and against the letter memo no-132(Ayush 28.01.2019 Chikitsah) dated 28.01.2019 issued by deputy secretary of the government Bihar wherein it is specifically stated in PG course department in five subjects 2 post for professor, 5 post for



Pravachak/Reader and 5 post for lecturers is available and no reservation is applicable against single post of the department while single post is also reserved in advertisement but in advertisement UG & PG courses post are mixed in advertisement, for appointment of teachers of Homeopathy and single post is also reserved. That total number of post is 21 out of which 7 posts are vacant for reader and 14 post is vacant is advertised for professor but in the advertisement only 13 post is mentioned for UG & PG courses which is contrary to the sankulp and is unsustainable;

(iv) for quashing the advertisement no-03/2023 dated 12.06.2023 that the condition mentioned in the advertisement no-3/23 for working experience for all illegible applicants is given 1 marks per year for maximum period of 10 years will be 10 marks but as per Niyama Wall



2017 only government employee shall be given 2 marks per year for maximum period of 5 years will be of 10 marks is also contrary to the rules framed and published in Bihar Ayush (Ayurvedic, Unani & Homeopathy) Medical Teaching Service Rule 2017. That in Adv no-2/23 as per Niyama Wali 2017 only government employee shall be given 2 marks per year for maximum period of 5 years will be of 10 marks was properly followed So it is irrational, discriminatory and without Jurisdiction therefore the advertisement cannot sustain in the eye of law and is liable to be quashed by this Hon'ble court;

(v) For quashing the advertisement no-03/2023 dated 12.06.2023 that the condition mentioned in the advertisement no-3/23 for publication of 1 paper 1 marks shall be counted as experience for all the applicants while earlier for 1



publication 2 marks was counted and given and 2 research paper publication is required which was desirable not compulsory in the appointment of the Teachers but it is made compulsory for appointment now for the applicant is without jurisdiction.

2. The petitioner claims himself to be a Homeopathy Doctor with specialization in Psychiatry and Paediatrics. According to him, the Central Council of Homeopaths, New Delhi (Henceforth 'the CCH') which is the supreme body relating to Homeopaths in the year 2013, framed rules and regulations published in the Gazette of India in which the criteria has been laid down relating to the posts a College must have for the students.

3. The Health Department also framed rules in the year 2017 prescribing several guidelines for appointment of Teachers in the Government Homeopathy College in the State.

4. The case of the petitioner is that the State Government (Health Department) came out with an



advertisement no. 02 (Ayurveda), 2023 for filling up the post of Associate Professors and Professors in the Government Ayurvedic College and Hospital on contractual basis.

5. The petitioner claims that the said advertisement no. 03/2023 is in the teeth of the rules and regulations framed by 'the CCH' in the year 2013 and the State Government in the year 2017 as in the said advertisement, the post of Psychiatry and Paediatrics is/are missing. He thus submits that the same need interference.

6. Having gone through the writ petition, we do not find any statement/document relating to the qualification of the petitioner. This Court thus put specific question to the learned counsel for the petitioner on the said claim made that he is having certificate of Homeopathy in Psychiatry and Paediatrics. Learned counsel save and except pointing out to an averment that he is registered as a Homeopathic practitioner could not show anything to support the claim.

7. A case has to stand on its own merit before it questions the decision taken by the respondent authorities. In absence of that, no relief can be extended to the petitioner.



8. In any event, we see the challenges to the advertisement to be unsustainable for the ground alleged of vacancies under two subjects not having been published. The petitioner neither has established locus standi nor raised a valid ground of challenge.

9. The writ petition is misconceived, ill advised and is accordingly dismissed. No cost.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	
CAV DATE	
Uploading Date	15.01.2024
Transmission Date	

