

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10563 of 2023

1. Ashok Kumar Thakur, Son of Sri Bindeshwar Thakur Resident of Flat No. 2/D, Sneha Plaza, Sardar Patel Path, North S.K. Puri Police Station-Sri Krishna Puri, Distirct-Patna, Bihar-800013.
2. Neeraj Kumar, Son of Rajdeo Singh Resident of House No.15, Gokul Marg, North S.K. Puri, Police Station-Sri Krishna Puri, Distirct-Patna, Bihar-800013.
3. Shravan Kumar, Son of Late Chakravarti Prasad Resident of Flat No. G6, Block A, Terrace Gardenia Society Shiv Shambhu Nagar, Ashiana Digha Road, Patna, Bihar-800014.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary-Cum-Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-In-Chief, Health Department, Government of Bihar, Patna.
4. The Bihar Technical Service Commission, through its Secretary, 19 Harding Road, Patna 800001.
5. The Chairman, Bihar Technical Service Commission, 19 Harding Road, Patna 800001.
6. The Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna 800001.
7. The Controller of Examination, Bihar Technical Service Commission, 19 Harding Road, Patna 800001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Kumar Kaushik, Advocate
For the State	:	Mr.S. D. Yadav, AAG-9
For the BTSC	:	Mr. Nikesh Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-04-2024

Petitioners are aggrieved with the qualifications prescribed for the post of Assistant Director (Medical Cardiology) and Assistant Director (Pediatric Cardiology) in



Appendix-I of the Indira Gandhi Institute of Cardiology Medical Service Rules, 2022 (for brevity 'Rules'), framed in exercise of powers conferred under Article 309 of the Constitution of India. Pursuant to the Rules and in accordance with it, an advertisement No. 01/2023 was published on 03.01.2023 for the above posts, in the Super Speciality Hospital; which imparts medical education up to Super Speciality in Cardiology. The qualifications prescribed do not make eligible the petitioners for applying under the advertisement; which has given rise to the grievance of the petitioners.

2. We heard the learned counsel for the petitioners and the learned Counsel appearing for the respondents.

3. The learned Counsel for the petitioners, at the outset, points out that in the writ petition reliance was placed on the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 brought out by the Medical Council of India under the Indian Medical Council Act, 1956. The same has been repealed and now what is applicable is the Teachers Eligibility Qualifications in Medical Institutions Regulations, 2022 brought out by the National Medical Commission.

4. It is pointed out that the petitioners are qualified to teach Post Graduate Courses and the Assistant Director's post is



not a mere administrative post in the college; which is also a faculty position. The prescription of the qualification is against the Regulation issued by the National Medical Commission and it unduly prejudices the petitioners, is the contention.

5. The learned Counsel for the respondents, however, contends that the employer has the ultimate authority to prescribe qualification; which is also on the basis of the requirements for a post.

6. On facts *suffice* it to notice that the petitioners are qualified doctors having a basic degree in MBBS, M.D. in Pediatrics and a Super Speciality D.M. in Cardiology. Insofar as the eligible qualifications for Assistant Director (Medical Cardiology Cadre), in addition to MBBS; which is the basic degree, an applicant has to have an M.D. in Medicine and a D.M. in Cardiology. Similarly, insofar as the post of Assistant Director (Pediatrics Cardiology Cadre), an applicant has to have an M.D. in Pediatrics and a D.M. either in Neonatology or Pediatrics Cardiology.

7. While applying for the post of Assistant Director (Medical Cardiology Cadre), the petitioners are disabled since they are Post Graduate in Pediatrics while the requirement is in Medicine. As far as Assistant Director (Pediatrics Cardiology



Cadre) is concerned, the petitioners have an M.D. in Pediatrics, but they do not have the Super Speciality qualification.

8. We have left far behind, the era of general practitioners treating all and sundry ailments. We are in the age of super speciality; due to the vast advancements made in medical science and technology. Though, a qualified doctor having an MBBS degree would look at many sundry medical problems, the era of specialisation requires specific ailments to be looked into and treated by a specialist. The posts advertised are not merely administrative in nature; we agree with the learned counsel. They are faculty positions and also the incumbents would be obliged to treat the patients coming to the Super Speciality Hospital. It is based on such requirements with reference to the courses run by the institutions and the specified ailments treated that the eligible qualification for a post is prescribed. When the appointing authority, a hospital, that too a Super Speciality Hospital, with reference to the various aspects, fix a qualification for a particular post; it is not for the Courts to interfere, especially on grounds of hardship caused to persons in similar but not identical specializations being disabled from applying for the post.

9. In the present case, we have to specifically notice



that one of the Assistant Director’s posts is in the Medical Cardiology Cadre, where the prescription is a Post Graduation in Medicine and a Super Speciality in Cardiology. A Post Graduate in Pediatrics will not be able to fit the bill of the Assistant Director (Medical Cardiology Cadre). Similarly, the specific requirement in the Pediatrics Cardiology Cadre is for a Specialisation in Neonatology or Pediatric Cardiology and a super speciality in Cardiology would also not fit the bill. The Post Graduation and the super speciality qualifications are prescribed based on the needs of the institution, with reference to the prevalence of patients and also the courses carried out. We find absolutely no reason to entertain the writ petition and dismiss the same.

10. Interlocutory application(s), if any, shall stand disposed of.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	19.04.2024
Transmission Date	

