

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14819 of 2023

1. Dr. Satyanarayan Paswan Son of Hardev Paswan, R/o - village- Bhikanpura, P.S. - Goraul, District - Vaishali.
2. Dr. Rakesh Kumar, S/o Godhan Prasad Gupta, R/o Village - Harshera, P.O. and P.S.- Goraul, District - Vaishali.
3. Dr. Singheshwar Sahu, S/o Mahavir Sahu, R/o-village- Saho, P.S. Bayatel, Dist. - Darbhanga.
4. Dr. Pramila Kumari, W/o Radheshyam, R/o - Village- Sherpur, Rayasth Tola, P.S. - Bela, Dist. - Muzaffarpur.
5. Dr. Upendra Kumar Singh, S/o Kalicharan Singh, R/o village- Chainpur, P.S. - Karpi, Dist. - Arwal.
6. Dr. Krishna Murari Prasad, S/o Suchendar Prasad, R/o - village - Ghorasahandih, P.S. - Ghorasahan, Dist. - East Champaran.
7. Dr. Tarun Kumar Sikdar, S/o - Late Amal Krishna Sikdar, R/o ward No. 7, Gorasahan North, P.S. - Ghorasahan, Dist. - East Champaran.
8. Dr. Manilal Vishwakarma, S/o Mahesh Vishwakarma, resident of village - Maudiha, P.S. - Imamganj, Dist. - Gaya.
9. Dr. Nand Kishore Chaturvedi, S/o Janardan Choubey, Village - Sakes, P.S. Sasaram, District - Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner cum-Secretary, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
2. The Joint Secretary to the Government, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
3. The Additional Secretary to the Government, Department of Health Medical Education and Family Welfare,
4. The Special Secretary to the Government, Department of Health Medical Education and Family Welfare,
5. The Bihar Technical Service Commission, through its Secretary, 19 Harding Road Patna.
6. Amrendra Kumar Singh, Male, Aged about 43 years, son of Upendra Kumar Singh, Resident of Bara Telpa, Nai Basti, P.O. Chaprs, District Saran, Bihar.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mukul Sinha, Advocate
For the Respondent/s : Mr. P.K. Shahi, Advocate General
Mr. Vikash Kumar, Advocate
Mr. Arvind Kumar, Advocate
Mr. S. Azeem, Advocate
For the BTSC : Mr. Nikesh Kumar, Advocate
For the Intervenor: Mr. Vikash Kumar Jha, Advocate
Mr. Rahul Kumar Singh, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 28-03-2024

Re: I.A. No. 1 of 2024

The above interlocutory application has been filed by the intervener-applicant Amrendra Kumar Singh s/o Upendra Kumar Singh, r/o Bara Telpa, Nai Basti, P.O. Chapra, District Saran, Bihar, for impleading him as additional respondent in the instant writ petition.

2.Having gone through the same, we allow the intervener-applicant to be impleaded as additional respondent in the writ petition.

3. The interlocutory application stands disposed of.

4. Registry to carry out necessary addition of parties in the cause title of the writ petitions.



CWJC No. 14819 of 2023

The petitioners challenge the validity of Section 2(ii) of the Bihar District AYUSH Medical/State AYUSH Medical Service (Appointment on Regular/Contract basis and Service Conditions) (Amendment) Rules, 2017 (hereinafter referred to as the 'Amendment Rules' in short). The challenge is insofar as the degree of Graduation in Ayurvedic Medicine and Surgery; which all the petitioners possess granted prior to 2003 as conferred by the Bihar State Faculty of Ayurvedic and Unani Medicines, having not been included as one of the eligible qualifications. The Bihar State Faculty of Ayurvedic and Unani Medicines was constituted under the Bihar Development of Ayurvedic and Unani Systems of Medicine, Act, 1951.

2. The petitioners while seeking inclusion of their qualification as eligible for appointment as AYUSH Doctors in Ayurveda, by making a suitable amendment also seeks due consideration under the Advertisement Nos. 4 to 9 of 2020 issued in accordance with the Rules for the purpose of recruiting Doctors under the AYUSH scheme.

3. We have heard learned counsel for the petitioners



and the learned Advocate General.

4. Learned counsel for the petitioners has specifically relied on a decision of the Hon'ble Supreme Court in ***Bihar State Council of Ayurvedic and Unani Medicine and Ors Vs. the State of Bihar and Ors;(2007) 12 SCC 728.***

5. Later to the decision, Ministry of Health and Family Welfare, Government of India issued notification dated 25.06.2010 under Section 14 (2) of the Indian Medicine Central Council Act, 1970 (48 of 1970) (for brevity “Act of 1970”) along with other amendments, amending *inter alia* Item No. 6 of Column 4 of Schedule II applicable to the State of Bihar. The validity of the Graduate in Ayurvedic Medicine and Surgery Course conducted under the aegis of the State Faculty of Ayurvedic and Unani Medicines, Patna, Bihar was restricted to the period between 1953 to 2003.

6. Hence, the graduate degree in Ayurveda conferred on persons who qualified prior to 2003 would be recognized. It is also submitted that a Division Bench of this Court in ***CWJC No. 20683 of 2019 (Rakesh Kumar Singh Vs. Union of India and Anr)***, has also accepted the above proposition; though the writ petitioners claim in that



case, for equivalence was declined since the degree was obtained only in the year 2012.

7. Learned Advocate General conceded that the petitioners claim for inclusion of the qualification is genuine and that the State is intending to amend the Rules. However, it is pointed out that insofar as the claim for consideration in the Advertisements of 2020, the selection has been completed and there is no vacancy left. The petitioners have unsuccessfully challenged the exclusion as per the advertisement; which was also in accordance with the Rules and now the petitioners cannot claim such consideration.

8. The intervener also appeared through his Counsel and argued. Intervener who was appointed in pursuance to the selection also argued for dismissal of the writ petition at least insofar as the consideration under the advertisement.

9. Admittedly, the petitioners were persons who were issued with certificates after 2003 but who had obtained their qualification prior to 2003. Annexure-1 series of certificates indicate that all the petitioners had sat for the examinations prior to 2003. When a doubt was raised as to



the certificates having been issued after 2003, the petitioners have produced along with a supplementary affidavit Annexure-9 series of provisional certificates, all of which were issued between 1997 and 2003. Hence, as held by the Hon'ble Supreme Court and this Court as also the notification referred to above, the petitioners are entitled to be treated as graduates in Ayurveda. The State also concedes that their qualification would be included.

10. Now the question arises as to whether they are entitled to be considered in the selection of 2020.

11. The very same petitioners had approached this Court with CWJC No. 8825 of 2020 (Dr. Satyanarayan Paswan and Ors Vs. the State of Bihar and Anr), wherein, the relief sought was for quashing Advertisement Nos. 4 to 9 of 2020 which was alleged to be in the teeth of the judgment of the Hon'ble Supreme Court cited hereinabove.

12. The learned Single Judge found that the petitioners were persons appointed on contract basis to the post of District AYUSH Medical/State Medical Services. The Amendment Rules of 2017 was notified on 20.11.2017, pursuant to which and in accordance with which the



advertisement was issued. The educational qualification of G.A.M.S as obtained by the petitioners is not one of the eligible qualifications as per the advertisement. The reference to *Bihar State Council of Ayurvedic and Unani Medicine (supra)* was also noticed by the learned Single Judge. The learned Single Judge held, based on *Nair Service Society Vs. Dr. T. Beermasthan and Ors; (2009) 5 SCC 545*, that statutory rules existing as on the date of impugned advertisement cannot be digressed from to interfere with an advertisement made in accordance with the statutory rules. The writ petition was dismissed on 04.04.2022. The petitioners did not file an appeal and filed the above writ petition after more than one year challenging the Rules.

13. Learned Counsel for the petitioners submits that by an interim order, in the present writ petition, counselling was said to be subject to the result of the writ petition. Merely, because there was such an interim order passed, it does not regulate the final adjudication of the matter. In the present case as we found, there was an earlier writ petition filed which challenged the advertisement and at that time



the Rules were not challenged. When the writ petition was dismissed, the petitioners did not seek any leave or liberty to challenge the Rule. The selection procedure was proceeded with and concluded. The interim order granted was only to ensure that if the final disposal goes in favour of the petitioner's they should not be denied a due consideration. Though we find that the petitioners claim of inclusion as an eligible qualification is perfectly in order; unless it is included, the petitioners cannot claim for a consideration especially since such a claim raised challenging the advertisement itself was declined by the learned Single Judge which judgment has achieved finality, without reserving any liberty or leave to challenge the rules.

14. Definitely the challenge to the rules would survive but only to the extent of future appointments or advertisements.

15. A counter affidavit has also been filed by the State clearly conceding that the petitioner's qualification has to be included which has been held to be a valid qualification by the Hon'ble Supreme Court. In such circumstance, we direct that the amendment to the Rules



may be carried out expeditiously by the Executive Government as conceded before this court, so as to not prejudice petitioners and like graduates in the future selections initiated.

16. As far as the case of the petitioners with respect to the Advertisements of 2020, their inclusion has already been held to be not practicable or equitable. We also notice the judgment of the Hon'ble Supreme court in ***Zonal Manager, Bank of India and Ors Vs. Aarya K. Babu and Anr Vs; (2019) 8 SCC 587***. On almost identical circumstances, it was held that equalization of qualification was not the function of the court and only persons who are eligible as provided under the advertisement could seek consideration in the selection carried out. Hence, we find no reason to interfere with the selection carried out especially since the petitioners claim for consideration in the selection was declined at the earlier instance.

17. While declining the consideration of the petitioners in the selections carried out pursuant to Advertisement nos. 4 to 9 of 2020, we direct that the State Government amend the Rules, as undertaken expeditiously



18. With the above direction, the writ petition stands
disposed off.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

ranjan/-.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.04.2024
Transmission Date	NA

