

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17771 of 2024

Dr. Niraj Kumar son of Ram Bihari Prasad Resident of Village - Amwa, Near
Sri Ram Mandir. P.S.- Jharokhar. District East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Health, Government of Bihar. Patna.
2. The Additional Chief Secretary, Department of Health, Government of Bihar. Patna.
3. The Secretary, Department of Health. Government of Bihar, Patna.
4. The Additional Secretary, Department of Health, Government of Bihar, Patna.
5. The Deputy Secretary, Department of Health. Government of Bihar, Patna.
6. The Joint Secretary, Department of Health, Government of Bihar, Patna.
7. The Bihar Combined Entrance Competitive Examination Board through its Chairman, L.A.S. Association Building. Near Patna Airport, Patna 14.
8. The Chairman, The Bihar Combined Entrance Competitive Examination Board, L.A.S. Association Building, Near Patna Airport, Patna-14.
9. The Secretary, The Bihar Combined Entrance Competitive Examination Board, L.A.S. Association Building. Near Patna Airport, Patna-14.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16484 of 2024

1. Dr. Priya Daughter of Veda Kant Jha Resident of Mohalla- Veer Kunwar Singh Colony, Kashipur, P.S.- Town, District - Samastipur.
2. Dr. Abhishek Kumar, Son of Nripendra Kumar Gupta, Resident of Mohalla - Barinagar, Gurubazar, P.S.- Barari, District- Katihar.
3. Dr. Subhash Chandra Sharma, Son of Bharat Lal Sharma, Resident of Village - Chainpur, P.O. - Baksanda, P.S.- Parsa, District - Saran.
4. Dr. Jyotsna Saran, Wife of Dr. Akhilesh Kumar, Resident of Mohalla- Kathi Factory Road, Mahatma Gandhi Nagar, Sharda Hospital, Kankarbagh, P.S. - Patrakar Nagar, District - Patna.
5. Dr. Rajiv Kumar, Son of Late Parmanand Sahni, Resident of Mohalla -



Sikandarpur, P.O.- H.P.O., P.S.- Town, District- Muzaffarpur.

6. Dr. Umesh Bharti, Son of Bishwanath Sahni Resident of Village- Jamalabad,
P.O. - Mushari, P.S.- Ahiyapur District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
3. The Secretary, Department of Health, Government of Bihar, Patna.
4. The Additional Secretary, Department of Health, Government of Bihar, Patna.
5. The Deputy Secretary, Department of Health, Government of Bihar, Patna.
6. The Joint Secretary, Department of Health, Government of Bihar, Patna.
7. The Bihar Combined Entrance Competitive Examination Board, through its Chairman, I.A.S. Association Building, Near Patna Airport, Patna-14.
8. The Chairman, The Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna Airport, Patna- 14.
9. The Secretary, The Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna Airport, Patna- 14.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16561 of 2024

1. Dr. Simi Saha Daughter of Murli Mohan Prasad Saw, Wife of Dr. Sanjeet Kumar, Resident of Mohalla 201, Annapurna Jalalpur Heights, Opp.- R.P.S. Mahila College, Danapur, PS. Rupaspur, District - Patna.
2. Dr. Nezamuddin, Son of Md. Allauddin, Resident of Mohalla- M.M. Colony, P.O.- Siwan, P.S.- Siwan Sadar, District- Siwan.
3. Dr. Imran Saba, Son of Nasim Ahmad Resident of Mohalla- Sabzibagh, 3rd Floor, Shalimar Market, P.O.- Bankipur, P.S.- Pibahor, District - Patna.
4. Dr. Rupam, Wife of Dr. Prabhat Ranjan, Resident of F-417, P.C. Colony, P.S.- Kankarbagh, District- Patna.

... .. Petitioner/s

Versus



1. The State of Bihar through the Additional Chief Secretary, Department of Health, Government of Bihar Patna.
2. The Additional Chief Secretary, Department of Health, Government of Bihar, Patna.
3. The Secretary, Department of Health, Government of Bihar, Patna.
4. The Additional Secretary, Department of Health, Government of Bihar, Patna.
5. The Deputy Secretary, Department of Health, Government of Bihar, Patna.
6. The Joint Secretary, Department of Health, Government of Bihar, Patna.
7. The Bihar Combined Entrance Competitive Examination Board, through its Chairman, I.A.S. Association Building, Near Patna Airport, Patna-14.
8. The Chairman, The Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna Airport, Patna-14.
9. The Secretary, The Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna Airport, Patna-14.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 17771 of 2024)

For the Petitioner/s : Mr. Jagjit Roshan, Advocate
For the Respondent/s : Mr. P. K. Shahi, Advocate General
For BCECEB Board : Mr. Prasoon Sinha, Advocate

(In Civil Writ Jurisdiction Case No. 16484 of 2024)

For the Petitioner/s : Mr. Anjani Kumar, Advocate
For the Respondent/s : Mr. P. K. Shahi, Advocate General

(In Civil Writ Jurisdiction Case No. 16561 of 2024)

For the Petitioner/s : Mr. Jagjit Roshan, Advocate
For the Respondent/s : Mr. Government Pleader 03
Mr. Mithilesh Kr. Pandey, AC to GP-3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-12-2024

The writ petitioners are aggrieved with the prescription of upper age limit, as per Annexure-P/17 order, which is alleged to be in violation of the Teachers Eligibility



Qualifications in Medical Institution Regulations 2022; brought out by the National Medical Council (for brevity 'NMC').

2. The petitioners are specifically aggrieved with (i) clause (f) of Rule 6 of Chapter 6 of the Senior Resident/Tutor Bihar Medical Education Service, Recruitment, Appointment & Promotion (Amendment) Rules 2013, produced as Annexure-P/16, which provides for a 5 year relaxation in the age limit for members of the Bihar State Health Service cadre and the (ii) upper age limit fixed in Annexure-P/13 advertisement issued for selection and appointment of Senior Residents/Tutors in the Bihar Medical Education Service; fixed in the light of resolution dated 07.01.2016 passed by the General Administration Department, Government of Bihar, produced as Annexure-P/17. The petitioners specifically refer to the regulations of the NMC produced at Annexure-P/4, wherein Senior Residents with post graduation, should be below 45 years of age at the time of initial appointment. The upper-age hence should have been prescribed as 45 years by the State, is the contention.

3. We have heard learned Counsel for the petitioner, Mr. Jagjit Roshan and learned Advocate General, Mr. P. K. Shahi.

4. The learned Counsel for the petitioner points



out that when the NMC provides for appointment of Senior Residents, whose initial appointment should be below 45 years of age, the Government could not have provided for an upper age limit of 37 for the general category, 40 years for the backward and extremely backward category and 42 years for the SC/ST category. It is the contention of the petitioner that there is dearth of medical professionals and the entire vacancies would not be filled up, even if all the qualified candidates are appointed; much less if such a restriction in upper age limit is made. The public would suffer insofar as no medical aid will be available, only for reason of the posts remaining vacant, because of the upper age limit prescribed by the State Government, which is also in violation of the Regulations of the NMC. The learned Counsel would also submit that, in any event if the relaxation as available to government employees in the amended rules is made applicable, SCs and STs above 45 years would be appointed, which would be in violation of the NMC Regulations.

5. The learned Advocate General pointed out that the prescription of the NMC, is only a bench mark which cannot be diluted by the State. The learned Advocate General would rely on the decisions in *Dr Spriha Smriti and Another v. The*



State of Bihar and Others in L.P.A. No.1105 of 2017 decided on 16.01.2018 and *Dr Nishant v. The State of Bihar and Others* in C.W.J.C. No.6780 of 2024 decided on 29.04.2024, one of which decisions relied on two earlier Division Bench decisions of this Court.

6. *Dr. Nishant (supra)* considered a similar contention with respect to the maximum age prescribed for appointment to the post of Assistant Professors, which prescription was said to be in conflict with the regulation of NMC. The regulations of the NMC provided for the maximum limit upto which a qualified person can be appointed as 70 years. This Court held that the prescription of the NMC is not mandatory so as to oblige every appointing authority to prescribe 70 years as the maximum age. Referring to *Dr. Professor Rajendra Chaudhary and Another v. State of U.P. and Others; (2020) 13 SCC 278*, the Division Bench found that the Hon'ble Supreme Court, in the cited decision, approved the enhancement of upper age limit from 45 years to 65 years, which was contrary to the maximum age prescribed of 45 years in the Medical College Teacher Service Rules, 2005, brought out by the State. Even in that case, despite the MCI having prescribed 70 years, the Hon'ble Supreme Court approved the



enhancement to 65 years. It was held by the Division Bench of this Court that : *“It is trite that the regulation of the MCI prescribe the minimum standards and a dilution shall not be made by the State but a rigor can definitely be applied”* (sic-paragraph 8).

7. **Dr. Spriha Smriti (supra)** relied on two Division Bench decisions of this Court, one in C.W.J.C. No.7297 of 2017 titled as **Dr. (Mrs.) Anupama Singh v. State of Bihar and Others** dated 15.05.2017 and **Md. Ali Muzaffar v. State of Bihar; 2012 (3) PLJR 419**. We extract paragraph 5 from **Md. Ali Muzaffar (supra)** hereunder:-

5. *As the title connotes, under the Regulations the Medical Council of India has prescribed minimum qualifications required for appointment of teachers in medical colleges. In our opinion, no medical college has been debarred from specifying higher qualification than the minimum qualification prescribed by the Medical Council of India. If the State of Bihar has, in its wisdom, provided for experience of three years after post Graduation, the same cannot be said to be in contravention of the Regulations framed by the Medical Council of India nor the Indian Medical Council Act, 1956.”*

8. We find absolutely no reason to interfere with the prescription of upper age limit. The relaxation of 5 years is



also perfectly in order since such relaxation is provided for doctors in employment of the health services of the State, which cannot be faulted nor can it be stated to be discriminatory. Their experience can be reckoned for the purpose of appointment to the post of Senior Residents/Tutors in the Medical Colleges of the State, especially since the post, in addition to teaching duties also require the incumbents to actively involve in the treatment of patients coming to the medical colleges. Even in academics their practical experience would enable better imparting of medical education.

9. One other contention raised by the petitioner is with respect to SC/ST candidates being enabled appointment in violation of the maximum age prescribed for initial appointment by the NMC; if relaxation is obtained. We do not see any person impleaded, who would be prejudiced by a finding on that aspect. Moreover, if on the basis of the relaxation available in maximum age, any SC/ST candidate qualifies for appointment, he would have to be accommodated in that category and in that circumstance; only a person from that category would be entitled to challenge it. The said contention is one which could be raised, on such appointment being made, by a candidate having a right to be considered for that post; which would also



have to be adjudicated after hearing the affected party. None of the petitioners have disclosed their category, and they are obviously not persons in the employment of the Government, as doctors. The petitioners admittedly are over aged, ineligible to apply under the advertisement and they cannot plead that for reason of the possibility of a violation of the Regulations of the NMC occurring; their ineligibility as per the rules of the State should be ignored. We do not think that the selection itself can be kept in abeyance on that ground; which ground we leave open for challenge at the appropriate time by the aggrieved person.

10. The writ petitions are dismissed with the reservation above.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

sharun/-

AFR/NAFR	
CAV DATE	
Uploading Date	09.12.2024
Transmission Date	

