

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6937 of 2016

1. Mushtari Begum Wife of Md. Idris, Resident of Road no. 15 A Rajeev Nagar P.S. Patliputra District Patna at present working as Ophthalmic Assistant at Referral Hospital Naubatpur.
2. Shambhu Nath Azad Son of Sri Damodar Prasad Yadav, Resident of Village Ganj Bajitpur Post Milkichak P.S. Bahadurpur District Darbangha at present working as Ophthalmic Assistant in the office of Additional Chief Medical Officer Muzaffarpur.
3. Akhlesh Prasad Son of Late Ram Narayan Prasad, Resident of Viduli P.S. Bhagwanganj District Patna at present working as Ophthalmic Assistant in the Office of Additional Chief Medical Officer Patna.
4. Surendra Prasad Yadav Son of Ramasis Prasad Yadav, Resident of Village Maqsoodpur Bahlempur P.O. and P.S. Shahjahanpur District Patna at present working as Ophthalmic Assistant in the Office of Additional chief Medical Officer Patna.
5. Lal Bahadur Singh Son of Sri Girja Singh, Resident of Village - Shekhpura, P.S. - Ram Krishna Nagar, P.O. - Dhelwan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director-in-Chief, (Disease Control, Public Health Para Medical), Health Services, Bihar, Patna.
3. The Principal Secretary Department of Health Government of Bihar New Secretariat Patna.
4. The Director, Department of Health Government of Bihar New Secretariat Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Mishra, Sr. Advocate Mr. Ashwini Kumar, Advocate Mr. Manas Raj, Advocate Mr. M. Jaiswal, Advocate
For the State	:	Mr. Jawed Gaffar Khan (AC to GP-24)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

3 18-03-2025 Heard Learned Senior Counsel Mr. Sanjeev Kumar Mishra assisted by Mr. Ashwini Kumar, Advocate and Mr. Manas Raj, Advocate for the petitioners and Learned Counsel Mr. Jawed Gaffar Khan (AC to GP-24) for the State.



2. The present writ petition has been filed for the following relief/s:-

“I. For quashing of the order contained in Memo No.177(11) dated 22.02.2016 issued under the signature of Director-in-Chief, (Disease Control, Public Health Para Medical), Health Services (annexed as Annexure-5) whereby and whereunder the case of the petitioners has not been considered for promotion to the post of Ophthalmic Officer or on the post of Tutor-cum-Incharge, Ophthalmic Officer in the pay scale of Rs.5500-9000 in terms of the Bihar Ophthalmic Assistant Joint Cadre (Recruitment and Service Condition) Rule 2011.

II. For commanding the respondent authorities to consider the case of the petitioners for promotion to the post of Ophthalmic Officer in terms of the Bihar Ophthalmic Assistant Joint Cadre (Recruitment and Service Condition) Rule 2011.

III. For any other relief or reliefs in the present facts and circumstances of the case.”

3. Learned Senior Counsel for the petitioners submits that petitioner no.1 was initially appointed on 16.12.1985,



petitioner no.2 was appointed on 30.08.2000, petitioner no.3 was appointed on 16.09.1988, petitioner no.4 was appointed on 06.02.1986 and petitioner no.5 was appointed on 30.08.2000 and all the petitioners were appointed on the post of Ophthalmic Assistant. Senior Counsel submits that *vide* notification dated 03.06.2011, Bihar Ophthalmic Assistant Joint Cadre (Recruitment and Service Condition) Rule 2011 (hereinafter referred to as 'Rule 2011') came into existence by which provision for promotional post of Ophthalmic Assistant has to be granted by way of promotion. Senior Counsel further submits that all the petitioners have come under the zone of consideration for promotion to the post of Ophthalmic Officer and the petitioners are suitable/eligible candidates to be considered for promotion to the post of Ophthalmic Officer in the light of notification dated 03.06.2011 (Rule 2011). Senior Counsel further submits that for redressal of their grievances, petitioners have filed representations, but when their representations have not been considered, then petitioner nos.1 to 4 approached before this Hon'ble Court in Civil Writ Jurisdiction Case No.9780 of 2014 which was disposed of *vide* order dated 23.06.2014 directing the Director-in-Chief, Health Services to consider the representations of the petitioners in the



light of the provisions of the said Rules and dispose them of within one month from the date of receipt/production of a copy of this order with necessary consequential orders. Senior Counsel submits that a rule namely, Para Medical/Para Dental Educational (Permission for Establishment of Institutions) Rule 2005 (hereinafter referred to as 'Rule 2005') came into existence on 31.12.2005 and according to its Rule 18, minimum academic qualification and experience for Principal, Head of the Department, Lecturer and Demonstrator/Tutor has been assigned. Senior Counsel submits that from the said rule, it become crystal clear that the persons having Diploma/Degree are also entitled for appointment on the post of Demonstrator/Tutor and the promotional post of Demonstrator has already been prescribed in Rule 2005.

4. Learned Senior Counsel for the petitioners further submits that petitioner nos. 2 to 5 are Graduate and petitioner no.1 has a Diploma and therefore, according to Rule 2005 and Rule 2011, they are entitled for promotion to the post of Tutor-cum-Incharge, Ophthalmic Officer in the pay scale of Rs. 5500-9000. Senior Counsel submits that the respondent authorities in compliance of the order dated 23.06.2014 passed in C.W.J.C. No. 9780 of 2014 has disposed of their representations



contained in Memo No.177(11) dated 22.02.2016 by which the case of the petitioners has not been considered for promotion to the post of Ophthalmic Officer or on the post of Tutor and the same has been rejected. Senior Counsel further submits that according to Rule 2011, provision for promotion on the post of Tutor-cum-Incharge, Ophthalmic Officer, Lecturer and Associate Professor has been made, but those posts comes within the category of Educational Cadre for which there were already basic eligibility criteria fixed and therefore, those persons who are non MBBS or non Post Graduate holder could not be granted promotion and therefore, the appropriate amendment in Rule 2011 is necessary which is under process and therefore, in that view of the matter, the promotion to petitioners shall be granted in the light of the amended rule and with this direction, the claim of the petitioners was rejected. Senior Counsel submits that only thereafter, petitioners have moved before this Court in the present writ petition challenging the said order contained in Memo No.177(11) dated 22.02.2016 (annexed as Annexure-5).

5. Learned Counsel for the State on the other hand submits that counter affidavit has been filed and from the pleadings of the counter affidavit, a clear cut stand has been



taken that the notification issued *vide* Memo No.177(11) dated 22.02.2016 has been withdrawn from the date of its issuance and a decision has been taken to consider the matter of promotion for eligible Ophthalmic Assistant to the post of Ophthalmic Officer in the light of Rule 2011 and according to the decision of the officials, Memo No.355(11) dated 06.04.2016 (annexed as Annexure-A to the counter affidavit) has been published in which petitioner no.1 has been granted promotion. But, so far as petitioner nos.2 to 5 are concerned, no decision has been taken with regard to them.

6. In the light of the submissions made and the pleadings on record, this Court hereby reached on the conclusion that the impugned order i.e. order contained in Memo No.177(11) dated 22.02.2016 has been withdrawn by the authorities in the light of the statement made in paragraph no.11 of the counter affidavit. But, decision has been taken with regard to petitioner no.1 only and promotion has been granted. But, no decision has been taken as yet with regard to petitioner nos.2 to 5 and therefore, there is no need of passing any order particularly when the impugned order has already been withdrawn by the authorities concerned.

7. In this background, it is hereby directed to the



petitioner nos.2 to 5 to file their fresh representation within 30 days along with the order passed by this Court before the Director-in-Chief, (Disease Control, Public Health Para Medical), Health Services, Bihar, Patna (Respondent no.2) and Respondent no.2 is directed to take decision within 90 days from the date of receiving of the representation.

8. It is directed to the petitioner nos.2 to 5 that they shall plead all the materials and facts before the Director-in-Chief, (Disease Control, Public Health Para Medical), Health Services, Bihar, Patna (Respondent No.2) in their representation.

9. Accordingly, with the aforesaid direction, this writ petition is hereby disposed off.

(Dr. Anshuman, J)

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