

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2937 of 2026

1. Anil Kamal S/O Suresh Prasad Singh, Village Goshnagar, P.O Kenarkala, P.S Sarmera District Nalanda 811104.
2. Abhay Kumar, S/O Rajeshwar Prasad Singh, Muh- Bichali Khndakpar, PO and PS- Biharsarif, District-Nalanda 803101.
3. Manoj Kumar Sahu, S/O Jugeshwar Sahu, Village-Khopa, PO-Sadai Ratauli, PS- Phulparas, District-Madhubani 847402.
4. Rakesh Kumar, S/O Shivnandan Sinha, Village-Gulzarbagh, PO and PS- Karpi, District. Arwal-804419.
5. Mukesh Kumar, S/O Ramdeo Prasad Singh, Vill and PO-Pasraha, District-Khagariya-851212.
6. Abhishek Kumar, S/O Nageshwar Prasad, House No. 35, Ramjanki Niwas, Kailashpuri, PO- Lohiyanagar, PS-Patnakarnagar, Kankarbagh, District Patna- 800020.
7. Amrendra Kumar, S/O Ram Kishor Narayan Singh, Narayan Bihar Colony, Bes Lal Singh Path, Near Krishna Niketan, Dhanuki, Patna-800007.
8. Rajiv Rajan Kumar, S/O Radha Krishna Prasad, Daudnagar, District-Aurangabad. Vill and PO-Tarari, PS 804407.
9. Rajiv Ranjan Kumar, S/O Shiv Bihari Prasad, AT and PO-Onda, PS-Asthawan, District-Nalanda-803107.
10. Priyanka Kumari, W/O Dinkar Prasad, Village-Kewai Bigha, PO- Dahapar, PS- Noorsarai, District- Nalanda-803114.
11. Brajesh Kumar, S/O Ramanand Sharma, Vill. Sabnima, Sabnima Khurd, District-Patna-803212.
12. Yugal Kishore Prasad, S/O Late Jawahar Prasad, Village and Post- Nawada, District- Garhwa, Jharkhand-822114.
13. Shambhu Kumar Singh, S/O Late Ramchandra Singh, Vill and PO- Sirisiya Khurd, PS- Adapur., District- East Champaran-845301.
14. Anil Kumar Mishra, S/O Rajendra Mishra, H.N. 318, Saraswati Sadan, Kharanjah Road, Near Shiv Mandir, PO-Danapur Cantt. PS-Danapur, Patna-801503.
15. Radha Nandan Raman, S/O Chulhay Sahu, Seikhtola Vill- Sisauni, PO and PS Barhara, District- Supaul-847452.
16. Abhishek Kumar, S/O Krishnandan Singh, Vill-Sada Dambar, PO and PS Motipur, District- Muzaffarpur.-843111.
17. Pritam Kumar, S/O Subhash Prasad Yadav, At-Arariya, PO- Balha, PS- Parbatia, District- Khagariya.
18. Deepak Kumar, S/O Mahesh Prasad, Satsang Bhawan PO and PS Gogari, District- Khagaria-851202.
19. Ajit Kumar, C/O Gayanand Prasad, R/O Village Khirouna, PO and P S- Rahui, District-Nalanda-803119.
20. Neeraj Kumar, S/O Jaynarayan Jaynarayan Paswan, Vill and PO Dhoawa, P



S Sanokhar, District Bhagalpur-813204.

21. Sanjay Kumar Kaul, S/O Ramsharan Mahto, East Laxminagar, New Bypass Khemnichak, New Jaganpura, Patna-800027.
22. Raju Bhai Patel, S/O Dharambir Prasad, Vill and PO Khorampur, PO-Islampur, Nalanda-801303.
23. Akhilesh Chandra Prabhakar, S/O-Kedar Prasad Verma, Vill, PO and PS Pasraha. District-Khagaria-851212.
24. Priyanka Kumari, W/O Ranjeet Kumar Gupta, South of Badi Patandevi Mandir, Gulzarbagh, Patna. P S-Alamganj, Patna-800007.
25. Sardanand Singh, S/O- Suryadeo Singh, Vill-Gordiha, P O- Sansa, PS Daudnagar. District- Aurangavad.
26. Pitambar Kumar Chauhan, S/O Jawahar Lal Chauhan, Village- Kajra, P O- Pachira, P S- Raniganj, District-Araria-854334.
27. Navin Kumar, S/O- Bhupendra Mandal, Vill-Bahadurpur, PO and PS Gogri, District- Khagaria-851202.
28. Mithilesh Kumar Singh, S/O Krishnandan Singh, At-Paharpur, P O- Lohchi, PS- H Kharagpur, District- Munger-811211.
29. Ajeet Kumar, S/O Ram Parvesh Thakur, Vill. Dumrawan, PO and PS- Bankey Bazar, District- Gaya-824217.
30. Shakeel Ahmed, S/O- Gafoor Ahmed, Muh-Shekhalamchak, PO and PS- Jehanabad-804408.
31. Pravin Kumar, S/O Rameshwar Prasad Singh, Vill and PO- Amarpur, Block-Suryagarha, District- Lakhisarai-811106.
32. Prabhat Kumar, S/O- Awadh Prasad, Vill. Mushouli, PO- Gangapur, PS- Hulasganj (Jehanabad)-804407.
33. Dilip Kumar, S/O Lakhan Choudhry, Vill- Kujha, PO- Nadiganj, Nawada-805123.
34. Koushlandra Kumar Suman, S/O- Gopal Singh, Vill-Harna, P O- Injor, PS- Rampur Chouram, District- Arwal-804428.
35. Anand Prakash, S/O- Ramshankar Bharti, At and PO-Belaon, PS-Sickroul Lakh, District-Buxer-802129.
36. Sanjay Kumar, S/O- Mathura Prasad, Vill-Mohaddipur, PO and P S- Bind, District- Nalanda-803107.
37. Mukesh Kumar, S/O- Binod Kumar Singh, At-Rasidpur, P O- Khanpurmal, PS- Bath, District- Bhagalpur-813213.
38. Chandan Kumar, S/O- Upendra Prasad, Vill- Singrahiya, PO-Kishanpur, P S- Sahiyara, District- Sitamarhi-843302.
39. Abhaya Kumar @ Avay Kumar S/O Nathuna Singh, Vill and PO-Kochahasa, PS- Kinjar, District- Arwal-804426.
40. Ramesh Kumar, S/O- Suresh Prasad Singh, Vill-Rashidpur, PO- Khanpur Mal, PS- Bath, District- Bhagalpur-813213.
41. Jaishankar Choudhry, S/O- Late Mahendra Prasad Choudhry, Near Uphar cinema, Sahu Gali Ratu Road Hehal Ranchi-834005.



42. Sameer Raj, S/O- Sitaram Paswan, Village-Sundarpur, PO-Bahachauki, PS-Dharhara, Munger-811202.
43. Waker Ahmed, S/O Late Moinul Haque, Vill and PO and PS- Borio, District-Sahebganj-816120.
44. Surendra Kumar, S/O Soharaj Pandit, Vill and PO-Faridpur, PS- Janipur, District-Patna-801113.
45. Rakesh Kumar, S/O Rohin Kumar Ram, Vill-Manmarpur, PO- Fatehpur, PS-Zero Mile, District- Bhagalpur-813210.
46. Avinash Kumar, S/O- Ram Parvesh Singh, Vill-Ratanpura, PO- Dariyapur, PS- Islampur, District- Nalanda-801303.
47. Rajeev Ranjan, S/O- Ram Ayodhya Ram, mah-Mainpura, PO- Saguna Mor, Danapur, District- Patna-801503.
48. Surya Narayan Sah, S/O- Guneshwar Sah, Vill-Sonbarsa, PO- Jirwa, District- Madhepura-852128.
49. Ved Prakash Sinha, S/O Hari Prasad, Vill and PO-Nahub, PS- Rajgir, District- Nalanda-803116.
50. Umesh Prasad Sinha, S/O- Mahadeo Mahto, Vill-Hemjapur, PO- Shivkund, PS- Hemjapur, District Munger-5 811202.
51. Rajeev Kumar, S/O- Nagendra Prasad Gupta, At and Po- Sahuriya Subhai Milk, Banmankhi Bnmankhi Purnia -854202.
52. Shahid Hussain Khan @ Shahid Hussan, S/O-Muzaffar Hussian Khan, Vill and PO- Saho via Bahera, District-Darbhanga-847201.
53. Sanjay Kumar, S/O- Ramchandra Thakur, At and PO. Salmari, PS- Alamnagar, District- Katihar-855113.
54. Vinay Kumar, S/O-Ramadhin Prasad, Village-Pachnuri, PS- Deepnagar, District- Nalanda-803101.
55. Deepak Kumar, S/O- Raj Kishor Sharma, Muh-Shakuntala, PO and PS-Biharsarif- District- Nalanda, 803101.
56. Sujeet Kumar, S/O- Mahendra Prasad, Village-Govindpur, PO-Baruane, District- Nalanda-803307.
57. Paramhans Kumar Gupta, S/O- Mahadev Gupta, Vill and Po- Balthari, PS-Kuchaikot, District- Gopalganj-841503.
58. Sonu Kumar Suman, S/O- Dhanraj Singh, Vill-Kadwapa Pachgachhiya, PO-Khairpur, PS- Naugachiya, District-Bhagalpur-853204.
59. Vijay Kumar, S/O- Arjun Prasad, Village and Buri, Warsliganj, District-Nawada-805130.
60. Rajnath Kumar, S/O- Shivnath Ram, Muh-Pitambar Madir Arfabad Colony, PO- Gulzarbagh, District-Patna-800007.
61. Balram Mahto, S/O-Sanichar Mahto, At- Khawa Chandra Tola, PO-Kiranpur, District- Lakhisarai-811106.
62. Sumeet Gaurav, S/O- Birendra Kumar, Vill -Oknawan, PS- Deepnagar, District-Nalanda-803111.
63. Awdhesh Kumar, S/O-Suresh Paswan, Vill-Sawalpur, PO- Marar, PS-



Morkhahi, Khagariya-851205.

64. Dinesh Kumar, S/O- Nathuni Prasad, Village-Baraipura, PO- Birpur, District- Begusarai-851127.
65. Amar Kumar, S/O- Dineshwar Pandit, At-Congress Muhalla Mahnar, PO and PS- Mahnar, District- Vaishali-844506.
66. Sanjeet Kumar Paswan, S/O- Raghunandan Paswan, Vill- Dariyapur (Mandir Tola), PS-Haragpur Haweli, Persando, District- Munger-811213.
67. Shashikant Kumar, S/O- Late Chandrashekhar Prasad Singh, Ram Krishnanagar West, PO- New jaganpura, PS-RK Nagar, Patna-800027.
68. Shashi Shekhar kumar, S/O-Manik Mandal, Vill-Hukma, PO- Dhuabai, PS-Sikandarpur, District -Bhagalpur-813204.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Principal Secretary, Department of Health, Government of Bihar.
4. The Director-in-Chief, Department of Health, Government of Bihar, Patna.
5. The Chairman of the Bihar Technical Service Commission, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amit Narayan, Advocate
For the State	:	Mr. Gyan Prakash Ojha (GA-7)
For the BTSC	:	Mr. Nikesh Kumar, Advocate
		Mr. Aditya Raj, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 21-04-2026

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the Bihar Technical Service Commission, Patna.

2. The present writ petition has been filed for issuance of order, direction or writ in the nature of Certiorari for the following relief/s:-



“I. To set aside the part of Advertisement No. 22 of 2025 dated 10.03.2025 for appointment of regular Pharmacist published by Bihar Technical Service Commission, Patna which is contrary to Letter No 12956 dated 16.08.2024 issued by the Principal Secretary, General Administration, Government of Bihar. Sub section (iii) of Section 5 of the said Advertisement which relates to non consideration of work experience marks (25 Max) in Prelims and Main examination. It is discriminatory and violative of earlier Letter No 12956 dated 16.08.2024.

II. To amend the advertisement for selection of permanent/regular pharmacist after giving due consideration of Memo no. 12956 dated 16.08.2024 issued by the Principal Secretary, General Administration, Bihar.

III. To issue a fresh memo giving weightage of work experience marks to the petitioners in Preliminary and Main examination for selection of regular and permanent Pharmacist.

IV. Alternatively, regularize the services of contract-based long-serving pharmacist in the government services as per the principle adopted in Jaggo Vrs. Union of India reported in 2024 INSC 1034 by the Supreme



Court of India.

V. And further be pleased to grant other relief/reliefs which petitioners may be found entitled in facts and circumstances of the present case.”

3. Learned counsel for the petitioners submit that the present writ petition has been filed by the petitioners with a limited request that the interest of the contractual pharmacists who were working since 2006 on the contractual post has not been taken care of. Counsel submits that the Principal Secretary, General Administrative Department, Government of Bihar has issued a Letter No. 12956 dated 16.08.2024 which categorically indicates that the contractual employees working on sanctioned post in different government departments be given relaxation in upper age limit by adding the number of years service rendered as contractual employees in their upper age limit in future advertisement for regular employment and also provided the extra grace marks of work experience would be added in formula for computing working experience grace marks in preliminary and mains examination for regular appointment. Counsel further submits that the said Letter No. 12956 dated 16.08.2024 has not been taken care of in the advertisement which was published *vide* Advertisement No. 22/2025.



Therefore, he submits that interest of the petitioners has been badly hampered. Counsel submits that it is due to this reason, request has been made to amend the advertisement in consideration of Letter No. 12956 dated 16.08.2024.

4. Learned counsel appearing for the Bihar Technical Service Commission submits that a detailed counter affidavit has been filed. He submits that the petitioners are not entitled for the relief as demanded in the present writ petition. Counsel submits that all the petitioners have already participated in the Advertisement No. 22/2025, but, none have achieved the minimum cut-off marks as fixed in the advertisement itself. Thereafter, the petitioners have filed the present writ petition. Counsel submits that in the advertisement, method of selection has already been indicated in which, 25 marks have been fixed for on the basis of experience and 75 marks have been fixed for by virtue of written competitive examination. He submits that in Clause-5(ii)(g) of the advertisement, it has been categorically indicated about the minimum cut-off marks for the respective categories with a specific note that if, anyone get marks below the cut-off marks, then those candidates shall not be entitled for any claim. He submits that the advertisement which has been challenged by the petitioners has to be taken place not in two



stages, rather, in only one stage. The petitioners were unsuccessful in getting the minimum cut-off marks and only due to this reason, they were not entitled to get the experience marks.

5. Learned counsel for the Bihar Technical Service Commission further submits that the issue which the petitioners have raised before this Hon'ble Court has been tested in the different judgments. Firstly, in case of *Arjun Kumar Vs. The State of Bihar & Ors. in C.W.J.C. No. 13951 of 2024 decided on 19.09.2024*. Secondly, in case of *Dr. Shankar Pandit & Ors. Vs. The State of Bihar & Ors. in C.W.J.C. No. 8115 of 2020 decided on 01.10.2021*. Thirdly, in case of *Kameshwar Kumar & Ors. Vs. The State of Bihar & Ors. in C.W.J.C. No. 16140 of 2023 decided on 25.02.2025*. Fourthly, in case of *Bedanga Talukdar Vs. Saifudaullah Khan & Ors.* reported in (2011) 12 SCC 85. Counsel submits that in the recruitment process, strict adherence has to be followed according to the conditions of the advertisement. He further submits that here in the present case, the petitioners have not challenged the advertisement, rather, when they were not selected on the ground of failing to achieve the minimum cut-off marks, then only they moved before this Hon'ble Court and requesting for change/amend the part of the



advertisement in the light of Annexure-P/2.

6. With a view to decide this case, it is necessary to quote the relevant provision on which both parties are relying. It is admitted that the advertisement was published in the year 2025 bearing Advertisement No. 22/2025, whose clause 5 is very much relevant and reads as under:-

“5. चयन की प्रक्रिया- आयोग लिखित प्रतियोगिता परीक्षा एवं कार्यानुभव के आधार पर अभ्यर्थियों का चयन करेगा।

(i) लिखित प्रतियोगिता परीक्षा एवं कार्यानुभव के आधार पर चयन हेतु अभ्यर्थियों की मेधासूची निम्न प्रकार तैयार की जायेगी

(a) लिखित प्रतियोगिता परीक्षा (Computer Based Test) के लिए पूर्णांक - 75 अंक

(b) बिहार राज्य के अन्दर अवस्थित राज्य के सरकारी अस्पतालों / स्वास्थ्य विभाग, बिहार सरकार से सम्बद्ध संस्थानों तथा गैर निजी (केन्द्र सरकार, पंचायती राज, नगर निकायों के नियंत्रणाधीन) अस्पतालों में कार्यअनुभव प्रतिवर्ष 05 अंक, अधिकतम 25 अंक (किसी वर्ष के अंश के लिए कार्यदिवसों की संख्या में 05 से गुणा करने के पश्चात् 365 से भाग देकर प्राप्त



अनुपातिक अंक जोड़ा जायेगा।)- 25 अंक

कुल- 100 अंक

नोट (i) अभ्यर्थी द्वारा लिखित प्रतियोगिता परीक्षा में प्राप्तांक के लिए उक्त परीक्षा में प्राप्त कुल अंकों का प्रतिशत को 0.75 के गुणक से गुणा करके अवधारित किया जायेगा। यथा यदि किसी अभ्यर्थी को कुल 50 प्रतिशत अंक प्राप्त हुआ हो तो उसे $50 \times 0.75 = 37.5$ अंक दिये जायेंगे।

(ii) लिखित प्रतियोगिता परीक्षा आयोग सभी अभ्यर्थियों के लिए Computer Based Test के माध्यम से लिखित प्रतियोगिता परीक्षा आयोजित करेगा।

परीक्षा का पाठ्यक्रम-

(a) प्रतियोगिता परीक्षा के प्रश्न-पत्र में कुल 100 प्रश्न होंगे, सभी प्रश्न बहुविकल्पीय वस्तुनिष्ठ प्रकृति के होंगे। प्रश्न-पत्र हिन्दी एवं अंग्रेजी दोनों भाषा में होंगे।

b) परीक्षा की अवधि दो घंटे की होगी और कुल अंक 100 होंगे।

(c) अधियाची विभाग द्वारा निर्धारित Diploma in Pharmacy स्तरीय पाठ्यक्रम के आधार पर प्रश्न पूछे जायेंगे। उक्त पाठ्यक्रम आयोग के Website



पर अलग से प्रकाशित किया जायेगा।

(d) उक्त परीक्षा एक से अधिक पालियों में Computer Based Test के माध्यम से आयोजित किया जायेगा एवं एक से अधिक पालियों में परीक्षा आयोजित किये जाने के कारण परीक्षा परिणाम समानीकरण (Normalization) की प्रक्रिया अपनाते हुए तैयार किया जायेगा।

(e) परीक्षा में गलत उत्तर के लिए नकारात्मक अंकन (Negative Marking) लागू किया जायेगा। प्रत्येक सही उत्तर हेतु 01 अंक देय होगा एवं प्रत्येक गलत उत्तर हेतु (0. 25) अंक काटा जायेगा।

(f) उक्त परीक्षा के आधार पर सभी अभ्यर्थियों की समानीकरण (Normalization) की प्रक्रिया अपनाते हुए परीक्षा-फल घोषित किया जायेगा।

(g) कार्मिक एवं प्रशासनिक सुधार विभाग, बिहार के संकल्प संख्या-2374, दिनांक 16.07.2007 एवं सामान्य प्रशासन विभाग, बिहार के संकल्प ज्ञापांक-962, दिनांक 22.01.2021 के द्वारा लिखित परीक्षा में सामान्य वर्ग के लिए 40%, पिछड़ा वर्ग के लिए 36.5%, अत्यंत पिछड़ा वर्ग के लिए 34% एवं अनुसूचित जाति/अनुसूचित



जनजाति, महिलाओं तथा निःशक्तता से ग्रस्त (दिव्यांग) उम्मीदवारों के लिए 32% निर्धारित न्यूनतम अर्हतांक प्राप्त करना अनिवार्य होगा।

नोट:- प्रतियोगिता परीक्षा में अभ्यर्थियों को अपने कोटि के अनुसार न्यूनतम अर्हतांक प्राप्त नहीं होने पर अभ्यर्थी का कोई भी दावा मान्य नहीं किया जायेगा।

(iii) कार्यानुभव का लाभ लिखित प्रतियोगिता परीक्षा में उत्तीर्ण अभ्यर्थियों को ही मिलेगा। कार्यानुभव प्रमाण-पत्र संबंधित जिले के सिविल सर्जन, चिकित्सा महाविद्यालय की स्थिति में प्राचार्य, चिकित्सा महाविद्यालय एवं अस्पताल की स्थिति में अधीक्षक, अतिविशिष्ट अस्पताल की स्थिति में निदेशक तथा विज्ञापन की कंडिका-5(i)(b) में उल्लेखित संस्थानों की स्थिति में उक्त संस्थानों के प्रधान द्वारा निर्गत हो, आवेदन के विहित कॉलम में दर्ज करेंगे। आवेदन में कार्यानुभव का दावा नहीं होने पर कार्यानुभव का अंक एवं आयु सीमा में छूट का लाभ देय नहीं होगा। कार्यानुभव अवधि की गणना 11.03.2025 तिथि तक की जायेगी।

(iv) कार्यानुभव प्रमाण-पत्र हेतु परिशिष्ट-1 में



प्रारूप (Format) संलग्न किया गया है। इस प्रारूप में ही कार्यानुभव प्रमाण-पत्र दिये जाने पर कार्यानुभव के अंकों एवं आयु सीमा में छूट का लाभ दिया जायेगा। इस प्रारूप से अलग किसी अन्य प्रारूप में कार्यानुभव प्रमाण-पत्र दिये जाने पर अंको का लाभ देय नहीं होगा।

(v) नियमानुसार, लिखित प्रतियोगिता परीक्षा में उत्तीर्ण (Qualified) अभ्यर्थियों को विज्ञापन के कंडिका-5(i) में वर्णित प्रावधानुसार कोटिवार मेधासूची तैयार कर दस्तावेज सत्यापन (Document Verification) हेतु आमंत्रित किया जायेगा।”

7. It transpires to this Court that the petitioners have not suffered from the part of relaxation of the age, rather, they have suffered only on the ground that experience marks have not been provided to them.

8. This Court upon going through the provision laid down in clause 5(ii)(g) of the advertisement, is of the view that there is already specific and expressed condition made i.e. to achieve the minimum cut-off marks by the respective categories and then only, it has been decided to provide the marks of the working experience. This is the basic condition inserted in the



advertisement.

9. So far as the different judgments as mentioned above are concerned, it is necessary to quote the relevant paras. Firstly, in case of *Arjun Kumar (supra)*, its relevant para 16 to 25 reads as under:-

“16. The General Administration Department had come out with two clarificatory instructions contained in Memo No. 2374 dated 16.07.2007 and Memo No. 962 dated 22.01.2021, and in view of the same petitioner has submitted that the clarification made by the General Administration Department if applied in case of the petitioner, by adding 25 marks to the marks which has been obtained being 36.25 percent of marks, the petitioner qualifies for the second phase of the examination cannot be sustained.

17. In the present Advertisement No. 11 of 2023, there is no separate preliminary and mains examination but in the advertisement itself there has been provision for grant of weightage point in respect of work experience as would appear from clause 3(ii)(d) putting condition that for being qualified for second phase of the recruitment process, the candidate must have to obtain the minimum qualifying



marks in view of clause 3(i)(h). The petitioner had applied in BC category and has obtained 36.25 percentage of marks as merit point and his normalized score is also 36.25 percentage of marks, whereas in view of clause 3(i)(h) for being eligible for second phase, a candidate has to obtain minimum 36.50 percentage of marks and as such in view of the petitioner not obtaining the minimum qualifying marks, the commission has found him as not qualified for phase II and, as such, he didn't find place in merit list.

18. I have given a serious consideration to the two subsequent clarifications also in respect of the advertisement dated 28.06.2023, I find that nowhere, the clarification has changed the minimum marks required to be obtained in first phase of the examination. The petitioner too in paragraph no. 13 of the writ petition has not stated the very fact that irrespective of the percentage of marks, which has been prescribed in SubClause (h) in paragraph no. 3 of the advertisement, 25 marks was to be added. Admittedly, the petitioner has obtained 36.25 percent, I find it proper to reproduce the statement made in paragraph no. 13 of the writ petition, which inter alia is reproduced hereinafter:



"13. That is is also relevant to mention here that thereafter general administration department, government of Bihar, issued a clarification notification contained in memo no. 12956 dated 16.08.2024 whereby and whereunder it has been clarified that the marks has to be added in both the phases, weightage i.e. the weightage 25 marks has to be added to the marks obtained in the written examination conducted in the first phase and the said weightage marks has also to be given in the second phase of the selection."

19. In course of argument, learned counsel has tried to enlarge the scope of the clarification by submitting that in any case, the clarification in respect of paragraph no. 10(3) of the advertisement in respect of having qualified for second phase of examination would only mean that the weightage has to be given to the number of year considering the petitioner's experience 25 marks was required to be added first can only be said to be misconceived in view of the terms and conditions of the advertisement and even considering the clarification it cannot be said that in the term of the advertisement calling for



participating in the selection procedure any deviation has been made following the procedure prescribed in Clause 3 to Clause 3(i)(h) and noted it in the Notification.

20. It is made clear that minimum qualifying marks is the benchmark for elimination of the candidature and it can only mean that the candidates, who obtain minimum marks as contained in the terms and conditions of Clause-10 of the advertisement then only can qualify for the second phase and then up to 25 marks weightage will be added for giving weightage as per their experience, who have rendered their service as contractual employee.

21. The Apex Court in case of Union of India vs. Mahendra Singh reported in 2022 SCC OnLine SC 909 decided on 25.07.2022, upon considering the law laid has in clear terms held that the candidature instructions in the matter of selection and appointment were required to be adhered strictly in terms of the instructions. I find it apt to reproduce paragraphs no. 16 and 17 of the aforesaid judgment, which inter alia is as follows:

“16. The said principle has been followed by this Court in Cherukuri Mani v. ChieSecretary, Government of Andhra Pradesh wherein this Court held as under: “14. Where the law



prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.....”

17. Similarly, this Court in Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal¹² and OPTO Circuit India Limited v. Axis Bank¹³ has followed the said principle. Since the advertisement contemplated the manner of filling up of the application form and also the attempting of the answer sheets, it has to be done in the manner so prescribed. Therefore, the reasoning given by the Division Bench of the High Court that on account of lapse of time, the writ petitioner might have attempted the answer sheet in a different language is not justified as the use of different language itself disentitles the writ petitioner from any indulgence in exercise of the power of judicial review.”

12. (2020) 13 SCC 234

13. (2021) 6 SCC 707

22. The aforesaid principles laid down by



the Apex Court is squarely applicable to the case in hand.

23. The petitioner, who is a Backward Class candidate, having not obtained 36.5 percent of the qualifying marks, in the first phase of examination, I don't find that by disqualifying the petitioners for phase-II, the respondents have committed any illegality in any manner or have deviated from the instruction contained in the Advertisement No. 11 of 2023.

24. I don't find any merit in the present writ petition. Accordingly, the present writ petition is dismissed.

25. There shall be no order as to cost.”

9.1. Secondly, in case of ***Dr. Shankar Pandit & Ors. (supra)***, its relevant para 7 to 17 reads as under:-

“7. In reply to the said counter affidavit, it has been stated on behalf of the petitioners that Rule 4(a) of the 2010 Rules, as it existed then, provided that all the Doctors working in Additional Primary Health Centers, Primary Health Centers and Government Dispensaries would be in the cadre of District Ayush Medical Cadre. It has been stated that in terms of Rule 10 of 2010 Rules, the Doctors already working prior to coming into force of the Rules



automatically stood included in the service.

8. The Commission in its counter affidavit has simply stated that it is the policy of the State Government, which has to prevail in such matters and the Commission has no role to play in respect of the dispute raised by the petitioners in this case.

9. The basic facts that the petitioners were working on contractual basis in Additional Primary Health Centers and Primary Health Centers are not in dispute. The only issue, which requires determination in the present case, is the effect of framing of the 2010 Rules, which came into force with effect from 22.12.2010 and subsequent amendments introduced in 2017 and 2019.

10. Originally, sub-Rule (e) of Rule 4 of 2010 Rules read as under : -

“(e) In the District Ayush Medical Cadre, doctors shall be selected on contract basis and shall work for at least two years. On their satisfactory services, extension of service may be made. All posts of this Cadre shall be filled on contract basis and no permanent/temporary appointment shall be on these posts. The services shall be extended after satisfactory performance. Doctors of this Cadre can be transferred any where in the



concerned district.”

11. Sub-rule (a) of Rule 4 of 2010 Rules reads as under :

“(a) All doctors working in Additional Primary Health Center, Primary Health Center and State Dispensary (Ayurved, Unani & Homeopathic) shall be in District Ayush Medical Cadre. All Doctors working in Referral Hospital, SubDivisional Hospital, Sadar Hospital, Hospitals of Medical Colleges of Ayush sector. State Ayurved & Unani Pharmacy and research unit, Doctors of State Ayush Medical Service

Specialist Sub-cadre of clause (b) of Rule-5 of chapter -3, Incharge Medical Officer, Dy Superintendents and first Medical officer of PH.C and Referral Hospital shall be in State Ayush Medical Cadre.”

12. Rule 10 of the Rules read as under : -

“10. All Ayush Doctors appointed on the basis of seniority and working prior to the coming into force of these Rules, shall be automatically deemed to be included in this service.”

13. If the case of the petitioners is to be



accepted, by application of Rule 4(a) of the Rules, they can be treated to be in District Ayush Medical Cadre on contractual basis. Sub-Rule (e) of Rule 4 was substituted by amendment Rule 2017. The aforesaid amendment in 2017, by no stretch of imagination, can be said to be having a consequence that persons working on contractual basis under sub-rule (a) of Rule 4 shall automatically become permanent employees under the Rules. The substituted sub-Rule (e) of Rule 4 by amendment Rule 2017 was apparently for the purpose of giving preference to those who were working on contractual basis, after adopting a process of selection as provided therein.

14. If the petitioners are desirous of joining District Ayush Medical Cadre Rules on regular basis, they will have to undergo the selection procedure as prescribed in sub-Rule (e) of Rule 4 of the Rules.

15. For the aforesaid reasons, I do not find the petitioners' case to be tenable.

16. This application is accordingly dismissed.

17. However, there shall be no order as to costs."

9.2. Thirdly, in case of **Kameshwar Kumar & Ors.**



(supra), its relevant para 35 to 45 reads as under:-

“35. The learned Advocate for the petitioners has further pointed out that by notification no. 9359 dated 9th July 2014 issued by the General Administration Department, Government of Bihar, an amendment has been made in the Bihar Drivers (Appointment and Service Conditions) Rules, 2005, under which the drivers who have been legally engaged on a contract basis in government departments have been allowed for an age relaxation of 5 years, and the provisions were also amended for additional marks on the basis of their work experience.

36. The petitioners are entitled to get the benefit of the said provision. In this regard, the learned Advocate for the petitioners refers to a decision in the case of **Secretary, H.S.E.B vs. Suresh & Ors.** reported in **1999 (3) SCC 601**. In **Suresh (supra)**, the Hon'ble Supreme Court was pleased to consider the fate of the contract laborers on the abolition of the contract labour system. The Hon'ble Supreme Court, placing reliance on the **Air India Statutory Corporation, etc. vs. United Labour Union & Ors. etc.** reported in **JT 1996 (11) SC 170**, held as under: –



"In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant."

37. The learned Advocate appearing on behalf of the respondents, on the other hand, submits that the petitioners challenged the advertisement 37/2023 dated 23rd August 2023 for appointment on the post of driver in various State Departments on the ground that they do not have any knowledge of computer application and the minimum educational qualification has been raised from class 8 to matriculation which many of the petitioners do not have and thirdly, they were not granted weightage as per the Rule.

38. It is submitted on behalf of the



*respondents that the petitioners were not asked to have computer knowledge as one of the qualifications; on the other hand, they were required to give a computer-based test. The computer-based test means the questions would appear on the computer screen with multiple-choice answers, and the candidates would be asked to click on the correct answer. For this reason, no knowledge in computer applications is necessary. Secondly, it is submitted by the learned Advocate for the respondents, and in the considered view of this Court, rightly submitted that the petitioners challenged advertisement no. 37/2023 but did not challenge the amendment of the Recruitment Rule by virtue of which the candidate's academic qualification was enhanced. Without challenging the Rule, they are not entitled to any relief claimed in paragraphs 1 & 2 of the writ petition. In support of his contention, the learned Advocate appearing on behalf of the respondents has placed reliance on an unreported judgment of a Co-ordinate Bench in the case of **Dr. Shankar Pandit and Ors. Vs. State of Bihar and Ors.** in **CWJC 8115 of 2020** decided on **1st October 2021**. In the said writ petition, the petitioners have prayed for relief holding*



and declaring that the petitioners, who were appointed on contract basis in July/August, 2010 were included in the District Ayush Medical cadre in terms of Rule-4 (a) and Rule-10 of the Bihar District Ayush Medical/State Ayush Medical Service (Appointment on Regular/Contract Basis and Service Conditions) Rule, 2010. The Co-ordinate Bench, after considering the various provisions of the Rule held in paragraphs 13 & 14 as under: -

“13. If the case of the petitioners is to be accepted, by application of Rule 4(a) of the Rules, they can be treated to be in District Ayush Medical Cadre on contractual basis. Sub-Rule (e) of Rule 4 was substituted by amendment Rule 2017. The aforesaid amendment in 2017, by no stretch of imagination, can be said to be having a consequence that persons working on contractual basis under subrule (a) of Rule 4 shall automatically become permanent employees under the Rules. The substituted sub-Rule (e) of Rule 4 by amendment Rule 2017 was apparently for the purpose of giving preference to those who were working on contractual basis, after adopting a process of selection as provided



therein.

14. If the petitioners are desirous of joining District Ayush Medical Cadre Rules on regular basis, they will have to undergo the selection procedure as prescribed in sub-Rule (e) of Rule 4 of the Rules.”

*39. It is further submitted by the learned Advocate for the respondents that some of the candidates/petitioners duly appeared in the examination. They did not get the minimum cutoff mark; therefore, they were not entitled to get weightage as per the Rule. In support of his contention, he refers to an unreported decision of this Court in the case of **Arjun Kumar Vs. The State of Bihar and Ors. in CWJC No. 13951 of 2024** decided on 19th September 2024, wherein it is observed in paragraph 20:-*

“20. It is made clear that minimum qualifying marks is the benchmark for elimination of the candidature and it can only mean that the candidates, who obtain minimum marks as Patna High Court CWJC No.13951 of 2024 dt.19-09-2024 contained in the terms and conditions of Clause-10 of the advertisement then only can qualify for the second phase and then up to 25 marks weightage will be added for



giving weightage as per their experience, who have rendered their service as contractual employee.”

40. In the instant case some of the petitioners who appeared in the examination did not even get the minimum qualification marks in computer-based/written examination.

*41. It is further submitted by the learned Advocate appearing on behalf of the respondents that in view of the decision in **Uma Devi’s** case, reported in **2006(4) SCC 1**, daily wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, **Uma Devi** itself distinguishes between appointments that are illegal and those that are irregular. The later being eligible for regularization if they meet certain conditions.*

*42. In reply to such argument, learned Advocate appearing on behalf of the petitioners have placed reliance on an unreported decision of the Hon’ble Supreme Court in **Shripal and Anr. vs. Nagar Nigam, Ghaziabad** in Civil Appeal No. 8157 of 2024 decided on 31st January 2025 and urged that **Uma Devi (supra)** cannot serve as a shield to justify exploitative*



engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor- based arrangement and a consistent need for permanent staff, the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.

43. Having heard the learned counsels for the parties and on careful perusal of the entire materials on record, it is found that the petitioners never disputed that they were appointed as daily wagers and till date their status in employment is as a daily wager. There is a difference between daily wage laborers and contractual laborers. If an employee is appointed directly by the employer on contract against a vacant and sanctioned post and performs his duty for a considerable period of time, he is entitled to be absorbed as per the existing rule of appointment/absorption.

44. In the instant case most of the petitioners do not have minimum educational qualifications, they did not come forward for the relief of amendment of their academic qualification in the amended rule of employment and to allow them to compete the recruitment test on the basis of pen and paper mode. Without such prayer, the



advertisement of recruitment of drivers in different departments of the State Government cannot be declared cancelled by the writ court. The petitioners did not come forward with a case that they were absorbed in vacant sanctioned posts. Thus, their appointment is absolutely fortuitous, irregular and considering the nature of their work, question of absorption in Government employment does not arise at all.

45. For the reasons stated above, this Court is not in a position to grant any relief to the petitioners. Accordingly, the instant writ petition is dismissed.”

9.3. Fourthly, in case of ***Bedanga Talukdar (supra)***, its relevant para 29 & 30 reads as under:-

“29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is



mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

30. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary



examination could be relaxed in the case of Respondent 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.”

10. After going through the provisions of the advertisement and the judgments quoted above, this Court is of the firm view that the condition precedent has already been laid down in the advertisement’s clause 5(ii)(g) which the petitioners have failed to achieve and only after getting knowledge that they got marks below cut-off, they challenged advertisement in the writ. Petitioners have opted to participate in the examination process and when they failed to achieve the minimum cut-off marks, then only they challenged the same. Particularly, in the light of the law laid down in the advertisement and ratio laid down in various judgments quoted above, this Court is of the firm view that there is no need of any interference in this matter. Hence, this writ petition stands dismissed.

(Dr. Anshuman, J)

Divyansh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23/04/2026
Transmission Date	NA

