

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8825 of 2020

1. Dr. Styanarayan Paswan S/o Hardev Paswan, R/o Village - Bhikhanpura, P.S. - Goraul, Dist.- Vaishali.
2. Dr. Rakesh Kumar, S/o Godhan Prasad Gupta, R/o - Vill - Harshera, P.O. and P.S. - Goraul, Dist.- Vaishali.
3. Dr. Shivnath Mahto, S/o Ganga Mahto, Village - Fakuli, P.S.- Kudhani, Dist. - Muzaffarpur.
4. Dr. Pramila Kumari W/o Radheshyam, R/o - Vill - Sherpur, Kayasth Tola, P.S. Bela, Dist.- Muzaffarpur.
5. Dr Krishna Murari Prasad, S/o Suchendar Prasad, R/o - Vill - Ghorasahandih, P.S. - Ghorasahan, Dist. - East Champaran.
6. Dr. Manilal Vishwakarma, S/o Mahesh Vishwakarma, Vill - Maudiha, P.S. - Imamganj, Dist. - Gaya.
7. Dr. Sinheshwar Sahu, S/o Mahavir Sahu, R/o - Vill - Saho P.S. Bahera, Dist.- Darbhanga.
8. Dr. Sudhir Kumar Singh, S/o Kamalkant Singh, Vill and P.O.- Chaita, P.S. - Pakaridayal, Dist. - East Champaran.
9. Dr. Upendra Kumar Singh S/o Kalicharan Singh, R/o -Vill - Chainpur, P.S. Karpi, Dist. - Arwal.
10. Dr. Sanjay Kumar Mishra, S/o - Jawahar Mishra, R/o Vill - Babhani Patra, P.S. - Gamhariya Via- Supaul, Dist.- Madhepura.
11. Dr. Nand Kishore Chaturvedi, S/o Janardan Choubey, Vill.- Sakes, P.S. - Sasaram, Distt.- Rohtas.
12. Dr. Tarun Kumar Sikdar, S/o Late Amal Krishna Sikdar, R/o - Ward No. 7 Gorasahan North, P.S. - Gorasahan, Dist. - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Health Department, Bihar, Patna.
2. The Principal Secretary, General administration Department, Bihar, Patna.
3. The Director-in-Chief, Health Department, Bihar, Patna.
4. The Bihar Technical Service Commission Through its Secretary, 19, Harding Road, Patna.
5. The Chairman, Bihar Technical Service Commission 19, Harding Road, Patna.
6. The Secretary, Bihar Technical Service Commission.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Pranav Kumar, Advocate
Mr. Rajeev Ranjant No. II



For the Respondent/State: Mr. Anil Kumar, Adv, AC to SC 8
For the B.T.S.C. : Mr. Nikesh Kumar, Advocate
For the intervenor : Mr. Prashant Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 04-04-2022

Heard learned counsel for the parties.

2. Insofar as, 3rd petitioner – *Dr. Shivnath Mahto*, the present petition do not survive for consideration in view of the fact that he has died during the pendency of the present petition.

3. In the instant petition, petitioners have prayed for the following relief/reliefs:

“That this application is directed for issuance of writ in the nature of certiorari for quashing the advertisement no. 4/20 to 9/20 which is in teeth of the apex court Judgement and legal preposition and further issuance of writ in the nature of mandamus/any other appropriate writ/order/direction commanding the respondents to allow the petitioners to participate in permanent requirement process pursuant to advertisement no. 4/20 to 9/20 issued by the respondent no. 4 where in the candidates having equivalent degree to B.A.M.S (Bachelor of Aurvedic Medicine and Surgery) have been deprived from taking part in requirement process which is absolutely against the Principle laid down by the apex court reports in (2007) 12 SCC 728 where in it has been held that Degree of G.A.M.S. (Graduate in Aurvedic Medicine and surgery) is equivalent to B.A.M.S. and in light of the apex court Judgement the action of respondent no. 4 is absolutely arbitrary and discriminatory.”

4. All the petitioners were stated to have been appointed on contract basis to the Post of Ayush Medical/ State Ayush



Medical Services. The Bihar District Ayush Medical/State Ayush Medical Service (Appointment on Regular/Contract Basis and Service Conditions) (Amendment) Rules 2017 was notified on 20th of November, 2017. Pursuant to the same impugned advertisement has been issued. In terms of substitution of Clause (e) of Rule (4) Chapter – 2 of the Rules 2010, the educational qualification is not G.A.M.S (Graduate in Ayurvedic Medicine and Surgery) as the petitioners are qualified with G.A.M.S qualification.

5. Learned counsel for the petitioners submitted that Apex Court in the case of *Bihar State Council of Ayurvedic and Unani Medicine vs. State of Bihar and Others, (2007) 12 SCC 728*, it is held that G.A.M.S. (Graduate in Ayurvedic Medicine and Surgery) is equivalent to B.A.M.S. (Bachelor of Ayurvedic Medicine and Surgery).

6. The aforesaid contention is not acceptable for the reasons that substitution of Clause (e) of Rule (4) Chapter – 2 of the Rules 2010 issued on 20th November, 2017 modifies the qualification from the inception of Rules, 2010. As long as amended Rules 2017 in particularly substitution of Clause (e) of Rule (4) Chapter – 2 of Rules 2010 is amended the decision cannot be taken into consideration for the reasons that Apex Court in the



case of *Nair Service Society vs. T. Beermasthan* reported in (2009) 5 SCC 545 in paragraph Nos. 47 and 48 held as under:

“47. This Court in Nair Service Society v. Kerala Public Service Commission [(2003) 12 SCC 10 : 2004 SCC (L&S) 1037] (SCC para 22) had the occasion to examine the Rules, the ranked merit list and the supplementary reserved list prepared by the Commission, and the principles followed by the Commission in making the appointments. This Court observed as follows: (SCC pp. 21-22, para 22)

“22. ... Based on the procedure so prescribed, KPSC prescribes the ranked merit list in the order of merit. The candidates are arranged strictly according to merit and are not arranged according to community or caste or group or according to the cycle of rotation, in reservation. The number of candidates to be included in this rank list is filled with reference to some principles followed by them, which are explained in Para 4 of KPSC's writ appeal before the High Court (pp. 102-03). The candidates are advised for appointment as and when vacancies are reported, but following the rules of reservation and rotation prescribed in Rules 14 to 17 of KSSR.”

The Commission has advised appointments based on a unit of 20 for the last more than 30 years. The principle of reservation, rotation and sub-rotation are all applied based on this unit of 20.

48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is



in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

7. In the light of the aforesaid decision of the Apex Court whatever statutory Rule existing as on the date of impugned advertisement, the same is required to be taken into consideration before applying any ratio of a judicial pronouncement. In the light of these facts and circumstances as long as substituted Clause cited *supra* is not amended appropriately by the State Government, the petitioners are not eligible to apply for the post of District Ayush Medical/State Ayush Medical Services post with a qualification of G.A.M.S. (Graduate in Ayurvedic Medicine and Surgery).

8. Accordingly, writ petition stands dismissed.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	05.04.2022
Transmission Date	

