
(2008) 06 PAT CK 0008
In the Patna High Court
Case No : CWJC No. 1608 of 2008

Dr. Kishore Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:

Citation : (2008) 3 PLJR 232

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard the learned, Counsel for the petitioner and the learned Counsel for the State. An advertisement was published by the respondents on 19.4.2007 inviting applications for appointment on contract basis on the post of Ayurvedic, Unani and Homeopathy doctors. The qualifications prescribed were that the candidate must possess the requisite degree as specified in Clause 2 of the advertisement and to be registered with the concerned Board. The maximum age limit was quantified to be 60 years. The period of contract was defined as eleven months. The last date for submission of application with necessary information as detailed in Item 11 of the advertisement was 15.5.2007. Clause 10 of the advertisement stipulated that the merit list would be prepared on basis of the marks obtained at the University level in the Degree Course or equivalent of B.A.M.S./B.U.M.S./B.H.M.S. Subsequently on 14.12.2007 a corrigendum has been published by the respondents to the effect that the applicants who have responded to the aforesaid advertisement would be required to undergo a written examination.

2. The contention of the petitioner is that the conditions and procedure for selection having been specified in the advertisement, the respondents are bound to make the selection and appointment in terms thereof and cannot subsequently introduce a new condition in excess of the original advertisement on basis of which the petitioner had opted to apply for appointment. In any event, no such

modification could be made after the last date fixed for submission of the applications. He lastly submits that the respondents in another advertisement dated 21.3.2007 have made contractual appointment of Allopathic doctors on the basis of a merit list prepared on basis of the marks obtained by them in the Degree Examination and not on the basis of any competitive examination for selection.

3. Learned Counsel for the State submits on instruction that due to large number of applications received, the respondents subsequently decided to go in for the process of a written examination for screening of the candidates.

4. Having considered the submissions made on behalf of the parties this Court is satisfied that the respondents shall be held bound to the conditions of the advertisement as originally specified. Once the last date for receipt of the applications was over and the respondents were at the stage of preparation of the merit list as apparent from the corrigendum itself, it is apparent that the process of selection had commenced and at which stage the respondents decided to change the conditions of the advertisement by incorporating the requirement of a written examination. They cannot be permitted to do so. The law stands settled that selection and appointment has to be made under the terms and conditions of the advertisement and that the respondents cannot be permitted to change the same subsequently.

5. This Court further concurs with the submission of the petitioner that in a contractual appointment it is highly unreasonable and impracticable to subject persons of considerable age like the petitioner of about 54 years to a written test for the only reason suggested by the respondents to make them compete with those who may have finished their studies recently when persons like the petitioner have years of experience behind them. A situation of entry level into service is entirely a different matter. The writ application is, therefore, allowed. The corrigendum dated 14.12.2007 requiring the candidates for appointment on contractual basis on the post of Unani, Ayurvedic and Homeopathy doctors to appear at a written examination is held to be bad. The respondents are therefore directed to proceed with consideration of cases of the applicants in terms of the advertisement originally released by them on 19.4.2007 and in response to which the petitioner is also stated to have applied in accordance with law.