

(2019) 11 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18819 Of 2019

Poonam Kumari And Ors

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 309
Bihar Nurse Cadre rules, 2019 — Rule 6(2)

Citation : (2019) 4 PLJR 1196

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Siddhartha Prasad, Ajay Bihari Sinha, Neeraj Raj, Nikesh Kumar

Final Decision : Dismissed

Judgement

1. The petitioners, 17 in number, claim that they have been working as Nurse Grade A on contractual basis under Health Department, Government of Bihar. They have a grievance against the stipulation in Clause 2(iv) of the Advertisement No. 2 of 2019 dated 19.07.2019 issued under the signature of the Deputy Secretary, Bihar Technical Service Commission, Patna, whereby relaxation of only five years in maximum age limit prescribed for selection and appointment of Nurse Grade A in Government Hospitals/Health Care Centres for Nurses working on contract basis has been provided. According to the petitioners, the said age relaxation of five years is substantially less than that were earlier prescribed in the advertisements issued in 2014 and 2015.

2. In the advertisement issued in 2014, age relaxation of 15 years was allowed to the candidates working on contractual basis and same age relaxation was provided in subsequent advertisement issued in 2015 for appointment against the said posts of Nurse Grade A, for such Nurses, who had been working on contractual basis.

3. It is their own case of the petitioners that taking advantage of age relaxation,

as allowed in the advertisements issued in the year 2014 and 2015, they had participated in the process of selection earlier. They have a grievance that if age relaxation of 15 years could be given for Nurses working on contractual basis in the advertisement of 2014 and 2015, a consistency ought to have been maintained in the present advertisement issued in 2019 also and granting only five years of age relaxation this time is arbitrary, illegal and irrational.

4. Counter affidavits have been filed on behalf of State of Bihar and Bihar Technical Service Commission.

5. In the counter affidavit filed on behalf of the State of Bihar, it has been stated that Bihar Nurse Cadre rules, 2019 have been notified by Notification No. 205(6) on 11.02.2019. The said Rules, framed under Article 309 of the Constitution of India, regulate appointment, promotion and service conditions in Nurse Cadre under the Health Department, Government of Bihar. It has been stated that earlier, age relaxation of 15 years was granted in the year 2014 with an intention to overcome the situation of missed opportunities to the candidates, who were deprived due to delay in publication of vacancies. It has further been stated that five years relaxation of age this time has been granted in the background of the fact that the last vacancy of Staff Nurse Grade A had been advertised in the year 2014 again to overcome the situation of missed opportunities.

6. Similar plea has been taken in the counter affidavit filed on behalf of Bihar Technical Service Commission, which has been constituted under the Bihar Act 13 of 2014. This is to be noticed that the decision to allow age relaxation up to five years for giving to Grade A Nurse working on contractual basis under the Rules is contained in an order dated 19.03.2019, which has been brought on record by way of Annexure-B to the counter affidavit filed on behalf of the Commission. A corrigendum has been issued subsequent to the said order dated 19.03.2019 and relaxation of 'category-wise five years' has been substituted by 'category-wise maximum five years'.

7. The said orders dated 19.03.2019 and 18.08.2019 are sought to be challenged by seeking amendment in the writ application through I.A. No. 1 of 2019.

8. Since the amendment in relief portion, being sought through I.A. No. 1 of 2019, relates to the same selection process under the same statutory rules/provisions, the same is allowed. Accordingly, the relief, which the petitioners are seeking through I.A. No. 1 of 2019, will form part of the relief sought in the original writ application and averments made therein will also form part of the pleadings in the writ application.

9. Mr. Siddhartha Prasad, learned counsel appearing on behalf of the petitioners, has submitted that there is no logic behind reducing the age relaxation from 15 years to 5 years in the present process of recruitment/selection against the post of Grade A Nurse. He has contended that the petitioners have worked on contractual basis for several years and all of them would be losing opportunity to

participate in the process of selection on the sole ground of having crossed the age limit.

10. Mr. Ajay Bihari Sinha, learned G.A.-8, appearing on behalf of State of Bihar, has submitted that the petitioners cannot claim relaxation of age as of their right and they have not been able to establish any fundamental or legal right for such relaxation. He has justified grant of 15 years of age relaxation in 2014 recruitment process, on the ground that the said selection process was undertaken after several years and in order to overcome the plight and predicament of such Nurses, who would have missed the opportunity of being considered against the vacancies in the absence of any selection process undertaken in the meanwhile, the said relaxation was granted.

11. Mr. Nikesh Kumar, learned counsel appearing on behalf of the Bihar Technical Service Commission, has submitted that the recruitment in question is governed by Rules. The proviso to sub-rule (2) of Rule 6 of the Rules enables the Health Department to relax maximum age limit, for the purpose of giving opportunity of appointment in favour of such Grade A Nurses, who have been appointed and working on contractual basis in Government Health Institutions of Bihar State. He has submitted that the decision of the Department to allow relaxation by five years, category-wise, exercising said power under the proviso to Rule 6(2) of the Rules, is binding on Commission. He contends that the Commission has accordingly proceeded with the recruitment process considering the order of the Health Department dated 19.03.2019 read with the subsequent corrigendum issued on 08.08.2019. He has argued that the present recruitment process has been initiated under statutory provisions in accordance with the prescriptions thereunder.

12. I have carefully examined and perused the pleadings on record and have given my anxious consideration to the submissions made on behalf of the parties. As has been noticed, the only grievance, which the petitioners have raised in the present writ application is that relaxation of five years of age is inadequate and discriminatory in the background of the fact that earlier relaxation of 15 years was granted in 2014 for regular appointment against Nurse Grade A post for such persons, who were working on contractual basis in the Government Health Institutions of the Bihar State. The only logic, which learned counsel appearing on behalf of the petitioners has put forth before this Court in support of his contention is that there is no reason why similar relaxation, as earlier allowed, should not be allowed this time and should be reduced to five years.

13. Reason why 15 years in age relaxation was allowed in the process of selection undertaken in 2014 has been given in the counter affidavit filed on behalf of the State of Bihar. It was for the purpose of overcoming a situation where large group of persons having requisite qualification for appointment against the posts in question had missed the opportunity due to delay in publication of vacancies. As has already been noticed above, the petitioners had

availed the age relaxation of 15 years in past for their selection in 2014 and 2015, and would not have had any opportunity to participate in the process of selection for appointment on regular basis against Nurse Grade A post had there been no such relaxation. Admittedly thus, the petitioners had two consecutive opportunities as stated by themselves in paragraph 22 and 23 of the writ application to participate in the process of selection for their regular appointment against the post in question.

14. Further, the rationale behind granting maximum of five years of age relaxation in 2019 is obvious, apparently to overcome the situation of missed opportunities of such aspirants as the present selection has been undertaken 4-5 years after the previous selection.

15. The petitioners cannot claim age relaxation by way of their fundamental or legal right. They cannot make out a case of their missed opportunities to establish any claim for age relaxation since they were given and they appear to have availed the opportunities to participate in previous selection as noticed above. No case of discrimination or arbitrariness is made out on the basis of what has been averred in the writ application or in the application seeking amendment in the writ application.

16. I find force in the submissions made on behalf of the respondents that statutory provisions governing the process of recruitment and the decision of the State Government dated 19.03.2019 based on which the age relaxation of five years was provided in the advertisement, was mentioned in the advertisement itself.

17. For the foregoing discussions, I do not find any merit in this application. This application is accordingly dismissed.

18. There shall be no order as to cost.