

(2019) 12 PAT CK 0047

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24336 Of 2019

Punam Glory Moses D/O Late Henry Moses

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 06-12-2019

Acts Referred:

Senior Resident, Tutor Of Bihar Medical Education Service Cadre Recruitment, Appointment And Promotion Rules, 2008 — Rule 7(iii)(d)

Citation : (2019) 12 PAT CK 0047

Hon'ble Judges : Sanjay Karol, CJ; Anil Kumar Upadhyay, J

Bench : Division Bench

Advocate : Satyabir Bharti, Manish Kumar

Final Decision : Dismissed

Judgement

1. Petitioner has prayed for the following reliefs:

"(i). Issuance of a writ of certiorari or any other appropriate writ, order or direction, quashing Rule 7(iii) (d) of the Senior Resident/Tutor and Bihar Medical Education Service Cadre Recruitment Appointment and Promotion Rules, 2008, as amended by the Senior Resident/Tutor and Bihar Medical Education Service Recruitment Appointment and Promotion (Amendment) Rules, 2013, as being manifestly arbitrary and discriminatory, as though it provides age relaxation of 5 years to the members of the Bihar State Health Service Cadre, belonging to the General Category, it does not provide for any such age relaxation to the Officers of the Bihar State Health Service Cadre, belonging to Schedule Caste and Schedule Tribe Category.

(ii) Issuance of a writ of certiorari or any other appropriate writ, order or direction, quashing the result dated 17.05.2019 published in connection with advertisement no. 03/2018 issued by the respondent no. 2, namely the Additional Secretary, Health Department, Government of Bihar for appointment to the post of Assistant Professor in Medical Colleges and Hospital on contractual

basis;

(iii) Issuance of writ of Mandamus or any other appropriate writ, order or direction, directing the respondents to consider the case of the petitioner, for the purpose of appointment on the post of Assistant Professor;

(iv) Issuance of any other writ, order, or direction as may be deemed fit and proper by this Hon'ble Court.

The relevant provision of the statute reads as under:

"(d) The maximum age limit for appointment on the post of Assistant Professor shall be 45 years for unreserved category, 48 years for backward class/extremely backward class, 48 years for women (unreserved, backward/extremely backward class) and 50 years for Scheduled Castes/Scheduled Tribes. The age limit for Doctors working in the Bihar Health Service Cadre shall be 50 years."

We find the issue raised by the present petitioner with regard to discrimination and arbitrariness of the self same statutory provision, which have been squarely dealt with by a co-ordinate Bench of this Court in CWJC No. 8149 of 2017 titled as Dr. Kishore Kumar Das & Ors. vs. The State of Bihar & Ors. and its analogous cases.

That apart even otherwise, we find that the issues raised by the present petitioner do not meet the test of proportionality laid down by the Hon'ble Supreme Court in the matter of Kerala State Beverages (M and M) Corporation Limited vs. P.P.Suresh & Ors. reported in (2019) 9 SCC 710, wherein it is held as under:

"30. Proportionality involves "balancing test" and "necessity test". Whereas the balancing test permits scrutiny of excessive and onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the necessity test requires infringement of human rights to be through the least restrictive alternatives.

31. An administrative decision can be said to be proportionate if:

(a) The objective with which a decision is made to curtail fundamental rights is important;

(b) The measures taken to achieve the objective have a rational connection with the objective; and

(c) The means that impair the rights of individuals are no more than necessary."

In the instant case, it is not established that principle of procedural legitimate expectation would be applicable. To the contrary, the petitioner, at one point of time, herself availed of the reservation in the affirmative, so postulated under the Constitution, having joined as Medical Officer in the Health Department of Government of Bihar, by taking benefit and advantage thereof. The petitioner cannot, at this point of time, contend that she is still a class apart than the

candidates belonging to an unreserved category and that the benefit of advantage of 05 years of relaxation be continued to be granted to her over and above, the advantage already received by her, than the candidates belonging to general category.

With the aforesaid, the application stands dismissed.