

(2016) 09 PAT CK 0083

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11092 of 2016

Rupesh Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 05-09-2016

Acts Referred:

Bihar X-Ray Technician Cadre Rules, 2014 — Rule 6(1)

Citation : (2017) 1 BBCJ 95 : (2016) 4 PLJR 800

Hon'ble Judges : Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. Kamla Kant Upadhyay and Mr. Chandra Bhushan Das, Advocates, for the Commission; Mr. Chakrapani, Mr. Sanjay Kumar Singh and Mr. Madhuresh Singh, Advocates, for the Petitioner; Mr. Anshuman Singh, AC to PAAG-1, for the State

Final Decision : Allowed

Judgement

Mr. Navaniti Prasad Singh, J.(Oral) - By this writ petition the challenge is to the decision of the Bihar Staff Selection Commission (hereinafter referred to as the Commission) by which the petitioners who hold B.Sc. Hons. in Medical X-ray Technology from Indira Gandhi Institute of Medical Sciences, Sheikhpura, Patna, (hereinafter referred to as the Institute) have been held to be ineligible for the post of X-ray Technicians. A counter affidavit has been filed by the Commission, which is on record.

2. We have heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the Commission and with their consent are disposing of this writ petition at this stage itself.

3. The facts are not in dispute. All the 18 petitioners are graduate with Hons. in Medical X-ray Technology from the Institute. It is an autonomous superspeciality Institute of the State Government. It appears that for the Government hospitals and medical colleges, State Government had formed a cadre known as Bihar X-ray Technicians cadre for which Bihar X-ray Technician Cadre Rules, 2014 were

enacted (Annexure-1 to the writ petition). The cadre rules and in particular Rule 6 provides for qualification of X-ray Technicians. Rule 6(1) insofar as relevant is as follows :

"6. Qualification. - (1) For appointment by direct recruitment to the basic grade post, minimum educational qualification shall be Intermediate/10+2 (Physics, Chemistry, Biology with English) pass. In addition to this, it shall be necessary to have passed Diploma in Medical Radiography from a Government recognised institution."

4. Further Rule 7(2) provides for the recruitment process and it recognises additional marks for higher degree of B.Sc., M.Sc. This course of B.Sc. Hons. is available to Intermediate in science pass students. Rule 7(2) is as follows :

"7(2) In light of requisition, the Commission shall invite applications by advertising vacancies and prepare merit list on following basis :-

(a) For marks obtained in Intermediate/10+2 -----25 marks

(b) For marks obtained in higher degree(B.Sc/M.Sc)-----10 marks

(c) For marks obtained in Diploma in Medical Radiography course examination-25marks

(d) For experience in Government Hospitals of Bihar State (5 marks per year, maximum 25 marks)- 25 marks

(e) For interview- 15 marks Total 100 marks"

5. It appears that on or about 27.04.2016 an advertisement was issued by the Commission for recruitment of X-ray Technicians, the total vacancies being 215. The minimum qualification as advertised was Intermediate with science and technical qualification required was diploma in X-ray Technician and Medical Radiography from Government recognised institution. The petitioners also applied and were selected but at the stage of counselling their candidature were cancelled on the ground that though they were Hons. graduate in Medical Radiology they were not diploma holders as X-ray Technicians and as such they were not eligible for the post.

6. Counter affidavit has been filed by the Commission stating that as the educational qualification requires as stipulated by the Requisitioning Department was diploma in X-ray Technology and the petitioners having a higher qualification of B.Sc. Hons. in Medical Radiology and not having diploma, were ineligible. The Commission could not alter the basic requirement. They have written to the State for clarification but no clarification has yet been received. There has been no counter affidavit by the State.

7. We have considered the matter and in our view the situation being of a serious nature, concerns us. A person who is Hons. graduate in X-ray Technology and Medical Radiology is said to be ineligible for a post which requires only a diploma

in X-ray Technology. It is not that the petitioners are Hons. graduate as aforesaid from any fly by night institution. They are Hons. graduate from autonomous Government Super speciality Institution, the Indira Gandhi Institute of Medical Sciences. A diploma course can unhesitatingly and undoubtedly be held to be a much inferior course than graduate, and much less graduate Hons. Apparently, even the Commission entertained the applications of the petitioners till the very final stage when someone somehow managed to pull the plug. This can only happen in Bihar. We may also notice that not only the cadre rules dealing with the procedure of recruitment but also the advertisement issued by the Commission clearly shows that additional marks are given for graduates and postgraduates, even for this particular post. We have serious doubts about the bona fides of the persons who took the decision on behalf of the Commission in this regard, who even ignored this part of the cadre rules and their own advertisement. It is a serious matter which should concern the State Government and the Chairman of the Commission.

8. In view of the facts aforesaid, we have no option but to hold that the petitioners have been wrongly discriminated and have wrongly been held to be ineligible. They are better qualified and better suited than the diploma holders, for the job in question. Thus, the decision of the Commission to hold them ineligible for the post in question, as advertised vide Advertisement No. 03010115, suffers from malice as has been noticed by the Apex Court in the case of Smt. S.R. Venkataraman v. Union of India AIR 1979 SC 49, relevant part of paragraph 5 is quoted hereunder :

"---Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause."

9. The decision is, thus, set aside. The Commission is directed to proceed with the selection process without the exclusion of the petitioners. The stay granted earlier would, thus, stand vacated. The petitioners cannot be put to any disadvantageous position because of their educational qualification. The writ petition is allowed.