

Shailesh Kumar 'Kaushal', Vs. the State of Bihar and Ors.

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Court : Patna

Decided On : Jul-16-2008

Judge : Navin Sinha, J.

Appellant : Shailesh Kumar 'Kaushal', Bihar Rajya Berojgar Bheshajgy and Nawal Kishore and Anr.

Respondent : The State of Bihar and Ors.

Judgement :

Navin Sinha, J.

1. The controversy in these three cases relate to appointment on the post of Pharmacist. Earlier under the 1981 Rules of the Pharmacy Council the minimum qualification for admission in Diploma of Pharmacy course was Matriculation. An advertisement came to be published on 25.1.2000, advertisement No. 22/Pharma/I/99 by the State inviting applications for the post of Pharmacist. Before the advertisement could culminate in final selection and appointment, the Pharmacy Council amended its rules in 1994 to incorporate the minimum qualification for admission in Diploma of Pharmacy course as I.Sc. In accordance therewith the State Government framed statutory Rules in the year 2004 under Article 309 of the Constitution published on 20.8.2004 styled as the Bihar Pharmacist (Procedure Service Conditions and Appointment) Rules, 2004. Clause 1.2 of the statutory Rules provided I.Sc. or its equivalent qualification from a

Government recognized institution as the minimum educational qualification for appointment on the post.

2. A fresh advertisement was then published by the Respondents on 7th of April, 2006, bearing No. 0606 for making appointment on the post of Pharmacist. This came to be questioned in CWJC No. 11405 of 2004 by those who had applied in response to the 2000 advertisement holding the qualification of Matriculation. The writ application was disposed on 14.11.2007. The order notices the stand of the State that it had resolved the controversy by deciding to hold a separate selection test for the applicants of the 2000 advertisement for vacancy till 1999. The Bench observed that the respondents after good deal of endeavour had decided the matter. In view of the stand of the State the writ application was disposed to hold the selection test in terms of the representation by the State.

3. It is apparent that no mandamus was issued by the Court to hold a separate selection test with regard to the applicants under the 2000 advertisement. The Court did not adjudicate the matter but disposed the application in terms of the representation of the State of its decision to hold a separate selection test for the applicants under the 2000 advertisement. In the present batch of writ petitions, surprisingly the State in its counter affidavit makes a total volte face and now contends that it is the High Court which had directed it to hold the test of applicants under 1999 advertisement.

4. When this Court put a specific question to the counsel for the State in these three writ applications, if the State had taken any decision to do away with the 2000 advertisement or whether it proposes to go ahead with the 2000 advertisement as distinct from 2006 advertisement, the answer was that the High Court directed the taking of examination of those who were applicants in response to the 2000 advertisement under the 2006 advertisement. What the State now seeks to do is to dove tail the applicants under the two advertisements into one class.

5. In that view of the matter, this Court in CWJC No. 14751 of 2006 on 24.6.2008 had required the State to file specific counter affidavit as to how by an executive order they propose to permit those who had applied in response to the 2000

advertisement as Matriculates to appear under the 2006 advertisement, when in the meantime statutory Rules had come into force which makes those not holding minimum qualification of I.Sc. ineligible to appear at the examination.

6. Supplementary counter affidavit filed today in CWJC No. 14751 of 2006 states that permission have been accorded to the applicants of the 2000 advertisement to appear under the 2006 advertisement in compliance of the orders of this Court in CWJC No. 11405 of 2004 and analogous cases dated 14.11.2007 as noticed above.

7. The statutory Rules framed by the Respondents in 2004 does not find reference in the order in CWJC No. 11405 of 2004. The writ application was disposed on the stand of the State. The State now urges that it was only acting in pursuance of the orders of the Court.

8. This Court, therefore, considers it proper that these applications be listed before the same Bench, which disposed off CWJC No. 11405 of 2004 and analogous cases after obtaining the orders of Hon'ble the Chief Justice.

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