

(2010) 10 PAT CK 0068

Patna High Court

Case No: CWJC No. 14751 of 2006

Bihar Rajya Berojgar
Bheshajgyna Sangh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Oct. 26, 2010

Acts Referred:

- Bihar Pharmacist (Procedure, Condition of Service and Recruitment) Rules, 2004 - Rule 1.2
- Constitution of India, 1950 - Article 14, 16

Citation: (2011) 1 PLJR 272

Hon'ble Judges: Shiva Kirti Singh, J; Hemant Kumar Srivastava, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. Heard learned Counsel for the Petitioner and learned Advocate General appearing for the State.
2. Petitioners are aggrieved by a provision in Rule 1.2(ka) of Bihar Pharmacist (Procedure, Condition of Service and Recruitment) Rules, 2004 which prescribes I. Sc. and equivalent examination as the minimum educational qualification for appointment of Diploma Holders in Pharmacy to the post of Pharmacist. According to the Petitioners such a provision in the Rules notified on 12th August, 2004 and published in Bihar Gazette on 20th August, 2004 (Annexure-10) is arbitrary and violative of Articles 14 and 16 of the Constitution of India because under the Regulations existing prior to 9.7.1994 a matriculate was eligible to acquire Diploma in Pharmacy and only after 9.7.1994 the regulation was amended so as to introduce qualification of Intermediate in Science in place of Matriculation. According to Petitioners, the Diploma Holders in Pharmacy having matriculation as the minimum educational qualification should not be declared ineligible because it was not their

fault in acquiring Diploma in Pharmacy while having only matriculation as educational qualification because this was permitted under the then existing regulation.

3. Learned Advocate General has fairly submitted that it would not be fair and proper to disqualify diploma holders in pharmacy only because they are matriculates provided they acquired diploma in pharmacy in accordance with rules/regulations existing prior to 9.7.1994.

4. From Annexure-2 which contains Education Regulations, 1991 for the Diploma course in Pharmacy, it appears that matriculates were permitted admission in Diploma course in Pharmacy in exceptional circumstances if Intermediate in Science were not available. Annexure-9, a communication from Pharmacy Council of India dated 31st August, 2006 also mentions the fact that Education Regulations, 1991 replaced the Education Regulations, 1981 with effect from 11.7.1992 and thereby, *inter alia*, the minimum qualification for admission to Diploma in Pharmacy was changed from Matriculation to Intermediate in Science. It is clarified in Annexure-2 that the relaxation in favour of the matriculates was made only for the academic sessions 1993-94 with a rider that matriculates having secured minimum 50% marks in aggregate only shall be entitled for admission to diploma course in Pharmacy.

5. The aforesaid facts have been noticed only by way of caution so as to make it clear that according to Respondent-State only those diploma holders in pharmacy will be considered for recruitment who have validly acquired such diploma under the relevant regulations, even if they were matriculates.

6. In view of aforesaid fair stand of the State it is not necessary for us to go into the issue of vires of the concerned rules. It has been stated by learned Advocate General that the advertisement issued in 2006 is not being acted upon for the present because the candidates who applied against an earlier advertisement have to be considered first. Further consideration as per advertisement of 2006 or later advertisement shall be dependent upon vacancy which may remain available for recruitment.

7. In view of aforesaid facts and discussions and fair stand on behalf of State, the writ petition is finally disposed of. It goes without saying that if these Petitioners have other requisite qualifications they will be eligible to apply regardless of the fact that they were Matriculates, provided they acquired valid diploma in pharmacy in accordance with regulations then existing.