

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9848 of 2021

1. Varsha Kumari, wife of Ramesh Chandra Gupta, Resident of Village- Musapur, P.S.- Mufassil, District- Samastipur.
2. Vijay Kumar, son of Bhagwan Raj, Resident of Village- Mahuani, P.O.- Saidpur, P.S.- Awatar Nagar, District- Saran.
3. Shashikant Kumar, son of Vijay Prasad Resident of Village- Pachwara, P.O., P.S. and District- Nalanda.
4. Pintu Kumar, son of Rama Prasad, Resident of Village- Rasibigha, P.O.- Keshopur, P.S.- Hilsa, District- Nalanda.
5. Rajeev Ranjan, son of Chandrika Prasad Singh, Resident of- Biscuit Factory More, Near SS Foam Factory Nasriganj, P.S.- Danapur, District- Patna.
6. Rajeev Kumar Bharti, son of Nageshwar Paswan, Resident of Village- Chandpur Fatah, P.O.- Shahbazpur Puraina Balbhaddarpur, P.S.- Patepur, District- Vaishali.
7. Harishchandra Kumar, son of Ramswarup Das Resident of Village- Nasibchak, P.S.- Barbigaha, District- Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Government of Bihar, Patna.
2. The Joint Secretary, Department of Health, Government of Bihar, Patna.
3. The Additional Secretary, Health Department, Government of Bihar, Patna.
4. The Director in Chief, Health Service, Health Department, Government of Bihar, Patna.
5. The Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.
6. The Deputy Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.
7. The Special Secretary, Bihar Technical Services Commission, 19, Harding Road, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 21242 of 2021

Pappu Kumar Chaudhary S/o Ranjit Choudhary, R/o Village-Near Mama Bhanja, P.S.-Jadhua, District-Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.



2. The Union of India through Director (N.P.C.B) Ministry of Health and Welfare Department, New Delhi.
3. The Director, Health Department, Govt. of Bihar, Patna.
4. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
5. The Joint Secretary, Health Department, Govt. of Bihar, Patna.
6. The Chief Director, Para Medical Health Department, Govt. of Bihar, Patna.
7. The Under Secretary, Bihar Technical Service Commission Govt. of Bihar, Patna.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 1188 of 2022

1. Randhir Kumar Singh, Son of Madan Dhari Prasad Singh Resident of Village- Mahajpura, P.S.- Bikram, District- Patna.
2. Uttam Kumar, Son of Chandrika Prasad Resident of Village- Mahamdali Chak, P.S.- Mufasil Akauna, District- Nawada.
3. Anjan Kumar Rajak, Son of Jai Prakash Rajak Resident of Village- Maharshi Nagar Dobha, P.S.- Rupauli, District- Purnea.
4. Brijmohan Chaudhari, Son of Rameshwar Chaudhari Resident of Village- Maharajganj, P.S.- Chapra Mufasil, District- Saran.
5. Anjali Kumari, Daughter of Satyendra Prasad Resident of Q No. 478/EF Rampur Colony, P.S.- Jamalpur, District- Munger.
6. Manish Kumar, Son of Baleshwar Tanti Resident of Village- Kandih, P.S.- Khaira, District- Jamui.
7. Mohammad Shahid, Son of Md. Israil Resident of Officers Colony Budhuchak, P.S.- Katihar, District- Katihar.
8. Nausad Ansari, Son of Md. Zafar Ansari Resident of Village- Bhakhra, P.S.- Masaudhi, District- Patna.
9. Niraj Kumar, Son of Parshuram Pandit Resident of Village- Gagi, P.S.- Kanke, District- Ranchi (Jharkhand).
10. Ravindra Kumar, Son of Raghubansh Manjhi Resident of Marar, P.S.- Parsa, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Health Department, Government of Bihar, Patna.
3. The Secretary, Health Department, Government of Bihar, Patna.
4. Bihar Technical Service Commission, 19, Harding Road, Patna through its Chairman.



5. The Chairman, Bihar Technical Service Commission, 19, Harding Road, Patna.
6. The Deputy Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 9848 of 2021)

For the Petitioner/s : Mrs. Nivedita Nirvikar, Sr. Advocate
Mr. Ranjeet Kumar, Advocate
Mr. Kundan Kumar, Advocate
Mr. Pramod Kumar Prasad, Advocate
Mr. Raj Kumar Rajesh, Advocate
For the Respondent/s : Mr. Pawan Kumar, AC to AG
Mr. Nilesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 21242 of 2021)

For the Petitioner/s : Mr. Rajkumar Rajesh, Advocate
For the Respondent/s : Mr. Binod Kr. Roy, SC-18
Mr. Radhika Raman, CGC
Mr. Awadhesh Kumar Pandey, Sr. Panel Counsel

(In Civil Writ Jurisdiction Case No. 1188 of 2022)

For the Petitioner/s : Mrs. Nivedita Nirvikar, Sr. Advocate
Mr. Suryakant Kumar, Advocate
Mr. Pramod Kumar Prasad, Advocate
Mr. Raj Kumar Rajesh, Advocate
For the Respondent/s : Mr. Binod Kr. Roy, SC-18
Mr. Nilesh Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 18-10-2022

Petitioners have prayed for the following reliefs:-

- (i) For setting aside Clause-5 (ii) of the Bihar Ophthalmic Assistants joint cadre (Recruitment and Service Conditions) Rules, 2011.
- (ii) For setting aside Clause-5(ii) of the Bihar Ophthalmic Assistant Cadre (Recruitment & Service Conditions) Rules, 2019 (as amended).
- (iii) For setting aside the letter no. 500(11)(dated 8.07.2020 issued by the Director in chief, Health Services, Government of Bihar, Patna, rejecting the representation of the National Ophthalmic Association Bihar, Patna.



Petitioners got admission in course of ophthalmic assistant on the basis of entrance test conducted by the Bihar Combined Competitive Examination Council and at that time i.e. prior to 2011 the eligibility criteria for admission in Diploma in Ophthalmic Assistant was 10+2 intermediate Science with Physics, Chemistry, English and either Mathematics or Biology. Petitioners are 10+2 intermediate with Physics, Chemistry, English and Mathematics and were admitted in the course of Ophthalmic Assistant and passed the course of Diploma in Ophthalmic Assistant from Government institute in between 2006-2011.

Department of Health, Government of Bihar, vide letter no. 646 dated 21.09.2011 issued instructions that from next session i.e. 2012 onwards candidates who have passed intermediate with Physics, Chemistry, English and Biology only will be eligible for taking admission in Diploma Course in Ophthalmic Assistant.

In exercise of power conferred under Article 309 of the Constitution of India, State Government framed Bihar Ophthalmic Assistant Cadre (Recruitment & Service Conditions) Rules, 2011 (as amended on 06.03.2019) which prescribes the eligibility criteria for recruitment in State Government on the



post of Ophthalmic Assistants to be Diploma in Ophthalmic Assistant with Physics, Chemistry, English with Biology at +2 level (Intermediate Science).

Advertisement No. 1 of 2021 has been issued by the Bihar Technical Service Commission for appointment on the post of Ophthalmic Assistants in which eligibility is Diploma in Ophthalmic Assistant and intermediate(Science) passed with Physics, Chemistry, English and Biology.

It is submitted that this advertisement for appointment of Ophthalmic Assistants in State services has been issued first time after framing of Bihar Ophthalmic Assistant Cadre (Recruitment & Service Conditions) Rules, 2011 and petitioners have been made ineligible to be appointed on the post of Ophthalmic Assistant although they are Diploma in Ophthalmic Assistant but they are intermediate(Science) with mathematics which was permissible for admission in the Diploma Course of Ophthalmic Assistant prior to 2011.

Prospectus of 2006 and 2010 issued by Bihar Combined Competitive entrance Examination Council, the eligibility criteria for taking admission in the course of Diploma in Ophthalmic Assistance was +2 intermediate (Science) with Physics, Chemistry, English and Mathematics or Biology. In the



year-2006 also Advertisement for appointment on the post of Ophthalmic Assistant was issued in which also the eligibility was corrected as Diploma in Ophthalmic Assistant and intermediate with Physics, Chemistry, English and Biology or Mathematics and only after 21.01.2011, educational qualification for admission in Diploma Course of Ophthalmic Assistant was confined to intermediate (Science) with Biology.

Accordingly, admission in the Diploma course of Ophthalmic Assistant was confined to students passing intermediate (Science) with Physics, Chemistry, English and Biology. Students passing intermediate (Science) with Physics, Chemistry, English and Mathematics were not eligible for admission in the Diploma Course of Ophthalmic Assistant after 2011.

It is submitted on behalf of petitioners that they took admission in Diploma course of Ophthalmic Assistant in Govt., institution and completed their diploma course prior to coming of Bihar Ophthalmic Assistant Cadre (Recruitment & Service Conditions) Rules, 2011, as such, eligibility made therein of having passed the intermediate Science examination with Biology is not applicable in their case as at the time of their admission in Diploma Course of Ophthalmic Assistant eligibility



was intermediate science with Mathematics or Biology and having taken admission in diploma course of Ophthalmic Assistant and after successful completion of the Diploma course and grant of diploma certificate, in Ophthalmic Assistant they cannot be made ineligible for appointment on the post of Ophthalmic Assistant when appointment to the said post is being made first time after their passing out from the Government institute.

It is further submitted on behalf of petitioners that during pendency of this writ petition prospectus (Annexure-9) has been issued by the Bihar Combined Competitive Entrance Examination Council, Govt. of Bihar with respect to entrance competitive examination-2021 for taking admission in the course of Ophthalmic Assistant in which again eligibility to appear in the competitive entrance examination with respect to Ophthalmic Assistant (Clause-7 ँ) has been made intermediate-Science with Mathematics or Biology.

It is further submitted that in the prospectus of 2011, it has been clearly indicated in Clause-16.13 that if there is any change in Admission/eligibility in the course of Ophthalmic Assistant by the Health Department the eligibility conditions for admission shall stand automatically amended to



the said extent. The relevant Clause-16.13 is reproduced hereinbelow:-

“16.13 विज्ञान एवं प्रावैधिकी विभाग बिहार सरकार द्वारा पॉलिटैकनिक अभियंत्रण (PE) एवं पार्ट-टाईम (चार वर्षीय) पॉलिटैकनिक अभियंत्रण (PPE) पाठ्यक्रमों से सम्बन्धित तथा स्वास्थ्य विभाग, बिहार सरकार द्वारा पारा मेडिकल (माध्यमिक स्तरीय) (PMM) एवं पारा मेडिकल (इंटरमीडिएट स्तरीय) (PM) पाठ्यक्रमों से सम्बन्धित यदि कोई परिवर्तन/संशोधन/प्रावधान/दिशा निर्देश विधिवत संसूचित किया जाता है तो वह डिप्लोमा सर्टिफिकेट प्रवेश प्रतियोगिता परीक्षा-2021 की विवरण पुस्तिका में समावेशित समझा जायेगा और उसकी सूचना विज्ञापन द्वारा कॉउन्सेलिंग/साक्षात्कार के पूर्व/समय दे दी जायेगी।”

Learned counsel for the respondents nos. 1 to 4 have submitted that that Rule 5 (ii) of the Bihar Ophthalmic Assistant Joint Cadre Rule (recruitment and service conditions) Rule, 2011 provides that "the minimum educational qualification shall be I.Sc./10+2 (Biology) passed and having a certificate of Diploma course prescribed for ophthalmic Assistant".

Bihar Ophthalmic Assistant Joint Cadre Rule (recruitment and service conditions) Rule, 2011 has been amended vide Notification dated 06.03.2019, as Bihar Ophthalmic Assistant Joint Cadre Rule (recruitment and service



conditions) (Amendment) Rule, 2019 wherein minimum education qualification prescribed for direct recruitment to the post of basic category post shall be Intermediate/ 10+2 pass (Physics, Chemistry, Biology with English). In addition to pass in diploma course of ophthalmic assistant from a Government recognized institute and a certificate to that effect necessary.

Since the date of coming into force of Bihar Ophthalmic Assistant Joint Cadre Rule (recruitment and service conditions) Rule, 2011 the educational qualification mandated for direct recruitment to the post of basic category post shall be I.Sc. / 10+2 (Biology) passed and having a pass certificate of Diploma course prescribed for ophthalmic Assistant".

In consonance with the Ophthalmic Cadre Rules, in the academic prospectus published by the BCECE, Board, Patna for Diploma Certificate Examination, the educational qualification for taking admission in Ophthalmic Assistant Course has been incorporated as Intermediate Science or Equivalent with Physics, Chemistry, Biology and English.

In the academic prospectus published by the BCECE, Board, Patna for Diploma Certificate Examination, 2021, the educational qualification Intermediate Science either with Mathematics or Biology was incorporated for Ophthalmic



Assistant only for the purpose of taking admission in Ophthalmic Assistant course in wider perspective, but in the matter of appointment of Ophthalmic Assistant, the State Government has taken policy decision and framed the relevant Rules i.e. Bihar Ophthalmic Assistant Cadre (Recruitment and Service Condition) Rules, 2011 and Amended Rules, 2019 in exercise of powers conferred by proviso to Article 309 of the Constitution of India.

In the academic prospectus published by the BCECE, Board, Patna for Diploma Certificate Examination, 2022, the Educational Qualification for taking admission in Ophthalmic Assistant Course has been corrected and incorporated as per the Ophthalmic Cadre Rules i.e. Intermediate Science or Equivalent with Physics, Chemistry, Biology and English.

I.Sc./ 10+2 with Biology has been made minimum essential qualification in the year 2011 itself immediately after coming into effect of Rules, 2011, and now, by the amended Rules, 2019, the qualification has merely been made more specific and clear by providing that the educational qualification shall be I. Sc./10+2 pass (with Physics, Chemistry, Biology & English) as, in the original rule only I.Sc./ 10+2



(Biology) pass was mentioned.

Petitioners have passed the course of Diploma in Ophthalmic Assistant from the Government Institutes before the coming into force of Bihar Ophthalmic Assistant Cadre (Recruitment and Service Condition) Rules, 2011 with prescribed educational qualification for taking admission in the course of diploma in Ophthalmic Assistant as +2 intermediate, science or other equivalent examination with physics chemistry and English besides mathematic or biology. They formed a different class from those who have passed the course of Diploma in Ophthalmic Assistant from the Government Institutes after the coming into force of Bihar Ophthalmic Assistant Cadre (Recruitment and Service Condition) Rules, 2011 with prescribed educational qualification as Intermediate Science or Equivalent with Physics, Chemistry, Biology and English.

In the matter of recruitment to any cadre, it is a matter of policy and depends upon variable circumstances to lay down criterion of eligibility and sources from which the recruitment shall be made through different methods. Such a laying down of a policy cannot be per se said to be arbitrary, unreasonable and violative of Article 14 and 16 of the



Constitution.

Heard learned Senior counsel for the petitioners
as well as learned Senior counsel for the respondents.

It is an admitted fact that before coming into force Bihar Ophthalmic Assistants joint cadre (Recruitment and Service Conditions) Rules, 2011 admission in Diploma Course for Ophthalmic Assistant through competitive examination students passing intermediate (Science) with Mathematics or Biology were eligible to appear in the competitive examination and on being successful in competitive examination were admitted in Diploma Course of Ophthalmic Assistant, however, after coming into force of Bihar Ophthalmic Assistants joint cadre (Recruitment and Service Conditions) Rules, 2011 admission in Government institute was confined to students passing intermediate (Science) examination with biology as such no student passing intermediate (Science) with Mathematics could take admission in Diploma Course of Ophthalmic Assistant after 2011 after framing of Bihar Ophthalmic Assistants joint cadre (Recruitment and Service Conditions) Rules, 2011 (except for the year-2021).

It is equally true that prior to 2011 students passing intermediate (Science) with Biology or Mathematics



were eligible for admission in Diploma Course in Ophthalmic Assistant. It is also apparent from records that in the year 2006, process for appointment on the post of Ophthalmic Assistant was undertaken by the State Government in which also eligibility was subsequently amended as Diploma Course in Ophthalmic Assistant and intermediate (Science) with Mathematics or Biology, for which a letter dated 12.02.2007, was issued by the Joint Secretary, Department of Health and Family Welfare, Government of Bihar (Annexure-4), which is reproduced hereinbelow:-

बिहार सरकार

स्वास्थ्य एवं प०क० विभाग

प्रेषक,

जमीरुद्दीन अंसारी
सरकार के संयुक्त सचिव।

सेवा में,

सचिव,
बिहार कर्मचारी चयन आयोग,
बिहार, पटना।

पटना, दिनांक 12.02.2007

विशय:- नेत्र सहायक के पदों पर नियुक्ति हेतु प्रकाशित विज्ञापन में निर्धारित अर्हता के संशोधन के संबंध में।

प्रसंग: स्वास्थ्य विभाग के पत्रांक 315(1B) दिनांक 01.06.2005, 612(11) दिनांक 25.08.2006 एवं पत्रांक 21(11), दिनांक 04.01.2007।

महाशय

उपर्युक्त विषयक प्रसंगाधीन पत्र के संबंध में निदेशानुसार कहना है कि नेत्र सहायक के पदों पर नियुक्ति हेतु आयोग द्वारा दिनांक 23.01.2007 को दैनिक समाचार पत्रों में प्रकाशित विज्ञापन सं०-2307 में निर्धारित अर्हता की उल्लेखित कंडिका में निम्न रूपेन संशोधन करने की कृपा की जाय-



1. भौक्षणिक योग्यता

आई०एस०सी० बायोलॉजी अथवा गणित (Biology or Mathematics) में उत्तीर्ण।

2. तकनीकी योग्यता

बिहार सरकार द्वारा मान्यता प्राप्त सरकारी/गैर सरकारी/ अर्द्ध सरकारी संस्थानों से नेत्र सहायक के दो (2) वर्षीय डिप्लोमा पाठ्यक्रम के प्रत्येक विषय में 50% न्यूनतम अंक के साथ उत्तीर्ण होना आवश्यक होगा।

3. पारा मेडिकल/पारा डेन्टल परीक्षा समिति द्वारा नेत्र सहायक के दो (2) वर्षीय डिप्लोमा पाठ्यक्रम की मार्च, 2007 में आयोजित होने वाली अन्तिम परीक्षा में सम्मिलित होने वाले उम्मीदवार भी आवंटन दे सकेंगे। साक्षात्कार की तिथि को उत्तीर्णता का प्रमाण पत्र प्रस्तुत करना अनिवार्य होगा अन्यथा उनकी अर्हता समाप्त कर दी जायगी।

अनुरोध है कि यथा स्थान उपर्युक्त संशोधन करते हुए पुनः संशोधित विज्ञापन प्रकाशित कराने की कृपा की जाय।

विश्वासभाजन

(जमीरुद्दीन

अंसारी)

सरकार के संयुक्त

सचिव

It is quite surprising that during pendency of writ petition prospectus for entrance examination 2021 was issued for admission in Diploma Course in Ophthalmic Assistant and again in prospectus eligibility for admission in Diploma course of Ophthalmic Assistant has been made Intermediate (Science) with Physics, Chemistry, English and Mathematics or Biology which depicts a very sorry state of affairs in which Department is functioning.

Having heard learned counsel for the parties, this



Court finds that once admission to candidates passing Intermediate (Science) with Biology or Mathematics have been permitted to appear in the competitive examination for admission in Diploma course of Ophthalmic Assistants and after successfully completing the diploma course and getting diploma certificate in Ophthalmic Assistant, State cannot deny them opportunity of appointment on the post of Ophthalmic Assistant and denial of opportunity for appointment on the post of Ophthalmic Assistant is arbitrary, unreasonable and discriminatory and offends Article -14 and 16 of the Constitution of India.

Respondent-Health Department, in the year 2006 also permitted selection of candidates on the post of Ophthalmic Assistant in the State Government having passed Intermediate (Science) with Biology or Mathematics and same principle will apply in the case of petitioners also and they are also governed by letter dated 12.02.2007 as contained in (Annexure 4 page 107).

Once the State government has permitted students passing Intermediate (Science) with Mathematics or Biology for admission in the Diploma course of Ophthalmic Assistant and having obtained diploma certificate State cannot



deny them appointment on the ground that they have passed Intermediate (Science) examination having Physics, Chemistry, English and Mathematics and not Biology same being arbitrary and cannot stand twin test of reasonableness and fairness.

Accordingly, petitioners who were admitted in the Diploma Course in Ophthalmic Assistant before framing of recruitment Rules-2011 are eligible to be considered for appointment on the post of Ophthalmic Assistant, since there is already a direction issued by this Court to accept the application forms of candidates passing Intermediate (Science) with Physics, Chemistry, English and Mathematics, as such the Bihar State Technical Commission is directed to prepare merit list treating petitioners to be eligible for appointment on the post of Ophthalmic Assistant.

Accordingly, the writ petitions are allowed.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.10.2022
Transmission Date	NA

