

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S). No. 796 of 2022
(Dr. Zafar Eqbal & Ors. Vs. the State of Jharkhand & Ors.)
with
W.P.(S). No. 793 of 2022
(Dr. Devendra Nath Tiwari & Ors. Vs. the State of Jharkhand & Ors.)
with
W.P.(S). No. 1085 of 2022
(Shakuntala Sundi & Anr. Vs. the State of Jharkhand & Ors.)
with
W.P.(S). No. 1006 of 2022
(Dr. Murli Manohar Prasad & Ors. Vs. the State of Jharkhand & Ors.)
with
W.P.(S). No. 915 of 2022
(Dr. Anupam Ghoshal Vs. the State of Jharkhand & Ors.)

CORAM: THE HON'BLE MR. JUSTICE DR. S.N.PATHAK

For the Petitioner	:	Mr. Abhay Kumar Mishra, Advocate Mr. Saurabh Shekhar, Advocate Mr. Ajay Kumar Pathak, Advocate Mr. P.K. Choudhary, Advocate Mr. Ashish Verma, Advocate
For the State	:	Mr. Mukesh Kumar Sinha, Sr. SC Mr. Gaurav Abhishek, AC to AG
For the JPSC	:	Mr. Sanjoy Piprawall, Advocate Mr. Rakesh Ranjan, Advocate Mr. Prince Kumar, Advocate Mr. Abhay Prakash, Advocate Mr. Amritanshu Singh, Advocate Mr. Pravin Kumar Pandey, Advocate

04/ 23.03.2022 Since the common issues are involved in all these writ petitions, they are tagged and heard together.

Petitioners have approached this Court with a prayer for issuance of writ in the nature of mandamus commanding the respondents to allow the petitioners to participate in the selection process for appointment of AYUSH Doctors pursuant to the Advertisement Nos. 09/2022, 10/2022 and 11/2022, by giving age relaxation to all contractual AYUSH Doctors, particularly, petitioners who had been working with the respondent-State since 2012 and were selected following due selection process on contractual basis.

Admittedly, it is not the vested right of the applicants to get relaxation in age against the policy decision of the State. The issue involved in these writ petitions are not of the shifting the cut-off date rather the issue is:

“Whether the petitioners who are working with respondent-State on contractual basis for a long period of time, be given an opportunity to appear in examination for appointment on regular basis , advertisement for which has come for the first time after coming into existence of the state of Jharkhand in the year 2000 ”

Earlier, some of the AYUSH Doctors moved this Court in W.P.(S). No. 1734 of 2009 and other analogous cases with a prayer to allow them to discharge their duties on the respective posts and further if regular selections are made on the posts in question, the respondents may consider cases of the petitioners by condoning overage as per relevant provisions of service laws. After hearing the parties, the Writ Petition was disposed of with the following directions:

“10.After hearing the learned counsel for the respective parties and having bestowed my anxious consideration to the rivalized submissions and on perusal of the documents on records, it would be in the interest of justice to direct the State Government to go for regular selection of Ayush Doctors in accordance with law after framing the necessary law and rules for recruitment, if not already framed, and while framing the rules, the respondents-authorities may insert clause for condonation of age as per the relevant provisions of the Service Code since no regularisation, contractual or regular recruitment has been made for the last 9 years and some of the eligible candidates have become overaged therefore, in order to mitigate the legitimate expectations of eligible candidates those have over-aged in the meantime the respondents being ideal employer ought to go for regular selections for Ayush doctors by framing the suitable recruitment rule if not already made as expeditiously as possible preferably within a period of six months from the date of receipt/ communication of the order.”

Similar issue fell for consideration before the Hon’ble Patna High Court and considering every aspects of the matter, fully conscious of the facts that Courts seldom interfere in the policy decision of the State regarding age relaxation, as the law is well settled that *determination of eligibility*

criteria and other conditions for appointment against any Government post squarely falls within the domain of the State as an employer and no one can claim as a matter of right, for making change in the eligibility criteria fixed by the State employer. The writ petition was disposed of with the following observations and directions:

*“8. It is true that it is purely within the domain of the State, as an employer, to lay down eligibility conditions in terms of age, qualification, experience etc. for appointment to a public post in consonance with the nature of duties to be discharged by a person to be appointed against such post. It is the own decision of the State Government in its circular issued vide letter no. 212 dated 23.01.2007, which permits grant of age relaxation in the upper age limit, where the recruitment process for a particular post could not be undertaken according to the schedule and in the meanwhile the aspirants for the post become over aged. Further, the respondents have not disputed the specific stand taken by the petitioners that 16 years age relaxation has been allowed for Allopathic, Dentist and Specialist (Allopathic) Doctors in the matter of their regular appointed, taking recourse to the said letter No. 212 dated 23.01.2006 of the General Administration Department. All those posts are under Health Department, Government of Bihar. In case of Physiotherapist/ Occupational Therapist, this Court, by order dated 16.10.2020 in case of **Krishna Murari and Another vs. State of Bihar and Others** (supra), has directed the respondents to consider the cases by granting one time relaxation having regard to the fact that they were appointed on contractual basis from respective dates when they were below 37 years of age and were still continuing.*

9. Considering the admitted facts and circumstances of the case, this writ application is disposed of with a direction to the Principal Secretary, Health and Family Welfare Department, Government of Bihar, to take a final decision in respect of grievance of these petitioners for grant of 16 years age relaxation in upper age limit for the posts in question in the light of the fact that similar age relaxation has been allowed in case of Allopathic Doctors and Dentist Doctors as asserted in the writ petition. Final decision must be taken in this regard within a period of one month from the date of receipt/ production of a copy of this order.”

In the State of Jharkhand AYUSH Doctors are working on contractual basis since very long. After bifurcation of the State, no steps have

been taken for regular appointment of AYUSH Doctors. In view of order passed by this Court in W.P.(S) No. 1734 of 2009, a Notification was issued on 06.01.2021, though not made public in view of dearth of AYUSH Doctors in the State of Jharkhand and as also no regular appointments have been made till date, a decision was taken to consider for relaxation of seven years' as a one time measure for those who are working for more than five years. It is an admitted fact that in the State of Jharkhand no regular appointments have been made for the post of AYUSH Doctors since very inception i.e. the year 2000 when State of Jharkhand came into existence. AYUSH Doctors are working on contract basis for the last 12 years or more. Considering age relaxation for 7 years cannot be said to be rational approach of the State. It also cannot be termed to be a policy decision as the same has not been notified by way of Gazette Notification. The age prescribed in the advertisement debar the AYUSH Doctors from making application as obviously they have become overaged working since more than 12 years. The law is well settled that there cannot be class amongst the class. The AYUSH Doctors cannot be distinguished by considering cases of those who have worked for five years and disallowing the claim of those who have worked for more than 10 years. The approach of the State is wholly arbitrary and irrational. Equal opportunity has to be given to all the contractual AYUSH Doctors who have been working in the State of Jharkhand as on date and may be considered by giving age relaxation as a one-time measure.

The Hon'ble Apex Court in the case of **CSIR v. Ramesh Chandra Agrawal** reported in (2009) 3 SCC 35 has observed as under:

“33. Indisputably, a policy decision is not beyond the pale of judicial review. But, the court must invalidate a policy on some legal principles. It can do so, inter alia, on the premise that it is wholly irrational and not otherwise. The contention of the respondents that only two chances are granted for consideration of the candidature of the employees for the purpose of regularisation is, in our opinion, misconceived. The Scheme being a one-time measure, even one opportunity could have been granted.”

Further, in para-45 of the said Judgment, the Hon'ble Court has observed as under:

“45. However, in this case, Para 9 of the Scheme although does not contain any limitation in the matter of exercise of power, it was for the authority concerned to lay down a principle as to in which case the power of relaxation should be exercised and in which case it would not be. If sufficient number of candidates were available who had worked for more than 15 years, keeping in view the requirements of the appellant itself the Director could take a further policy decision that no relaxation shall be granted to an applicant who did not fulfil that criterion. Ordinarily, the Court, it is trite, would not interfere with such discretionary power in exercise of its jurisdiction of judicial review.”

Admittedly, the AYUSH Doctors working on contractual basis in the State of Jharkhand have become overage without getting any opportunity to appear in the selection process for appointment on regular basis.

Since, earlier also the issue fell for consideration before this Court as well as the Hon’ble Patna High Court and directions were given to relax upper-age as one time measure, irrespective of the discipline to which the petitioners belonged to as admittedly, all are AYUSH Doctors, may be from different discipline i.e. Ayurvedic, Unani, Homeopathy, etc., as they have been working since long, the right has accrued to them to appear in the selection process for appointment on regular basis since after bifurcation of the State and creation of new State of Jharkhand, for the first time advertisement has been floated for appointment of regular AYUSH Doctors.

In view of the aforesaid facts and in peculiar circumstances of the case, the respondents are directed to extend last date of filling-up of the application form pursuant to the Advertisement Nos. 09/2022, 10/2022 and 11/2022 for a further period of 15 days from today for all contractual AYUSH Doctors working in the State of Jharkhand and they may be allowed to fill-up forms for the respective posts as a onetime measure giving relaxation to their age subject to fulfillment of other eligibility criteria laid down by the State. The respondents – JPSC is directed to issue Press Communique in the local New paper having wide circulation in the State of Jharkhand as well as by putting the same on its Official Website informing the arrangements made by this Court.

Let it be made clear that this direction has been issued in a peculiar facts and circumstances of the case being conscious of the fact that sitting under Article 226 of the Constitution of India the Court seldom interferes in the policy decision of the State and judicial review can be done only if the decision on the face of it is arbitrary.

The respondent – Principal Secretary, Department of Health, Education and Family Welfare, Government of Jharkhand as well as the Director, Jharkhand State AYUSH Medical Council are directed to take a policy decision regarding age relaxation of AYUSH Doctors keeping in view peculiar facts and circumstances of the case as a onetime measure since for the first time after bifurcation of the State, an advertisement has been floated for regular appointment. Let a decision to that effect be taken by the respondents by assigning reasons within a period of six weeks from the date of receipt/ production of a copy of this order.

The respondents are directed to file counter-affidavit within a period of six weeks.

List these cases after six weeks.

Any appointment pursuant to Advertisement Nos. 09/2022, 10/2022 and 11/2022 will be subject to outcome of theses writ petitions.

As a result thereof, pending Interlocutory Applications stand disposed of.

Let a copy of this order be handed over to counsel appearing for the JPSC as also to the office of learned Advocate General.

(Dr. S.N. Pathak, J.)