IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 1786 of 2021

Dr. Anuj Sharma, aged about 39 years, son of Shri R.K. Sharma, resident of A-1, Vinayak Enclave, Navin Mitra Lane, Circular Road, P.O. & P.S. Lalpur, District Ranchi-834001 (Jharkhand).

…… **Petitioner**

Versus

1. The State of Jharkhand, through the Principal Secretary, Department of Health, Medical Education and Family Welfare, having its office at Nepal House, Doranda, P.O. and P.S. Doranda, Ranchi-834002.

2. Rajendra Institute of Medical Science (RIMS), (An autonomous Institute under Government of Jharkhand), through its Director, having its office at Bariatu, P.O. and P.S. Bariatu, District Ranchi-834009, Jharkhand.

3. Principal, Dental Institute, Rajendra Institute of Medical Science (RIMS), having its office at Bariatu, P.O. and P.S. Bariatu, District Ranchi-834009, Jharkhand.

4. Dr. Santosh Kumar Verma, Father's name not known to the Petitioner, at present working as Lecturer, Department of Periodontology & Oral Implantology, Dental Institute**,** Rajendra Institute of Medical Science Bariatu, P.O. and P.S. Bariatu, District Ranchi-834009, Jharkhand.

…… **Respondents**

CORAM: **HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner	:	Mr. Sumeet Gadodia, Advocate Mrs. Shilipi Sandil Gadodia, Advocate Ms. Sakshi Kathuria, Advocate Ms. Nidhi Lall, Advocate
For the RIMS	:	Mr. Ashok Kumar Singh, Advocate
For the Resp. No.4	:	Mrs. Aparajita Bhardwaj, Advocate Ms. Tanya Singh, Advocate
For the Resp.-State	:	Mr. Ashwini Bhushan, A.C. to Sr. S.C.-II

CAV on**: 27.08.2026.** **Delivered on: 14.09.2026.**

1. Heard learned counsel for the parties.

2. The instant writ application has been preferred by the petitioner for the following reliefs:

> ***(i)*** *For issuance of an appropriate writ/order/direction for quashing/setting aside the Reasoned Order passed by Respondent No.3-Director, RIMS, contained in Memo No. 4522/RIMS dated 13.11.2020 (Annexure-16), wherein the claim of the Petitioner for appointment as Lecturer in the Department of Periodontology and Oral Implantology in Dental Institute of RIMS has been rejected and, further, appointment of Dr. Santosh Kumar Verma (Respondent No.4) has been considered to be valid for the said post.*

(ii) *For issuance of further appropriate writ/order/direction to call for and quash the entire proceedings of the Scrutiny Committee of Respondent-RIMS including its report dated 26.10.2018, wherein it has been declared that the Petitioner is ineligible to be considered for appointment on the post of Lecturer in the Department of Periodontology and Oral Implantology in Dental Institute of RIMS on the alleged ground that Petitioner does not have three years teaching experience in the subject of specialization.*

(iii) *For issuance of further appropriate writ/order/direction, including Writ of Declaration, declaring the appointment of Respondent No.4 by Respondent-RIMS on the post of Lecturer in the Department of Periodontology and Oral Implantology in Dental Institute of RIMS, as illegal and contrary to the terms and conditions of the Advertisement as well as contrary to the letter and spirit of the decision dated 24th September, 2018 passed by Division Bench of this Hon'ble Court in L.P.A. No. 582 of 2017 (Annexure-10).*

(iv) *For issuance of further appropriate writ/order/direction, including Writ of Mandamus, directing the Respondent-RIMS to appoint the Petitioner on the post of Lecturer in the Department of Periodontology and Oral Implantology in Dental Institute of RIMS along with all consequential benefits including consequential seniority.*

(v) *For issuance of any other appropriate writ(s)/order(s)/direction(s) as to Your Lordships may deem fit and proper in the facts and circumstances of the case.*

FACTS OF THE CASE

3. As per the pleadings, Respondent No. 2–RIMS issued an advertisement being Advertisement No. 7581 dated 07.11.2015 which was posted in its website inviting applications from applicants with complete Bio-data to fill up the posts under different departments of Dental Institute of RIMS. The Petitioner was having requisite eligibility criteria for appointment on the post of Lecturer in the Department of Periodontology & Oral Implantology, submitted his application on 16.11.2015 for appointment on the said post in the requisite format as prescribed by the advertisement.

4. For appointment to the post of Lecturer, eligibility criteria prescribed in the advertisement was ***'MDS in concerned subject with three years teaching experience as tutor/ Senior Resident in concerned subject'.*** A candidate was also required to submit the details of paper published by the said candidate in State and International Journals along with application. Clause 18 of the said advertisement mandated that, ***'the age and experience of the candidate shall be counted as on***

30.11.2015'. Hence, qualifying period under the advertisement was prescribed as on 30.11.2015.

5. Petitioner was called for interview vide interview letter dated 14.03.2016. The interview letter specifically directed the Petitioner to be present for interview on 01.04.2016 along with specified documents as well as to bring along with him the documentary evidences and photocopies of all his Research Publications, Index/Medicus, National/International Journals.

6. On 01.04.2016, Petitioner appeared for the interview before said authority along with requisite documents and photocopies of his Research Publications in National and International Journals. It was during the course of interview that the Petitioner and other candidates were informed that marks would be allotted for academic qualification of the candidates being 70 points out of the total points/marks of 100 and further 30 points/marks would be awarded for the interview. During the interview, Petitioner and other candidates were informed that marks of academic would be awarded in the following manner:

(i) Maximum 25 points/marks on the basis of percentage obtained in BDS examination;

(ii) Maximum 10 points/marks for having degree of MDS in concerned subject;

(iii) It was pointed out that 02 points/marks would be deducted for failure in MDS examination;

(iv) Maximum 15 points/marks would be awarded for article/Journals published during the qualifying period. Each Publication made in International Journal was to carry 4 points/marks, whereas Publications made in National Journals were to carry 3 points/marks;

(v) Maximum 5 marks to be awarded for paper presentation in National/International conference;

(vi) Maximum 15 points to be awarded for teaching experience.

7. Pursuant to interview held on 1.4.2016, results of successful candidates were published by Respondent No.2 on its website contained in Memo No. 10370 dated 18.08.2016. One Dr. Santosh Kumar Verma (Respondent No.4) was selected as successful candidate to the post of Lecturer in the Department of Periodontology & Oral Implantology pursuant to Advertisement dated 07.11.2015.

8. It is the case of Petitioner that Respondent No.4 was selected for appointment on the post of Lecturer even though Respondent No.4 did not have any International/National Publications to his credit on the qualifying date i.e. 30.11.2015. Whereas, on the other hand, Petitioner had published almost 16 International Journals and was having an excellent academic career record.

9. No details regarding individual marks awarded to one or the other candidates were uploaded by Respondents and, under said circumstances, Petitioner filed application under Right to Information Act and it was disclosed to Petitioner that he secured 64.05 marks, whereas Respondent No.4 secured 70.85 marks. Out of aforesaid 70.85 marks awarded to Respondent No.4, 08 marks were awarded pertaining to publication in a Journal, which was beyond the cut-off date i.e. 30.11.2015. If, aforesaid 08 marks would not have been awarded to Respondent No.4, Petitioner's marks would have been the highest entitling him for appointment. Accordingly, Petitioner filed writ petition being *W.P.(S) No. 293 of 2017* for quashing the decision taken by Respondent-RIMS awarding 08 marks to Respondent No.4.

10. In the Writ Petition, Counter Affidavit was filed by Respondent-RIMS, wherein it admitted that marks were awarded to Respondent No.4 for International Publication published beyond the cut-off date i.e. 30.11.2015. However, said decision was justified by contending that marks were awarded to the Respondent, as publications were made prior to the date of Interview i.e. 01.04.2016.

11. Arguments of Respondent-RIMS were accepted by learned Writ Court and vide Order dated 03.11.2017, W.P.(S) No. 293 of 2017 was dismissed.

12. Petitioner preferred Letters Patent Appeal being *LPA No. 582 of 2017* against aforesaid Order of Single Judge, which was duly considered by Division Bench of this Court and vide Judgment and order dated 24.09.2018, Judgment of the Single Judge was set aside.

13. The Division Bench held that Respondent no.4 was wrongly awarded marks for International Publication and accordingly Respondent–RIMS was directed to recast Score sheets of the Petitioner and Respondent No.4 as regards allocation of points in relation to weightage given to Publications excluding any Publication produced by Respondent No.4 after 30.11.2015 from the zone of assessment. Division Bench further directed that selection of Respondent No.4 was not being immediately invalidated, but, if Respondent No.4 has already been appointed and after recasting of score sheets and computation of total points if it is found that Petitioner has scored more marks than Respondent No.4, then in that event appointment of Respondent No.4 would stand invalidated. Subsequently, Petitioner being the second-best candidate on the basis of present evaluation would be declared successful and all consequential steps would be taken. Aforesaid exercise was to be completed within a period of 12 weeks.

14. Respondent-RIMS for the very first time submitted before the Division Bench that Petitioner did not have sufficient teaching experience in concerned subject without there being any such pleadings in its Counter Affidavit. The Division Bench did not make any comment on the qualification of Petitioner, and observed that in the event if there is any mistake as suggested by Respondent–RIMS, then the authorities would take steps in accordance with law.

15. Respondent No.4 secured 70.85 marks out of which 08 marks were awarded to him for Publication after 30.11.2015, and as per the Division Bench order, aforesaid 8 marks were to be deducted from the

marks of Respondent No.4 which would have left Respondent No.4 with a total mark of only 62.85 as against the total marks being 64.05 marks secured by Petitioner. Therefore, Petitioner automatically would become entitled for appointment under the advertisement in question.

16. Respondent No.4 filed SLP before Hon'ble Supreme Court being *SLP (Civil) Diary No. 41913 of 2018* but said SLP was withdrawn by Respondent No.4 on 02.08.2019.

17. Pursuant to order passed by the Division Bench, Petitioner filed representation on 22.10.2018 before Respondent–RIMS requesting the said authority to act in terms of the Judgment of the Division Bench and to consider the case of Petitioner for appointment after recasting of the score-sheet. However, no steps were taken by Respondent – RIMS for recasting of the score-sheets as directed by the Division Bench even after receiving representation dated 22.10.2018 of the Petitioner.

18. On the contrary, a letter dated 09.01.2019 was issued to Petitioner asking him to give certain clarifications in respect of his experience certificate pertaining to *Vananchal Dental College & Hospital (VDCH), Garhwa*. Petitioner furnished his reply dated 24.01.2019 giving his explanation relating to his teaching experience in VDCH, Garhwa. Despite Petitioner submitting requisite documents before Respondent –RIMS, he was not issued any appointment letter after recasting of the score-sheet and reducing the marks of Respondent No.4.

19. Petitioner again filed a representation dated 19.03.2019 before Respondent – RIMS which was followed with another reminder representation dated 17.09.2019. Respondent-RIMS was sitting over Petitioner's representation and the order of the Division Bench was not being complied with, hence, Petitioner filed a contempt petition being *Contempt Case (Civil) No. 481 of 2020* before this Court for non-compliance of the Order dated 24.09.2018 passed in *LPA No. 582 of 2017*. During pendency of the Contempt case, Petitioner was communicated a reasoned order contained in Memo No. 4522/RIMS

dated 13.11.2020 by Respondent–RIMS wherein for the first time it was stated that score-sheet of Respondent No.4 has been re-casted and final marks given to Respondent No.4 was reduced from 70.85 to 62.85.

20. However, Respondent–RIMS rejected the candidature of Petitioner from being appointed pursuant to advertisement in question by stating that Petitioner does not fulfill the eligibility criteria under the advertisement as Petitioner does not have three years teaching experience as Tutor /Senior Resident in concerned subject.

21. Prior to declaring the Petitioner ineligible under the advertisement by virtue of the impugned order no opportunity of hearing was given to Petitioner and only a letter dated 09.01.2019 was issued seeking certain clarifications from Petitioner.

22. Respondent–RIMS has held that teaching experience of 3 years of Petitioner as *'Senior Resident' in RIMS* cannot be considered as the said teaching experience is not in subject of Specialization i.e. *Periodontology and Oral Implantology*, and on that basis Petitioner has been declared ineligible under the advertisement.

Stand of the Petitioner

23. Mr. Sumeet Gadodia, Ld. Counsel, assisted by Ms. Sakshi Kathuria, Advocate, submitted that impugned order passed by Respondent No.2-Director, RIMS contained in Memo No. 4522/RIMS dated 13.11.2020 and the report of Scrutiny Committee dated 26.10.2018, wherein candidature of Petitioner was rejected on the ground that Petitioner does not possess requisite teaching experience in concerned department, is completely illegal and contrary to the guidelines issued by Dental Council of India. While referring to the letter of Dental Council of India dated 13th July, 2018**,** it was submitted that Dental Council of India, in its reply to R.T.I. application of Petitioner, specifically stated that there is no bar on a dental faculty working in a Medical College to join a Dental College or to count his/her past service rendered in a Medical College to become undergraduate Dental faculty. However, in the said letter it was further clarified that in order to become

Post Graduate faculty at a Dental College, experience of U.G. student at a Dental College for a minimum period of three years is required.

24. Further, reference was given to similar Advertisement being Advertisement No. 928 dated 06.03.2019 issued by Dental Institute of Respondent-RIMS for the post of Assistant Professor/Lecturer, wherein similar teaching experience of three years as Tutor/Senior Resident in concerned subject was provided. Reference was given to Advertisement No. 1067 dated 02.04.2020 wherein advertisement was issued for appointment on the post of Assistant Professor/Lecturer by Dental Institute of Respondent-RIMS and one person Dr. Harsh Priyank was appointed who was also having experience of Sr. Resident in RIMS Medical College. Further reference was given to the case of Dr. Virendra Kumar Prajapati, who was earlier working only in Dental Department of RIMS Medical College, and, at present working as Professor and Head of Department of Oral Surgery in Dental Institute of Respondent RIMS. It was submitted that said person was also having experience only in Medical College of RIMS, but, upon creation of Dental Institute by RIMS when all Dental Departments of RIMS were shifted under Autonomous Institute i.e. Dental Institute of RIMS, said person was appointed as Head of Department of Oral Surgery**.** It was further submitted that while Petitioner was working as Sr. Resident in RIMS, admittedly he discharged his duties in Dental Department and since MDS qualification was in the subject 'Periodontology and Oral Implantolaogy', Petitioner was working in said sub-department of Dental Department of RIMS. It was submitted that under Dental Department, there were 9 sub-departments of various subjects and person having specialization in specified subject was required to perform his duty in concerned sub-department where, admittedly, teaching experience was obtained.

25. In view of above, it has been submitted that impugned order passed by Respondent-RIMS is liable to be quashed and set aside.

<u>Stand of the Respondent-RIMS</u>

26. *Per contra*, Dr. Ashok Kumar Singh, Ld. Counsel appearing for Respondent-RIMS vehemently opposed the writ application and while referring to his Counter Affidavit, submitted that RIMS framed *'RIMS Regulations, 2014'* which was notified on 08.09.2014 and under the said Regulations, for appointment to the post of Assistant Professor/Lecturer, a person was required to have teaching experience of three years in concerned subject.

27. It was submitted that although Petitioner was working in Dental Department of Respondent-RIMS and was having teaching experience of three years, but it cannot be said that he has teaching experience in concerned subject i.e. *'Periodontology and Oral Implantolaogy'*, for which he applied under concerned advertisement. While distinguishing the case of Dr. V.K. Prajapati, it was argued that Dr. V.K. Prajapati was appointed prior to coming into force RIMS Regulations, 2014 and after creation of Autonomous Institute i.e. *Dental Institute of RIMS*, being Dental College, Dental Department of RIMS stood transferred and became part of Dental Institute of RIMS and services of Dr. V.K. Prajapati was also transferred under said Autonomous Institute, who was already working in Dental Department of RIMS. Thus, his case cannot be equated with that of Petitioner.

28. Mr. Singh further tried to distinguish the case of Dr. Harsh Priyank by referring to Annexure H/3 of Counter Affidavit, but on specific question being put by this Court as to how his experience as Sr. Resident in Dental Department of RIMS was counted as teaching experience in concerned subject pursuant to subsequent Advertisement issued by Respondent-RIMS, (reference may be made to Para-18 of the Counter Affidavit), it was submitted that there has been some departure/deviation from the provisions contained in RIMS Regulations, 2014, but said departure by itself cannot entitle the Petitioner to seek appointment in RIMS especially when Petitioner was not having teaching experience in concerned subject.

<u>Stand of the Respondent No.4</u>

29. Ms. Aparajita Bhardwaj, Ld. Counsel appearing for Respondent No.4, supported the stand taken by Respondent-RIMS. In addition, she argued that after Division Bench Judgment of this Court, Respondent-RIMS re-casted the mark-sheet and reduced the marks of Respondent No.4 by 8 marks by excluding the publication submitted by Respondent No.4 after 30.11.2015. However, still Respondent No.4 was found eligible for being appointed and, accordingly, Respondent No.4 was allowed to continue in service and now almost about 10 years have elapsed since he joined his services.

30. It was argued that at this point of time, if Respondent No.4's services are disturbed, Respondent No.4 would suffer irreparable loss and injury for no fault of his own as it is Respondent-RIMS who has rejected the candidature of Writ Petitioner.

31. I have considered rival submissions made across the bar and carefully perused the terms of the Advertisement, the Judgment dated 24th September, 2018 rendered by the Division Bench in *L.P.A. No. 582 of 2017* and all relevant records.

32. From the detailed facts narrated hereinabove, it is an undisputed fact that Petitioner has teaching experience of three years as Sr. Resident in Dental Department of Respondent-RIMS. It is further an undisputed fact that it is the same Dental Department of Respondent-RIMS, which stood subsequently transferred and merged with Autonomous Institute being Dental Institute of RIMS. As per communication of Dental Council of India, contained in Letter No. 3671 dated 13th July, 2018, teaching experience obtained in a Medical College can be counted to become a Dental faculty of Undergraduate level, but in order to become a post-graduate faculty at Dental College, teaching and training experience to Undergraduate students only at a Dental College can be counted.

In other words, even if a person has not worked in a specialized Dental College but has worked and is having teaching experience in a Medical College having Dental Department, his/her

teaching experience can be counted for being appointed as a faculty in Dental College of 'Undergraduate level".

33. Admittedly, the post advertised of Assistant Professor/Lecturer was for teaching to students of Undergraduate level in Dental Institute of RIMS. Thus, as per DCI guidelines, teaching experience of Petitioner in RIMS Medical College should have been validly counted for his appointment in Dental College i.e. *Autonomous Dental Institute of RIMS*.

34. Now, the only question which remains to be answered is whether teaching experience of the Petitioner in RIMS Medical College under Dental Department can be said to be of concerned subject. It is an admitted fact that under Dental Department of Respondent-RIMS, there were 12 separate sub-departments and persons posted as Sr. Resident in RIMS Dental Department were required to impart teaching only in concerned subject in which they were specializing.

It is further not in dispute that Dental Department of RIMS stood converted/merged into an Autonomous Dental College i.e. Dental Institute of RIMS, and, Dental Department of RIMS ceased to exist.

35. It is also not in dispute that in present Dental College, there is a Department of *Periodontology and Oral Implantology* for which advertisements were issued for appointment on the post of Lecturer/Assistant Professor.

Petitioner has completed his B.D.S. course from MCODS, Mangalore (Manipal University) and Manipal University is a premier Institute for both B.D.S. and M.D.S. courses. Further, Petitioner has completed his M.D.S. course in *Periodontology* which includes *Oral Implantology*.

Thus, when Petitioner was working as Sr. Resident, RIMS, he was already possessing the Degree of M.D.S. in concerned subject and as a Resident Teacher he was required to impart education in concerned subject apart from performing other general duties.

36. Respondent-RIMS, in its Counter Affidavit has specifically admitted that services of Dr. V.K. Prajapati, who was appointed in

Dental Wing of RIMS, stood transferred in *Dental Institute of RIMS* upon creation of Autonomous Institute and it has been further admitted that said transfer was necessary as Dental Department of RIMS, on account of creation of Autonomous Institute i.e. *Dental Institute of RIMS*, was closed.

It has been specifically pleaded in Counter Affidavit that on account of closure of Dental Department of RIMS, all sanctioned and vacant posts of Assistant Professor and Associate Professor in Dental Department of RIMS were transferred and absorbed in Dental Institute.

37. It is correct that the case of Petitioner cannot be compared with that of Dr. V.K. Prajapati, but at the same time, this Court cannot lose sight of the fact that Petitioner was working as Senior Resident in *Dentistry Department of RIMS* which was subsequently closed and all its employees were transferred to *Dental Institute of RIMS* being an Autonomous Body.

38. While Petitioner was performing his duties as Senior Resident in RIMS under *Dentistry Department*, admittedly, Petitioner discharged his duties in concerned subject as he was having specialization in concerned subject only. As per Dental Council of India guidelines, teaching experience in a Medical College having Dental Department can be counted for appointment as faculty for teaching to Undergraduate faculty i.e. B.D.S. course.

It would be travesty of justice, if Petitioner, who was working under Respondent-RIMS as Senior Resident/Tutor in its Dentistry Department is not allowed to count his teaching experience, merely because, at the relevant time, RIMS was only having a Dental Department and was not having a separate Dental College.

39. Almost identical issue came up for consideration before Hon'ble Supreme Court of India in the case of ***'Dr. M.C. Gupta and Ors. Vs. Dr. Arun Kumar Gupta and ors'.,*** reported in ***(1979) 2 SCC 339***. In the said case, High Court of Allahabad has quashed selection of two candidates on the post of Professor in Medicines on the ground that said

persons were not having teaching experience of five years in subject 'Medicines' which was required under the Regulations/Advertisement.

Aforesaid persons approached Hon'ble Supreme Court and it was their case that they were having Degree of M.D. Cardiology, which is under the Department of Medicines, and were having requisite teaching experience in the specialized subject and, thus, contended that decision of High Court was incorrect.

Hon'ble Supreme Court, in the said Judgment, held that, normally, the Court should be slow to interfere with the opinion expressed by experts unless there are allegations of *mala-fide* against them. It would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts.

The twilight zone of Court's interference in appointment to posts requiring technical experience should ordinarily be left on decisions of the experts. However, Hon'ble Supreme Court held that the Court, in exercise of extraordinary jurisdiction to enforce rule of law, may interfere in a writ petition under Article 226 when expert's decisions are, on the face of it, perverse and contrary to Regulations and/or Advertisement itself.

In the aforesaid background, Hon'ble Supreme Court examined the issue *'whether teaching /research experience in Cardiology would satisfy the experience qualification for the post of Professor in Medicines'*. In Para-10 of the Judgment of Hon'ble Supreme Court, it was held as under:-

> *"10. The controversy centres round the connotation of the expression 'medicine'. Does it include cardiology or is cardiology a separate branch? Section 2(f) of the Act defines medicine to mean modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery. This is too wide a definition to assist us in the problem posed for the decision of the Court. In the world of medical science there are general subjects and specialties. Medicine and surgery are general subjects. To wit, cardiology is a speciality in medicine and orthopaedics is a speciality in surgery. Even the regulation from page 8 onwards bears the heading 'Specialist Branches under Medicine and Surgery'. Cardiology finds its place as a specialist branch under medicine. The relevant regulation requires teaching/research experience in medicine. Contention is, if any one who has teaching/research experience in*

cadiology, could he be said to have such experience in medicine? In this context, we must recall Regulation 4 which provides that 40% of the time spent in recognized research after obtaining the requisite post-graduate qualification shall be counted towards teaching experience in the same or allied subject provided that 50% of the teaching experience shall be the regular teaching experience. If research in allied subject can be taken to satisfy the requisite experience, teaching experience shall be the regular teach experience. If research in allied subject can be taken to satisfy the requisite experience, teaching experience in a speciality under the general head could not be put on an inferior footing. Undoubtedly, if the post is in a specialist department, the requisite teaching/research experience will have to be the speciality. To illustrate, if one were to qualify for being appointed as Professor/ Associate Professor of Cardiology, his teaching experience must be in cardiology though his research experience could as well be in cardiology or allied subject. A person having such experience in the general subject medicine cannot qualify for the speciality. That is what distinguishes the speciality from the general subject. This becomes clear from the fact that in a number of hospitals there may not be posts in specialist branches and someone working in the general department may be assigned to do the work of specialist branches. If a particular hospital has not got cardiology as a specialist branch, a Reader or Assistant Professor in the Department of Medicine may be required to look after cardiology cases and teaching of cardiology as a subject. In that event he is certainly a Reader/Assistant Professor in Medicine teaching one of the subjects, viz., cardiology which again forms part of the general curriculum of the subject of medicine. Therefore, it is not proper to divorce a specialist branch subject from the general subject. It cannot be seriously contended that medicine does not include cardiology. To be qualified for the specialist branch of cardiology, the minimum academic qualification is M.D. (Medicine). This would clearly show that after acquiring the general qualification one can take the specialist branch. If any other approach is adopted it would work to the disadvantage of the person who while being posted in the Department of Medicine, is asked to teach a subject which is necessary for being taught for qualifying for M.D. but which can be styled as speciality. He would simultaneously be denied the teaching experience in the subject of medicine. An extreme argument was urged that in adopting this approach it may be that somebody may be working in different specialist branches such as neurology, gastroenterology, psychiatry, etc. and each one would qualify for being appointed as Professor of Medicine without having even a tickle or experience on the subject of general medicine. This wild apprehension need not deter us because it should be first remembered that any one going into specialist branch under medicine has to be M.D. (Medicine). Thereafter, if he wants to become a professor in the specialist branch such as cardiology, the academic qualification required is to hold a degree of D.M. in the specialist branch. This becomes clear from a perusal of the regulations. It is not necessary, therefore, to go into the dictionary meaning of the expression 'medicine' to determine whether it includes cardiology. The Medical Council of India, a body composed of experts have in the regulations clearly manifested the approach when they said that cardiology is a specialist branch under medicine. Ipso facto, medicine includes cardiology. It was not disputed that one qualifying for M.D. (Medicine) has to learn the subject of cardiology. And it must be remembered that the four experts aiding and advising the commission have considered teaching experience in cardiology as teaching experience in medicine. The counter-affidavit on behalf of the Commission in terms states that medicine is a wide and general subject and includes

> *cardiology whereas for the post of Professor of Cardiology a further two years' special training in cardiology of D.M. in cardiology after M.D. in medicine has been laid down as a requisite qualification by the Medical Council. It is further stated that teaching experience in cardiology will make the person eligible for the post of Professor of Medicine. That was the view of the experts who assisted the Commission. Incidentally it may be mentioned that Mr. V.M. Tarkunde, learned counsel for respondents 1, 2 and 3 took serious exception to giving any weight to the counter-affidavit because it has not been sworn to by any expert aiding or advising the Commission or by any officer or Member of the Commission but by an Upper Division Assistant whose source of knowledge is the legal advice tendered to him. In paragraph 1 of the affidavit the deponent says that he has been deputed by the Commission to file the counter-affidavit on their behalf and as such he is fully acquainted with the facts deposed to in the affidavit. It is our sad experience that responsible authorities avoid filing affidavits in courts when it behoves them to assist the court and facilitate the decision of the questions brought before the court but on this account alone we would not wholly ignore the counter-affidavit.*

40. A bare perusal of aforesaid decision would show that if a person is having specialist Degree and is imparting teaching in specialist Department, requisite teaching/research experience will have to be in the said specialty. In the present case, Petitioner's M.D.S. degree was in concerned subject and, admittedly, he was teaching in Respondent-RIMS in Dental Department. Thus, teaching/ research experience of Petitioner would be counted in concerned subject i.e. in specialty subject.

41. Apart from above, Petitioner specifically gave illustration of the cases of Dr. Ruchi Mitra, Dr. Rachna Kaushik and Dr. Harsh Priyank and stated that teaching experience of aforesaid persons as Senior Resident/Tutor in Dental Department of RIMS was counted as valid teaching experience in concerned subject, under similar advertisement issued subsequently. Respondent-RIMS in its Counter Affidavit has not given any specific reply to the aforesaid averments of Writ Petitioner and, in Paras 17 and 18 of the Counter Affidavit dated 03.12.2021, following reply has been given:-

> *"17. That so far as the case of experience of Dr. Ruchi Mitra, Dr. Rachna Kaushik and Dr. Harsh Priyank are concerned, their status vis-à-vis the petitioner is entirely different.*
>
> *18. That assuming (though not admitting) that there has been some departure deviation from the provisions contained in RIMS Regulations, 2014 and terms and conditions of Advertisement in any particular case(s) the Petitioner cannot take advantage of that on the ground of discrimination and violation of Article 14 of the Constitution of India. It is hit by the doctrine of negative equality.*

> *It is a settled proposition of law that there is no equality in illegality. This is notwithstanding the fact that there has been no such deviation or departure from relevant statutory provisions specially the essential requirement of experience in any case after RIMS Regulations, 2014 came into force."*

42. I have carefully perused Annexure-H series, and, in Annexure-H series, so far as Dr. Ruchi Mitra is concerned, it has been stated that she has been provisionally selected in Advertisement No. 928 dated 06.03.2019 and was given chance to prove her eligibility, but was not later allowed to appear for interview as she was not found eligible. Along with aforesaid comment, an Annexure being Annexure-03 Page No. 08-12, is said to have been enclosed, but said document has not been filed by Respondent-RIMS along with its Counter Affidavit.

43. Petitioner in his Rejoinder Affidavit has annexed the information supplied under Right to Information Act regarding Dr. Ruchi Mitra and from bare perusal of said document, it would be evident that Dr. Ruchi Mitra was permitted to appear in interview and even marks were allotted to her for both, teaching experience and interview, and, she was declared as wait-list candidate in respect of Advertisement No. 928 dated 06.03.2019.

44. So far as Dr. Rachna Kaushik is concerned, in Annexure-H series, it is noted that she was only having experience in Dental Department of Sri Krishna Medical College, Muzaffarpur. However, despite stating aforesaid fact, it has been mentioned that her marks can, at best, be reduced by 4 points for having teaching experience of two years, but same has not been done as there was no direction against her by High Court.

45. A careful perusal of aforesaid documents would clearly reveal that in respect of Dr. Rachna Kaushik, Respondent-RIMS itself treated her teaching experience in Dental Department of Medical College to be a valid criterion for her appointment.

46. So far as Dr. Harsh Priyank is concerned, in Annexure-H series, it has been mentioned that Dr. Harsh Priyank's teaching experience as Senior Resident/Tutor of RIMS was not considered, but

since Dr. Harsh Priyank produced seven years' teaching experience in recognized Dental College, i.e. Hazaribagh College of Dental Science & Hospital, Hazaribagh, he was considered eligible for recruitment. Along with Annexure-H series, a document being Annexure H/3 was annexed, which shows that Dr. Harsh Priyank was only working as Reader and, subsequently, as Professor in Hazaribagh College of Dental Science and Hospital, and, not as a Tutor/Senior Resident in aforesaid College. Petitioner specifically pleaded that experience of Dr. Harsh Priyank for appointment was considered as that of Senior Resident in Dental Department of RIMS and not of Hazaribagh Dental College.

47. It is relevant to note here that Respondent-RIMS, in earlier round of litigation, being *W.P.(S) No. 293 of 2017 and also in L.P.A. No. 582 of 2017*, never raised any written objection regarding eligibility of Petitioner to participate in advertisement process. Only oral submissions were made during the course of hearing before the Division Bench, and, the Division Bench, vide Para-10 of its judgment, held as under:-

> *"10. ..... We have not made any comment on the qualification of the appellant as the authorities themselves had passed him on that score. In the event there is any mistake, as suggested by Dr. Singh, it would be for the authorities to take steps in accordance with law..."*

48. Respondent-RIMS, on the strength of above-said observation, passed a unilateral order declaring the Petitioner as ineligible. This clearly reflects the manner in which Respondent-RIMS has proceeded against Petitioner and it appears to this Court that Respondent-RIMS acted with malice in law against the Petitioner as Petitioner has questioned the authority of Respondent-RIMS.

49. In view of above cumulative facts, this Court has no hesitation to hold that impugned order passed by the 3rd Respondent-RIMS, contained in Memo No. 4522/RIMS dated 13.11.2020, by which candidature of Petitioner in respect of Advertisement No. 7581 dated 07.11.2015 was rejected, is illegal and arbitrary and, accordingly, the same is quashed.

50. However, the question further arises as to whether appointment of Respondent No.4, who has been appointed pursuant to aforesaid advertisement, is required to be annulled and direction be issued for appointment of Petitioner in place of Respondent No.4, or the appointment of Respondent No.4 is required to be protected.

51. This Court is of the considered opinion that Respondent No.4 participated pursuant to advertisement process and even after the Judgment and order passed by the Division Bench, Respondent-RIMS has allowed Respondent No.4 to continue on the post by declaring the candidature of Petitioner as ineligible. Respondent No. 4 has nothing to do with the decision of Respondent-RIMS as he was not privy to such decision.

Under the said circumstances, if, at this stage, appointment of Respondent No.4 is set aside by this Court due to illegality committed by Respondent-RIMS, Respondent No.4 would suffer irreparable loss and injury as he has already worked for about ten years and he might have become overage for seeking fresh appointment at any place.

52. Thus, in order to balance equalities between Writ Petitioner and Respondent No.4, this Court directs that Petitioner shall be appointed by Respondent-RIMS in *Dental Institute of RIMS* on the post of Lecturer in the *Department of Periodontology and Oral Implantology* with effect from the date when Respondent No.4 was appointed on the said post, with all consequential benefits including seniority, revision of pay-scale and promotion, if any, granted to Respondent No.4.

However, Writ Petitioner would not be entitled for any arrear of salary or back wages as it is nowhere specifically pleaded by Writ Petitioner that he was not gainfully employed elsewhere.

53. Respondent-RIMS should create a post of Lecturer and consequential promotional post in Dental Institute of RIMS, if no post, at present, is lying vacant with Respondent-RIMS.

Aforesaid exercise shall be completed within a period of eight weeks from the date of receipt/production of copy of this Order.

54. However, it is made clear that this Court is not inclined to quash/set aside the appointment of Respondent No.4 and it is ordered that he will be allowed to continue on his post.

55. As a result, the instant writ application stands allowed in the aforesaid terms. Pending I.As., if any, shall stand disposed of and there shall be no order as to costs.

(Deepak Roshan, J)

Dated: 14/09/2026
Amardeep/
A.F.R.

Uploaded on
18.09.2026