

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1088 of 2015

In

Civil Writ Jurisdiction Case No. 5991 of 2015

Dr. Akshay Kumar son of Sri Gena Sinha, resident of village- Hariharpur
Via- Pindaruch, P.S.- Kamtaul, District- Darbhanga

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Government of Bihar, Patna
2. The Bihar Public Service Commission through it's Chairman, Bailey
Road, Patna
3. The Secretary, Bihar Public Service Commission, Bailey Road, Patna
4. The Joint Secretary-cum-Examination Controller, Bihar Public Service
Commission, Bailey Road, Patna

.... Respondents

Appearance :

For the Appellant : Mr. Rajendra Prasad Singh, Senior Advocate
Mr. Dilip Kumar Tewari, Advocate
For the Respondent No.1: Mr. Gyan Shankar, A.C. to GP-6
For the Respondent Nos. 2-4: Mr. Sanjay Kumar Pandey, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

5 02-11-2015

The appellant, in the present *intra Court* appeal,
filed under Clause 10 of the Letters Patent of the Patna High
Court, is aggrieved by the order, dated 12.05.2015, passed by a
learned single Judge in C.W.J.C. No. 5991 of 2015, whereby his
application, under Article 226 of the Constitution of India, stand
dismissed.

2. Facts are short and not in dispute. The Bihar
Public Service Commission came up with the Advertisement

No.15 of 2014 inviting applications for the 2301 posts of General Medical Officers of basic grade under the Bihar Health Services.

3. As per the said advertisement, an aspirant was essentially required to have a M.B.B.S. degree from a recognized University and registration with the Medical Council of India or State Medical Registration Council. The last date of submission of application form, as prescribed in the said advertisement, was 20.08.2014, which was, subsequently, extended to 05.09.2014.

4. This is an admitted fact that the appellant, though had M.B.B.S. degree from a recognized institution, did not have registration with the Medical Council of India till the last date, prescribed by the Bihar Public Service Commission, for submission of the application. The appellant had, however, applied, pursuant to which an interview letter was issued to him. In the said interview letter, whereby the appellant was asked to appear in the interview on 23.06.2015, it was specifically mentioned that at the time of interview, the candidate would be required to produce original certificate in support of his registration with the Medical Council of India or Medical Registration Council of any State.

5. Realising that with such condition in the interview letter, he may not be allowed to participate in the interview, the



appellant approached this Court by filing an application, under Article 226 of the Constitution of India, which gave rise to C.W.J.C. No. 5991 of 2015, seeking a direction to allow the appellant to appear in the interview for appointment to the said post. The learned single Judge, having found that the appellant did not fulfill the minimum requisite qualification, as prescribed by the advertisement till the date of submission of his application form and till the last date fixed by the Bihar Public Service Commission for submission of application, dismissed the writ petition relying on a Supreme Court decision in the case of *Ashok Kumar Sonakar vs. Union of India and others*, reported in (2007) 4 SCC 54, and a decision of this Court in the case of *Dr. Rajeev Kumar vs. State of Bihar and Others*, reported in 2012 (3) PLJR 417.

6. Mr. Rajendra Prasad Singh, learned Senior Counsel, appearing on behalf of the appellant, has submitted that just a few days after the last date of submission of application form, as prescribed by the Commission, the appellant got himself registered with the State Medical Registration Council. He has contended that the process of recruitment to the post of Basic Grade Medical Officers has been undertaken in the State of Bihar nearly 14 years after the last selection and it would cause serious



prejudice to the appellant's career if he was not allowed to participate in the process of selection as there is complete uncertainty as to when the next selection process would commence. He has accordingly submitted that a sympathetic and pragmatic approach should have been taken by the learned single Judge, while exercising equitable writ jurisdiction.

7. Mr. Sanjay Kumar Pandey, learned Counsel, appearing for the respondent Bihar Public Service Commission, on the other hand, defending the order, under appeal, passed by the learned single Judge, has contended that there is no infirmity in the said order, which is based on a well known principle that *a candidate, in order to become eligible for the process of selection, must have the requisite qualification, as per the advertisement, on the date of submission of application form.* He has submitted that the appellant has no case as, admittedly, he did not fulfill the requisite eligibility conditions till even the last date of submission of application form as fixed by the Bihar Public Service Commission.

8. In our considered opinion, the order, under appeal, passed by a learned single Judge cannot be faulted with. It is settled principle that if no cut off date is prescribed in the advertisement, then, the eligibility criteria shall be applied with



reference to the last date prescribed for submission of the application form. The contention of Mr. Rajendra Prasad Singh, learned Senior Counsel, appearing on behalf of the appellant, that the date of interview should be the relevant date for determination as to whether a candidate fulfills the eligibility criteria or not cannot be accepted. We can, in this regard, usefully refer to the decisions of the Supreme Court in case of ***Bhupendra Pal Singh vs. State of Punjab***, reported in (2000) 5 SCC 262 and ***Basic Education Board, U.P. Vs. Upendra Rai***, reported in, (2008) 3 SCC 432.

9. In the case of ***M.V. Nair (Dr.) Vs. Union of India***, reported in (1993) 2 SCC 429, a three-Judge Bench of the Supreme Court disapproved the contention that even though a candidate, who was ineligible initially, but deserved to be considered along with other eligible candidates, as he acquired eligibility during the pendency of the proceedings. In the said decision, the Supreme Court, in clear terms, held that suitability and eligibility of a candidate for the purpose of selection and appointment had to be considered with reference to the last date, fixed for submission of application, unless the advertisement, inviting application, specified some other date.

10. In case of ***U.P. Public Service Commission vs.***

Alpana, reported in (1994) 2 SCC 723, the Supreme Court assigned reasons as to why eligibility conditions, e.g., educational qualification, must be fulfilled on the last date, fixed for submission of application by the Commission, and has held thus :

“.... Many candidates superior to the respondent in merit may not have applied as the result of the examination was not declared before the last date for receipt of applications. If once such an approach is recognized there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties. This would also leave vacancies unfilled for long spells of time. We, therefore, find it difficult to uphold the view of the High Court impugned in this appeal.”

11. The learned single Judge, in our considered view, has rightly dismissed the writ application by the order, under appeal, relying upon the Supreme Court’s decision in the case of **Ashok Kumar Sonakar** (supra) and a decision of this Court in the case of **Dr. Rajeev Kumar** (supra).

12. We do not find any infirmity in the order under appeal. This appeal is accordingly stands dismissed.

(I.A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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