

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4734 of 2014

Dr. Parmit Tiwary, son of Dr. K. Tiwary, resident of Daudpur Kothi, Police Line Muzaffarpur, P.S. MIT Police Station, Dist. Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The Principal Secretary, Department of Health, Government of Bihar.
3. The Joint Secretary, Department of Health, Government of Bihar.
4. The Additional Secretary, Department of Health, Government of Bihar.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Adv.

For the Respondent/s : Mr. Ajay Bihari Sinha, SC-19

Mr. Kalpana, AC to SC-19

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 22-04-2015

Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:-

- "I. For quashing the part of the notification no. 1565 (17) dated 29.11.2013 in relation to amendment of Rule 9 of Chapter 6 of Rule 2008 4(d) issued under the signature of Joint Secretary to the Government Department of Health, Government of Bihar by the order of Hon'ble Governor as contained in Annexure-2 by which criteria has been fixed to give weightage of medical teaching work experience in the Government Sector two marks per year maximum ten marks.*
- II. Also declaring criteria fixed by the Government to the extent in such appointments weightage will be given to the Medical teaching work, experience in government sector (two marks per year maximum ten years) is violative of Article 14 of the Constitution of India, void ab initio.*
- III. Also declaring that the Senior Resident/Tutor, Bihar*



Medical Education Service Recruitment/Appointment and Promotion (Amendment) Rule 2013 which has been issued vide notification no. 1265 (17) dated 28.11.2013 as contained in Annexure-2 is not applicable against the advertisement dated 29.11.2013 as contained in Annexure-3 for appointment to the post of Assistant Professor on the contract basis in the State of Bihar on the reason notification no. 1265 (17) dated 28.11.2013 has not been notified in ordinary gazette of the State of Bihar up till now.

- IV. *Alternative prayer for direction to the respondents to complete the selection process of appointment to the post of Assistant Professor on the contract basis in the State of Bihar against the advertisement dated 29.11.2013 as contained in Annexure-3 as per the existing Rule i.e. Senior Resident/Tutor, Bihar Medical Education Service Cadre Recruitment/Appointment and Promotion Rule 2008 hereinafter referred as Rule 2008 which is in force up till now in the eye of law.*
- V. *Also for commanding the respondents to publish the result and issue appointment letter against advertisement as contained in Annexure-1 after following the Rule 2008 and not Rule 2013 against the advertisement as contained in Annexure-3 considering the vacancies were prior to issuance of notification dated 28.11.2013."*

Mr. Dinu Kumar, learned counsel for the petitioner, has basically concentrated on two aspects. Firstly, according to him the experience clause laid down in the rule, being contrary to the norms laid down by the M.C.I., cannot be sustained. He has also submitted that even if it be held to be correct in practice, the respondents are not awarding points/marks for the experience acquired by the candidates

other than nine government medical colleges of the Bihar.

Learned counsel for the State, on the other hand, has sought to clarify such issue by firstly explaining that the experience clause for giving weightage in government medical colleges is not essential qualification but, only a desirable qualification and the weightage has to be given only to such of the candidates who have such experience acquired from the government institution. According to her, since the appointment has to be made in the government medical college of the State of Bihar, such desirable qualification has definite nexus to the purpose sought to be achieved in making such appointment. She has also submitted that the apprehension of the petitioner that only experience of 9 government medical colleges of Bihar will be counted towards the desirable qualification for giving weightage, having been not pleaded in the writ application specifically while she is not in a position to answer it immediately, inasmuch as, the counter affidavit does not take these things into account but, then, as the expression of experience is referable itself to the government institutions, the same cannot be read only has been acquired in the nine medical colleges of the Government of Bihar.

In the considered opinion of this Court, the validity of the rule has to be always examined by the Court in relation to the nexus sought to be achieved. Here in this case, when the State Government



has framed rules for appointment on the post of teaching personnel, it had the powers to provide the essential qualification as well as desirable qualification. The employer always has a liberty to select a better candidate in presence of the candidates having essential qualification. Thus, if for this reason the respondents, having prescribed the essential qualification for the teaching post in the rules, have also laid down desirable qualification for giving weightage, that cannot be questioned on the anvil of Article 14 of the Constitution of India. This Court in fact is also of the view that giving weightage to the candidates having essential qualification by way of additional qualification of the experience of working in government institution can in no way held to be arbitrary. In fact, such provisions made in the rule by way of giving weightage for experience would only subserve the purpose of rules of selecting the better candidate for the purpose of appointment in government medical colleges.

The second aspect is with regard to the actual implementation of the rule. The apprehension of Mr. Kumar is that the respondents are only counting the experience for giving weightage towards the work done by the candidate in the nine medical colleges of Bihar and they are not again likely to consider the experience acquired by the candidates in other government institutions such as All India Institute of Medical Science or even any other government

medical colleges of the State of Bihar.

As noted above, since this issue was not specifically addressed to in the prayer portion and only mentioned in paragraph nos. 15 & 16 of the writ application, no firm answer has been given by the respondents. This court, however, on perusal of the rule and provision laying down;

“In such appointments, weightage will be given to the medical teaching work experience in government sector”

is satisfied that weightage will have to be given to the medical teaching by way of work experience not only for the nine governmental medical colleges of the State of Bihar but to any medical college/institution in the government sector which would include All India Institute of Medical Science or the other medical colleges being directly run by the other States Government who would also definitely fall within the aforesaid clause of eligibility.

With the aforesaid observation, this writ application is disposed of.

(Mihir Kumar Jha, J)

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