

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1453 of 2016
IN
Civil Writ Jurisdiction Case No. 18484 of 2015**

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1. Chitaranjan Kumar Sinha, Son of Late Surendra Prasad Sinha, Resident of Umesh Kutir, New Area, Ward No.18, Post Office and Police Station- Dalianagar, Dehri-on-sone, District- Rohtas.

2. Sujit Manohar, Son of Anil Kumar Srivastava, C/o Manohar Sharma, Resident of Rafiganj, Post Office and Police Station- Rafiganj, District- Aurangabad.

3. Sushma Sinha, Wife of Dr. Navin Kumar Singh, Resident of Vir Kuwar Singh Colony (North), Post Office and Police Station- Hajipur, District- Vaishali.

.... Appellants

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Government of Bihar, Patna.

2. The Director-in-Chief, Department of Health, Government of Bihar, Patna.

3. The Medical Council of India through its Chairman, Medical Council of India, New Delhi.

4. The Chairman, Medical Council of India, New Delhi.

5. The Bihar Public Service Commission through its Secretary, Bihar Public Service Commission, Patna.

6. The Secretary, Bihar Public Service Commission, Patna.

.... Respondents

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Appearance :

For the Appellants	: Mr. Siya Ram Sahi, Mr. Purushotam Sharma, Advocates
For the State	: Mr. Jai Prabhat Kishore, AC to SC 13
For the BPSC	: Mr. Zaki Haider, Advocate
For the MCI	: Mr. Kumar Brijnandan, Mr. Tarees Hameed, Advocates

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 30-11-2016

Heard learned counsel for the appellants and learned



counsel for the respondents.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 25th of May, 2016 in CWJC No. 18484 of 2015 whereby the writ application filed by the present appellants seeking appointment to the post of Medical Officers in pursuance of Advertisement No. 15/2014 dated 20th of July, 2014 issued by the Bihar Public Service Commission (hereinafter referred to as “the Commission”) remained unsuccessful.

3. All the three appellants have obtained MBBS degree from the foreign Universities. The appellants applied for appointment to the post of Medical Officers in pursuance of such an advertisement published by the Commission. One of the conditions in the advertisement was that those candidates who have obtained MBBS degrees from the foreign Universities, but have not been given marks are required to produce a certificate of conversion of the grade into the marks from the Universities otherwise their applications shall be rejected. The appellants have obtained equivalent certificates from the foreign Universities wherein qualitative value of grade has been given 85% or above for Excellent, 70% to 84% for Good, 50% to 69% for Satisfactory and 49% or below for Fail. It is on the basis of such equivalent certificates; the appellants claimed that they were meritorious and are entitled to be appointed.



4. On the other hand, in the counter affidavit filed on behalf of the respondent nos.1 and 2, the stand is that the Commission faced difficulties in calculating and computing marks to be awarded to the candidates who have obtained MBBS degree from foreign Universities. The Commission requested the State Government to constitute a Committee of Specialist Doctors and depute them in the office of the Commission for the purpose of calculation of exact percentage of marks to be awarded against MBBS degrees in such cases so that interview may be expedited. In pursuance of such communication, a Committee was constituted under the Chairmanship of the Director-in-Chief, Health Services which consisted of Principal, Nalanda Medical College, Patna; a representative of the Examination Controller, Nalanda Medical College, Patna; and representative of the Principal of the Patna Medical College, Patna. Such Committee recommended that computation of marks of foreign MBBS degrees should be made on the basis of 50% of the marks obtained and then the merit list be prepared on the basis of the marks obtained and other conditions.

5. In the counter affidavit filed on behalf of the respondent nos. 5 and 6, it is pointed out that the merit list was prepared on the basis of 100 marks which was divided into educational qualifications, work experience and interview and that 50



marks for MBBS, 10 marks for post graduation or higher degree; 25 marks for work experience on contract/regular in Government Hospitals (5 marks for one year) and 15 marks for interview has been fixed. It is thus pointed out that the marks have been given to the appellants in terms of the decision of the Committee and as per the division of the marks mentioned in the counter affidavit, the appellants could not make grade, therefore they were not appointed. It is also pointed out that the appellants are not only the candidates who had obtained MBBS degrees from foreign Universities but in fact there were 516 other candidates who had obtained MBBS degrees from the foreign Universities, therefore, such decision has been made applicable to the all the candidates who had obtained MBBS degrees from the foreign Universities.

6. The argument of the learned counsel for the appellants is that the decision of the Committee dated 27th of January, 2015 was not notified and, therefore, such decision cannot be applied in the case of selection and process of appointments in question. It is contended that in fact, the Bihar Health Services (Appointment & Service Condition) Rules, 2013 was amended on 17th of March, 2015 and it is on the basis of such amendment, the marks were granted in respect of the candidates including the present appellants. Such amendment has come into force from the date of publication of the notification which



contemplates that calculation of the marks of MBBS degrees from foreign Universities shall be on the basis of maximum 50% meaning thereby 25, which has the effect of changing the rules of game after the game has started. Therefore the action of preparing the merit list is fallacious.

7. On the other hand, learned counsel for the Commission and the State argued that it is the Rules amended on 17th of March, 2015 which were made not applicable to the selection in process but the merit list was prepared on the basis of the decision taken by the Expert Committee of the Doctors on 27th of January, 2015, and on such considerations, the appellants were not found meritorious.

8. A perusal of the record shows that the merit list was prepared out of 100 marks. Out of 100 marks, 50 marks are of academic marks of MBBS. The appellants have not been granted marks by their Universities as they have only obtained equivalence certificate from foreign Universities. Since the merit list was required to be prepared on the basis of the marks obtained, the Commission was in a dilemma as to how to determine the merit of the graduates from the foreign universities as they have not been granted marks and the equivalence certificate gives range of marks. Therefore, a committee of subject experts decided that the merit list be prepared on the basis of 50% of the marks obtained. Maybe, there could be better



way of deciding the merit but since the Committee of the Expert of the Doctors has taken a decision to grant 50% of the marks obtained in MBBS degree, therefore, in exercise of power of judicial review, this Court cannot act as the Appellate Authority to say that such decision is not fair or reasonable or arbitrary. It is the decision taken by the Expert of the Doctors who understand the requirement of services and academics and have taken a decision in bona fide manner. There is no allegation that such decision is actuated by collateral and mala-fide motive. Therefore the decision taken by the Committee of the Experts cannot be said to be illegal and unwarranted in exercise of writ jurisdiction of this Court.

9. Still further, the amended Rules are not extended in the case of the present appellants as it is the decision of the Committee which was made the basis for final selection of the candidates. Thus there was change of rule of games after the game has begun. We again do not find any merit that such decision was not notified for the information of all concerned. The decision to grant marks is part of the process to complete selection. It is in house decision but in case of judicial scrutiny, the reasons for arriving such decision can be examined. As mentioned above, we find that such decision is possible decision taken by the experts in bona-fide manner. Such decision was not required to be made public before the declaration of result.



10. We do not find any patent illegality in the order of the learned Single Bench warranting interference in the present Letters Patent Appeal. The appeal is accordingly dismissed.

(Hemant Gupta, ACJ)

B.T/-

(Vikash Jain, J)

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