

IN THE HIGH COURT OF JUDICATURE AT PATNA
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 Pharma, 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.

.... Petitioners

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 Petitioners	:	Mr. Siya Ram Shahi, Advocate Mr. Purushottam Sharma, Advocate
For the State	:	Mr. Nawal Kishore Singh, S.C.2 Mr. Kamlesh Prasad, A.C. to S.C.2
For B.P.S.C.	:	Mr. D.K. Sinha, Sr. Advocate Mr. Zaki Haider, Advocate
For M.C.I.	:	Mr. Kumar Brijnandan, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
CAV JUDGMENT
Date: 25-05-2016

All the three petitioners were aspirants to the post of Medical Officers to be appointed under the State of Bihar. They have been through the process of selection but since they have failed to make the cut, they decided to file the present writ application on the ground that the Bihar Public Service Commission (hereinafter referred to as 'B.P.S.C.') cannot change

the rule of the game by bringing about changes in the mode of selection.

2. The petitioners had applied in terms of Advertisement No.15 of 2014, dated 20th of July, 2014, copy of the advertisement is Annexure-13. While the process of selection was still on, based on an amendment to the rule notified on 17.03.2015 to the Bihar Health Service (Appointment and Service Conditions) Rule, 2013, a copy of which is Annexure-D, to the counter affidavit of B.P.S.C., the selection of candidates on the post of Medical Officer was carried out. By virtue of this amendment to the rule, the State decided to award the maximum marks of 50%, i.e., 25 marks for the M.B.B.S. degree obtained from a foreign university. This provision was not there when Annexure-13, the advertisement, was issued.

3. Learned counsel representing the petitioners relied on a series of decisions rendered in the case of ***P. Mahendran & Ors. v. State of Karnataka & Ors.***, reported in ***AIR 1990 SC 405***, ***Sonia v. Oriental Insurance Co. Ltd. & Ors.***, reported in ***AIR 2007 SC 2932*** as well as in the case of ***Kulwant Singh & Ors. v. Daya Ram & Ors.***, reported in ***(2015) 3 SCC 177*** to buttress the point that the respondents cannot change the parameters of selection contrary to the advertisement.

4. The Court directed the respondent authorities to file their counter affidavit and explain the reason for such a decision.

5. It is evident from the materials which have been brought on record both in the counter affidavit of B.P.S.C. as well as the State that while the B.P.S.C. was processing the application forms for selection of eligible candidates including candidates who had obtained their M.B.B.S. degree from a foreign university, they realized that most of these foreign universities do not award marks on the academic performance. The normal mode of declaration of result is Excellent, Good, Satisfactory or Fail. With no clear parameters as to what marks is required to be awarded to a candidate for academic performance in terms of the advertisement, B.P.S.C. felt a-lot of difficulty in applying a uniform yardstick. Some candidates obtained some kind of certification or so called transcript as to what Excellent, Good or Satisfactory meant. But there also since the range of marks indicated was so wide that a fair assessment and award of weightage on the academic performance of such candidates became a nightmare. It was in this background that the B.P.S.C. got in touch with the State Government and sought their advise as to how to go about the issue vexing them.

6. There were more than 516 candidates who had foreign degrees and in all the cases marks had not been provided by such universities in the academic performance. The Secretary of B.P.S.C., therefore, wrote a letter to the Principal Secretary, Health on 16.12.2014, a copy of which is Annexure-B to the counter affidavit of respondents no.1 and 2.

7. The Department of Health constituted a Four Member Committee to examine the issue and advise. It was on their advise that the government decided to amend the rules and provide 25 marks across the board to all holders of foreign M.B.B.S. degrees. It was in this background that the State Government amended the rule of recruitment and B.P.S.C. decided to apply it even in this process of selection which was held up, in the background indicated above.

8. Learned counsel representing B.P.S.C. and the State both support the decision and justify the basis for the selection of candidates, on the basis of amended rules. Their stand is that a deviation from the general rule that the rule of the game cannot be changed midway is not applicable as a thumb rule. The change was for a justifiable cause and reason and is sustainable in law. In fact if the above methodology was not adopted, may be the entire advertisement and selection process itself would be required

to be scrapped. However, keeping the larger public good and with time and resources already having spent by the candidates and the B.P.S.C., they adopted a prudent approach. There was no hide and seek or any kind of motive behind the above decision.

9. The counsels for the respondents also raise a preliminary legal submission that since these petitioners participated, took a chance and only when they failed to get selected on the basis of the parameters of selection, which was applied across the board for all the candidates that they have decided to file the present writ application which is not maintainable and should be dismissed at the threshold.

10. In support of the above argument, a recent decision rendered by a Division Bench of the High Court in the case of ***Rakesh Ranjan v. State of Bihar & Ors.***, decided on 12.05.2016, which is ***CWJC No.8863 of 2015*** has been brought to the notice of the Court. The Division Bench keeping in mind the law laid down in the case of ***Om Prakash Shukla v. Akhilesh Kumar Shukla & Ors.***, reported in ***AIR 1986 SC 1043***, ***Madan Lal & Ors. v. State of J & K & Ors.***, reported in ***(1995) 3 SCC 486*** and in the case of ***Dhananjay Malik & Ors. v. State of Uttaranchal & Ors.***, reported in ***(2008) 4 SCC 171*** have held in no uncertain terms that no relief ought to be granted by the Court to

any petitioner in the above background and circumstance.

11. In the present case, these petitioners have participated, went through the process of selection and only after having been declared unsuccessful that they have decided to file the present writ application for the relief which cannot be granted to such candidates keeping in mind the law laid down by the Apex Court.

12. The Court is also satisfied that some kind of parameter for award of marks for academic performance was required to be laid down keeping in mind that there were large number of candidates having foreign degrees and without any marks having been indicated in the award of degrees which made it difficult for the B.P.S.C. to make any assessment with remarks of Excellent, Good or Satisfactory the above exercise was warranted.

13. Since M.B.B.S. degree obtained from foreign universities have been given recognition and they have been declared to be eligible for participation in such selection, the only methodology which could bring about some sanity to the process of awarding of marks was adopted after bringing about necessary changes in the rules notifying it and then applying it for completing the process of selection. The Court, therefore, is satisfied that the respondents have done no wrong in carrying out

the selection in terms of the amendment in the rules which was necessitated under the circumstances explained both by the State and B.P.S.C.

14. Counsel for B.P.S.C. also relies on a decision rendered in the case of ***Rajya Sabha Secretariat & Ors. v. Subhash Baloda & Ors.***, reported in ***(2013) 5 SCC 169*** specially para 19 to 26 to show that the principle of the rule of the game not being changed midway may not be a universal rule since there are occasions when certain changes could be warranted which are fair objective and not necessitated out of any oblique reason.

15. The writ application, therefore, is dismissed being devoid of merit.

(Ajay Kumar Tripathi, J.)

SanjayKumar/-

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