

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9502 of 2013

Dr. Om Prakash S/o Late Ram Ekbal Ram R/o Doctor's Quarter, New Gardiner Road Hospital, Near Income Tax Golamber, Police Station- Kotwali, District- Patna.

.... Petitioner/s

Versus

1. The Bihar Public Service Commission through its Chairman, Bailey Road, Patna
2. The Principal Secretary, Department of Health, New Secretariat, Patna
3. The Examination Controller, the B.P.S.C., Bailey Road, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Singh Jha, Sr. Adv.
Mr. Binod Kumar Singh, Adv.
For the State Smt. Kumari Amrita, GP-3
For the Respondent/s : Mr. P.N. Shahi, Sr. Adv.
Mr. Sanjay Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-10-2016

In this case the petitioner has raised grievance that he has illegally been not selected as Assistant Professor in the Physical Medicine and Rehabilitation Department and has claimed that he was/is a single person from the schedule castes category having been denied selection. He has further claimed that he has done M.B.B.S. from D.M.C.H., MS in Orthopaedics from Rajendra Medical College, Ranchi and Senior Residency in Physical Medicine and Rehabilitation from Nalanda Medical College Hospital since 11.03.2008 till the date of filing the writ application.

On 20.07.2011, an advertisement was published in

the Daily Hindi Newspapers 'Hindustan' for 13 posts of Assistant Professor in the Physical Medicine and Rehabilitation Department in which break up has been given that 07 posts are for general category, 2 posts for scheduled castes category, 02 posts for EBC and 02 posts for BC category.

The petitioner belongs to SC category, applied for the post of Assistant Professor, 09.06.2012 was fixed for the date of interview as published in the Daily Hindi Newspaper 'Dainik Jagran' in which the name of the petitioner was not appearing, for that, he approached the concerned person and could know that his name was not appearing on account of the fact that he had no minimum qualifying marks as fixed by the Commission on account of not having been given the marks in the published journal. whereupon he submitted the certificate issued by the H.O.D., N.M.C.H. who endorsed that the articles published in the journal in Physical Science, in which main work was done by the petitioner whereafter he was called for the interview, he appeared but ultimately his name did not figure in the merit list and thereafter, he filed an application under the R.T.I. Act from that he could know that no marks has been given in the published journal in Physical Science.

In the present case the counsel for the petitioner has raised two points, first the petitioner has wrongly been deprived of the

marks in the published journal and second the constitution of the Selection Committee was not proper, as no Member from the subject of Physical Medicine and Rehabilitation, was there to assess the value of the published journal and as such, the ultimate decision of the Commission suffers from illegality.

The counsel for the respondent has submitted that this Court in the judicial review, will not act as an Appellate court and sit over the judgment of expert, assessing minutely the opinion given by the Expert Committee.

It has further been submitted that in exercise of the judicial review, the Court should be very slow and should give a proper weightage to the opinion given by the Expert Committee as they know the subject matter better than the Court and further said that the constitution of the Committee cannot be said to be illegal on account of the fact that those, Members of the Committee, are experts in different field not on the subject for which the petitioner had applied, as has been claimed by respondent that the members of expert Committee were competent to assess the published material of petitioner as they have basic idea of the subject of the Physical Medicine and Rehabilitation on the score that all the persons first they have cleared the degree of M.B.B.S. and then done expertise in their respective field.



In support of his submission, he has placed reliance on judgment passed in the identical matter which has been reported in 2015 (3) PLJR 528 (Dr. Narendra Kr. Singh vs. State of Bihar) there also the Member of the Expert Committee was not of that particular subject which was under consideration but the Court has refused to interfere on the score that the Court should not exercise the power as an Appellate court. The Court should accept the opinion of the expert inasmuch as the Court should go very slow to interfere with the opinion expressed by the experts, as they do have a better knowledge than the Court dealing with the subject matter. The Constitution of expert Committee was not found wrong. It will be relevant to quote paragraphs 18 and 19 of the said judgment, which are as follows:-

“Para 18- *The question therefore would as to what extent there could be judicial review over such assessment made by the team of experts. It is by now well settled that this Court in exercise of power under Article 226 should be slow to interfere with the opinion of the selection committee particularly when such a committee consisted of experts being men of high status and also had unquestionable integrity. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of*

National Institute Mental Health & Neuro Science vs. K. Kalyana Raman reported in (1992) 2 SCC 481 and on this Court in the case of Kamal Kumar Sinha vs. Indira Gandhi Institute of Medical Science reported in 1993 (1) SLJ 67.

Para-19 *The Supreme Court has also, in the case of University of Mysore vs. C.D. Govinda Rao reported in AIR 1965 SC 491 and in the case of Dr. J.P. Kulshrestha vs. Chancellor, Allahabad University reported in AIR 1980 SC 2141, emphasized that the Court should be slow to interfere with the opinion expressed by the experts. In the case of Neelima Misra vs. Dr. Harinder Kaur Paintal reported in (1990) 2 SCC 746, the Apex Court has pointed out that when an appointment has been made on recommendation of experts, judicial review is limited to overseeing whether the appointment had contravened any statutory or binding rule. The Court should have due regard to the opinion expressed by the experts constituting the selection committee and its recommendation.”*

This Court reiterated in 2010 (3) PLJR 190 (SC) and

(2012) 12 SCC 106.

In such view of the matter, the expert Committee after examining of the article published, did not find any worth to allocate some marks, as the petitioner has not received any marks in the published journal, on that account, he has secured only 8 marks, minimum qualification was fixed to be 10 marks. As the expert Committee has assessed his journal, this Court has no experties in that field, cannot as the Appellate court make minute judicial scrutiny sitting over the opinion given by them.

This Court does not find any error in refusing to appoint the petitioner. However, in future if any selection is made and paper placed is found favour with the expert Committee, they will examine the candidature of the petitioner for promotion and will act in accordance with law.

Accordingly, this petition disposed of.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
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