

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7297 of 2017

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1. Dr. (Mrs.) Anupama Singh Wife of Dr. Ranjit Kumar Singh Resident of Road
No. 1-D, Police Station- Kadamkuan, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna Secretariat, Patna.
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Secretary, Health Department, Govt. of Bihar, Patna.
4. The Chairman, Bihar Public Service Commission, Patna.
5. The Special Secretary-cum- Controller of Examination, Bihar Public Service Commission, Patna.
6. The President, Medical Council of India, Pocket-14, Sector-8, Dwarka , Phase-1, New Delhi- 110077

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Advocate Mr. Parijat Saurav, Advocate
For the State	:	Mr. S.D. Yadav- AAG-9 Mr. Prem Ranjan Kumar, AC to AAG-9
For the M.C.I.		Mr. Kumar Brijnandan, Advocate Mr. Tarees Hameed, Advocate
For B.P.S.C.		Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 15-05-2017

Challenging Clause 7(iii)(a) of the Senior Resident, Tutor and Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008, this writ petition has been filed and the Rule is challenged on the ground that the requirement that the three years' teaching experience should be gained after a candidate has completed the post graduation runs contrary to the



requirement of the Medical Council of India Minimum Qualification for Teachers in Medical Institutions Regulations, 1998.

Inter alia contending that the requirements formulated by the Medical Council of India have the force of law and anything contrary thereto is unsustainable and *ultra vires*, the petition has been filed and for the purpose reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Sudhir N. & Ors. vs. State of Kerala & Ors., (2015) 6 SCC 685.

Learned counsel for the State, the Medical Council of India and the Bihar Public Service Commission point out that the same Rule was subject matter of challenge before a co-ordinate Bench of this Court in the case of Md. Ali Muzaffar & Ors. vs. The State of Bihar & Ors., 2012 (3) P.L.J.R. 419, and having considered the regulation formulated by the Medical Council of India it has been held by a co-ordinate Bench that the Rule in question is nothing but a Rule framed under Article 309 of the Constitution and the State has got the power to prescribe qualification higher than the one prescribed by the Medical Council of India. In the aforesaid case, it has been held that a qualification prescribed by the Medical Council of India is the minimum qualification and, under law, there is nothing which prevents the State Government from prescribing higher qualification than what has been prescribed by the Medical



Council of India.

The requirement that the three years’ teaching experience should be gained after a candidate has completed the post graduation is held to be a higher qualification and therefore it is held that there is no conflict that the Rule framed by the Medical Council of India is the minimum qualification. Once the issue is already decided by a Coordinate Bench of this Court, we see no reason to take a different view than what has already been by a co-ordinate Bench in the case of Md. Ali Muzaffar (supra) and finding the issue in question to be decided in the aforesaid case wherein similar arguments advanced and rejected by the Court, we dismiss this writ petition.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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