

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13684 of 2016

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Kartikey Kumar, son of Gopi Nath Dwivedi, resident of Village- Parsouni Devajit Mehasi, P.S. Mehsi. District- East Champaran (Motihari), at Present resident of Om Diagnostic Centre, Road No. 7, Rajendra Nagar, P.S. Kadam Kuan, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Director-in-Chief, Health Services, Govt. of Bihar, Patna.
3. The Nodal Officer, Para Medical Cell, I.A.S. Association Building, Patna- 14.
4. The Executive Director, State Health Society, Sheikhpura, Patna, Bihar.
5. The Principal, Patna Medical College & Hospital, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arup Kumar Chongdar, Advocate

For the Respondent/s : Mr. Birju Prasad, GP-13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-06-2017

Heard Mr. Arup Kumar Chongdar, learned counsel appearing for the petitioner and Mr. Birju Prasad, learned Government Pleader No.13 for the State.

The petitioner prays for quashing of the order bearing Memo No.3750 dated 11.9.2014, whereby the joining of the petitioner has been refused by the Principal, Patna Medical College and Hospital, inter alia, on grounds that he had obtained Bachelor of Medical Laboratory Technology (for short 'BMLT') qualification through distant education mode. A copy of such order is impugned at Annexure-11 to the writ petition.

Annexure-9 is the engagement of Lab Technician including the petitioner whose name appears at serial no.2 and bears



Memo No.28(4) dated 21.1.2014 issued under the signature of the Director-in-Chief, Health Services, Bihar, Patna. The engagement in terms of Clause 2(ग) is for a period of one year and until regular appointments are made. There is no dispute that regular appointments are still awaited although the statutory rules have been framed as evident from the counter affidavit. The respondents in paragraph 11 of the counter affidavit filed today have stated that process for regular appointment has been initiated.

The dispute herein is whether the selection of the petitioner on the post of Laboratory Technician vide order passed on 21.1.2014 present at Annexure-9 could have been refused by the Principal, Patna Medical College and Hospital on grounds that he has obtained 'BMLT' degree through distant education mode. The issue is no more res-integra rather apart from the fact that the petitioner has specifically given the details in paragraph 18 of the writ petition as to the persons who continue to be on the rolls of the respondents despite having obtained similar qualification through distant mode, the issue came up for consideration before a Bench of this Court in CWJC No.20837 of 2014 (**Pawan Kumar vs. The State of Bihar**) and this objection has been negated by a Bench decision passed on 20.5.2016, a copy of which is present at Annexure-12 and for the sake of convenience I deem it necessary to reproduce paragraphs 1, 18 and 19 of the judgment which concludes



in favour of the petitioner:

“In the present writ application, the petitioners seek quashing of letters dated 24.9.2014, as contained in Annexure 13 Series, whereby and whereunder the petitioners’ joining was refused with retrospective date on the ground that they completed their courses from Distance Education. The petitioners further pray for a direction to the respondents to reinstate them on the post on which they were working before the issuance of the aforesaid letters dated 24.9.2014. A further writ/order/direction has also been sought, commanding the respondents to pay to the petitioners their salary and other consequential benefits from the date of termination from service till the date of reinstatement on the post on which they were working after following the due selection process. They have also prayed for payment of arrears of salary for the working period of eight months i.e., from the date of their joining till the date of their termination.

18. In the instant case, it appears that all through in the selection process, there was no such stipulation debarring a person with Technical Education through Distance Education mode from applying or participating for being selected for the post. It was only after the third list was issued, that such stipulation came to be inserted in the appointment letter. Such action on behalf of the State does not appear either logical or based on sound rationale and is also against the law with regard to the recruitments. In support of the contention, learned counsel for the petitioners has relied on a judgment of the Apex Court in the case of ***Maharashtra SRTC v. Rajendra Bhimrao Mandve***, reported in (2001) 10 SCC 5, which came to be the basis of the decision in the case of ***K. Manjusree v. State of A.P.***, reported in (2008) 3 SCC 512, which is quoted hereunder:

“32. In *Maharashtra SRTC v. Rajendra Bhimrao Mandve*, this Court observed that “the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced”. In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game had been played



*and the results of the game were being awaited.
That is unacceptable and impermissible.”*

19. Accordingly, I find and hold that the action of the respondents in altering the terms and conditions of selection in the case of the petitioners are wholly unjustified and warrant interference. Thus, the impugned orders of termination, as contained in Annexure 13 Series, being wholly violative of not only the Service Jurisprudence but also being discriminatory and violative of Article 14 of the Constitution of India, are set aside and the petitioners are directed to be reinstated in service.”

(Emphasis is supplied)

The only objection raised on the relief so prayed by the petitioner is, the delay by the petitioner in approaching this Court as also on grounds that the engagement was for a period of one year. In my opinion, either of the objection(s) is taken to be rejected for once the issue stood settled by this Court in the case of **Pawan Kumar** (supra) the relief so granted to the petitioner in CWJC No.20837 of 2014 should have been automatically extended to all such persons whose joining was refused on similar grounds, that they have obtained ‘BMLT’ degree through distant education. It is unfortunate that since the respondents have not chosen to extend similar benefits which ought to have been done in normal course of business that this petitioner was forced to come before this Court. The delay is entirely attributable on the laches of the respondents in not according similar benefits to the petitioner whose case stands covered by the judgment passed in the case of **Pawan Kumar** (supra).

The other objection raised by Mr. Prasad that an intra-



court appeal is pending before this Court also does not come to his rescue in absence of any stay order and thus in terms of the judgment passed in the case of **Pawan Kumar** (supra) the respondents are duty bound to accord similar benefit to the petitioner.

In the result, the order of the Principal, Patna Medical College in refusing the joining of the petitioner dated 11.9.2014 impugned at Annexure-11 is quashed and set aside.

The respondent Principal, Patna Medical College and Hospital shall act consequentially to accept the joining of the petitioner on similar terms as extended to other similarly placed persons whose names finds mention in Annexure-9.

Since the petitioner has not been allowed to work on the post and the engagement is contractual I am not persuaded to grant arrears of salary to the petitioner.

The writ petition is allowed.

(Jyoti Saran, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29-06-2017
Transmission Date	NA

