

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7435 of 2017

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1. Dr. Spriha Smriti, Wife of Dr. Shakti Kishore, at present Tutor, Microbiology, PMCH, Patna, resident of Malahi Pakri, Near Ishan International School, West Kankarbag, P.S.- Kankarbag, District- Patna.

2. Dr. Shakti Kishore, Son of Kaushal Kishore Singh, presently Sr. Resident, Orthopaedics, PMCH, Patna at present residing at Malahi Pakri, Near Ishan International School, West, Kankarbag, P.S.- Kankarbag, District- Patna.

.... Petitioner/s

Versus

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

2. The Principal Secretary, Department of Health & Medical Education, Government of Bihar, Patna.

3. Bihar Public Service Commission through its Secretary, 15 Jawaharlal Nehru Marg (Bailey Road), Patna.

4. The Chairman, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg (Bailey Road), Patna.

5. The Secretary, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg (Bailey Road), Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Advocate
Mr. Vikas Kumar

For the Respondent/s : Mr. Chandra Shekhar Singh, AC to GA-10

For the BPSC : Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

6 17-07-2017 This application has been filed seeking quashing of Clause 3 of the advertisement, dated 24.04.2017, issued by the Bihar Public Service Commission for appointment of Assistant Professors in various Medical Colleges and Hospital in the State of Bihar, whereby minimum eligibility criteria in terms of educational qualification/experience has been prescribed, *inter alia*, to the effect that a candidate after having passed the post-graduate (PG) Course in the



concerned subject from any College recognized by the Medical Council of India, 'must have three years teaching experience as senior resident/tutor of any Medical College recognized by the Medical Council of India'.

2. Though it has been contended in the writ application that the said condition is contrary to Rule 7 (iii) of the Bihar Medical Education Service Cadre, Recruitment, Appointment and Promotion Rules, 2008, after having realized that the said conditions cannot be said to be contrary to the said provisions under the Rules, it has been argued that extant Rules and the said Clause of the advertisement are contrary to the provisions laid down for making appointment to such posts by the Medical Council of India in Minimum Qualification for Teachers in Medical Institution Regulation, 1998 as amended up to May, 2015 (hereinafter referred to as the Regulation).

3. It is the case of the petitioners that three years experience after passing of the post-graduate course is not required under the Regulations rather in terms of the Regulation, a candidate should have teaching experience as Resident/Registrar/Demonstrator/Tutor in a recognized Medical College 'either during the post graduation' degree or 'after having passed the P.G. Course'. It is the case of the petitioners that their teaching experience as Resident /Registrar /Demonstrator /Tutor earned while pursuing post graduation course should have been recognized and counted



for determining their qualification for appointment to the said post in view of the Medical Council of India Regulations.

4. Countering the aforesaid submission, learned counsel appearing on behalf of the Bihar Public Service Commission has drawn my attention to a recent Division Bench decision of this Court, dated 15.05.2017 rendered in CWJC No. 7297 of 2017 (Dr.(Mrs.) Anupama Singh Vs. The State of Bihar and others), wherein the validity of the said Clause 7 (iii) (a) of the Senior Resident, Tutor and Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008 was put to challenge on the same ground of it being in conflict with the requirement of the Medical Council of India prescribing Minimum Qualification for Teachers in Medical Institutions Regulations, 1998. The Division Bench in most clear terms has held in the said decision as follows:-

“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 therefor 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.”

5. Another Division Bench decision in case of Md. Ali Muzaffar and Ors. Vs. The State of Bihar and others, 2012(3) PLJR 419 has held as follows:-

“3. At the outset, we may note that the statutory Rules framed under Article 309 of the Constitution cannot be held to be ultra vires the Regulations framed under a parliamentary enactment.

4. The Medical Council of India has, in exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956, framed “the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998”. The said Regulations have been amended by the Amending Regulations of 2010 provides:-

“(i) For the candidates possessing MD/MS Degree from MCI recognized medical College.

Three years teaching experience in the subject as Resident/Registrar/Demonstrator/Tutor in a recognized medical college either during the post graduation course or after obtaining post graduate degree in the subject.”

5. As the title connotes, under the Regulations the Medical Council of India has prescribed minimum qualifications required for appointment of teachers in medical colleges. In our opinion, no medical college has been debarred from specifying higher qualification



than the minimum qualification prescribed by the Medical Council of India. If the State of Bihar has, in its wisdom, provided for experience of three years after post Graduation, the same cannot be said to be in contravention of the Regulations framed by the Medical Council of India nor the Indian Medical Council Act, 1956.”

6. Situated thus and in view of the categorical pronouncements by the Division Bench of this Court in case of Dr. (Mrs.) Anupama Singh (supra), the claim which the petitioners has raised in the present writ application cannot be sustained.

7. Evidently thus what has been prescribed under the Regulations of Medical Council of India, is the minimum qualification for appointment to the posts in question. That does not take away the right of the State Government to prescribe qualification higher than the minimum prescribed by the Medical Council of India.

7. This application has no merit and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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