

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.860 of 2014

In

Civil Writ Jurisdiction Case No.10596 of 2012

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1. The Bihar Public Service Commission through its Secretary, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.
 2. The Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.
 3. The Joint Secretary cum Controller of Examinations, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.
 4. The Section Officer, Direct Recruitment Branch, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001. Appellant/s

Versus

1. Sudhir Kumar S/o Shri Ram Chandra Gope Present address Ram Krishna Welfare Hospital, Yogipur More, South Chitragupt Nagar, Near Buddha Dental College, Kankarbagh, P.S. Patrakar Nagar, District Patna (Bihar).
 2. The State of Bihar through the Principal Secretary, Department of Health & Family Welfare, Govt. of Bihar, Patna.
 3. The Principal Secretary, Department of Health & Family Welfare, Govt. of Bihar, Patna. Respondent/s
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Appearance :

For the Appellant/s	:	Mr. Ashok Kumar Singh Sr. Advocate Mr. Sanjay Pandey Advocate Mr. Manish Kumar Thakur Advocate Mr. Shyam Nandan Advocate
For the Respondent No. 1:		Mr. Sanjay Singh Advocate Mr. Mrityunjay Kumar Advocate
For the Respondent Nos. 2-3:		Mr. Ajay GA-5 Mr. Pratik Kumar Sinha AC to G.A.-5

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 08-03-2018

A bunch of writ applications were clubbed together and decided by a common order, dated 14.02.2014. The common



thread, which ran through most of the writ applications, was the decision of the Bihar Public Service Commission (hereinafter referred to as “B.P.S.C.” for short) to reject the candidature of the petitioners of the writ applications for consideration for appointment on the post of Assistant Professor in different colleges of the State of Bihar.

2. In the present appeal, preferred by the B.P.S.C., since there is a direction given by the Learned Single Judge while allowing the writ applications to consider the candidature of the private-respondent, namely, Dr. Sudhir Kumar, the said direction and order is being assailed through this intra-court appeal.

3. Submission of the counsel for the B.P.S.C. is that when scrutiny was done of the application made by the private-respondent, it was found that he did not have three years of teaching experience after post-graduation and, therefore, a communication, dated 18.05.2012, was issued by the B.P.S.C. to the private-respondent that he has been found ineligible and, therefore, cannot be called for interview for the above reason.

4. While dealing with the case of the private-respondent, the Learned Single Judge did take note of the extraordinary skill and knowledge of the private-respondent and the kind of educational degrees and experience he has gathered over a period of time.



They do read impressive. But the core issue is not the talent of the private-respondent. The issue is whether he fulfills the terms and requirements of the advertisement, which according to the counsel for the B.P.S.C. has been issued in consonance of the 'Senior Resident, Tutor and Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rules', 2008. The Court is told that this Rule has been made under Article 309 of the Constitution of India and, therefore, has statutory status. It has also been submitted on behalf of the senior counsel, representing the B.P.S.C., that the B.P.S.C., which is the recruiting agency also, cannot be unmindful of the requirements laid down by the Medical Council of India under Section 33 of the Medical Council Act, 1956 as well as the 'Minimum qualifications for Teachers in Medical Institutions Regulations' made in the year 1998 and as amended in the Regulations, 2010, especially Regulation 4 (iii), which mandates three years teaching experience in the subject as Residents / Registrar / Demonstrator / Tutor in a recognized Medical College, either during the post-graduation course or after obtaining post-graduation degree in the subject.

5. It is not the case of the private-respondent even before the writ court that he had the three years teaching experience with him after doing post-graduation in the specialized field. However, a



case was made out that between 10.12.1998 to 30.06.2003, the private-respondent was virtually carrying out the responsibility of a Teacher as an Assistant Professor and then between 01.07.2003 to 25.11.2003 as an Associate Professor in what is known as Indira Gandhi Institute of Medical Sciences, Patna (hereinafter referred to as “I.G.I.M.S.” for short). Keeping in mind the nature of work and responsibility performed by the private-respondent, the requirement of three years teaching experience according to him was met.

6. On behalf of the appellants a stand was taken that I.G.I.M.S. was not a recognized teaching institution by the Medical Council of India. No teaching was imparted, because there were no students, who were allowed to pursue any study in I.G.I.M.S. It is a hospital and functioned as one, as a specialized hospital. It is only in the year 2010 that the Medical Council of India has granted permission for admission of students for the M.B.B.S. course in the IGIMS. What the private-respondent was doing in IGIMS was imparting training to the staff and doctors, but not teaching.

7. Still despite a clear position, emerging about the non-recognition by the MCI and no teaching being imparted as such in I.G.I.M.S., drawing analogy from the case of *Dr. Ranbir Prasad Singh Vrs. The State of Bihar* and *Dr. Ashok Kumar Sinha Vrs. The State*



of Bihar, reported in 2000(3)PLJR618, the Learned Single Judge held that a teaching experience can be in any form and from any institution, and recognition, as such by MCI, was not of relevance.

8. In the appeal, learned senior counsel for the B.P.S.C. has a very pointed submission to make. His first contention is that the judgement of Dr. Ranbir Prasad Singh or Dr. Ashok Kumar Sinha (*supra*) was rendered in the year 2000, when the 2008 Rules or 2010 Regulations of MCI was not in existence. The interpretation to the advertisement was given by the Division Bench and somehow keeping in mind that the I.G.I.M.S. was set up by the State of Bihar as a specialized hospital, the Division Bench gave a direction that the nature of job done could be considered for experience in teaching, where the requirement of teaching was a must.

9. Since the 2000 judgement referred to above, has been relied upon by the counsel for the private-respondent quite vehemently to push the point that nothing much has changed and that the advertisement, especially Clause 3 (ka) and 3 (ga) are identical in nature, therefore, the Division Bench judgement still applies in toto.

10. The Court cannot be unmindful of the fact that at the point of time, when the Division Bench rendered its decision in the



year 2000, in the case of Dr. Ranbir Prasad Singh (supra), it was open field and there was no guiding Statutes or Rules and Regulations in place and the interpretation given by the Division Bench was on the wordings so provided in the advertisement. Much water has flowed down since then. Now, we have a Rule formulated in the year 2008 under Article 309 of the Constitution of India and a Regulation of the Medical Council of India as amended in the year 2010. The advertisement, which is Annexure – 2 to the LPA and is dated 03.05.2011, cannot, by any stretch of argument be said to be independent of the Rules and Regulations in relation to appointment on the post of Assistant Professor in Medical Colleges. In our opinion, the advertisement even though worded similar is now required to be read, keeping in mind the 2008 Bihar Rules, read with 2010 amended Regulations of MCI.

11. An effort was made by certain vested interest to assail the statutory rule made under Article 309 of the Constitution of India by the State of Bihar, i.e., 2008 Rules. That was successfully negated by a Division Bench of this Court in a decision rendered in the case of *Md. Ali Muzaffar Vrs. The State of Bihar, reported in 2012 (3) PLJR 419*. The Division Bench has this to say in paragraph 5 of the said judgement:



“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.”

12. In the case of the private-respondent, the Division Bench judgement rendered in the case of Dr. Ranbir Prasad Singh (supra) in the year 2000, was made the basis for allowing the writ application with the direction to the B.P.S.C. to consider his case for appointment, which according to us has no application now.

13. We are of the opinion taking into consideration the 2008 Rules and Regulations of the MCI read with the requirements of the advertisement that three years teaching experience in a recognized Medical College by MCI is a must, and innovations cannot be allowed to show certain work having been done by a candidate to pass off as a teaching experience. This is so, because there are no standard yardstick and uniformity, which can be maintained, when there are many institutions dishing out degrees



of medical education have mushroomed across the country even without recognition. The recognition of the MCI, therefore, can only form the touch-stone for giving recognition or value to any teaching experience.

14. We, therefore, come to a considered opinion that the Learned Single Judge has committed a serious error by ignoring the 2008 Bihar Rules, as well as the 2010 Regulations of the MCI and by relying on a judgement, which cannot be said to be good law now, after the Statutes and Regulations have been put in place with certain mandated requirements or eligibility.

15. In view of the above, the impugned order, dated 14.02.2014, passed by the Learned Single Judge is required to be set aside and is set aside.

The appeal stands allowed in relation to order passed in C.W.J.C. No. 10596 of 2012.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

skm/-

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