

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1410 of 2018**

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Amit Kumar son of Sri Nand Prasad Sahu Resident of Kali Asthan, Mahboob Khan Tola, Purnea, P.S. - Purnea, District – Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Bihar, Patna.
2. The Special Secretary-cum-Examination Controller, Bihar Public Service Commission, Patna.
3. The Joint Secretary-cum-Controller of Examination, Bihar Public Service Commission, Bihar, Patna.

... .. Respondent/s

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**Appearance :**

|                      |   |                                  |
|----------------------|---|----------------------------------|
| For the Petitioner/s | : | Mr. Indu Bhushan, Adv.           |
| For the State        | : | Mr. Ranjan Kr. Singh, AC to PAAG |
| For the BPSC         | : | Mr. P. N. Shahi, Sr. Adv.        |
|                      |   | Mr. Sanjay Pandey                |

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**ORAL JUDGMENT**

**Date : 26-07-2018**

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the action of the Bihar Public Service Commission declaring him Ineligible Senior Residency to participate in the selection of Assistant Professor Orthopedics. It has been contested by the Commission that he was declared ineligible initially vide the list of ineligible candidate of total 59, his number stands at serial no. 36 where it has been mentioned that his experience is less than three years. The petitioner filed his representation for re-consideration which has been rejected vide decision dated 12.1.2018, recorded that he has only experience of 2 years 11 months and 28 days, is short by 2 days.



The short fact of this case is that for the appointment of Assistant Professor, an advertisement was published wherein the minimum qualification in the heading of experience has been mentioned as three years experience as resident. The petitioner applied for the post along with the others and his application has been rejected on the ground of ineligible experience as senior resident.

In the present case, the only question is as to whether the petitioner has worked for three years as Senior Resident for satisfying the condition mentioned in the advertisement or he has really failed to fulfill the condition mentioned in the said advertisement. Three years experience is must for participation in recruitment of Assistant Professor. As per petitioner, he has worked as a Senior Resident in Orthopedics at Trauma Center Institute of Medical Science, Varanasi with effect from 2.6.2014 to 1.6.2017, on counting it comes to 1095 days and is divided by 3, it comes to complete three years whereas the Commission has submitted that he has not completed three years rather he is lacking by two days as the 6 months will not be treated to be 180 days but, it must be six complete months. As the Bihar General Clause Act has defined the month, 6 months and a year as British Calendar. In the present case, six months will not be appropriate



for consideration for entitlement of the petitioner for counting eligibility but, a year has been defined in the General Clause Act as :- “year” shall mean a year reckoned according to British Calendar. As in the British calendar 365 days is stated to be one year and if it is multiplied by 3, it comes to 1095 days.”

Mr. P.N. Shahi, representing the Commission, has placed reliance on the two judgments of the Honb’le Apex Court in the case of Tamal Lahiri Vs. Kumar P.N. Tagore reported in 1978 AIR 1811 wherein the Court has considered six months in the General Clauses Act where six months would be reckoned according to the British calendar and expression 6 calendar months does not mean 180 days but, six months but, that was the case is related to criminal matter and examining expiry of the six months for expiry of a period of limitation under the Limitation Act. There the Court has said that six months does not mean 180 days but, it has to be calculated six calendar months. Similar matter arose for consideration before the Madras High Court in the case of G. Deenadayalan Vs. Habibunnissa (C.M.P. No.11950 of 1993 in C.R.P.SR. No. 53300 of 1993 decided on 2<sup>nd</sup> February, 1994) in connection with limitation for filing revision application and, in that term, the calculation was made with regard to expiry of the period of limitation in filing the revision application but, in the present case, the matter relates to



the recruitment of a person on the post of Assistant Professor. It has to be liberally construed not in a pedantic manner. If two views are possible, the Court will lean in favour of person who has been deprived of the benefit. It appears from the record that he has worked in total 1095 days and, in such circumstances, the equity lies in favour of the petitioner to declare him eligible for participation in the interview.

In that view of the matter, the declaration made by the Commission of ineligible to participate in the interview is hereby quashed.

As has been informed that the interview of the eligible candidate has already concluded, in such circumstances, this Court directs the Commission to constitute a Special Board and hold the interview of the petitioner within a period of four weeks from the date of receipt/production of a copy of this order.

With the aforementioned observation and direction, this writ application is allowed to the extent indicated above.

**(Shivaji Pandey, J)**

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