

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1105 of 2017
IN
Civil Writ Jurisdiction Case No. 7435 of 2017**

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

.... Appellant/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

=====

Appearance :

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

For the State : Mrs. Shama Sinha, AC to AAG IX

For BPSC : Mr. Ssanjay Pandey

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 16-01-2018



Seeking exception to an order dated 17.07.2017 passed by the learned Writ Court in CWJC No. 7435 of 2017 this appeal under Clause 10 of the Letters Patent has been filed.

An advertisement was issued by the Bihar Public Service Commission (for short, BPSC) on 24.04.2017, where in the matter of appointment of Assistant Professor in various medical colleges and hospitals in the State of Bihar, the minimum eligibility criteria fixed in terms of educational qualification/experience was that a candidate after having passed the Post Graduate 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.

Inter alia, contending that this qualification prescribed runs contrary to the provisions contemplated in the minimum qualification for teachers in Medical Institutions Regulations, 1998, formulated by the Medical Council of India and that recruitment rule of the Government prescribed qualification contrary to the regulations of the Medical Council is not permissible the writ petition was filed. The learned Writ court took note of the aforesaid submission and found that two Division Benches of this Court in CWJC NO. 7297 of 2017 in **Dr. Mrs. Anupama Singh vs. State of Bihar & Ors.** decided on 15.05.2017 and earlier to it another



Division Bench in the case of **Md. Ali Muzaffar vs. State of Bihar [2012(3) PLJR 419]**, has considered similar submission and rejected it. Taking note of the aforesaid, the writ petition has been dismissed and in paragraphs 4 and 5 of the impugned order, the learned Writ Court has considered the issued in the following manner:-

“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 2917 (Dr. Mrs. Anupama Singh vs The State of Bihar & 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 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 taken 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 have raised in the present writ application cannot be sustained."

It has been held by the learned Writ Court that what has



been prescribed in the regulations made by the Medical Council is the minimum qualification for appointment to the post and the State Government can always prescribe higher qualification which is permissible.

Shri P K Shahi, learned Senior Counsel vehemently argued that this was not sustainable and in support thereof, placed reliance on a judgment of the Supreme Court in the case of **Sudhir N & Others vs. State of Kerala & Ors. [(2015) 6 SCC 685]**, to canvass this contention that the regulations framed by the Medical Council should prevail and any rule or regulation framed contrary thereto is *ultra vires*.

Having considered the rival contentions, we are of the considered view that as indicated hereinabove, the issue in question is squarely covered by the two judgments of the Division Bench of this Court as detailed by the learned Writ Court in paragraphs 4 and 5 hereinabove. As far as the judgment of the Supreme Court in the case of Sunil K (supra) is concerned, it pertains to regulations formulated for admission to Post Graduate Medical Colleges the standard of education and the admission criteria prescribed by the Medical Council of India and in the matter of prescribing the standard of medical education, deviation from the Medical Council and prescribing different and contrary rules for admission. The said



submission was accepted by the Hon'ble Supreme Court and in our considered view the same cannot be made applicable in the facts and circumstances of the present case. As held by the two division Benches in the case of **Dr. Mrs. Anupama Singh** (supra) and **Md. Ali Muzaffar** (supra) the regulations formulated by the Medical Council in 1998 is the minimum qualification for teachers in medical institutes and we find that the learned Writ Court in paragraph-5 has referred to certain observations made in the case of **Md. Ali Muzaffar** which clearly shows that the regulation only prescribes the minimum qualification for appointment to the post and the State in its wisdom can always prescribe an experience above the minimum prescribed. If we go through the issue in question in detail we find that the Medical Council says that for appointment of teachers to medical institutes the bare minimum qualification of a candidate having three years experience as a Resident/ Registrar/ Demonstrator or Tutor during the course of its undertaking the Post Graduation should be availed. Now, the Govt. of Bihar feels in its wisdom that the experience gained while undertaking the course is not sufficient enough over and above that three years working experience as a regular doctor after having obtained Post Graduate degree is also necessary. That being the intention of the State Government under prescribed rule and when after considering all these aspects two



Division Benches have taken concurrent views in the matter, we see no reason to take a different view. The decisions of the Division Bench are binding on us and until and unless materials are brought on record to show that the decision taken warrants reconsideration by a larger Bench on account of factors which were not considered we cannot make any indulgence into the matter.

Accordingly, in the facts and circumstances of the case we do not find any error in the order passed by the learned Writ Court warranting reconsideration.

The appeal is accordingly dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mr1/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19/01/2018
Transmission Date	

