

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.830 of 2014

In

Civil Writ Jurisdiction Case No.9291 of 2012

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1. The Bihar Public Service Commission through its Chairman, 15 Jawahar Lal Nehru Marg (Bailey Road), Patna - 800001.
 2. Secretary, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg (Bailey Road), Patna - 800001.
 3. Examination Controller, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg (Bailey Road), Patna - 800001.
 4. Section Officer, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg (Bailey Road), Patna - 800001.

... .. Appellant/s

Versus

1. Dr. Jagat Narayan Nayak S/O Late Sita Ram Nayam resident of Sri Ram Janki Arogya Niketan, 8 G.M. Road (Near Radio Station), P.S. - Town Thana, Town & Distt. - Darbhanga.
2. State of Bihar through the Principal Secretary, Health (Medical Education, Family Welfare and Indigenous Medicine), Department, Govt. of Bihar, New Secretariat, Patna.

... .. Respondent/s

with

Letters Patent Appeal No. 1139 of 2014

In

Civil Writ Jurisdiction Case No.9154 of 2012

The Bihar Public Service Commission through its Chairman, Bailey Road, Patna

... .. Appellant/s

Versus

1. Dr. Vinod Kumar Mishra S/O Late Jugal Kishore Mishra, resident of Barauni, Block No. 2, P.O.- Barauni, Deorhi, Distt.- Begusarai and at present Senior Resident (Paediatric), P.M.C.H., Patna
2. Dr. Md. Sarfaraz Alam, S/O Late Abdull Ansari, resident of Nilu Nursing Home, Chauhatta, the Masjid, Near P.M.C.H., P.S.- Pirmahor, Distt.- Patna
3. Dr. Ashok Kumar, S/O Late Ram Chandra Prasad, resident of Adorakh Ghat, Maruf Ganj, Patna City, at present posted as Senior Resident (Medicine), P.M.C.H., Patna
4. Dr. Rana Randhir Kumar Singh, S/O Ram Pujan Singh, resident of 93, Gandhi Path, North S.K. Puri, Patna and at present posted as Senior Resident (Medicine), P.M.C.H., Patna
5. Dr. Brind Kumar Singh, S/O Late R.C. Singh, resident of Chamtha, Barkhut, P.S.- Bachwara, Distt.- Begusarai and at present Assistant Professor (Bio-Chemistry), P.M.C.H., Patna
6. Dr. Janardan Prasad Sinha, s/O Late Sudarshan Prasad Singh, resident of China Kothi, Vidyapati Marg, Patna- 800001, and at present posted as Senior Resident (Paediatric), P.M.C.H., Patna



7. Dr. Sharbeshwar Kumar, S/O Late Jaleshwar Prasad singh, resident of House No. 199, Varun Colony, Gola Road, Bailey Road, Danapur, Patna and at present Tutor, P.M.C.H., Patna
8. Dr. Ajit Kumar, S/O Late Bhupendra Prasad sinha, resident of House No. 10, Shiv Shambhu Nagar, Ashiyana Road, Patna and at present posted as Tutor (Pharmacology), P.M.C.H., Patna
9. Dr. Binay Kumar, S/O Sri Satyanarayan Gupta, resident of At + P.O.- Maker, Distt.- Saran (Chapra) and at present posted as Senior Resident (Medicine), P.M.C.H., Patna
10. The State of Bihar through the Principal Secretary, Department of Medical Education & Family Welfare, Govt. of Bihar, New Secretariat, Patna
11. The Principal Secretary, Department of Medical Education & Family Welfare, Govt. of Bihar, New Secretariat, Patna
12. The Additional Secretary, Department of Medical Education & Family Welfare, Govt. of Bihar, New Secretariat, Patna
13. Deputy Secretary to the Government, Department of Medical Education & Family Welfare, Govt. of Bihar, New Secretariat, Patna

... .. Respondent/s

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with

Letters Patent Appeal No. 829 of 2014

In

Civil Writ Jurisdiction Case No.11416 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 Chairman, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg (Bailey Road), Patna - 800001.

... .. Appellant/s

Versus

1. Dr. Nirmaja Kumari Jha @ Nirmaja Jha W/O Dr. Santosh Kumar Jha resident of Moh. Boei Park, Church Road, Opposite G.P.O. , Bhagalpur, P.O. - General Post Office, P.S. - Kotwali, Distt. - Bhagalpur (Bihar).
2. The State of Bihar through the Principal Secretary, Health Medical Education and Family Welfare, Govt. of Bihar, Vikash Bhawan, Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 881 of 2014

In

Civil Writ Jurisdiction Case No.10729 of 2012

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The Bihar Public Service Commission through its Chairman, Bailey Road, Patna

... .. Appellant/s

Versus

1. Dr. Pradeep Kumar Verma, S/o Late Surya Kant Prasad, Resident of House No. 35, Jhunjhun Mahal Road, New Yarpur, P.O.- Mithapur, P.S.-



- Gardanibagh, Distt.- Patna, presently posted as Tutor, Anatomy Department, Vardhman Institute of Medical Science, Pawapuri, Nalanda
2. Dr. Amrendra Prasad Singh, S/O Chaturbhuj Prasad Sinha, resident of Katra, P.O.- Katra, P.S.- Katra, District- Muzaffarpur, presently posted as Tutor, Anatomy Department, Patna Medical College & Hospital, Patna
 3. The State of Bihar through the Principal Secretary, Department of Medical Education and Family Welfare, Govt. of Bihar, New Secretariat, Patna
 4. The Principal Secretary, Department of Medical Education and Family Welfare, Govt. of Bihar, New Secretariat, Patna
 5. The Additional Director, Department of Medical Education and Family Welfare, Govt. of Bihar, New Secretariat, Patna
 6. The Deputy Secretary to the Government, Department of Medical Education and Family Welfare, Govt. of Bihar, New Secretariat, Patna

... .. Respondent/s

with
Letters Patent Appeal No. 576 of 2015
In
Civil Writ Jurisdiction Case No.12736 of 2012

1. The Bihar Public Service Commission through its Secretary , 15 Jawahar Lal Nehru Marg (Bailey Road) , Patna- 800001.
2. The Chairman , Bihar Public Service Commission, 15 Jawahar Lal Nehru Mang (Bailey Road) , Patna- 800001.
3. The Secretary, The Bihar Public Service Commission through its Secretary , 15 Jawahar Lal Nehru Marg (Bailey Road) , Patna- 800001.
4. The Examination Controller, The Bihar Public Service Commission through its Secretary , 15 Jawahar Lal Nehru Marg (Bailey Road) , Patna- 800001.
5. the Sectional Officer, Direct Recruitment Branch , The Bihar Public Service Commission through its Secretary , 15 Jawahar Lal Nehru Marg (Bailey Road) , Patna- 800001.

... .. Appellant/s

Versus

1. Dr. Sujata Kumari W/O Dr. Vijay Kumar Choudhary, resident of MIG -223, Shantikunj , Lohianagar, Kankarbagh, Patna, -20 at present posted as Senior Resident, Department of Obstetrics & Gynecology, P.M.C.H. , Patna.
2. The State of Bihar through the Principal Secretary , Health Department , Govt. of Bihar, Patna.

... .. Respondent/s

with
Letters Patent Appeal No. 966 of 2014
In
Civil Writ Jurisdiction Case No.11409 of 2012

1. Bihar Public Service Commission through its Chairman, null 15 Jawahar Lal Nehru Marg (Bailey Road), Patna- 800001



2. Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg (Bailey Road), Patna- 800001
3. Examination Controller, Bihar Public Service Commission 15 Jawahar Lal Nehru Marg (Bailey Road), Patna- 800001
4. Section Officer, Direct Recruitment Section, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg (Bailey Road), Patna- 800001

... .. Appellant/s

Versus

1. Dr. Vasudha Rani, W/o Dr. Jagat Narayan Nayak, resident of Sri Ram Janki Arogya Niketan, 8 G.M. Road (Near Radio Station), P.S.- Town Thana, Town & Distt.- Darbhanga
2. State of Bihar through the Principal Secretary, Health (Medical Education, Family Welfare and Indigenous Medicine), Department, Govt. of Bihar, New Secretariat, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr Ashok Kumar Singh, Sr. Advocate
(In all the LPAs) Mr. Sanjay Pandey
Mr Manish Kumar
Mr Prem Ranjan Raj
Mr Bimlendu Shekhar Thakur
Mr Shyam Nandan Thakur

(In Letters Patent Appeal No. 830 of 2014)

For the Respondent/s : Mr S.D.Yadav, AAG 9

(In Letters Patent Appeal No. 1139 of 2014)

For the State : Mr. Anjani Kumar, AAG 4
For the Pvt. Respondents: Mr Basant Kumar Chaudhary, Sr. Advocate
Mr Jagjit Roshan
Mr Sanjeev Kumar

(In Letters Patent Appeal No. 829 of 2014)

For the State : Mr. Anant Pd. Singh, SC 15
For the Pvt. Respondent : Mr Sanjay Kumar Srivastava

(In Letters Patent Appeal No. 881 of 2014)

For the State : Mr. Arvind Ujjwal, SC 4
For the Pvt. Respondent : Mr Sanjay Kumar

(In Letters Patent Appeal No. 576 of 2015)

For the State : Ranjit Kumar, AC to GP 26
For the Pvt. Respondent : Mr M. N. Parbat, Sr. Advocate
Mr Abhay Kumar Singh
Mr Sanjay Kumar Jha

(In Letters Patent Appeal No. 966 of 2014)

For the State : Mr S.D.Yadav, AAG 9
For the Pvt. Respondent : Mr Shivendra Kishore, Sr. Advocate
Mr B.S.Thakur



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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

**ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

Date : 09-03-2018

All these appeals were taken up and heard separately, but since common questions of law emerge for consideration, they are being finally disposed off by a common judgment.

2. These appeals have been preferred by Bihar Public Service Commission (BPSC) against the order of the learned Single Judge dated 14.02.2014 since the learned Single Judge allowed the writ applications of all the private respondents giving a direction upon the BPSC, the appellant, to consider their case for appointment on the post of Assistant Professors in different streams for the medical colleges of the State of Bihar. In these appeals, the issue before the learned Single Judge was whether the BPSC was correct in its view of not calling the private respondents for interview because they refused to award marks under publication and since the minimum cut- off 10 marks was not reached, the private respondents approached the High Court through writs.



3. The learned senior counsel representing the appellant- BPSC submits that the learned Single Judge committed a serious error of law as well as fact by giving an interpretation as well as a direction that articles, which were not even published but only submitted for publication, was as good as publication and, therefore, they deserved to be granted marks against the would be publications or the publication, which saw the light of the day after the cut- off date, which was fixed as 31.07.2011 or even beyond the last date of application, which was fixed as 18.08.2011.

4. The thrust of the argument on behalf of the BPSC is that it is settled law that no candidate or a person can claim benefit of any kind in terms of eligibility which may have been acquired after the cut- off date. Contra, it is the stand of the learned senior counsel that all eligibility and requirements in terms of the advertisement for consideration for the post in question must be in place before the cut- off date. If it is not so then the BPSC has committed no wrong by not considering any publication which was published after the cut- off date or having been brought into existence just before the interview.

5. For Assistant Professors, requirement of publication is a must for award of marks under the head for publication. Marks can be awarded only for those publications which are in public



domain of all the candidates before the cut- off date. They cannot draw advantage by making statements or producing certification that they have submitted their articles for publication before the cut- off date and that the editorial board of the respective medical journals had accepted those articles for future publication, though, admittedly, final publications came into existence only before the interview of the respective candidates. There is no dispute that before the cut- off date none of these candidates or respondents had publications in their favour. They had only produced certification that the publication was in the process.

6. Submission on behalf of the private respondents made are that the learned Single Judge has rightly considered the position emerging from the Minimum Qualification for Teachers in Medical Institutions (Amendment) Regulations, 2009, where publication include even matters accepted for publication. Such view has been taken by the learned Single Judge in the impugned order wherein reliance has been placed on clause 4 (A) (ii), which has been reproduced as part of the order and since arguments and rational of the learned Single Judge is based on the said provision, it is reproduced herein below as part of this order as well :

“3(a). In Clause 4(A) under the heading “Professor” as amended vide “Minimum Qualification for Teachers in Medical Institutions (Amendment) Regulations, 2009”, be



**further amended by inserting the following proviso in 4(A)
(ii):-**

“Provided that these research publications are published/accepted for publication in the Journals by the national Associations/Societies of the respective specialities as the First Author. Further provided that the requirement of 4 research publications for promotion to the post of Professor should be taken on cumulative basis with minimum of 2 research publications must be published during the tenure of the Associate Professor”.

7. An interpretation has been given by the learned Single Judge based on the extract of the regulation that wherever the word ‘publication’ has been referred it has been qualified as accepted or published. According to him, a harmonious interpretation is required to be given to the word ‘publication’ in the requirement as laid down in ‘Senior Resident/ Tutor/ Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008’.

8. Learned senior counsel for the appellant- BPSC submits that the learned Single Judge seems to have missed out on a significant aspect of the regulation and by his interpretation he has read more into the provisions or the rules than what the legislature had envisaged. What has been extracted by the learned Single Judge from 2008 MCI Regulation, he omitted to notice that the word publication or accepted for publication has been talked



about with regard to the two senior positions i.e. of a Professor or an Associate Professor. There is no corresponding provision of such kind with regard to Assistant Professors. Argument is that it is deliberate on the part of the legislature not to use such interpretation with regard to Assistant Professors for the reason that they join the teaching cadre at the very threshold whereas Associate Professors and Professors are already people with experience and exposure having sufficient seniority and, therefore, they do not have to establish or prove their achievements in the area of research or publication. Exceptions, therefore, have been made for Associate Professors or Professors that even if their articles or research papers have been submitted or accepted for publication it will be considered as a publication.

9. However, because the recruitment is being made at the bottom of the teaching cadre, which is the post of an Assistant Professor, they must have publications to their credit and the publications must be within the realm of public knowledge and mere submission of publication or its acceptance by any journal for future publication cannot be said to be 'publication' but only a process towards publication.

10. What is important with regard to publication is that it must be propagated and brought to the knowledge of the people at



large because the Hon'ble Supreme Court has taken a view that mere printing also may not amount to publication. A publication acquires the status of publication or having been published only after it is brought within the public domain and in this regard reliance has been placed on the case of *Collector of Central Excise vs. New Tobacco Co. and others*, reported in (1998) 8 SCC

250. Paragraph 4 of the said decision is reproduced herein below :

“4. Section 38 of the Act provides that all the rules made and notifications issued under the Act shall be published in the official Gazette. So, the requirement of Section 38 is publication of the rules and the notifications in the Official Gazette. The dictionary meaning of the word “publish” as given in Webster’s Comprehensive Dictionary, International Edn., is “(1) To make known or announce publicly; promulgate; proclaim. (2) To print and issue to the public. (3) To communicate to a third person.” According to the Legal Glossary, published by the Legislative Department, Ministry of Law, Justice and Company Affairs, Government of India in 1992, it means “to make generally accessible or available; to place before or offer to public; to bring before the public for sale or distribution”. Thus the word “publish” connotes not only an act of printing but also further action of issuing or making it available to the public. Notification, according to Webster’s Third New International Dictionary, inter alia means “1. the act or an instance of notifying; Intimation, Notice; est: the act of giving official notice or information; 2. a written or printed matter that gives notice”. The Legal Glossary, referred to above, defines it as “a written or printed matter that gives notice”.Even if we go by the dictionary meaning the requirement of publishing the notifications would connote that what is intended to give notice or



information to the public can be treated as published only when it is made available to the public so that they can know about it. (emphasis supplied) The requirement of publishing the notifications in the Official Gazette, which is an official journal or a newspaper containing public notices and other prescribed matters, also indicates that the word “publish” in Section 38 should be so interpreted.”

11. A matter is said to have been published only when it is made known to the public at large which may include the concerned community or section of the community, but by no stretch of imagination mere tendering or acceptance of a research paper or article with an assurance of its future publication can be said to have acquired the status of publication.

12. While going through the records of these cases, it is not a coincidence that all the candidates, who had applied for consideration for appointment on the post of Assistant Professors, had tendered their article for publication just before the cut- off date, which is mostly in the month of June or July or thereafter in the year 2011. The Court would again point out that the cut- off date was 31.07.2011 in terms of the advertisement. The candidates had annexed certificates from the publishers of the journal saying that they have accepted the articles for publication and emphasis has been laid on the fact that since in the cases of Professors or Associate Professors even acceptance for publication is considered



as good as publication, therefore, the same analogy and logic should be extended in the case of Assistant Professor.

13. The Medical Council of India (MCI) no doubt is a professional body, which regulate the standards of medical education, therefore, if they in their regulation did not provide for similar kind of provisions in relation to Assistant Professor, which has been done with regard to Associate Professor and Professors, then obviously there is an object behind it and that object cannot be diluted by reading into the regulation of the MCI or the 2008 Bihar Rules to mean that articles tendered for publication should be considered to have been published. It again be highlighted that none of these articles had seen the light of the day before the cut-off date. The printing has been done only before the date of interview of the respective candidates.

14. If such a leeway is granted to a candidate or candidates to acquire eligibility after the cut- off date then, in our opinion, there would be no uniform consideration and it will violate Articles 14 and 16 of the Constitution of India. There has to be a uniform yardstick and eligibility in every respect and it must be in place on the cut- off date fixed by the recruiting agency so that the authority does not exercise any kind of discrimination



or providing leeway to any candidate lest there will be allegations of nepotism or favoritism.

15. In some of the cases, we have noticed that in terms of the rules, especially Rule 5 of 2008 Rules, a requirement of certification by the Professor In-charge and Head of Department has been talked about. That certification has been provided for in 2008 Bihar Rules with the object of certifying that the articles so published is the original article of the author and that it is not a case of copying or somebody's else work passed off as original work of the author. We have noticed from records that some candidates have claimed benefit in the writ application on the basis of those certificates issued by Professor In-charge or Head of Department by the candidates who were working under them and even this is sought to be passed off as acceptance for publication. With due respect such certification has to be there only to prove the authenticity of the publication and that stage will only come after the article is published and the certification cannot be used as a publication or tendering of publication or acceptance for publication. This aspect of the matter is also reflected from the advertisement which anyway seems to be an extract or reproduction from the 2008 Rules.



16. Since in none of these cases any of these candidates had their articles published or was brought within the public domain before the cut- off date which is 31.07.2011 then this Court has difficulty in accepting the interpretation given by the learned Single Judge that even tendering of articles for publication should be treated as publication and benefit of award of marks for those publications must accrue in favour of the candidates.

17. The learned Single Judge, therefore, has committed error by reading something into the regulation which does not provide for the post of Assistant Professors as well as missing out the significant milepost, which is the cut- off date. Since all these candidates, who are respondents in these appeals, have failed to satisfy this Court that any of them had successful publications before the cut- off date, any publication brought thereafter cannot be of any avail and to that extent the BPSC cannot be compelled to award marks to them on the basis of those publications. We, therefore, come to a conclusion that the interpretation and direction given by the learned Single Judge on the issue of publication seems to be erroneous.

18. We reiterate this position in law that any person, who is looking for the benefit of award of marks for publication, for the post of Assistant Professor must bring in the publication in the



public domain before the cut- off date and not after the cut- off date. Tendering or acceptance or certification by any editorial board or magazine of having accepted such articles for future publication is no publication in the eye of law but it is only a process towards publication and not actual publication.

19. In one appeal, which is LPA No.576 of 2014 which arose out of CWJC No.12736 of 2012, which is the case of Dr Sujata Kumari, a plea is taken that her articles had earlier been published in certain foreign journals in USA and UK. Those were already in place in the year 1991 and thereafter those articles are also available on the internet. However, on a closer examination it emerges that the articles, which Dr Sujata Kumari is talking about, are articles published not in a medical journal but a patent journal. Even a plea was taken on behalf of Dr Sujata Kumari that she had certain inventions to her credit and that the Commissioner of Patent and Trade Marks of USA has given patent on certain discovery made by her.

20. Such arguments have been accepted by the learned Single Judge, who seems to have been carried away more by the fact that some of these publications have been made abroad and, therefore, of a higher order of stature and credibility. However, what has been lost sight of by the learned Single Judge is that the



requirement for publication has to be in a medical journal of repute and not any journal including a journal which publishes article on patent and trade marks. No publication has been shown by Dr Sujata Kumari even before us to have been published before the cut- off date in medical journal. In her case also certificate showing that articles have been submitted or tendered for publication has been brought on record. This does not help the cause of Dr Sujata Kumari in any manner for the reason that the arguments earlier made and noticed in earlier part of our order that publications not brought in public domain before the cut- off date, are no publication in the eye of law especially if it not before the cut- off date i.e. 31.07.2011. The argument will also apply to the case of Dr Sujata Kumari.

In totality, therefore, these appeals stand allowed. The order of the learned Single Judge dated 14.02.2014 stands set aside.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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AFR/NAFR	AFR
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