

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17056 of 2017

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1. Dr. Amod Prakash, S/o Sri Dharendra Kumar, resident of Mohalla- Agamkuan, P.S. By-Pass, District- Patna.
 2. Dr. Ajeet Kumar, S/o Late Mistri Rabidas, resident of Village & P.O.- Bijubigha, P.S. Meskaur, District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Bihar, Patna.
2. The Principal Secretary, Department of Health Govt. of Bihar, Patna.
3. The Additional Secretary to the Government of Department of Health, Bihar, Patna.
4. The Central Council of India Medicine, Jawahar Lal Nehru Bhartiya Chikitsa Avam Homeopathy Anusandhan Bhawan 61-65, Institutional Area, Janakpuri, D-Block New Delhi- 110058, through its Secretary.
5. The Bihar Public Service Commission, 15, Bailey Road, Patna through its Secretary.
6. The Special Secretary-cum-Examination Controller, 15 Bihar Public Service Commission, Baily Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioners	: Mr. Suraj Narain Yadav
For the State	: Mr. Dharendra Kuamr, AC to AAG 6
For CCIM	: Mr. Ray Sourabh Nath
For BPSC	: Mr. Sanjay Pandey

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 30-04-2018

Challenging Clause 3 of Appendix-1 of Rule 4 of the Bihar Ayush (Ayurvedic, Unani & Homeopathy) Medical Teaching Service Rules, 2017 for appointment of Assistant Professor in Ayurvedic Medical College this petition has been filed under Article 227 of the Constitution of India.

It is argued that weightage of 10 marks for work



experience gained by working in the department on contract basis and further weightage of 4 marks for publication of papers and other activities is ultra vires of the Constitution and is contrary to the provision of the regulations formulated by the Indian Medicine Central Council (Post Graduate Ayurveda Education) Regulation, 2016 which does not contemplate grant of any such benefit in the matter of appointment to the post. It is stated that marks awarded for experience and research work is unsustainable and contrary to the Regulations, 2016.

Respondents have indicated that the Regulations, 2016 only prescribes the minimum qualification required for appointment to the post and if the State Government exercises its power under Article 309 of the Constitution some weightage to certain aspects of the matter beyond the minimum qualification prescribed by the statutory authority the same is not illegal. Learned counsel invites our attention to the orders passed by a Co-ordinate Bench of this Court in somewhat similar situation in CWJC No. 7297 of 2017, whereby certain rules, namely, Senior Resident/Tutor and Bihar Medical Education Service Selection, Appointment and Promotion Rules, 2008 was challenged and the same was rejected wherein marks granted for work experience and certain additional qualification were considered by this Court. It is argued that what is prescribed by the Regulations,



2016 is the minimum qualification in view of the judgment rendered by a Bench of this Court in the case of ***Md. Ali Muzaffar & Ors. Vs The State of Bihar & Ors. [2012 (3) PLJR 419]*** such a rule which prescribes certain higher qualification is not unsustainable.

Keeping in view the grounds canvassed in the writ petition, the law laid down by a Co-ordinate Bench of this Court in the case of ***Md. Ali Muzaffar*** (supra) and taking note of the fact that the Regulations, 2016 only prescribes the minimum criteria for appointment to the post and there is nothing which prevents the State Government from giving incentive for having worked on contract basis or for having submitted papers on research etc., we see no reason to make any indulgence into the matter. The State Government is well within its right in granting incentive or marks for certain additional qualification or experience gained by the employee by working in the department. There is nothing in Regulations, 2016 which prevents the State Government from doing so. The Regulations, 2016 only prescribes the minimum standard for appointment to the post which cannot be considered to mean that the State Government is precluded from prescribing certain additional provision in the rules for making the selection process by granting incentive to certain category of candidates who have gained experience by working on the same post on contract basis and who have done research work or submitted



papers with regard to various aspects in the subject in question.

Accordingly, finding no reason to hold that the Rules in question is ultra vires we are not inclined to interfere into the matter. The writ petition stands dismissed.

(Rajendra Menon, CJ)

(Sanjay Kumar, J)

mr.l./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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