

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 20011 of 2016

The Director, All India Institute of Medical Sciences, Patna

... .. Petitioner

Versus

1. Bheem Prasad, S/o Shri Devta Nand Prasad, Assistant Professor/Senior Resident, Department of Anatomy, All India Institute of Medical Sciences, Patna, resident of Flat No. 107, Type - 3, AIIMS, Residential Complex, Hydraulic Road, Khagaul, Patna. (As in O.A . Application)

... .. Contesting Respondent

2. The Union of India through the Secretary, Ministry of Health and Family Welfare, New Delhi.
3. The Joint Secretary (PMSSY), Ministry of Health and Family Welfare, Government of India.

... .. Respondents

With

Civil Writ Jurisdiction Case No.14821 of 2018

Dr. Bheem Prasad, son of Sri Devta Prasad, Assistant Professor, Department of Anatomy, All India Institute of Medical Science, Patna, resident of Type- 4, Block-2, Flat No. 101, AIIMS Residential Complex, Hydraulic Road, Khagaul, Patna.

... .. Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Health & Family Welfare, New Delhi.
2. The Joint Secretary, Ministry of Health and Family Welfare (PMSSY), Govt. of India, New Delhi.
3. The Director, All India Institute of Medical Science, Patna.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 20011 of 2016)



For the Petitioner : Mr. S.D. Sanjay, Additional Solicitor General
Mr. Binay Kumar Pandey, Advocate
For the Respondent No.1: Mr. K.D. Chatterjee, Senior Advocate
Mr. Chandan Jha, Advocate
Mr. A.K. Verma, Advocate
For the Respondent Nos. 2 &3: Mr. Abhay Shankar Jha, CGC
(In Civil Writ Jurisdiction Case No. 14821 of 2018)
For the Petitioner : Mr. K.D. Chatterjee, Senior Advocate
Mr. Chandan Jha, Advocate
Mr. A.K. Verma, Advocate
For the Respondent-UIO: Mr. S.D Sanjay, Additional Solicitor General
Mr. Kumar Priya Ranjan, CGC
For the AIIMS Patna : Mr. Binay Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 19-12-2019

These two writ petitions arise from the order dated 30.03.2016 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short 'the Tribunal') in OA/050/00062/16 filed by the petitioner of CWJC No.14821 of 2018 Dr. Bheem Prasad.

2. O.A./050/00062/16 was filed by Dr. Bheem Prasad before the Tribunal seeking the following reliefs:-

"I. The Notice as contained in Annexure A/10 be quashed.

II. During pendency of the instant application the Notice as contained in Annexure 10 be stayed.

III. The respondents be directed to allow the applicant to resume his services as Assistant Professor Anatomy, AIIMS, Patna."



3. After hearing the parties, vide order dated 30.03.2016, the Tribunal set aside the order dated 07.01.2016 issued by the Director, All India Institute of Medical Sciences, Patna (for short 'AIIMS Patna') observing as under:-

“15. We pointedly the asked the respondents' counsel to show the order by which after verification of document the applicant was appointed as Senior Resident. Even after giving adequate opportunity the respondents have not been able to produce any such letter. In their supplementary affidavit also they are silent on this aspect. The only logical inference we are compelled to draw is that the applicant was considered eligible for the post of Assistant Professor in all respects except the experience. Since no specific order appointing him as Senior Resident was issued, we conclude that the authorities required him to complete three years residency after which he would be automatically appointed as Assistant Professor. We have also noted the case of Susmita Das who was also short of three years experience, but she has been appointed as Assistant Professor. The respondents have made no reference to this case in their reply. Therefore, there is some merit in the argument of the applicant that in view of Susmita Das case he had legitimate expectation that he would be automatically appointed as Assistant Professor on completion of three years.



16. There is an unusual situation in this case that there is no specific order subsequent to the preliminary conditional appointment letter that upon verification the applicant was offered appointment as Senior Resident. On the other hand, the applicant has already worked for three years as Senior Resident under whatever circumstances. It also transpires that even though the term of three years expired on 12.08.2015 the notice for termination has been issued on 07.01.2016 and termination will be effective only in April, 2016. Thus, the authorities have also allowed the applicant to continue for about 8 months more than three years. This shows acquiescence on the part of the respondent too. This endorses the submission of the applicant that there was an understanding that upon completion of the required experience of three years he would be offered an appointment as Assistant Professor. There are no other averments on the part of the respondents regarding any deficiency on the part of the applicant nor absence of vacancy. The fact that the post is advertised again means that the post exists for which the applicant was originally selected. We have also noted that in duty rosters for faculties placed at Annexure/9 series the applicant has been shown as Assistant Professor.

17. In view of the above, the equity lies in favour of the applicant. Therefore, we quash and set aside the order dated 07.01.2006 (Annexure-



10) and direct that on completion of the three months' notice, i.e. from 06.04.2016, the applicant shall automatically be entitled to be appointed as Assistant Professor as he would have already completed more than three years of experience. We are making it clear that this order is being passed based on peculiar circumstances of the case and cannot be cited as a precedent by other Senior Residents.”

4. Being aggrieved by the aforestated order dated 30.03.2016, the Director, AIIMS, Patna filed CWJC No.20011 of 2016 praying therein as under:-

“That the present writ petition is being filed for setting aside the order dated 30.03.2016 passed by the learned Central Administrative Tribunal, Patna Bench, Patna in OA/050/00062/16 whereby and where under the Ld. Tribunal has allowed the prayer made by the applicant by setting aside the order dated 07.01.2016 issued by the Director, All India Institute of Medical Sciences, Patna whereby the applicant was directed to be relieved with effect from 06.04.2016. The Ld. Tribunal has further directed that on completion of the three months' Notice, i.e. from 06.04.2016, the applicant shall automatically be entitled to be appointed as Assistant Professor as he would have already completed more than three years of experience.”

5. Similarly, being aggrieved by the order dated



30.03.2016 passed by the Tribunal, Dr. Bheem Prasad also preferred CWJC No.14821 of 2018 seeking the following reliefs:-

“I. The Hon’ble Court may be pleased to issue writ in the nature of Certiorari or any other appropriate writ, quashing part of the Order dated 30.03.2016 passed in OA No. 050/00062/16 by the Learned Central Administrative Tribunal, Patna Bench, Patna whereby and where under erroneous finding has been made that petitioner has been working on the post of Senior Resident and on basis thereof it has been directed to appointing him to the post of Assistant Professor.

II. This is consequently prayed that a writ in the nature of writ of certiorari may be issued quashing the letter No.835/AIIMS/Pat/Dir./2016 dated 07.01.2016 issued under the signature of the Director, AIIMS Patna whereby and where under petitioner was notified to be relieved from Service with effect from 06.04.2016.

III. That the Hon’ble Court may further be pleased to issue writ in the nature of Mandamus directing the respondent authorities to allow the petitioner to continue on the post of Assistant Professor, Anatomy, AIIMS Patna where he was duly selected & appointed pursuant to recruitment process notified vide Advt. No.: Faculty New AIIMS No.1/2011/dated 28th of December, 2011 and grant him the benefits of



Assistant Professor with effect from his initial date of joining.

IV. Any other/further consequential relief/reliefs in the facts & circumstances of the case, which the Hon'ble Court deems fit, the Hon'ble Court may kindly be pleased to issue necessary order or direction in connection thereof.”

6. During pendency of the writ petitions, on 19.09.2018, letter No. 268 was issued under the signature of Director, AIIMS, Patna whereby Dr. Bheem Prasad was notified to be relieved on 19th September, 2018 from the post of Senior Resident, Department of Anatomy. Then, he filed an interlocutory application vide I.A. No. 7578 of 2018 in CWJC No.14821 of 2018 praying therein for addition of the following relief:-

“This is also for issuance of a writ in the nature of writ of certiorari quashing the order/letter No.268 dated 19.09.2018 (as contained in Annexure-21) issued under the signature of Director, All India Institute of Medical Science Patna”.

7. The said prayer was allowed by this Court vide order dated 27.09.2019.

8. Since these writ petitions arise out of common order passed by the Tribunal, most of the questions, which arise for consideration are common and, the parties are also common,



they have been heard together and are being decided by a common judgment.

9. For the sake of convenience, the relevant facts necessary for adjudication of these two cases are being taken from CWJC No.14821 of 2018.

10. The Ministry of Health and Family Welfare, Government of India issued Advertisement No.1/2011 dated 28.12.2011, which was notified on website and published in English daily Hindustan Times dated 30.12.2011 for filling up the Faculty positions in six newly constituted AIIMS including AIIMS, Patna. The Faculty positions advertised were for the posts of Professor, Additional Professor, Associate Professor and Assistant Professor under different departments of new AIIMS including the AIIMS, Patna. The said posts included five posts of Assistant Professor in the Department of Anatomy. Out of the five posts of Assistant Professor, four posts were for unreserved category while one post was reserved for the candidate from the OBC category.

11. The qualification criterion mentioned in the advertisement states that *“qualification may be relaxed for highly experienced, trained or reputed candidates at the discretion of the search cum selection committee. However, they*



generally are:

(1) PG Degree recognized by the MCI or Equivalent in the concerned subject, A PG degree Lab Medicine will be considered for application to Posts in Pathology.

(2) P.hD. or Equivalent in the Anatomy, Physiology, Biochemistry, Pharmacology, Microbiology, Pathology recognized in India for non Medical Candidates.

(3) Nursing: As per recommendations of the Nursing Council of India.”

12. The experience criterion as mentioned in the advertisement stipulates that for Assistant Professor, it would be three years of Teaching/Research Experience after Qualifying degree or three years as Senior Resident or Equivalent.

13. Pursuant to the aforesaid advertisement dated 28th December, 2011, Dr. Bheem Prasad had applied for the post of Assistant Professor, Department of Anatomy.

14. After initial screening, the Selection-cum-Search Committee called the petitioner Dr. Bheem Prasad for interview for the post of Assistant Professor, Anatomy on 10th April, 2012.

15. The interview letter sent to the petitioner reads as under:-



“To

Dr. Bheem Prasad
H.No. A/9, Type 1, AMPRI Campus,
Near Habibganj Naka, Hosangab Road,
Bhopal (M.P.), Bhopal
Madhya Pradesh 462026
09630232444, 09074858441
prasadbheem@gmail.com
Dear Dr. Bheem Prasad,

Kindly refer to your application number FNAIIMS012011-003087 for new AIIMS Faculty Position under PMSSY, for Assistant Professor in the Subject of Anatomy.

May we request you to appear for interview at 9 am on 10th April 2012. At National Institute of Health & Family Welfare, Education Block, Munirka, New Delhi.

Along with:

1. Kindly bring a fresh (recently generated) Hard copy of your online application PDF, with corrections if any, duly signed along with any documents that you have not submitted online but submitted on hard copy. Kindly let these discrepancies known to the selection committee so that you can be duly evaluated for such documents.
2. Kindly bring the proof of payment of the processing fees in the absence of which if we do not have bank confirmation of your payment you may have to submit the due but unpaid processing fees at the time of the interview.
3. Originals for Verification along with Self Attested photocopy for submission.
4. Suggested list of Originals are:
. Age Proof



- . Degree
- . Mark-sheets
- . Reservation Proof/Certificates
- . No-Objection Certificates, in cases required.
- . Any other Documents in support for your candidature

Kindly, send your confirmation at this Email
Address: facultyinterview@aiimspatna.org
Phone Number: +91-9968120034

In case you are not in India/Not able to attend interview at the schedule date/time, at the discretion of the search-cum-selection committee, your application may be considered in absence or you may be contacted telephonically or online. In this case intimates your mobile number/landline number/Skype address/Email along with explicit reason as to why your wish to avail this facility.

Sincerely
Sd/
Administrative Officer
AIIMS Patna”

16. The petitioner Dr. Bheem Prasad appeared in the interview along with the original certificates regarding qualification, experience, proof of age, no objection certificate, etc.. The result of the selection was published on 13th of July, 2012 and the petitioner was shown as selected for the post of Assistant Professor in the Department of Anatomy for AIIMS, Patna.

17. Though, the petitioner belongs to the OBC category and was also entitled for consideration against one



reserved post, the selection committee found him fit to be selected in the open category, i.e. for unreserved post.

18. After declaration of the result, the petitioner was issued appointment letter dated 18.07.2012 under the signature of the Director, AIIMS, Patna. He was directed to join on the post of Assistant Professor in the Department of Anatomy.

19. Thereafter, he submitted his joining on 21st of August, 2012 in the AIIMS, Patna.

20. The contention of the petitioner Dr. Bheem Prasad is that though he was appointed as Assistant Professor at AIIMS, Patna and the institute proudly declared him as such in its brochure and its website, he was arbitrarily being paid the salary of Senior Resident. He repeatedly filed representation to the Director, AIIMS, Patna to correct the anomalies in his pay scale and the then Director assured that it would be done soon, but it was never corrected and ultimately the Director, AIIMS issued letter dated 07.01.2016 for removing him from the post with effect from 06.04.2016 terming him as Senior Resident. As the said termination was not on ground of misconduct, breach of service condition, etc., he moved before the Tribunal vide O.A. No.050/00062/2016. The Tribunal quashed the order dated



07.01.2016 and directed that on completion of three months' notice, i.e. from 06.04.2016, he shall automatically be entitled to be appointed as an Assistant Professor, as he would have completed more than three years of experience.

21. Being aggrieved by part of the aforesaid order dated 30.03.2016 passed in OA No.050/00062/2016 by the Tribunal, Dr. Bheem Prasad filed the writ petition vide CWJC No.14821 of 2018.

22. Mr. K.D. Chatterjee, learned senior advocate appearing for the petitioner Dr. Bheem Prasad submitted that the Tribunal has given an erroneous finding that the petitioner was working on the post of Senior Resident and, on basis thereof, it has directed to appoint the petitioner to the post of Assistant Professor on completion of three months' notice, i.e. from 06.04.2016. He contended that the advertisement was for the post of Assistant Professor against which the petitioner had submitted his application. The selection committee had the power to relax the criterion in suitable and exceptional cases. The selection committee considered the qualification of the petitioner and found the same to be suitable and exceptional and, thus, relaxed the eligibility criteria and recommended his name for appointment. The Appointing Authority also finding



him suitable, appointed him on the post of Assistant Professor. His selection was made against a regular post. There is no allegation that there was any suppression or misrepresentation on the part of the petitioner and, thus, by no stretch of imagination, it can be said that he was appointed on any post other than the post of Assistant Professor.

23. Mr. Chatterjee, learned senior advocate further contended that the petitioner had done M.Sc. in Genetics and by the time of filling application form for the selection he was about to submit his thesis for P.h.D. in Genetics with Studies on “Cytogenetics Studies in Infertile Couples” and also had experience of research. He was working as Lecturer (part time) in college of Nursing & Physiotherapy from January, 2009 to January, 2012 in Rajeev Gandhi College, Bhopal, which is an unit under Barkatullah University. While working as part time Lecturer, he was also doing his P.h.D. research. Besides that, he also worked as guest faculty from 2010 to 2012. He urged that out of five vacant posts of Assistant Professor in the Department of Anatomy, only four candidates were selected and out of which, only two successful candidates have joined the service. All the four selected candidates were selected on unreserved posts. Albeit the petitioner was an OBC candidate, he was also



selected on an unreserved post.

24. He submitted that the Tribunal, though, quashed the impugned order dated 07.01.2016 passed by the Director, AIIMS, Patna, but has wrongly held that there is acquiescence on the part of the petitioner and that he had worked as Senior Resident for three years on payment of consolidated amount.

25. He submitted that the Senior Resident is given consolidated amount, but his grade pay was wrongly fixed at Rs. 6600/- as a result of which his basic pay was Rs.15600/- whereas other Assistant Professor selected pursuant to the same recruitment process are getting basic pay of Rs.40320/- and the total salary which the petitioner was getting was just about half of the salary the other Assistant Professor selected through same selection process were getting.

26. He further contended that there is no question of acquiescence on the part of the petitioner, as he was raising the issue frequently and was objecting to illegal and discriminatory treatment meted out to him by the Director, AIIMS, Patna in the arbitrary manner. There was no abandonment of right on the part of the petitioner. There could not have been any waiver of right to the post of the Assistant



Professor, Anatomy.

27. *Per contra*, Mr. S.D. Sanjay, learned Additional Solicitor General appearing for the respondent-Director, AIIMS, Patna (petitioner in CWJC No.20011 of 2016) submitted that the Tribunal failed to appreciate that the petitioner was selected for the post of Assistant Professor subject to verification of three years post-PG/P.hD. Experience. Since the petitioner was not having requisite experience, he was allowed to join as Senior Resident and not as an Assistant Professor. He submitted that the Tribunal also failed to appreciate that at the time of selection, the petitioner was not having three years' teaching experience and, hence, he was not eligible to be appointed as an Assistant Professor. He contended that the services of the petitioner were dispensed with, as the maximum tenure of Senior Resident is of three years. According to him, the Tribunal has shown undue sympathy upon the petitioner and, thus, had failed to consider that an ineligible candidates cannot be appointed later on even when he acquired the requisite eligibility on a later date.

28. He argued that that the petitioner ought to have the requisite qualification and experience as mentioned in the advertisement on the relevant date and not at any later date.



He submitted that the adverse inference drawn by the Tribunal is not in consonance with the established principle of law. He further urged that the petitioner had willingly accepted the post of Senior Resident. He joined and worked as Senior Resident and later on, demanded to be upgraded as an Assistant Professor, which would amount an indirect entry and would be against the principle of natural justice.

29. Lastly, he contended that even if the petitioner was appointed to the post of Assistant Professor, such appointment would not confer him any right to the post of Assistant Professor for which he was not eligible at all.

30. On the basis of the aforesaid submissions, he contended that the impugned order dated 30.03.2016 passed by the Tribunal is unsustainable in the eyes of law. According to him, OA application filed by Dr. Bheem Prasad before the Tribunal ought to have been dismissed.

31. In reply, Mr. K.D. Chatterjee, learned senior advocate appearing for the petitioner Dr. Bheem Prasad submitted that the post of Senior Resident is a training-cum-job post, which has a fixed tenure. The duty of Senior Resident is patient care in a hospital. A Senior Resident has to examine all patients and to give treatment, etc. He contended that for



appointment on the post of Senior Resident a candidate is required to possess educational qualification of MS/MD/DNB/MCH,DNB. As far as the petitioner is concerned, admittedly, he is a non-medico post-graduate candidate. For the posts in the Department of Anatomy, Physiology, Biochemistry, Pharmacology and Microbiology, non-medical teachers may be appointed to the extent of 30% of total number of posts as per MCI Regulation of 1998. He has also drawn my attention towards the pleadings of the petitioner in CWJC No.20011 of 2016 in order to show that even the case of the respondent-AIIMS, Patna is that the petitioner was appointed against the post of Assistant Professor.

32. The aforesaid contention of the petitioner Dr. Bheem Prasad has not been contradicted by the respondents.

33. We have heard the parties and carefully perused the records of both the writ petitions.

34. The moot question in these two writ petitions are:-

- (i) Whether Dr. Bheem Prasad was appointed as an Assistant Professor or as a Senior Resident?
- (ii) Whether a person having a non-medico background can in any circumstance be selected/appointed as Senior Resident?



35. Having heard the parties, it is important to advert, first and foremost, the pleadings of the Director, AIIMS, Patna made in CWJC No.20011 of 2016 in paras 3 to 13, which are as under:-

“3. That the brief factual matrix giving rise to filing of the Writ Petition is that the **applicant (private respondent herein) had applied against the Post of Assistant Professor, in the department of Anatomy, in response to the Advertisement issued by the Government of India, Ministry of Health and Family Welfare, vide adv. Faculty New AIIMS No.1/2011 dated 28th December, 2011.**

4. **The Applications for the post of Asstt. Professor were called for from the candidate having 3 years of teaching/research experience after qualifying Degree or 3 years as Senior Residents or equivalent (Para XXIII of Advertisement in Column Experience).**

5. As per Para-XII Qualifications-The minimum qualification for non medical candidates was Ph.D. or equivalent for the post of Asstt. Professor.

6. The interview letter issued to Contesting Respondent was with the condition to bring original certificate for verification of



following documents along with self attested photo copies for submission:

- 1) Age proof
- 2) Degree
- 3) Mark-sheets
- 4) Reservation proof/certificate
- 5) No objection certificate, in case required
- 6) Any other documents in support of your candidature.

7. That the applicant was called for interview to be held on 10.04.2012 at New Delhi. He was asked to bring original certificates for verification along with self attested photo copies of the testimonials and other documents in support of his candidature.

8. **That the applicant appeared for interview on 10.04.2012 at New Delhi, for the post of Asstt. Professor (Anatomy) as the interview was for the post of Asstt. Professor (Anatomy) only and there was no vacancy for the post of Senior Resident in the advertisement issued (Para-11 of the advertisement dated 28.12.2011 under the head details of posts).**

9. **After the interview for the post of Asstt. Professor, a panel was drawn by the Selection Committee headed by Dr. G.K. Singh, the then Director, AIIMS-Patna, whereby Dr. Bhim Prasad was**



recommended for the post of Asstt. Professor (Anatomy) which was approved by the Ministry of Health & Family Welfare, Govt. of India (Annexure-to and Annexure-I Colly) subject to verification of qualification and experience, etc.

10. That it is stated that AIIMS-Patna issued appointment letter to applicant vide reference No. AIIMS/PATNA/ 20163 dated 18.07.2012 for appointment to the post of Assistant Professor/Senior Resident in the Department of Anatomy, AIIMS-Patna, wrongly, subject to verification of qualification & experience. In fact the post of Senior Resident was neither advertised nor recommended by Selection Committee, nor approved by the Ministry of Health & Family Welfare.

11. That the applicant communicated the acceptance against the offer of appointment to the post of Assistant Professor / Senior Resident in the Department of Anatomy of AIIMS-Patna subject to verification of qualification & experience and assured to join the same before 21.08.2012 both by means of Post and email.

12. That it is stated that since the desired experience for the post of Assistant



Professor was not possessed by the applicant, he was allowed to join to the post of Senior Resident by AIIMS-Patna again wrongly, which he though accepted and joined. **The candidate applied only against the post of Asstt. Professor. He was interviewed for consideration for the Asstt. Professor only. The Selection Committee also recommended empanelment as Asstt. Professor only. The Competent Authority also approved appointment as Asstt. Professor only** subject to meeting of qualification and experience criterion by the candidate Shri Bheem Prasad. However, as it turned out Shri Bheem Prasad failed to meet the experience criterion. In these circumstances, Shri Bheem Prasad was not to be given any appointment. However, Director, AIIMS-Patna offered him appointment on the post of Asstt. Professor/Senior Resident. This was a wrong action on the part of the Director, AIIMS. **In fact, the post of Senior Resident was not advertised at all, hence no appointment against the post of Sr. Resident could be offered. This was never approved by the Competent Authority in this case.** Notwithstanding to the above, offer of appointment letter issued by AIIMS-Patna wrongly, was specific enough for the



post of Senior Resident and no other word and or explanation is / was necessary.

13. That the applicant worked as Senior Resident and was paid his salary accordingly. It is stated that tenure of Senior Resident is of three years as per the Residency Scheme and as such he was issued three months termination Notice dated 07.01.2016 in view of clause 3 in the offer of appointment letter.” (emphasis supplied)

36. The aforesaid pleading of the Director, AIIMS, Patna, would make it abundantly clear that through the advertisement dated 28th December, 2011, applications were called for from the candidates for the post of Assistant Professor, Anatomy by the Government of India, Ministry of Family Welfare and Dr. Bheem Prasad had applied against the post of Assistant Professor in the Department of Anatomy in response to the advertisement. He appeared for interview on 10.04.2012 at New Delhi for the post of Assistant Professor (Anatomy) only and there was no vacancy for the post of Senior Resident in the advertisement dated 28.12.2011. After the interview for the post of Assistant Professor, a panel was drawn by the selection committee whereby Dr. Bheem Prasad was recommended for the post of Assistant Professor (Anatomy),



which was approved by the Ministry of Health and Family Welfare, Government of India.

37. It would further be evident that AIIMS, Patna issued appointment letter to the petitioner for appointment to the post of Assistant Professor/Senior Resident in the Department of Anatomy.

38. Thus, the undisputed case, even, according to the AIIMS, Patna is that the post of Senior Resident was neither advertised nor Dr. Bheem Prasad made any application for the said post nor he faced interview for that post nor his recommendation by the selection committee was made for the post of Senior Resident rather for the post of Assistant Professor.

39. Under the circumstances, the contention of the Director, AIIMS, Patna that since Dr. Bheem Prasad did not have the desired experience for the post of Assistant Professor, he was allowed to join the post of Senior Resident at AIIMS, Patna, which he accepted and joined cannot be accepted. The petitioner had applied only against the post of Assistant Professor. He was interviewed for consideration for the post of Assistant Professor only. The selection committee also recommended his appointment on the post of Assistant



Professor only. The competent authority also approved appointment as Assistant Professor. Since there was no vacancy to the post of Senior Resident, the AIIMS, Patna could not have appointed him against the said post.

40. Thus, we are of the opinion that the appointment of Dr. Bheem Prasad was for the post of Assistant Professor, Anatomy and not as a Senior Resident.

41. As far as the contention of the Director, AIIMS, Patna that since Dr. Bheem Prasad failed to meet the experience criterion, he was offered appointment on the post of Senior Resident is concerned, the same is fit to be rejected. It has rightly been contended by Mr. K.D. Chatterjee, learned senior advocate representing the case of Dr. Bheem Prasad that the post of Senior Resident is not a non-medico post. It is a training-cum-Job post and the duty of Senior Resident is patient care in hospital. Further, for appointment on the post of Senior Resident, a candidate is required to possess educational qualification of MS/MD, DNB/MCH, DNB.

42. Admittedly, Dr. Bheem Prasad is a non-medico teacher. He does not possess the requisite qualification for appointment on the post of Senior Resident. Hence, under no circumstance, he could have been appointed against the post of



Senior Resident.

43. The next issue for consideration is as to whether the appointment of Dr. Bheem Prasad was *per se* illegal, as he failed to meet the experience criterion.

44. In this regard, it would be proper to refer to the advertisement dated 28th December, 2011, at this stage, once again. In the advertisement, the required experience for the Assistant Professor is mentioned as three years of teaching/research experience after qualifying degree or three years as Senior Resident or equivalent.

45. It is not disputed that at the time of appointment, Dr. Bheem Prasad was not having three years' teaching/research experience after qualifying degree or three years as Senior Resident or equivalent.

46. However, that alone would not be the determinative factor for coming to the conclusion that he failed to meet the experience criterion, and, thus, was not eligible for being appointed as an Assistant Professor, Anatomy. The experience criterion has to be read together with the clause of qualifications as mentioned in the advertisement dated 28th December, 2011 itself. It is clearly mentioned in that clause that qualifications may be relaxed for highly experienced, trained or



reputed candidates at the discretion of search-cum-selection committee.

47. Thus, the search-cum-selection committee was vested with the power to relax the qualifications required for appointment against the vacancies in question.

48. The petitioner, Dr. Bheem Prasad had submitted all his testimonials along with his application, which were duly scrutinized by the search-cum-selection committee.

49. After scrutinizing all the testimonials and interviewing Dr. Bheem Prasad, if the search-cum-selection committee, in its wisdom, relaxed the experience criterion and selected him on the post of Assistant Professor, the wisdom of the selection committee cannot be subsequently changed in an arbitrary manner by the authorities of the AIIMS, Patna.

50. The Tribunal has also observed in its impugned order dated 30.03.2016 that despite having adequate opportunity, the respondent-AIIMS have not been able to produce any such letter, which would show that after verification of documents, Dr. Bheem Prasad was appointed as Senior Resident.

51. We have also seen the duty roster of AIIMS, Patna, which has been brought on record as Annexure-8 series.



The endorsements made therein would clearly show that Dr. Bheem Prasad had discharged his duty in the AIIMS, Patna as an Assistant Professor, Anatomy and not as a Senior Resident.

52. We have further find from the record that AIIMS, Patna had constituted a Tender Purchase Committee on 28.08.2012 consisting of Dr. Tribuwan Kumar, Associate Professor, As Chairman and Dr. Paramjeet Panchal, Assistant Professor and Dr. Bheem Prasad, Assistant Professor, as members.

53. We have also seen numerous other documents annexed to the two writ petitions would clearly show that at all places Dr. Bheem Prasad has been shown as an Assistant Professor and not as a Senior Resident.

54. In view of these materials, we are of the considered opinion that while setting aside the impugned order dated 07.01.2016 issued under the signature of the Director, AIIMS, the Tribunal made an erroneous finding that Dr. Bheem Prasad had been working on the post of Senior Resident and, on basis thereof, it has been directed to appoint him to the post of Assistant Professor on completion of three months' notice, i.e. from 06.04.2016.

55. Keeping in mind the discussions made



hereinabove, CWJC No.14821 of 2018 filed by the petitioner, Dr. Bheem Prasad is allowed. We hold that Dr. Bheem Prasad was duly selected and appointed on the post of Assistant Professor, Anatomy, AIIMS, Patna pursuant to the recruitment process notified vide advertisement dated 28th December, 2011. Hence, the order dated 19th September, 2018 passed by the Director, AIIMS, Patna whereby the petitioner, Dr. Bheem Prasad has been notified to be relieved on 19th September, 2018 from the post of Senior Resident, Department of Anatomy on the premise that Senior Residency of a tenure post of three years and, hence, no further extension can be granted is quashed. The order passed by the Tribunal on 30.03.2016 in OA No. 050/00062/2016 stand modified to the extent indicated hereinabove.

56. Dr. Bheem Prasad shall be entitled to all the benefits of Assistant Professor like any other Assistant Professor, who would have been appointed pursuant to the aforesaid advertisement process dated 28th December, 2011.

57. The Director, AIIMS, Patna is hereby directed to make payment of all the due salary of the petitioner since the date of his appointment within two months from the date of receipt/production of a copy of the order.



58. Consequently, CWJC No.20011 of 2016 filed by the Director, AIIMS, Patna, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J.)

(Prakash Chandra Jaiswal, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.12.2019
Transmission Date	NA

