

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12178 of 2017

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Dr. Raj Kishor Rai, son of late Brij Narayan Rai, resident of village-Manjharia, P.S.-Seorahi, P.O.-Gaurijagdish, District-Kushinagar (Uttar Pradesh), Pin-2744006.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Health Department, Government of Bihar, Patna.
4. The Joint Secretary, Health Department, Government of Bihar, Patna.
5. The Bihar Public Service Commission through its Secretary, 15 Jawaharlal Nehru Marg. Bailey Road, Patna.
6. The Chairman, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg Beilry Road, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kumar Kaushik, Advocate
		Ms. Namrata Dubey, Advocate
For the B.P.S.C.	:	Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 16-12-2019

Heard learned counsel for the parties.

2. The petitioner was appointed as a Medical Officer on contractual basis for two years by an order dated 04.09.2010 issued by the District Health Society, Gopalganj, and was posted at Primary Health Centre, Vijaipur of the said District, pursuant to which, he had submitted his joining on 07.09.2010. His engagement on contractual basis was subsequently extended. Subsequent to the petitioner's engagement on contractual basis, the State of Bihar framed Rules in exercise of the Proviso to Article 309 of the Constitution of India,



namely, 'Bihar Health Services (Appointment & Service Conditions) Rules, 2013' (hereinafter referred to as the 'Rules').

3. Rule 6 of the said Rules prescribes *inter alia*, award of marks against different attributes of an aspirant for appointment in Bihar Health Service, including work experience, against which, maximum of 25 marks can be awarded to a candidate for his experience of work after his appointment in Government Hospital on contract/regular basis, and, for each complete one year of work experience, candidates are to be credited with 5 marks. Relevant portion of Rule 6 of Rules is being reproduced hereinbelow for the benefit of quick reference:

*“(iii) Work Experience after appointment
in Government hospital on
contract/regular basis. Total 25 Marks.
Provided that for each complete one year of work
experience, candidates will be given 5 and thus
maximum 25 marks will be given”.*

4. The Bihar Public Service Commission came out with an advertisement No. 15/2014 on 20.07.2014 inviting applications for appointment of Medical Officers, (Basic Grade) on permanent basis. Needless to say that the recruitment was to be carried out in accordance with the Rules of 2013 and candidates deserved to be awarded marks for their work experience as prescribed in the Rules, relevant portion of which has been quoted hereinabove. The last date of submission of application form was 20th October, 2014 which was



later extended to 05.09.2014. The petitioner appeared for the interview held by the Commission on 09.05.2015, the result was published on 12.10.2015.

5. The only dispute which the present writ application involves is as to whether the petitioner can be said to have completed 04 years of work experience as a Medical Officer on contractual basis as on the last date of submission of application i.e. 05.09.2014, after his joining as a contractual appointee on 07.09.2010. He would have been awarded 20 marks had he been held to have worked for complete four years as contractual appointee as on the last date of submission of application form. It is evident that the petitioner could have completed 04 years on 06.09.2014. It is the petitioner's case that his score was determined as 50.72 whereas the cut-off marks for open category candidate was fixed as 53.04 out of 100. According to him, he was awarded 15 marks against work experience only, though, he had completed 4 years of service on contractual basis and, therefore, he deserved 20 marks. The facts as noted above are not at all in dispute.

6. Counter affidavits have been filed on behalf of the Bihar Public Service Commission and the State of Bihar justifying award of 15 marks to the petitioner against work experience.

7. Mr. Kumar Kaushik, learned counsel appearing on behalf of the petitioner has submitted that even if hyper technical approach of the respondents of treating and insignificant shortfall of



one day in completing 4th year of the petitioner's contractual service, the said shortfall stands compensated, because 2012 was a leap year with 366 days. He has argued that impact of the leap year ought to have been taken into account by the respondents for determining the score against work experience of the petitioner. He has further submitted that the respondents have now come out with an advertisement in 2019 for making appointment of Medical Officers of permanent basis. Since the respondents did not initiate any action immediately after conclusion of recruitment, based on 2015 advertisement, the petitioner is now not eligible to participate in the process of selection, subsequent to the said advertisement issued in 2019. He has placed reliance on a decision of the High Court of Kerala dated 22.09.2015 passed in **WP(C) No. 10405 of 2009 (Mathai M.V. Vs. Accountant General (A&E), Tvm. And Ors.** reported in **2016 LabIC68**, paragraph 7 of which, reads thus:-

“7. As rightly pointed out by the learned Senior Counsel for the petitioner in the calculation made by the respondents, the impact of leap years has not been taken into account. This is a crucial aspect in this case as the benefit of 27 years is denied only for the shortage of one day. If it is 26 years and 5 months, it cannot be rounded to 27 years as per Rule 57 of Part III KSR. There would be one leap year in every four years. The leap year being relevant in the particular context of this case, a further probe into it is germane”.



8. The said decision, he contends, has been affirmed by the Division Bench of the Court in W.A. No. 146 of 2016 by Judgment and Order dated 17.07.2017 (MANU/KE/1362/2017) wherein it has been clearly held that the existence of one day extra in a leap year, is a factual reality and cannot be overlooked when it become crucial in calculation of any period.

9. Mr. Sanjay Pandey, learned counsel appearing on behalf of the Bihar Public Service Commission, on the other hand, has submitted that expression “each complete year” as occurring in Rule 6 of the Rules, means a year reckoned according to the British Calendar, and the same cannot be interpreted in any manner, with reference to previous years including 2012 which was a leap year. He has relied on a Supreme Court decision in case of ***Tamal Lahiri vs. Kumar P.N. Tagore (1978 AIR 1811)*** wherein the Supreme Court had the occasion to interpret the expression “within six months next after the Commission” and it has been laid down that the said expression is to be construed to mean six calendar months and not 180 days.

10. In view of the rival submissions made on behalf of the parties, in my opinion, the resolution of the controversy lies in language of the Rule 6 of the Rules itself. This has to be always kept in mind that while interpreting statutory provisions, the Court is neither required to add any word nor to subtract one. The legal maxim ‘*A Verbis legis non est Recedendum*’ has been one of the fundamental



Rules of statutory interpretation which means that there should not be any departure from the words of the law.

11. Coming back to the Rule 6, based on which, the advertisement has prescribed determination of score against work experience, it clearly provides that maximum marks which can be awarded for the said attribute would be 25. It further requires that for each complete year, 5 marks would be awarded. It does not refer to combination of years rather a year as an independent unit. If read closely, the said provision clearly means that for one completed year, a candidate would get 5 marks, for other completed years, another 5 marks and for yet another completed year, again 5 marks, and so on. A year as a unit has to be the basis to determine score of a candidate against work experience as per the requirement under the Rule. The argument, that since the year 2012 was a leap year, and, therefore, one day of that year ought to have compensated, the deficit for the year 2014, is not at all acceptable to this Court as that would be contrary to the language of the Rules.

12. If in the aforesaid background, the case of the petitioner is to be examined, after having joined on contractual basis on 07.09.2010, he acquired one complete year of experience on 06.09.2011 against which he was entitled for 5 marks. Similarly, for subsequent years ending on 06.09.2012 and 06.09.2013, he completed second and 3rd complete year of experience. 4th year of experience he could not be said to have completed as on the last date of submission



of application form i.e. 05.09.2014. While examining this aspect, by way of repetition, I must record, that for each independent complete year, the petitioner as a candidate, deserved 5 marks of work experience.

13. Learned counsel for the petitioner, to make out his case, has attempted to club the years of his experience by asserting that impact of the leap year of 2012, ought to have been taken into account.

14. The decisions of Kerala High Court in case of *Mathai M.V. Vs. Accountant General* (Supra) and *Accountant General (A&E) Vs. Mathai* (Supra) do not have any application in the facts and circumstances of the case as the Kerala High Court, in that was considering whether the petitioner had completed 27 years of his service, or not, as qualifying service for the purpose of granting him pensionary benefits. In that case, the Kerala High Court was considering competition of period of 27 years and not a year as a unit, against each of which, a person was entitled to have benefit/credit.

15. In my opinion, no other interpretation of the said provision under Rule 6 of the Rules can be given, if the words used therein, are read as they are. The language does not suffer from any ambiguity. It is a sound rule of statutory interpretation that the Court must proceed on the assumption that legislature did not make a mistake and that it did, what it intended to do. The Court cannot averse to attitude or read words into it, which are not there,



particularly, when literal reading produces intelligible results (*AIR 2001 SC 2699 (Dadi Jagannadham V. Jammulu amulu and Others)*). The privy counsel in case of *Royal Trust Company Vrs. Ministry of Finance (AIR 1921 P.C. 184)* remarked that making an averse addition to the language of the Act would not be a construction of the statutory provision, rather would be an amendment thereof, which is impermissible.

16. The cut-off date of 05.09.2014, the last date for submission of application, appears to have been uniformly applied for determination of score against work experience in the matter of the selection/recruitment in question. The petitioner, in my view, cannot be said to have acquired fourth complete year of experience and he was, therefore, rightly awarded 15 marks for his 1st, 2nd and 3rd complete years of experience.

17. For the reasons aforesaid, I do not find any merit in this application. This writ application is, accordingly, dismissed.

18. No orders as to costs.

(Chakradhari Sharan Singh, J)

S.Ali/-

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CAV DATE	N.A.
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