

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10173 of 2018

=====

The Director, All India Institute Of Medical Sciences, Patna, Phulwarisharif,
P.S.- Phulwarisharif, P.S.- Phulwarisharif, District- Patna..... .. Petitioner

Versus

1. Dr. Supriya Sharma W/o Dr. Gaurav Pande, Posted as Assistant Professor
SGPGI, Lucknow, resident of G-99, P.C. Colony, Kankarbagh, P.S.-
Kankarbagh, District- Patna
2. Dr. Gaurav Pande S/o Dr. S.B. Pandey, Posted as Assistant Professor, SGPGI
Lucknow, Resident of G-99, P.C. Colony, Kankarbagh, P.S. Kankarbagh,
Distirct-Patna.

.. ... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Ad. S.G Mr. Binay Kumar Pandey, Advocate Mr. Mohit Agarwal Advocate
For the Respondent/s	:	Mr. Mukeshwar Dayal, Advocate Mr. Vivek Mohan, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 10-07-2019

Challenge in the present writ application is to the order dated 13.04.2018 passed by learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as 'the Tribunal') in O. A./050/00103/2018 by which the learned Tribunal has been pleased to hold that the applicants who are respondent no. 1 and 2 in the present writ application possess qualification in terms of the notification of the Government of India in its Ministry of Health and Family Welfare dated 20th February, 2009 (Annexure '6' to the O. A.)



hence, the applicants should be considered for the post of Additional Professor in the concerned department of the All India Institute of Medical Science, Patna (hereinafter referred to as the 'AIIMS').

In the present case AIIMS, Patna came out with an advertisement dated 21.03.2017 inviting applications for recruitment for the faculty and non-faculty (Group A) posts for various departments on direct recruitment basis. According to the petitioner, the advertisement took all care to adhere to the AIIMS (Amendment) Act, 2012, Rules and Regulations governing AIIMS along with the relevant orders of the Government of India. The 'advertisement' was not challenged by the private respondents, they applied for their selection on the post of Additional Professor, Surgical Gastroenterology and Gastroenterology respectively. Respondent no. 1 wanted her appointment to the said post in the department of Surgical Gastroenterology whereas respondent no. 2 was looking for appointment in the department of Gastroenterology. The educational qualification for super speciality discipline prescribed in the advertisement reads as under :

2.	Additional Professor	Essential for super speciality discipline:- Educational Qualification 1. A medical qualification included in the I or II schedule or part II of the third
----	----------------------	---



	schedule to the Indian medical council Act of 1956 (persons possessing qualifications included in part II of third schedule should also fulfill the condition specified in section 13 (3) of the Act.) 2. A post graduate qualification e.g. MD/MS or a recognized qualification equivalent thereto in the respective discipline/subject. 3. D.M. in respective discipline/subject for medical supper-specialties and M.Ch. in respective discipline/subject for surgical super-specialties (2 years or 3 years or 5 years recognized course) or qualification recognized equivalent thereto. Experience: Eight years teaching and/or research experience in recognized institution in the subject of specialty after obtaining the qualifying degree of D.M./M.Ch. (2 years or 3 years or 5 years course recognized after MBBS) in the respective discipline/subject or a qualification recognized equivalent thereto. Or Seven years teaching and/or research experience in recognized Institution in the subject of specialty for the candidates possessing 3 years recognized degree of D.M. /M. Ch in the respective discipline/subject or a qualification recognized equivalent recognized equivalent thereto.
--	---

It is not in dispute that both the respondents are possessing the required degree as they have done DIPLOMATE OF NATIONALBOARD (DNB) in the Super Specialty discipline which is equivalent to D.M/M.Ch but what is in dispute is their experience.

It is the contention of the respondents herein that the seven years teaching and/or research experience in the subject of specialty as required in terms of the advertisement be counted



by taking into consideration the three years period which they spent in pursuing the DNB course. The Director, AIIMS (petitioner) has taken a plea that in terms of the advertisement the seven years teaching and/or research experience in the subject of specialty should have been obtained after obtaining the qualifying degree of D.M/M.Ch or a qualification recognized equivalent thereto. The respondents have heavily relied upon a notification dated 20th February, 2019 issued by the Government of India in its Ministry of Health and Family Welfare which is quoted hereunder for a ready reference:

“No. V. 11025/12/2004-MEP-(I)
Government of India
Ministry of Health & Family Welfare
(Department of Health & Family Welfare)

New Delhi, Dated the 20th February, 2009

NOTIFICATION

S.O. 522 (E).- In exercise of the powers conferred by sub-section (2) of the Section II of the Indian Medical Council Act, 1956 (Act 102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments to the First Schedule to the said ACT, namely :-

2. In the Medical Council Act, 1956, in First Schedule “National Board of Examination”., after the entry “Diplomate National Board (Pharmacology) [Diplomate in N.B. (Pharm)]”, the following note shall be inserted, namely:-

“Note:- 1. The Diplomate National Board (DNB), qualifications included in this Schedule shall be treated as equivalent to M.D., M.S., D.M. and M. Ch.



Qualifications of the respective specialty or super specialty, as the case may be, for all purposes including appointment to the teaching posts in the medical institutions.

2. The teaching experience gained while pursuing DNB courses shall be treated as teaching experience for appointment to the teaching posts in the medical institutions.” (emphasis supplied)

The case of the respondents is thus, based on the notification as they argue that the ‘AIIMS’ cannot be permitted to lay down a different condition with regard to the experience de-hors to the “Note” inserted in the first schedule of the Medical Council Act, 1956 after the Entry “Diplomate National Board (Pharmacology) [Diplomate in N.B. (Pharm)]”. On the contrary the stand of the petitioner is that the teaching experience gathered prior to DNB could not count. It is submitted that AIIMS has got power to provide for the qualification and experience for appointment to a post under the institute and there is no bar either under the AIIMS Act or the Rules framed thereunder by the Central Government if the appointing authority in order to obtain the services of much experienced faculties decides to require seven years of teaching experience /research experience in the subject of specialty acquired after obtaining the qualifying degree of D.M/M. Ch. The learned Tribunal vide its order dated 13th April, 2018 passed



in O.A/050/00103/2018 took note of the submissions of the parties and accepted the case of the applicants. Pleas of the Director, AIIMS, Patna have been rejected saying that the advertisement in question cannot be allowed to override the statutory provisions as indicated in the Medical Council of India Act, 1956 after the amendments to the First Schedule vide notification dated 20th February, 2009. According to the learned Tribunal, the advertisement has to be in consonance with the Medical Council of India Act, 1956 and has to be construed to imply something in tune with the Act and not contradicting it or offending it. The Tribunal relied upon the maxims:

“(i) UNIS EST EXCLUSION ALTERIUS:- Meaning whatever has not been included has by implication excluded.

(ii) EXPRESUM FACIT CESSARE TACITUM- is when there is express mention of certain things, anything not mentioned is excluded.”

In the ultimate analysis the Tribunal held that both the applicants possess qualification in terms of the notification (Annexure ‘A/6’) and they are to be considered for the posts in question as they were eligible in terms of the advertisement dated 21.03.2017 (Annexure- ‘A/3’).

The Director, AIIMS, Patna who is the writ petitioner



before us has assailed the impugned order on various grounds. It is his contention that the AIIMS Recruitment Rules are different than that of the Medical Council of India and in the matter of filling up of the post of Additional Professor, Gastroenterology and Surgical Gastroenterology, he has rightly proceeded to follow the AIIMS Recruitment Rules in its true letters and spirit. It is stated that the AIIMS, Patna is an Autonomous institute of national importance established under the provisions of the AIIMS Act 1956 (Act No. 25 of 1956). It has been established and incorporated as a body corporate having its own identity in terms of Section 3 of the AIIMS Act, 1956.

It is pointed out that under Section 25 of the AIIMS Act, 1956, the institute with the previous approval of the Central Government may by notification in the official gazette make regulations consistent with this Act and the Rules made thereunder to carry out the purposes of the Act and without prejudice to the generality of the powers such regulations may provide for inter alia the posts for Professorships, Readerships, Lecturer ships and other posts. It is submitted that the Central Government has also framed Rules in exercise of its power under sub-section (1) of Section 28 of the AIIMS Act 1956 whereunder Rule 24 provides that the age, experience and other



qualifications for appointment to a post under the institute shall be prescribed by the appointing authority keeping in view the qualifications and experience prescribed by the Central Government for similar posts before the applications from the candidates are called for subject to the condition that non-medical personnel shall not be appointed to the post of Director.

It is submitted on behalf of the petitioner that the learned Tribunal while considering the application completely erred in taking a view that the advertisement in question is overriding the statutory provision. The Tribunal, it is submitted, gave emphasis on the notification dated 20.02.2009 (Annexure 'A/6' to the Original Application) and took a wrong view of the matter stating that the advertisement is offending the notification dated 20.02.2009 and is in conflict with the statutory provision. It is submitted that the learned Tribunal could not appreciate that the Medical Council of India Act applies to the establishment of a Medical College established by a person and in terms of Section 10 A of the Medical Council of India Act, 1956 no person shall establish a medical college and do such other acts and deeds as prescribed therein except with the previous permission of the Central Government, however, explanation 1 to Section 10 A specifically provides that for the



purposes of this Section “person” includes any university or a trust but does not include the Central Government, the AIIMS which is an institute established under a special statute enacted by the Parliament of India has been given an autonomous status with all powers to make the appointments on various posts subject, however, that in terms of Section 25 of the AIIMS Act, 1956 the institute shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.

Mr. S. D. Sanjay, learned Additional Solicitor General has assailed the impugned order passed by the learned Tribunal by submitting that the advertisement is in consonance with the recruitment rules of the AIIMS, Patna and by prescribing a higher standard than one prescribed under the Indian Medical Council Act or Medical Council of India Regulations, the petitioner has not violated the provisions of the Indian Medical Council Act or the Regulations framed thereunder by the Medical Council of India.

Mr. Mukeshwar Dayal, learned Advocate representing the respondents has reiterated the submissions of the respondents as according to him there cannot be a condition prescribing experience of 7 years after obtaining the degree of



DNB and any attempt not to count the period spent in pursuing DNB course for the purpose of teaching experience / research experience would be contrary to the notification dated 20.02.2009.

Epilogue

Having heard learned counsel for the parties and on perusal of the records, I find that so far as the conditions with regard to experience prescribed in the advertisement is concerned, a literal interpretation of the condition is not in dispute. The first part of the experience requirement clearly provides “eight years teaching and/or research experience in recognized institution in the subject of specialty after obtaining (emphasis supplied) the qualifying degree of D.M/M.Ch. (two years or 5 years course recognized after MBBS) in the respective discipline or subject or a qualification recognized equivalent thereto”, means the advertisement is talking of the teaching experience / research experience obtained in the subject of specialty after obtaining the qualifying degree. The alternative to the aforesaid requirement prescribes as under:-

“seven years teaching and/or research experience in recognized Institution in the subject of specialty for the candidates possessing three years recognized degree of



D.M/M.Ch in the respective discipline/subject or a qualification recognized equivalent thereto”.

Thus, those who obtained three years recognized degree of D.M/M.Ch., they should have seven years of teaching and/or research experience. This has to be read in consonance with the condition prescribed in respect of eight years of teaching or research experience where it has been clearly laid down that the experience should be after obtaining the qualifying degree.

In the present case the respondent no. 1 has the following degree and experience:

S. No.	Degree	Year of passing	College
1.	MBBS	March 1999	Goa Medical College
2.	MS (General Surgery)	2002	Goa Medical College
3.	DNB (Gastroenterology)	2010	Amrita Institute of Medical Sciences, Kocchi.

Experience:

S. No.	Name of Institution	From	To	Period	Admissible Experience for teaching
1.	SGPGI, Lucknow	2013	2017	4 years	Admissible
2.	AIIMS, Patna	2013	2013	5 months	Not admissible as it is not in the subject concerned
3.	Carrier Institute of Medical Sciences	2011	2013	2 years	Not admissible as it is not in the subject concerned
4.	Amrit Institute of Medical Sciences	2007	2010	3 year	As it was before having requisite qualification



5.	Goa Medical College, Goa	2002	2004	2 years	As it was before having requisite qualification
6.	Goa Medical College, Goa	1999	2002	4 years	As it was before having requisite qualification

Similarly respondent no. 2 has the following educational qualification and experience:

S. No.	Degree	Year of passing	College
1.	MBBS	March 1997	Bangalore Medical College, Bangalore.
2.	MD	2005	Kasturba Medical College, Manipal
3.	DNB (Gastroenterology)	December 2009	National Board of Examination

Experience:

Sl. No.	Name of Institution	From	To	Period	Department	Admissible Experience for teaching
1.	Royal Melbourne Hospital Melbourne, Victoria	Jan 2008	June 2008	5 months		Not admissible as it is before qualifying DNB Examination
2.	Amrit Institute of Medical Sciences, Kocchi	07-01-2010	31-01-2011	1 year		Admissible
3.	Carrier Institute of Medical Sciences & Hospital	03-02-2011	12-03-2013	2 years	General Medicine	Not admissible as it is not in the subject concerned
4.	Johns Hopkins	03-06-2013	15-07-2013	1 months	Gastroenterology	Admissible
5.	AIIMS, Patna	13-02-2013	28-07-2013	5 months	General Medicine	Not admissible as it is not in the subject concerned
6.	SGPGI, Lucknow	2013	2017	4 years	Gastroenterology	Admissible



In the tabular chart shown above the admissible experience for teaching as have been considered by AIIMS, Patna have been shown. If the true literal interpretation of teaching experience as prescribed in the advertisement is applied in the given facts of the case, it would be evident that what is being submitted on behalf of the AIIMS, Patna is correct. The respondents had participated in the selection process knowing fully well the requirement of experience in terms of the advertisement but when their candidature were not found in accordance with the experience conditions, they moved the learned Tribunal for issuance of a direction to the respondents in the Original Application to issue interview letter and to consider their appointment for the post of Surgical Gastroenterology and Gastroenterology.

On perusal of the Original Application I find that their contention before the Tribunal was that the teaching experience obtained by them while pursuing the DNB Course should be treated as teaching experience for appointment to the teaching post in the Medical Institute as per given notification dated 20.02.2009. I find myself unable to agree with the conclusion reached by the learned Tribunal saying that the advertisement cannot be allowed to override the statutory provisions. In my



considered opinion, the Tribunal was not dealing with a challenge to the advertisement and by seeking a experience obtained after possessing the required qualification in the specialty discipline the advertisement did not contravene any statutory provisions. It could not consider that AIIMS, Patna is an autonomous institution, has been incorporated as a body corporate and is a separate entity in the eye of law which has been conferred with powers to make Regulations for the matters enumerated under Section 29 of the AIIMS Act, 1956. Clause K of sub-section 1 of Section 29 of the Act of 1956 provides for one of the matters for which regulations may be framed by AIIMS is the Professorships, Readerships, Lectureships and other posts which may be instituted and persons who may be appointed to such Professorships, Readerships, Lectureships and other posts. Similarly under Section 28 of the AIIMS Act Central Government has been conferred with powers to frame rules. Clause 'C' of sub-section 2 of Section 28 of the AIIMS Act confers powers upon the Central Government to frame Rules regarding the conditions of service, the procedures to be followed by, and the manner of filling vacancies among, members of the Institute.

The AIIMS has in exercise of it's power under sub-



section 1 of Section 29 of the AIIMS Act of 1956, with the previous approval of the Central Government made regulations namely the All India Medical Sciences Regulation 1999. Regulation 24 of the said regulation clearly provides that experience and other qualifications for appointment to a post under the Institute shall be prescribed by the appointing authority keeping in view the qualifications and experience prescribed by the Central Government for the similar posts before applications from the candidates are called for subject to the condition that non-medical personnel shall not be appointed to the post of Director. In exercise of such power the appointing authority has come out with the advertisement laying down the conditions including the qualification and experience for filling up the post of Additional Professor.

A careful reading of the Regulation 24 would show that while prescribing the qualification and experience the appointing authority has to keep in mind the qualification and experience prescribed by the Central Government for the similar post, therefore in my opinion AIIMS appointing authority cannot prescribe a qualification and experience lesser than what has been prescribed by the Central Government. It cannot be interpreted in a manner so as to say that the AIIMS cannot



prescribe a qualification and experience better than what is prescribed by the Central Government. In my opinion the 'AIIMS' is competent to fix a bench mark as has been done in this case. Any other interpretation would take away the statutory status of Autonomous Institution of AIIMS, Patna.

It appears that the learned Tribunal has got influenced by the notification dated 20.02.2019 without appreciating that the appointing authority under the AIIMS Act, 1956 has got statutory power vested in it to prescribe for the experience and in the present case what has been done is that the bench mark of the experience has been raised by the appointing authority. The seven years experience obtained after obtaining the qualifying degree is required for the post of Additional Professor in super specialty. The advertisement, therefore cannot be said to be in conflict with the provisions of the Medical Council of India Act 1956 as there is no Bar either under the Medical Council of India Act or under the AIIMS Act 1956 to the appointing authority, AIIMS, Patna to prescribe a condition seeking better experienced candidates for appointment.

I therefore, find that the impugned judgment of the learned Tribunal cannot sustain the test of law. It is liable to be set aside and is accordingly, set aside.



The original application is dismissed and the writ application is allowed. There will, however, be no order as to the cost.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

avin/-

AFR/NAFR	
CAV DATE	08.05.2019
Uploading Date	10.07.2019
Transmission Date	

