

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12982 of 2017

Dr. Anil Kumar, Son of Late R.L. Choudhary, resident of Hari Memorial,
Bhojpur Colony, Ram Lakhan Path, Kankarbagh Colony, P.s.-Kankarbagh,
District-Patna, PIN Code-800020,

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Medical Health and Education, Health Department,
Government of Bihar, New Secretariat, Patna
3. The Secretary, Department of Health Medical Education and Family Welfare
Government of Bihar, New Secretariat, Patna
4. The Director in Chief medical Education and Family Welfare Government of
Bihar, New Secretariat Patna
5. The Deputy Secretary, Department of Health Medical Education and Family
Welfare Govern Bihar, New Secretariat, Patna
6. The Under Secretary, Department of Health Medical Education and Family
Welfare Government of Bihar, New Secretariat, Patna
7. The Principal, Jawaharlal Nehru Medical College and Hospital, Bhagalpur.
8. The Principal Secretary Cum Commissioner, Personnel and Administration
Department, Govt. of Bihar, New Secretariat, Patna
9. The Bihar Public Service Commission through its Secretary, Baily Road,
Patna.
10. The Secretary B.P.S.C. Baily Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rakesh Kumar Sharma, Advocate Mr. Amresh Kumar, Advocate
For the State	:	Mr.Ravi Kumar, AC to GP-13
For the BPSC	:	Mr. Sanjay Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 17-07-2019 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the respondents.

The petitioner has filed the present writ petition for a
direction to the respondents to include the petitioner within
eligible candidates of PMR faculty for interview of Assistant



Professor.

Learned counsel for the petitioner, with reference to Annexure-6, the Medical Council of India Minimum Qualifications for Teachers in Medical Institutions Regulation, 1998 (amended up to November, 2010), submitted that Medical Council of India is the Apex Body and for the appointment of teacher in Physical Medicine and Rehabilitation the Medical Council has prescribed the eligibility as MD (PMR)/ M.D. (Medicine) with Diploma in PMR/M.S. (General Surgery)/ M.S. (Orthopaedics) with two years special training in the Speciality of Physical Medicine and Rehabilitation (Rehabilitation Medicine) or two years of equivalent training approved in the subject in any approved institution in India. He further submits that the petitioner is working as Resident in the subject PMR and as such he acquired the eligibility for appointment as Assistant Professor in terms of Medical Council of India Regulation. The respondents have acted arbitrarily in not considering the case of the petitioner for appointment on the post of Assistant Professor in PMR.

Per contra, Mr. Sanjay Pandey, learned counsel appearing on behalf of the Bihar Public Service Commission (BPSC) submits that the BPSC has followed the rules contained



in Annexure-B, the Gazette Notification dated 10th of October, 2008, in particular, he referred to Chapter 4 Rule 7. Mr. Pandey, with reference to the Rule submits that for appointment to the post of Assistant Professor, the candidate is required to have PG Degree in the specified subject with three years teaching experience as Senior Resident or Tutor in specified subject after post graduation. Mr. Pandey submits that the petitioner does not possess the PG Degree in the subject of PMR and as such in terms of the Appointment Rules contained in Annexure-B to the counter affidavit, the petitioner was not eligible and as such there is no infirmity in the action of the respondents in not considering the case of the petitioner as he was lacking the basic qualification for appointment as Assistant Professor.

The issue that Medical Council of India has permitted alternative qualification for appointment as Assistant Professor, does not merit any consideration for the reason that alternative qualification prescribed by the Medical Council of India is the minimum standard and that cannot be diluted by the recruiting agency. If the recruiting agency or the State agency prescribed qualification, which is higher than one prescribed by the Medical Council of India, then in that situation no fault can be attached to the selection process. Since the alternative



qualification prescribed by the MCI is only designed to facilitate the recruiting agency in the absence of availability of person having requisite qualification in the subject concerned, in the instant case when qualified people in the subject concerned are available and taking note of the aforesaid the recruitment rule has specifically laid down that the incumbent should be post graduate in the concerned subject and experience acquired after PG in the concerned subject as eligibility for appointment, the Court does not find any infirmity in the action of the respondents.

The writ petition does not merit any consideration. It is, accordingly, dismissed.

(Anil Kumar Upadhyay, J)

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