

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8225 of 2015

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Shailesh Chandra Gupta Son of Sri Motilal Prasad, Resident of New Colony
Ulaw, P.O. P.S. District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, New Secretariat, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 10956 of 2015

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Veterans Forum For Transparency In Public Life through its General
Secretary namely Wing Commander (Retd.) Bishwanath Prasad Singh, Son
of Late R.N. Singh R/o PNT Colony No. 2, Dahiyawan, Chapra, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Joint Secretary to the Government, Health Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 8225 of 2015)

For the Petitioner/s : Mr.Kundan Kumar

For the Respondent/s : Mr.Paag- Lalit Kishore

(In Civil Writ Jurisdiction Case No. 10956 of 2015)

For the Petitioner/s : Mr.Rajesh Kumar Singh

For the Respondent/s : Mr.Kumar Alok- Sc8

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 24-08-2020

The proceedings of the Court are being conducted
through Video Conferencing and the Advocates joined the



proceedings through Video Conferencing from their residence.

Heard learned counsel for the petitioners and learned counsel for the State.

Petitioner of C.W.J.C. No. 8225 of 2015 has prayed for following reliefs:-

“1 (i) That this civil writ application is being filed for issuance of appropriate writ/writs and thereby for a declaration and holding that Rule 7(2)(A)(iii) and 7(2)(B)(iii) of the Bihar Dentist Service Rule, 2014 are ultra vires and against the mandate of the Hon’ble Supreme Court of India, as the Hon’ble Supreme Court of India has already held that maximum 15% weightage can be extended in recruitment of public employment to those who have experience to work on contract basis, but under the said provision 25% weightage marks has been allotted for past experience. The said provision is also against the 1029 dated 19.01.2012 issued by the General Administration Department, Government of Bihar, Patna which fixes ,maximum 10 weightage marks for past experience. The provision is



further against the mandate of Article 16 of the Constitution of India.

(ii) For any other relief/reliefs for which petitioner may be deemed entitled too.”

Petitioner of C.W.J.C. No. 10956 of 2015 has prayed for following reliefs:-

“A. For declaring Bihar Laboratory Technician Cadre Rule 2014 framed by the Government under Article 309 of the Constitution of India vide notification No. 142(4) dated 13.02.2014 issued under the signature of Joint Secretary to the Government by the order of Hon’ble Governor, Health Department, Government of Bihar (hereinafter referred as Cadre Rule 2014) to the extent Rule 7(2)(gh) providing 5 marks per year maximum 25 marks for working experience in the Bihar Government Hospital is ultra vires, void, ab initio and bad in law.

B. Also for declaring any consequential action taken up by the government pursuant to Bihar Laboratory Technician Cadre Rule 2014 as contained in Annexure-1



vitiates in the eye of law.

C. For any other relief or reliefs for which the petitioner is entitled as your lordships may deem fit and proper.”

Petitioners have filed this writ petition for declaring that Rule 7 (2)(A)(iii) and 7(2)(B)(iii) of the Bihar Dentist Service Rule, 2014 are ultra vires and against the mandate of Apex Court which has held that maximum 15% weightage can be extended to those who have experienced to work on contract basis, however, under Dentist Service Rule 2014, 25% weightage marks has been allotted for previous experience.

Health Department, Government of Bihar created 617 posts for appointment in Primary Health Centres, Sub-Divisional Referral Hospitals and Medical College Hospitals out of which 488 were for dentists, 73 for Junior Staffs surgeons (Dental), 55 for Surgeon (Dental) and 1 of Joint Director Dental Services.

In Exercise of Powers conferred by Article 309 of the Constitution of India, the Governor of Bihar framed “The Bihar Dentists Service Rules, 2014” to regulate appointment and service conditions in the dentist service and same was



notified on 14.10.2014.

Under rule 6 it has been stated that in case of non-availability of dentist fit for appointment dentists may be employed on contract basis for a limited period as per necessity for which employment procedure is to be determined by the government. Under rule 7 the procedure for recruitment in Bihar Dentist Service is prescribed under which 5 marks per year maximum 25 marks can awarded for experience in Government Hospitals.

The counsel for the petitioner has relied upon the judgement passed by Rajasthan High Court Archana Vrs. State of Rajasthan reported in 2014 (1) RLW 478, however, said judgment has no application in facts and circumstances of present case.

It has been submitted on behalf of counsel for the State that issue raised in this writ petition is no more res integra as same has been decided by order dated 10.04.2015 passed by Division Bench of this Court in C.W.J.C. No. 855 of 2015 (Dr. Dharamvir Kumar and another Vs. State of Bihar and Ors.).

The relevant paragraphs of judgement dated 10.04.2015 passed in C.W.J.C. No. 855 of 2015 (Dr. Dharamvir



Kumar and another Vs. State of Bihar and Ors.) is quoted below:-

“Basically, it is for the recruiting agency to stipulate the procedure for selecting the candidates. It is only when the procedure is found to be patently illegal, that the Court would interfere. For selecting candidates, written test can certainly be treated as a good method, but there is nothing in law which mandates that written test is the only method to select the candidates.

Awarding of marks for experience is not uncommon. The candidates who have been engaged on contractual basis served the Government Hospitals at a time when their other colleagues have been pursuing their green pastures. The State can certainly recognize the service of such candidates, subject, of course, to certain limits.

The judgment of the Supreme Court, relied upon by the learned counsel for the petitioners, apart from not supporting the contention, approves the procedure of awarding marks for experience in the Government Hospitals.”

Division Bench of this Court in C.W.J.C. NO. 15231 of 2015 by order dated 21.06.2016 referred the matter to be considered by Larger Bench and same was placed before Full



Bench to answer the reference and Full Court answered the reference as following:-

“The order passed by the Division Bench on 10.04.2015 in C.W.J.C. No. 855 of 2015 will not have universal application in all cases. While considering the question of granting benefit of marks towards experience gained by an employee for working on contract basis, the matter of induction of the employee into service, i.e. the contract employee will have to be considered and only if the appointment even on contract basis is made after following procedure known to law meeting the requirement of Article 14 can a benefit be granted and not otherwise. The reference is, accordingly, disposed of.”

The Apex Court in case of Meeta Sahay Vs. State of Bihar and Ors. which was also with respect to awarding weightage for experience in appointment in Medical Service and same was approved by the Apex Court. The relevant paragraph Nos. 36 and 37 are reproduced below:-

“36. We are of the view that the purpose behind formulation of the Rules was to recognize the unique challenges of hospitals in Bihar and incentivise doctors to work in non-private hospitals. There is some substance in the submission of learned counsel for the



Respondents that Bihar is predominantly poor and thus requires doctors having exposure to such challenging environment as compared to their counterparts in private hospitals. Experience in a non-private hospital instills sensitivity in its doctors, making them more adept to understand the ail and agony of poor patients. Such experience will undoubtedly be useful in furthering the object of Government hospitals and must be given due weightage while selecting suitable candidates. Interpreting 'Government hospitals' to include only a small class of persons who have worked under the Government of Bihar, is thus clearly erroneous and anti-merit. Such an objective would not be defeated by the understanding of the Rules as has been construed by us.

37. For the reasons stated above, the appeal is allowed. Rule 5 & 6(iii) of the Bihar Health Service (Appointment and Service Conditions) Rules, 2013 are construed to include the experience gained by a doctor in any hospital run by the Bihar Government or its instrumentalities, as well as any other non-private hospital (including those run by the Central Government, Municipalities and Panchayati Raj Institutions; or other public authorities) within the territory of Bihar.



Respondents are accordingly directed to rework and prepare a fresh merit list by granting due weightage to the appellant and other similarly placed candidates, within two months. We however clarify that grant of weightage on the basis of work experience shall have no bearing on the suitability of a candidate.”

There is no merit in this writ petition and accordingly is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

