

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7474 of 2020

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Dr. Kumar Sagar, aged about 27 years, male, son of Narendra Prasad Singh, permanent Resident of Village- Rahimpur, P.O. Rahui, P.S. Rahui, District Nalanda, PIN- 803119, At present Resident of House No. 90H, Pocket A 2, Mohalla- Mahalla- Mayur Vihar, Phase-3, East Delhi, Delhi-110096

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Joint Secretary, Department of Health, Government of Bihar, Patna.
4. The Chairman, Bihar Technical Service Commission, 19-Harding Road, Patna.
5. The Secretary, Bihar Technical Service Commission, 19-Harding Road, Patna.
6. The In-charge Secretary, Bihar Technical Service Commission, 19- Harding Road, Patna.
7. The Deputy Secretary, Bihar Technical Service Commission, 19- Harding Road, Patna.

... .. Respondent/s

With

Civil Writ Jurisdiction Case No. 7476 of 2020



Dr. Prakash Kumar, aged about 31 years, male, son of Shri Lakshman Prasad, Resident of C/O Sri Lakshman Prasad, near S.K.G. Godown, Mohalla Shantipur, P.S. Sadar Motihari, Town Motihari, District East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Joint Secretary, Department of Health, Government of Bihar, Patna.
4. The Chairman, Bihar Technical Service Commission, 19-Harding Road, Patna.
5. The Secretary, Bihar Technical Service Commission, 19-Harding Road, Patna.
6. The In-charge Secretary, Bihar Technical Service Commission, 19- Harding Road, Patna.
7. The Deputy Secretary, Bihar Technical Service Commission, 19- Harding Road, Patna.

... .. Respondent/s

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Appearance :

(In CWJC No. 7474 of 2020)

For the Petitioner/s	:	Mr. Satish Chandra Mishra, Adv.
For the Respondent-State:		Mr. Rajeshwar Singh, GA-10
		Mr. Nikesh Kumar, Adv.

(In CWJC No. 7476 of 2020)

For the Petition		Mr. Satish Chandra Mishra, Adv.
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For the Respondent-State : Mr. S.D. Yadav, AAG-9
Mr. Nikesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGEMENT

Dated: 23-07-2021

The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. The aforesaid two writ petitions have been filed for quashing the decision contained in Letter No. 2/Appointment-17/ 2018-2010(2) dated 2.12.2019 (Annexure-6 to the writ petition) issued by the Joint Secretary, Department of Health, Government of Bihar, Patna, whereby and where-under it has been communicated to the respondent Commission that the degree holder, who have obtained their M.B.B.S. degree from foreign country, their marks (Grade or mark's percentage) are required to be calculated only on 50% provided their registration is from M.C.I.

3. The petitioners of the aforesaid two cases have obtained M.B.B.S. degree from the Tribhuwan University, Kathmandu, Nepal.

4. A



earned counsel for the petitioners

Shri Satish Chandra Mishra, the learned counsel for the respondent Commission, Shri Nikesh Kumar and the learned counsel for the respondent State, Shri S.D. Yadav, AAG-9 as also Shri Rajeshwar Singh, GA-10 have jointly submitted that the issue under consideration is no longer res- integra inasmuch as a co-ordinate Bench of this Court by a judgement dated 13.07.2021 passed in CWJC No. 8916 of 2020 (Dr. Mehre Afshan Mehdi vs. The State of Bihar & Ors.) has held that no distinction can be carved out in-between the candidates who have obtained MBBS degree from a foreign country and those who have obtained MBBS degree from India, for the purposes of awarding points/marks and preparation of merit-list.

5. It would be relevant to reproduce paragraphs no. 20 to 24 of the aforesaid judgement rendered in the case of Dr. Mehre Afshan Mehdi (Supra), herein below:-

“20. The said decision of the experts committee is the basis for the State Government to take a policy decision that only 50% weightage shall be given to the MBBS score of candidates acquiring such qualification from an institution outside the country does not disclose any rationale nor any such discussion is there in the original records. The said decision is apparently in teeth of the statutory R



power under Article 309 of the Constitution of India and are violative of Articles 14 and 16 of the Constitution of India, the objective to be achieved by carving out such distinction itself is absent, let alone the 'reasonable nexus'.

21. Learned counsel for the petitioner, in my pinion, is correct in his submission that the respondents could not have deviated from prescription in the advertisement and those in the Rules. However, since the petitioner is raising any challenge apropos the selection pursuant to advertisement No. 3 of 2019 and has confined her relief with respect to the subsequent advertisement, no further comments are required in the present case in the said regard.

22. Resultantly, the said decision of the experts committee in its meeting held on 23.01.2015 is held to be violative of Articles 14 and 16 of the Constitution of India and the provisions of the Rules. The letter dated 04.02.2015, issued by the Health Department, Government of Bihar to the Commission is also unsustainable for the same reason and is declared ultra vires Articles 14 and 16 of the Constitution of India and the provisions of the Rules. Consequently, the impugned letter No. 2010(2) dated 02.12.2019 (Annexure-10) is hereby set aside. The Respondent- Commission is directed to act accordingly, strictly in accordance ns of the Rules.



23. In the background of the aforesaid discussions, in my opinion, the said prescription in Clause 8 note (ii) of the advertisement No. 17/2021 cannot be legally sustained and is accordingly set aside, being in breach of the statutory Rules. The Commission is directed to proceed accordingly.

24. The writ application is accordingly allowed.”

6. The learned counsel for the parties are in agreement that the aforesaid two writ petitions can also be allowed in terms of the law laid down by a co-ordinate Bench of this Court in the case of Dr. Mehre Afshan Mehdi (Supra).

7. Accordingly, the aforesaid two writ petitions stand allowed in terms of judgment rendered in the case of Dr. Mehre Afshan Mehdi (Supra) and the Letter No. 2/Appointment-17/2018-2010(2) dated 2.12.2019, issued by the Joint Secretary, Department of Health, Government of Bihar, Patna is quashed, however, with a further direction that in case the aforesaid two writ petitioners have applied, pursuant to the advertisement in question and the recruitment process thereof has not been completed, their counselling would be held by treating the M.B.B.S. degree obtained by them from Nepal to be equivalent



to the one obtained by the candidates from India and 100% weightage shall be given to their MBBS score for awarding points/marks and preparation of the merit-list.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR- - - - N/A

CAV DATE- - - - N/A

Uploading Date- - - 26.07.2021

Transmission Date-- N/A

