

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.604 of 2018

Dr. Tej Narayan Raj S/o Shri Kishun Shafi resident of Mohalla - Shekhpura
Bagicha, Near IGMS, Flat No. 104 of Madhusudan Apartment, P.S. - Shastri
Nagar, Town and District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Health & Medicine, Government of Bihar, Patna.
2. The Director, Health Services, Government of Bihar, Patna.
3. The Additional Secretary, Government of Bihar, Patna.
4. The Civil Surgeon, Arah, Bhojpur.
5. The Principal, Vardhman Institute of Medical Science, Pawapuri, Nalanda.
6. The Bihar Public Service Commission, Bailey Road, Patna through its Secretary.
7. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, Bailey Road, Patna
8. Medical Council of India, New Delhi.

... .. Respondent/s

Appearance :

For the Petitioner : Mr. Prakash Chandra Jha, Adv.
For the BPSC : Mr. Sanjay Pandey, Adv.
For the State : Mr. Vasant Vikas, AC to GP-12
For the NMC : Mr. Kumar Brijnandan, Adv.
For the Intervener : Mr. Sunil Thakur, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 24-12-2021

The present writ petition has been filed for



directing the respondents to issue interview letter (admit card) in favour of the petitioner to enable him to appear in the interview in connection with advertisement no. 15/17, for selection on the post of Assistant professor as also to declare that the academic qualification and experience of Senior Residency of the petitioner is appropriate in terms of the advertisement no. 15/17 and consequently, hold that the remark made against the name of the petitioner in the list of ineligible candidates by the Respondent-Bihar Public Service Commission (herein after referred to as the "BPSC") to the effect that the period of Senior Residency of the petitioner is less than three years in a recognized Medical College, is incorrect.

2. The brief facts of the case, according to the petitioner, are that the petitioner is a qualified Doctor, possessing the qualification of MBBS and MD and has been working on the post of Medical Officer, Government of Bihar, since the year, 2000. In the year 2009, applications were invited from suitable Medical Officers for preparation of panel of



Senior Resident / Tutor for the tenure post and the petitioner, being a qualified and competent candidate, had submitted his application through the Civil Surgeon-cum-Chief Medical Officer, Bhojpur, opting for Nalanda Medical College, Patna, PMCH, Patna, SKMC Muzaffarpur, DMCH, Darbhanga and ANMC, Gaya for joining as Senior Resident Doctor, however, the petitioner was posted at VIMS, Pawapuri, Nalanda, by a common notification dated 10.05.2011, whereafter the petitioner had joined at VIMS, Pawapuri, Nalanda on 29.11.2011 to discharge his duties as a Senior Resident and there he had worked till 15.08.2015. In the meantime, the Respondent-BPSC had invited applications from eligible candidates for selection and appointment on the post of Assistant Professor for different faculties of Medical Science in different Medical Colleges by issuing advertisement no. 15/2017, pursuant whereof, the petitioner had applied for being appointed in the Department of Medicine. Nonetheless, the candidature of the petitioner was rejected with the



remark:- “Senior Residency less than three years in recognized Medical College”.

3. The learned counsel for the petitioner has submitted that though the advertisement in question under Clause 3(viii) states that the candidate must have experience of three years in the capacity of Resident/Senior Resident in a Medical College & Hospital of the State, however, the petitioner is having four years experience and he was sent to VIMS, Pawapuri, Nalanda by the Government of Bihar, thus, his experience for the period, the said Medical Institute was not recognized by MCI, should also be counted and in this regard, the learned counsel for the petitioner has relied on a letter dated 17.1.2018 sent by the Special Secretary to the Government, Health Department, Government of Bihar, Patna to the Secretary, BPSC, Patna wherein it has been stated that the experience of the petitioner at Vardman Institute of Medical Sciences, Pawapuri, Nalanda with effect from 17.5.2011 to 15.8.2015, be taken into account and the petitioner be considered



eligible for interview in view of the fact that the petitioner was posted at the said Medical Institute by the State Govt.. Thus, it is the submission of the learned counsel for the petitioner that there is no fault on the part of the petitioner, as such, his experience at VIMS, Pawapuri, Nalanda from 17.5.2011 to 15.8.2015 should be considered and he should be called for the interview.

4. Per contra, the learned counsel for the Respondent-BPSC, Sri Sanjay Pandey, has submitted that the Respondent-BPSC had published advertisement nos. 07/2017 to 31/2017, on the basis of requisition received from the Department of Health, Govt. of Bihar vide letter no. 138(17) dated 26.2.2016 for altogether 1171 posts of Assistant Professor in different faculties of Medical Science in various Medical Colleges & Hospitals under the Health Department, Govt. of Bihar. The said advertisements were published by the BPSC on the basis of the Bihar Health Service Recruitment Rules, 2008 & revised Rules, 2013. The last date of submission of the application form



in the office of the BPSC was 31.5.2017.

5. It is further submitted by the learned counsel for the Respondent-BPSC that the requisite qualifications/ experience and age limit, according to the requisition of the Government of Bihar, as published in the aforesaid advertisement no. 15/2017, are as follows:-

"A. Educational Qualification / Experience

(a) For appointment to the post of Assistant Professor, it shall be essential for the candidate to have PG Degree in specified subject and 03 years teaching experience as Senior Resident/ Tutor in specified subject after Post Graduation from Medical Colleges & Hospitals recognized by the Medical Council of India.

(b) Officers of the State Health Service, who have already served as Resident / Senior Resident /Tutor for minimum 03 years in teaching institution recognized by the Medical Council of India shall be eligible to apply for the post of Assistant Professor.

(c) For PG Degree- MD, MS and DNB will be valid. PG diploma will not be valid.



(d) MBBS, PG and DM, M.Ch., DNB (Super Speciality) Degree from colleges / institutions should be recognized by the Medical Council of India.

B. For Super Speciality Department / Unit, the tenure of DM / M.Ch. will be counted for eligibility in the light of the above advertisement. Direct recruitment for the post of Assistant Professor in Super Speciality subjects, DM / M.Ch./ DNB (Super Speciality) is essential with basic speciality subjects of MD/MS/DNB.

....."

6. It is further submitted by the Ld. counsel for the BPSC that the Commission, on account of clerical mistake had repeated the sentence "05 (Five) years relaxation in age limit for the members of Bihar State Health Service Cadre" in the advertisement. This relaxation in para-2(3) (cha) of the notification dt. 28.11.2013 (Annexure-C) is for Senior Resident / Tutor. For Assistant Professor, para-3(2)(gha) is relevant. After issuance of advertisement, this error was detected, thus the Commission had deleted the last sentence of



clause-4 of the advertisement in which it was mentioned that “05 (Five) years relaxation in age limit for the Members of Bihar State Health Service Cadre”. The Commission had then published the corrigendum in the daily newspaper and on its official website on 3.5.2017.

7. It is next contended by the Ld. counsel for the BPSC that the last date of submission of application i.e. 31.5.2017 was fixed by the BPSC as the cut off date on which the candidates must fulfil the requisite qualification and criteria in light of Sl. No. 9 of the letter no. 540(17) dt. 15.7.2016 of the Health Department, Govt. of Bihar.

8. It is also pointed out by the learned counsel for the Respondent-BPSC that similar issue was considered by the Ld. Division Bench of the Hon’ble Patna High Court in a writ petition bearing CWJC No. 7297/ 2017 [Dr.(Mrs.) Anupama Singh vs. The State of Bihar & Others] and the same has stood dismissed by a Judgment dated 15.05.2017, operative portion whereof is being reproduced



herein below:-

"Challenging Clause 7(iii)(a) of the Senior Resident, Tutor and Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008, this writ petition has been filed and the Rule is challenged on the ground that the requirement that the three years' teaching experience should be gained after a candidate has completed the post graduation runs contrary to the requirement of the Medical Council of India Minimum Qualification for Teachers in Medical Institutions Regulations, 1998.

Inter alia contending that the requirements formulated by the Medical Council of India have the force of law and anything contrary thereto is unsustainable and ultra vires, the petition has been filed and for the purpose reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Sudhir N. & Ors. vs. State of Kerala & Ors., (2015) 6 SCC 685.

Learned counsel for the State, the Medical Council of India and the Bihar Public Service Commission point out that the same Rule was subject matter of challenge before a co-ordinate Bench of this Court in the case



of Md. Ali Muzaffar & Ors. vs. The State of Bihar & Ors., 2012 (3) P.L.J.R. 419, and having considered the regulation formulated by the Medical Council of India it has been held by a co-ordinate Bench that the Rule in question is nothing but a Rule framed under Article 309 of the Constitution and the State has got the power to prescribe qualification higher than the one prescribed by the Medical Council of India. In the aforesaid case, it has been held that a qualification prescribed by the Medical Council of India is the minimum qualification and, under law, there is nothing which prevents the State Government from prescribing higher qualification than what has been prescribed by the Medical Council of India.

The requirement that the three years' teaching experience should be gained after a candidate has completed the post graduation is held to be a higher qualification and therefore it is held that there is no conflict that the Rule framed by the Medical Council of India is the minimum qualification. Once the issue is already decided by a Coordinate Bench of this Court, we see no reason to take a different view than what has already been taken by a co-ordinate Bench in the case of Md. Ali Muzaffar (supra) and finding the issue



in question to be decided in the aforesaid case wherein similar arguments advanced and rejected by the Court, we dismiss this writ petition."

9. It is also contended by the learned counsel for the Respondent-BPSC that the petitioner had applied for the post of Assistant Professor, Medicine under advertisement no. 15/2017 and he was allotted roll no. 150024. The Expert Committee, which has been constituted by the Health Department, Govt. of Bihar, examined all the applications of the abovementioned advertisements in light of the requisition of the Health Department, Govt. of Bihar and the Recruitment Rules 2008 and 2013. The Expert Committee found that the petitioner has done Senior Residency from IGIMS, Patna from 04.08.2003 to 31.10.2006. In this period IGIMS, Patna was not a recognized Medical College. The petitioner has submitted his Senior Residency Certificate from Vardman Institute of Medical Science, Pawapuri, Nalanda from 17.5.2011 to 15.8.2015. It is relevant to mention here that MCI



has recognized the said institution in the year 2013 only. On the above facts, the Expert Committee has declared the Senior Residency of the petitioner to be valid from 02.07.2013 to 15.8.2015, which is evident from the certificate issued by the Principal of Vardman Institute of Medical Science, Pawapuri, Nalanda, vide letter no. 486 dated 16.5.2017. Thus, the period of Senior Residency of the petitioner is less than three years, hence the Expert Committee has declared him ineligible for the afore-said post.

10. The learned counsel for the respondent BPSC has stated that three years Senior Residency in a recognized Medical College is an essential qualification for appointment on the above-mentioned post and the petitioner does not fulfil the said required essential qualification in terms of the advertisement and the recruitment rules framed by the State Govt., hence the application of the petitioner has been put in the category of ineligible candidates by the Commission, thus he



has not been invited for interview.

11. The learned counsel for the Respondent-BPSC has referred to the aforesaid letter dated 17.01.2018, written by the Special Secretary to the Government, Health Department, Government of Bihar, Patna to the Respondent-Commission to submit that in reply thereof, the respondent BPSC had written a letter dated 18.01.2018 and had informed the Health Department that the instructions given by the Department with respect to counting the experience of the petitioner as a Senior Resident with effect from 17.5.2011 to 15.8.2015 at VIMS, Pawapuri, so as to make him eligible for the post of Assistant Professor, is not in consonance with Rule 7(iii) of the Recruitment Rules as the same envisages three years teaching experience as a Senior Resident / Tutor in a Medical College recognized by the MCI. Thus, in nutshell, the submission of the Respondent-BPSC is that since the petitioner was not having three years teaching experience as a Senior Resident / Tutor in a Medical College & Hospital recognized by the



MCI, as postulated under Rule 7(iii)(a) of the Senior Resident, Tutor and Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008 as also in Clause 3(a) of the advertisement no. 15/2017, the petitioner has not been considered to be an eligible candidate.

12. The learned counsel for the Medical Council of India, now National Medical Commission, has submitted that the Central Government had issued letter of permission dated 02.07.2013 for the establishment of VIMS, Pawapuri, Nalanda, Bihar with intake of 100 MBBS students annually from the academic year 2013-14 under Section 10A of the IMC Act, 1956, thus, the experience of the petitioner would be counted with effect from 02.07.2013 and not from a prior period.

13. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that Clause 3(a) of the advertisement no. 15/2017 as also Rule 7(iii)(a) of the Senior Resident, Tutor and Bihar Medical



Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008 require a candidate to be possessing three years teaching experience as a Senior Resident / Tutor in the specified subject, after post-graduation, from a Medical College & hospital recognized by the Medical Council of India, however, in the present case, the petitioner though has worked as a Senior Resident from 17.05.2011 to 15.08.2015 at VIMS, Pawapuri, Nalanda, but the said institution was recognized by the MCI/NMC only in the year, 2013 i.e. with effect from 02.07.2013, hence, the experience of the petitioner as a Senior Resident would be counted only from 02.07.2013 to 15.08.2015 and not from 17.05.2011 to 15.08.2015, thus, the experience of the petitioner as a Senior Resident is admittedly less than three years, consequently, the petitioner does not fulfil the requirement of essential qualification in terms of the advertisement and the Senior Resident, Tutor and Bihar Medical Education Service Cadre Recruitment, Appointment and Promotion Rules, 2008, framed by the State



Government. Thus, this Court finds that the petitioner has rightly not been considered to be an eligible candidate, hence, I do not find any merit in the present writ petition.

14. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the present writ petition stands dismissed, being bereft of any merit.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	13.09.2021
Uploading Date	24.01.2022
Transmission Date	NA

