

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3139 of 2021

1. Sunil Kumar Singh Son of Deonandan Singh, resident of Village Nawadih, P.O. Amjhore, District Rohtas, Bihar (821302), presently working as J.E under DME/C and W/DDU) in East Central Rail having registration No. BR00150010094633.
2. Ravikant Kumar, Son of Sri Madan Prasad Singh, resident of Flat No. D4-204, IIT Patna, Bihta Campus, Bihta, Patna 801103 having registration No. BR00150010094126
3. Mani Bhushan Kumar, Son of Sri Vishnu Deo Ray, House No. 31, Village Fatehpur Pakri, P.O. Piroe, District - Vaishali, Bihar presently posted as SI/Overseer (JE) at Indo Tibetan Border Police Force, Halbhavi Camp, Belgaum, Karnataka 591156 having registration No. BR00150010035288.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Bihar Technical Service Commission, 19 Harding Road, Patna through its Chairman.
4. The Chairman, Bihar Technical Service Commission.
5. The Secretary, Bihar Technical Service Commission, Patna.
6. The Deputy Secretary, Bihar Technical Service Commission.
7. Jitendra Kumar Singh Son of Sri Ramesh Kumar Singh Resident of Mohalla- Maharana Pratap Nagar, Ara, Police Station- Ara, District- Bhojpur (Bihar).
8. Nasir Furquan Khan Son of Md. Faiyaz Ahmad Resident of Mohalla- Baksaria Tola, Sultanganj, Ashok Raj Path, Sampatchak, Patna (Bihar).
9. Sunil Kumar Chaturvedi Son of Sri Havaldar Chaturvedi Resident of West Patel Nagar, Ganga Path, P.S.- Shastrinagar, District- Patna.
10. Gautam Kumar Das Son of Basudeo Das Resident of Village- Safi Chak, P.S.- Sherghati, District- Gaya.
11. Vivek Ranjan Son of Wakil Deo Mehta Resident of Village- Bhirha, P.S.- Medni Chowki, District- Lakhisarai.
12. Pankaj Kumar Son of Ram Prawesh Pandit Resident of Village- Jat Dumri, P.S.- Punpun, District- Patna.
13. Aniket Kumar Son of Omprakash Prasad Resident of Village- Gandhinagar, P.S.- Bagaha, District- West Champaran.
14. Satish Kumar Singh Son of Virendra Singh Resident of Village- Sultanpur, P.S.- Desari, District- Vaishali.
15. Meghnath Kumar Son of Rambabu Ray Resident of Village- Khanpatti, P.S.- Mahua, District- Vaishali.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vaidehi Raman Prasad Singh
For the Commission : Mr. Nikesh Kumar
For respondent no. 9-15 : Mr. P. K. Shahi, Sr. Adv.
For respondents 7 & 8 : Mr. Sanjeev Kumar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
C.A.V.

Date : 17-09-2021

The present writ application has been filed by the three petitioners for quashing of Clause 4 (i) of Advertisement No. 01 of 2019, issued under the signature of Deputy Secretary, Bihar Technical Service Commission (hereinafter referred to as 'the Commission'), for appointment on the vacant posts of Junior Engineer (Civil/Mechanical/Electrical), to the extent it provides for grant of weightage by giving additional marks to the candidates having work experience as Junior Engineer (Civil/Mechanical/Electrical) in Bihar Government or under any undertaking/ corporation/ organization/ authority/ autonomous bodies) of Bihar Government on contract basis only and for a further direction to the Commission to grant similar weightage to the petitioner, having work experience under the Central Government or its instrumentalities.

2. Short facts, giving rise to the present writ application, is that the petitioner no. 1 is working in East Central Railway,



petitioner no. 2 is working in I.I.T., Bihta, Patna and petitioner no. 3 is working as S.I./Overseer (JE) in Indo-Tibetan Border Police and had spent a long period in Bihar. The petitioner no. 1 joined the Railways as Junior Engineer in the year 2007 and is presently working in East Central Railway, the petitioner no. 2 joined I.I.T., Bihta, as Junior Mechanic on 29.01.2013 and promoted to the post of Junior Technical Superintendent on 20.07.2016; whereas the petitioner no. 3 is working in Indo-Tibetan Border Police as S.I./Overseer (JE) and presently posted at Halbhavi Camp, Belgaum, Karnataka.

3. The impugned advertisement was published by the Commission pursuant to the requisition made by the General Administration Department, Government of Bihar, inviting application for filling up the vacant posts of Junior Engineer (Civil/Mechanical/Electrical). The basis of selection to the posts in question was based upon allocation of marks, i.e. out of 100 marks, 75 marks has to be allocated on the basis of marks obtained in diploma courses and 25 marks has to be allocated on the basis of experience as Junior Engineer on contract basis under Government of Bihar or its instrumentalities.

4. The contention on behalf of the petitioners is that they are having Diploma in Engineering in different discipline and



having huge experience of working in different organization of the Central Government, applied for the post and obtained more than cut off marks and were called for counselling on different dates, i.e. the petitioner nos. 1 and 2 were called for counselling on 06.11.2020 and petitioner no. 3 on 16.12.2020, pursuant to which they appeared for counselling on the respective dates.

5. On the respective dates of counselling, the petitioners were informed that they have got working experience in the services of Central Government and its instrumentalities and, as per the terms of the impugned advertisement, they would not be entitled for 25 marks towards working experience inasmuch as the same is meant for a candidate who has worked on contract basis under the Government of Bihar and its instrumentalities only.

6. In support of their contention, the petitioners have relied upon the case of **Dr. (Major) Meeta Sahai v. The State of Bihar and Others**, reported in **(2019) 20 SCC 17**.

7. The Commission has filed a counter affidavit, stating therein that the State Government framed Bihar Water Resources Department Subordinate Engineering (Civil) Cadre Recruitment Rules, 2015 (hereinafter referred to as the 'Cadre Rules, 2015', and likewise, issued further other rules for Mechanical and Electrical also in purported exercise of power under Article 309 of



the Constitution of India. Rule 10 of Cadre Rules, 2015, prescribes as follows:

“Rule - 10. Procedure of Selection- (1) Selection to the posts of basic category of this cadre i.e. (Junior Engineer (Civil) shall be made by the Commission on the basis of percentage of marks obtained in Diploma or equivalent qualification as well as interview (viva voce). Such candidates having experience of working on the post of Junior Engineer (Civil) on contract basis under the Government of Bihar or in any undertaking/body/corporation/entity/ Authority/autonomous body under the Government of Bihar, who fulfill the qualifications of the recruitment in this cadre, shall be given preference by giving additional marks according to sub rule (2) of this Rule.

(2) Merit list of candidates shall be prepared on the following basis:-

		Full Marks
(a)	On the basis of percentage of marks obtained in Diploma (Civil) or equivalent qualification-	60
(b)	Maximum weightage for the working experience on contract basis (weightage of per working year shall be 5 marks maximum limit of which will be up to 25 marks. For part of any year, obtained proportionate mark by dividing by 365 to the no. of working days in that year multiplying by number 5, will be added)	25
(c)	Interview (viva voce)	15



	TOTAL	100 Marks
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(3) Determination of working period on the contract basis shall be made on the basis of Payment Certificate issued by their respective controlling officers. For this, the period up to the cut off date mentioned in the advertisement published by the Commission shall be calculated for the working experience.”

8. The Cadre Rules, 2015 was amended by Bihar Water Resources Department Subordinate Engineering (Civil) Cadre Recruitment (Amendment) Rules, 2017 (hereinafter referred to as the ‘Cadre Amendment Rules, 2017’), and Rule 10 of Cadre Rules, 2015 was replaced by a new Rule 10, which is mentioned in Rule 4 of the Cadre Amendment Rules, 2017, which is reproduced herein below:

"4. Substitution of Rule 10 of Bihar Water Resources Department Subordinate Engineering (Civil) Cadre Recruitment Rules, 2015: The said Rule 10 of the Rules, 2015 is substituted by the following:

10. Procedure of selection- (1) Selection to the posts of basic category of Junior Engineer (Civil) of this cadre shall be made by(3) Determination of working period on the contract basis shall be made on the basis of Payment Certificate issued by their respective Controlling Officers. For this, the period up to the cut-off date mentioned in the advertisement published by the Commission may be calculated for the working experience.” the Commission on



the basis of percentage of marks obtained in Diploma or equivalent qualification. Such candidates having experience of working on the post of Junior Engineer (Civil) on contract basis under the Government of Bihar or in any Undertaking/ Corporation/ Body/ Authority/ Autonomous Body under the Government of Bihar, who fulfill the qualifications of the recruitment in this cadre, shall be given preference by giving additional marks according to sub rule (2)(b) of this Rule.

(2) Merit list of candidates shall be prepared on the following grounds:-

		Full Marks
(a)	On the basis of percentage of marks obtained in Diploma or equivalent qualification	75
(b)	Maximum weight age for the working experience on contract basis (weight age of per working year shall be 5 marks maximum limit of which will be up to 25 marks. For part of any year, obtained proportionate mark by dividing by 365 to the No. of working days in that year multiplying by number 5, will be added)	25
	Total Marks	100

(3) Determination of working period on the contract basis shall be made on the basis of Payment Certificate issued by their respective Controlling Officers. For this, the period up to the cut-off date mentioned in the advertisement published by the Commission may be calculated for the working experience.”

9. It has further been stated on behalf of the Commission that the Commission has prepared Advertisement No. 1 of 2019 in



consonance with the Cadre Rules, 2015 and the Cadre Amendment Rules, 2017, and all the provisions inserted, vide Rule 4 of the Cadre Amendment Rules, 2017, and there is no discrepancy as far as the impugned advertisement issued by the Commission is concerned. Admittedly, the petitioners have not worked on contract basis in any organization, as specified in Clause 4 (i) of the Advertisement, in the State of Bihar, as such, the petitioners are not entitled to get benefit of working experience and are also not entitled to come within the 40 per cent quota under Clause 10 (4) (a) of Cadre Amendment Rules, 2017.

10. Reply to the counter affidavit filed on behalf of the Commission has been filed by the petitioners, stating therein that the Cadre Rules, 2015 and Cadre Amendment Rules, 2017 are for the purposes of recruitment in the Water Resources Department of the Government of Bihar only; whereas the advertisement was issued for appointment in various other departments also. Moreover, the respondents have not mentioned about any other rules for such recruitment in Mechanical and Electrical cadre.

11. Rejoinder to the reply of the petitioners to the counter affidavit has been filed by the Commission, stating therein that the State Government has made Water Resources Department as Nodal Department for recruitment to the post of Junior



Engineers for all the cadres, i.e. Civil, Mechanical and Electrical and further stated that though all the Departments have made their own Rules for the recruitment of Junior Engineers in all the cadres, but all the rules made by different departments are pari materia and as such for making the counter less thick, only one rule framed by the Water Resources Department has been annexed to the counter affidavit. The Commission has further stated that the writ petitioners have not challenged the Rules framed by the Water Resources Department and without challenging the Rules, the writ petitioners cannot be permitted to challenge the impugned advertisement inasmuch as the advertisement is in consonance with the Cadres Rules, 2015 and Cadre Amendment Rules, 2017.

12. Learned Counsel for the petitioners further stated that the petitioners 1 and 2 applied for the post of Junior Engineer (Mechanical) and petitioner no. 3 applied for the post of Junior Engineer (Civil) in various departments and there is no specific rule covering appointments on all the posts of Junior Engineer (Civil/Mechanical/Electrical) in all the departments. The Rule relied upon by the respondents is for appointment on the post of Junior Engineer (Civil) in the Water Resources Department only and there is no basis for the argument that the State Government has made Water Resources Department as Nodal Department for



recruitment on the post of Junior Engineer for all the branches, i.e. Civil, Mechanical and Electrical. More over, the stipulation regarding grant of weightage for recruitment to the employees of State of Bihar is discriminatory and without any nexus with the object sought to be achieved. Accordingly, the submission is that there is no need to challenge the Rule since there is no specific rule pursuant to which the advertisement for appointment was published for appointments to the post of Junior Engineer (Civil/Mechanical/Electrical) in all the eight departments.

13. Learned Counsel, in support of the writ application, argued that Clause 4 (i) of the impugned advertisement is discriminative and the denial of weightage of the marks to the petitioners is not having any nexus with the object sought to be achieved. He further submitted that denying similar treatment to persons having work experience under the Central Government or its instrumentalities and giving weightage for work experience to persons working on contract basis under Bihar Government or its instrumentalities only is against the principles of equality and in contravention of Articles 14 and 16 of the Constitution of India. He also submitted that denial of experience of the candidates working under Central Government service is anti-merit and without any object sought to be achieved. He heavily relied on the



judgment of the Supreme Court rendered in the case of **Dr. (Major) Meeta Sahai** (supra). He further submitted that by agreeing to participate in the selection process, the candidate only accept the prescribed procedure and not the illegality therein, as has been held in paragraphs 17 and 18 in the case of **Dr. (Major) Meeta Sahai** (supra), inasmuch in that case, the appellant had moved the High Court after having failed in the selection process.

14. Learned Counsel for the petitioners, further submitted that the case of the petitioners is squarely covered by the judgment of the Supreme Court, in the case of **Dr. (Major) Meeta Sahai** (supra), which has been rendered in the similar facts as in the present writ application. He placed reliance on paragraphs 26, 27, 32 to 36 of **Dr. (Major) Meeta Sahai** (supra), which is quoted herein below:

“26. Further, if faced between a choice in which only a few people would be eligible versus a fairly large group, we feel that the latter ought to be adopted to have a diverse pool of applicants. This would promote merit, bring better doctors and further the Constitutional scheme of providing equal opportunity in public employment to the masses. We are thus of the view that the provisions of the Rules in the case at hand cannot be construed or explained by applying the principle of literal interpretation.



27. In pursuance to the above analysis, we are of the view that it is necessary to resort to purposive interpretation of the provisions of the Rules, in light of its objectives. Otherwise also as per the prefatory part of Article 309, the Rules framed thereunder must be in conformity with all other Constitutional provisions, which necessarily includes Part III. Dealing with recruitment in Government hospitals, it is clear that the object and purpose of the Rules too must satisfy the test of Article 16.

32. Other hospitals are also established by instrumentalities of the States and the Centre in pursuance of Constitutional obligations under Part IV. These although not strictly covered within the ambit of the Rules as propounded by the respondents, nevertheless serve the same purpose of providing best medical facilities to public at large. An apt example is of Army hospitals, and there is little reason to ignore and overlook the experience gained in such hospitals.

33. It is hence irrational to urge that the work experience in any such hospital is different from that in a Government of Bihar hospital. Hence, it would be Constitutionally unjust to allow differentiation between the experience gained by doctors at these hospitals established by Panchayats or Municipalities or by the Central Government and its instrumentalities in the territory of Bihar vis-a-vis those run by the Bihar Government. Any attempt to discriminate between hospitals run by the State Government and the Central Government or Municipalities/Panchayati Raj



Institutions is bound to hit the very ethos of our Constitutional governance setup.

34. Having said so, we are not oblivious to the fact that equality does not imply that there can be no classification. Instead, sometimes it may be necessary to treat unequals unequally, for equal treatment of persons with unequal circumstances creates an unjust situation. Such classification, however, must not be arbitrary but rationally founded on some quality or characteristics which are identifiable within the class of people so created and absent in those excluded from such classification.

35. 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.”

15. Learned Counsel for the Commission argued that the Commission has issued the impugned advertisement for appointment to the post of Junior Engineer on the basis of Cadre Rules, 2015 and Cadre Amendment Rules, 2017 and as per Rule 4 of the Cadre Amendment Rules, 2017, the Commission prescribed Clause 4 (i) in the impugned advertisement, which is totally in consonance with the Rules framed by the Legislature regarding giving weightage of the work experience gained by a candidate while working on the contract basis under Government of Bihar or its instrumentalities and the recruitment process is almost complete as the counselling has already been held and at the fag end of the recruitment process, the petitioners have filed this writ application challenging Clause 4 (i) of the impugned advertisement and that too, without challenging the vires of the connected Rules framed by the State Government under Article 309 of the Constitution of India.

16. Learned Counsel for the Commission further submitted that the ratio laid down by the Supreme Court, in the case of **Dr. (Major) Meeta Sahai** (supra), is not applicable in the facts of the present case and it is settled principle of law that the



ratio of any judgment would be applicable on the facts of that case alone. In the case of **Dr. (Major) Meeta Sahai** (supra), the Supreme Court has interpreted the rules framed by the Health Department, namely. Bihar Health Services (Appointment and Service Condition) Rules, 2013, particularly Rule 6 thereof regarding the work experience. He further submitted that there was admitted discrepancy in the Rules framed by the State Government and the advertisement published by the Bihar Public Service Commission for appointment, but in the present case, Clause 4 (i) of the impugned advertisement is in consonance with the Cadre Amendment Rules, 2017 and since the petitioners have not challenged the Cadre Rules, 2015 and Cadre Amendment Rules, 2017, which is *pari materia*, they may not be allowed to challenge the terms of the impugned advertisement.

17. Learned Senior Counsel for the respondent nos. 9 to 15 submitted that pursuant to the Cadre Rules of Junior Engineer, the impugned advertisement was published by the Commission for filling up the vacant posts of Junior Engineer and as per the said advertisement, based upon the Cadre Rules, 2015 and Cadre Amendment Rules, 2017, the recruitment has to be made on the basis of academic marks as well as working experience of the candidates under Bihar Government or its instrumentalities. He



further submitted that the recruitment process is almost complete and counselling has already been held and admittedly the petitioners have no work experience under the Bihar Government or its instrumentalities and at the fag end of the recruitment process, the petitioners have filed the present writ application after participating in the selection process. He next submitted that the case of **Dr. (Major) Meeta Sahai** (supra), relied upon by the petitioners, is not applicable in the facts of this case inasmuch as in the case of **Dr. (Major) Meeta Sahai** (supra), the Rules relating to the Health Department was under consideration, wherein the words 'any Government Hospital' was mentioned, but in the advertisement, the work experience was restricted to the Government Hospital of the State of Bihar only. In the present case, The Cadre Rules, 2015 and the Cadre Amendment Rules, 2017, stipulates 'Bihar Government' and accordingly, the impugned advertisement also stipulates 'Bihar Government', so far as experience of work is concerned. He further submitted that the petitioners, after having participated in the recruitment process, cannot be permitted to challenged the terms of the impugned advertisement in view of the various judicial pronouncement of the Supreme Court as well as this Court. He also submitted that the terms of the impugned advertisement is consistent with the Cadre



Rules, 2015 and the Cadre Amendment Rules, 2017, and the petitioners having not challenge the same, they cannot challenge the terms of the impugned advertisement. He placed reliance in the case of **Manish Kumar Shahi v. The State of Bihar**, reported in **(2010) 12 SCC 576**, on the point that once participated in the selection process, a candidate cannot be allowed to challenge the terms of the advertisement.

18. Learned Counsel for the respondents 7 and 8 argued that in exercise of power conferred under Article 309 of the Constitution of India, the Government of Bihar framed Rules, i.e. Cadre Rules, 2015 and to amend the provisions of the Cadre Rules, 2015, made Cadre Amendment Rules, 2017 and Rule 10 was amended and a provision was made for granting weightage for the working experience on contract basis in the different departments of State of Bihar and the State Government declared Water Resources Department as the Nodal Department for appointment of Junior Engineer (Civil/Mechanical/Electrical) in all the departments under the Government of Bihar. He next submitted that the petitioners cannot challenge the process of selection after participating in the selection process at the fag end and the petitioners having not challenged the Cadre Rules, 2015 and Cadre Amendment Rules, 2017, are debarred from challenging



the consequential impugned advertisement. He next submitted that the recruitment or the methodology of recruitment, including the criteria of selection, is not open for judicial review and the employer may structure or re-structure the cadre for the purposes of improving efficiency in the administration. He next submitted that the case of **Dr. (Major) Meeta Sahai** (supra), relied upon by the petitioners, is relating to the interpretation of the Rules relating to the Health Department and in the present case, the Rules have not been challenged by the petitioner and as such, the case of **Dr. (Major) Meeta Sahai** (supra), is not applicable in the facts of this case.

19. I have heard Mr. Vaidehi Ramam Prasad Singh, learned Counsel for the petitioners, Mr. Nikesh Kumar, learned Counsel for the Commission, Mr. Sanjeev Kumar, learned Counsel for the respondent nos. 7 and 8 and Mr. P. K. Shahi, learned Senior Counsel appearing on behalf of respondent nos. 9 to 15, and have carefully gone through the materials available on record.

20. The petitioners have challenged Clause 4 (i) of the impugned advertisement mainly on the ground that the same is discriminatory in nature inasmuch as only those candidates having experience of work on the post of Junior Engineer on contract basis under the Government of Bihar or its instrumentalities has



been given preference by giving additional 25 marks and not the candidates, like the petitioners, who gained work experience while working under the Central Government or its instrumentalities.

21. I have gone through the case of **Dr. (Major) Meeta Sahai** (supra), heavily relied upon by the petitioners and the factual matrix of the case is that an advertisement was published by the Bihar Public Service Commission in various local newspapers on 18.07.2014, inviting applications from eligible candidates for filling up 2301 vacant posts of General Medical Officer in Bihar. The selection process was elucidated in Clause 5 of the Advertisement, wherein general sub-cadre doctors were to be selected on the basis of a merit list prepared by giving weightage for academic qualifications, work experience (5 marks per year for a maximum of 25 marks) and marks obtained in interview. Pursuant to the advertisement, the appellant applied for the post of General Medical Officer and she was called for interview where she was informed that no marks could be granted under the head of 'work experience' as she lacked experience in the hospital run by the Government of Bihar. The aggrieved appellant filed a writ application before this Court challenging Clause 5 (iii) of the advertisement issued by the Commission to the extent it mandated that only work experience in hospitals of



Government of Bihar shall be considered for awarding marks for 'work experience'. The appellant contended that this Clause of the advertisement was in contravention of the Rules (which did not prescribe any such limitation of work experience only in the hospitals of the Government of Bihar). The appellant felt that if not for this erroneous interpretation of the Rules, she would have been selected for the post of General Medical Officer. The learned Single Judge of this Court dismissed the writ application holding that the validity of such provision had already been upheld by a Division Bench of the Patna High Court in the case of **Dr. Dharmbir Kumar v. State of Bihar**, reported in **2015 (2) PLJR 916**. Therefore, the appellant could not plead that exclusion of service rendered in Army Hospitals, while evaluating work experience, resulted in discrimination. The appellant filed a Letter Patent Appeal, with the foremost plea that the condition in the advertisement which restricted the work experience to only hospitals of Government of Bihar, was contrary to the Rules which gave weightage for experience in any Government hospital for the purpose of drawing the merit list. The contention of the appellant before the Supreme Court was that the restriction of work experience to only hospitals of Government of Bihar was arbitrary and contrary to Rule 5 and Rule 6(iii) of the Rules.



22. The Supreme Court, at paragraphs 22, 23, 24 and 25, in the case of **Dr. (Major) Meeta Sahai** (supra), has held as follows:

“22. There is no doubt that executive actions like advertisements can neither expand nor restrict the scope or object of laws. It is therefore necessary to consider the interpretation of the phrase ‘Government hospital’ as appearing in the Rules. Two interpretations have been put forth before us which can be summarized as follows:

a. Only hospitals run by the Government of Bihar.

b. Hospitals run by the Bihar Government or its instrumentalities, as well as any other non-private hospital within the territory of Bihar.

The former interpretation to the term, as accorded to it by the respondents, forms a narrower class whereas the latter interpretation used by the appellant is broader and more inclusive.

23. At the outset, the respondents’ contention that meaning of the term ‘Government hospital’ would be bound by the restrictive definition of ‘Government’ under Rule 2(a) of the Rules, does not sound well. It is settled that grammatical rules must be given due weightage during statutory interpretation. Rule 2 is a definitional provision and defines ‘Government’ as a noun. However, it would not necessarily govern instances where the word has been used in another form.¹⁰ Under Rule 5, the operative phrase is “any



Government hospital”. Here, ‘Government’ is restrictively defining the noun ‘hospital’ to exclude those run by certain entities. Thus, ‘Government’ as part of ‘Government hospital’ is a noun adjunct and has been used as an adjective. Such usage of a noun in its adjectival form changes its character altogether and it would be unwise to import the meaning of its noun form. This is especially true considering how the prefatory portion of Rule 2 explicitly provides that the definitions as prescribed thereunder shall be referred to unless otherwise required in context. The phrase ‘Government hospital’ therefore cannot be construed to exclude other non-private hospitals which are otherwise run exclusively with the aid and assistance of the Governments. Additionally given the difference in common usage wherein ‘government hospital’ refers to all non-private hospitals and not hospitals established by a particular government, Rule 5 & 6(iii) would not be bound by Rule 2(a).

24. Presence of the word ‘any’ in Rule 5 is also critical. It indicates a legislative intent to bestow a broad meaning to hospitals eligible for accrual of work experience. Importing the restrictive definition of Rule 2(a) would hence lead to an anomalous situation in having both expansive and restrictive adjectives applied to the same underlying noun. Consequently, we are inclined to adopt an expansive interpretation of the phrase, and not lay weight on Rule 2(a), as urged by the respondents.



25. In addition to this, adopting the respondents' interpretation would increase uncertainty and create practical difficulties. When Rule 2(a) is applied to 'Government hospital' there is substantial ambiguity created as to whether or not hospitals run by instrumentalities of the Government, which are not strictly owned by the Government of Bihar would be included within Rule 5. When a pointed question was put forth to learned counsel for the respondents as to whether a hospital established by the municipality or one run by an institute substantially funded by State money would be included in their definition, no clear answer was forthcoming. Such issues are bound to arise repeatedly in any selection process. Given how there is no simple answer to such questions, the rigid interpretation adopted by the Government would only lead to friction in the system and cause interpretative chaos which would undermine the fair and just right to compete for public employment."

23. Accordingly, the Supreme Court, at paragraph 36, in the case of **Dr. (Major) Meeta Sahai** (supra), has concluded as follows:

"36. 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. The 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.”

24. In the present case, I find that there is no ambiguity between the impugned clause of the advertisement and the relevant Rules; whereas, in the case of **Dr. (Major) Meeta Sahai** (supra), the contention of the appellant was that the clause of the advertisement was in contravention of the Rules and, accordingly, the Supreme Court interpreted the Rules and held that Rules 5 and 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. Accordingly, in my considered opinion, the



case of **Dr. (Major) Meeta Sahai** (supra), relied upon by the petitioners, is not applicable in the facts of this case.

25. The Supreme Court, in the case of **Maharashtra Public Service Commission v. Sandeep Shriram Warade and Others**, reported in **(2019) 6 SCC 362**, at paragraph 9, has held as follows:

“9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the



advertisement contrary to the plain language of the same.”

26. From perusal of Clause 4 (i) of the impugned advertisement and the Cadre Rules, 2015 along with the Cadre Amendment Rules, 2017, it is evident that the language of the impugned advertisement and the Cadre Rules, 2015 along with the Cadre Amendment Rules, 2017, are clear and there is no ambiguity in the impugned advertisement and the Cadre Rules, 2015 along with the Cadre Amendment Rules, 2017.

27. It is well settled principle of law that it is for the recruiting agency to prescribe procedures for selecting the candidates and only when the procedure is found to be patently illegal, the Court would interfere. Awarding of marks for experience is not uncommon and in the present case, the weightage of work experience is sought to be given to the candidates who have been engaged and served on contractual basis in the State of Bihar. Therefore, in my considered view, there is no illegality in Clause 4 (i) of the impugned advertisement, which is also in consonance with the Cadre Rules, 2015 and the Cadre Amendment Rules, 2017.

28. Further contention of learned Counsel for the petitioners is that there is no Cadre Rules with regard to the



appointment to the post of Junior Engineer (Mechanical/Electrical) in other departments, as such, the petitioners are not required to challenge the validity of the Cadre Rules, 2015 and the Cadre Amendment Rules, 2017 and Rules relied upon, i.e. the Cadre Rules, 2015 and the Cadre Amendment Rules, 2017, by the Commission is not relevant for appointment of the petitioners to the post of Junior Engineer (Mechanical/Electrical).

29. First of all, I find that it is the specific case of the Commission that the Water Resources Department of Government of Bihar is the Nodal Department for making appointments, which has framed its rules, i.e. the Cadre Rules, 2015 and the Cadre Amendment Rules, 2017, and a combined advertisement has been issued for appointment to the post of Junior Engineer in various departments and it is the specific case of the Commission, in its rejoinder (paragraph 3) that the respective departments have framed their respective rules for appointment and the rules made by different departments are *pari materia* and the same.

30. I have lay my hand upon similar rules framed by the Road Construction Department, Government of Bihar, dated 26.04.2018, namely, Bihar Road Construction Department Subordinate Engineering (Mechanical) Cadre Recruitment and



Service Condition Rules, 2018, in which the petitioners 1 and 2 have applied for and Clause 10 of the same is quoted herein below:

“10. Procedure of selection- (1) Selection to the posts of basic category of Junior Engineer (Mechanical) of this cadre shall be made by the Commission on the basis of percentage of marks obtained in Diploma or equivalent qualification. Candidates having experience of working on the post of Junior Engineer (Mechanical) on contract basis under the Government of Bihar or in any Undertaking/ Body/Corporation/Authority/Autonomous Body under the Government of Bihar, who fulfill the qualifications of the recruitment in this cadre, shall be given preference by giving additional marks according to sub rule (2)(b) of this Rule.

(2) Merit list of candidates shall be prepared on the following grounds:-

		Full Marks
(a)	On the basis of percentage of marks obtained in Diploma (Mechanical) or equivalent qualification	75
(b)	Maximum weightage for the working experience on contract basis (weightage of per working year shall be 5 marks maximum limit of which will be up to 25 marks. For part of any year, obtained proportionate mark by dividing by 365 to the no. of working days in that year multiplying by number 5, will be added)	25
	Total Marks	100

(3) Determination of working period on the contract basis shall be made on the basis of Payment



Certificate issued by their respective Controlling Officers. For this, the period up to the cut-off date mentioned in the advertisement published by the Commission shall be calculated for the working experience.

(4) Appointment of the Mechanical/Electrical Diploma holder candidates as Junior Engineer (Mechanical) shall be made in the following manner:-

(a) Reservation categorywise, 40% posts of total vacant posts under Rule 5 of these rules shall be reserved for Mechanical/Electrical Diploma holder candidates from the Government Polytechnic Institutes under the State which will be filled up on the basis of Merit list prepared reservation categorywise under the determined procedure by Rule 10(2).

(b) Remaining vacant post shall be filled on the basis of merit list prepared reservation categorywise under the determined procedure and on the basis of eligibilities/qualifications by Rule-9(1)(iii).

(c) After filling vacant posts of para (b) through general procedure, the remaining reserved posts of para (a) on the basis of merit list in categorywise merit-order, by selection, of candidates passing from the Government Polytechnics of the State.”

31. From perusal of Clause 10 of the Cadre Amendment Rules, 2017 and the Bihar Road Construction Department Subordinate Engineering (Mechanical) Cadre Recruitment and Service Condition Rules, 2018, it is crystal clear that both are



identical and the terms of the impugned advertisement and Clause 10 of both the Rules are exactly the same. It is admitted position that the petitioners have not challenged the validity of the Cadre Amendment Rules, 2017 and this Court has come to the finding herein above that there is no ambiguity between the terms of the impugned advertisement and the Rules and, as such, the contention of the petitioners on this score is also not tenable.

32. In view of the above discussion, on the point of law as well as on the facts, I come to the conclusion that the language of the impugned advertisement and the relevant Rules are clear and there is no ambiguity between them and Clause 4 (i) of the Advertisement No. 01 of 2019 is not contrary to the relevant Rules. Accordingly, Clause 4 (i) of the Advertisement No. 01 of 2019 does not require any interference by this Court.

33. In the result, I find no merit in this writ application, which is, accordingly, dismissed.

34. However, there shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	13-08-2021
Uploading Date	17-09-2021
Transmission Date	N/A

