

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1843 of 2022

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Vikram Kumar son of Rajendra Prasad Yadav, resident of Mohalla-Krishnapuri, Police Station-Kotwali, District-Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through its Secretary, Department of Personnel Affairs, Govt. of Bihar, Patna.
2. The Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Bihar Technical Service Commission, 19, Harding Road, Patna through its Chairman.
4. The Chairman, The Bihar Technical Service Commission, 19, Harding Road, Patna.
5. The Secretary, The Bihar Technical Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, AAG 4
		Mr. Nikesh Kumar, AC to AAG 4

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 19-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

“That this is an application for issuance of an appropriate writ and / or order and/ or direction to declare the Rule 10(2)(b) of Bihar Water Resources Department Subordinate Engineering (Civil) Cadre Recruitment Rules 2015 and Amended Rule 10(2)(b) of 2017 (hereinafter called as Rues) as ultra vires which in contravention and violation of Articles 13, 14 and 16 of the Constitution of India. Rule 10(2)(b) of 2015 and Rule 10(2)(b) of 2017 state that at the time of preparation of merit list, 25 marks (maximum) will be awarded to 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 Govt. of Bihar in addition to 75 marks for marks obtained in Diploma (Basis qualification for the post). The aforesaid said rules have been inserted as Class IV in Adv. 01/2019 for the appointment of Junior Engineer (Electrical) published by Bihar State Technical Commission, Patna.”

The issue raised in this writ petition is no more *res integra* and stands decided by Division Bench of this Court by order dated 10.04.2015 passed in ***CWJC No.855 of 2015 (Dr. Dharmbir Kumar & Ors. versus The State of Bihar and Anr.)***.

The relevant paragraphs of the aforesaid judgment are reproduced as under:-

“Clause B is in relation to Specialized Sub-cadre and is almost similar in content. The objection raised by the petitioners is about Clause-7(2)(A)(iii), which provides for award of 5 marks per year of experience in the Government Hospitals subject to a maximum of 25 marks. Even according to the petitioners, several candidates were engaged in Government Hospitals on contractual basis and such candidates are being awarded five marks for each year of experience.

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.”

Similar view has been expressed by Division Bench of this Court by order dated 24.08.2020, passed in CWJC

No.8225 of 2015 (Shailesh Chandra Gupta and Anr. Vs. State of Bihar & Ors. and its analogues cases) wherein Division Bench has also approved the Recruitment Rules framed under Article 309 of the Constitution of India by the State Government in which weightage for experience was granted to contract employees while considering regular appointment on the said post. However, in said judgment, it has also been clarified that the benefit of experience as contractual employee can only be granted, if the contract appointment has been made, meeting the requirement of Article-14 and 16 of the Constitution of India. Relevant paragraph of said judgment is reproduced hereinbelow:-

“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 a case of ***Dr. (Major) Meeta Sahai*** *since reported in 2019 (20) SCC 17*, has also approved grant

of weightage of experience in recruitment rules framed by State of Bihar for appointment of medical officers and relevant paragraphs 18, 19, and 36 are reproduced below:-

“18.The question of permissibility of giving weightage for “work experience” in government hospitals is also not the bone of contention in this case. Medicine being an applied science cannot be mastered by mere academic knowledge. Longer experience of a candidate adds to his knowledge and expertise. Similarly, government hospitals differ from private hospitals vastly for the former have unique infrastructural constraints and deal with poor masses. Doctors in such non-private hospitals serve a public purpose by giving medical treatment to swarms of patients, in return for a meagre salary. Hence, when placing emphasis on the requirement of work experience, there is no dispute on such recognition of government hospitals and private hospitals as distinct classes. Instead such recognition ensures that the doctors recruited in not-so-rich States like Bihar have the requisite exposure to challenges faced in those regions.

19.The appellant has thus rightly not challenged the selection procedure but has narrowed her claim to only against the respondents' interpretation of “work experience” as part of merit determination. Since interpretation of a statute or rule is the exclusive domain of courts, and given the scope of judicial review in delineating such criteria, the appellant's challenge cannot be turned down at the threshold. However, we are not commenting specifically on the merit of the appellant's case, and our determination is alien to the outcome of the selection process. It is possible post what is held hereinafter that she be selected, or not.

36 For the reasons stated above, the appeal is allowed. 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. 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.”

For the reasons, as stated above, writ petition has no merit and is accordingly dismissed. No order as to cost.

(S. Kumar, J)

I agree.

(Sanjay Karol, CJ)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	03.03.2022
Uploading Date	19.04.2022
Transmission Date	NA