

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.144 of 2022

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1. Bihar Staff Selection Commission, Patna, through its Secretary, Patna - 800014.
 2. The Chairman, Bihar Staff Selection Commission, Patna - 800014.
 3. The Secretary, Bihar Staff Selection Commission, Patna – 800014.

... .. Appellant/s

Versus

1. Arbind Kumar Dubey, aged about 35 years, male, Son of Birendra Dubey, Resident of Village - Reriya, Bikramganj, Vikramganj, P.S. - Bikramganj, District - Rohtas, Bihar.
2. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna.
3. The Chief Secretary, Govt. of Bihar, Patna.
4. Magadh University, Bodh Gaya, through its Registrar Magadh University, Bodh Gaya.
5. Vice Chancellor, Magadh University, Bodh Gaya.
6. College of Commerce, Arts and Science, Earlier known as College of Commerce, Patna through its Principal College of Commerce, Arts and Science, Patna.
7. Director- in-Chief, Health Services, Health Department, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Satyabir Bharti, Adv. Ms. Sushmita Sharma, Adv. Mr. Abhishek Anand, Adv.
For the State	:	Mr. P.K. Shahi, A.G. Mr. Manish Dhari Singh, A.C. to A.G.
For Respondent No. 1	:	Ms. Shama Sinha, Adv.
For Respondent No. 5	:	Mr. Pratik Kumar Sinha, Adv.



CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)
Date : 02-02-2023

Heard the learned counsel for the parties.

2. The Bihar Staff Selection Commission
(in short the Commission) has chosen to challenge the judgment and order passed by the learned Single Judge on 22-11-2021 in C.W.J.C. No. 7828 of 2020, directing the Commission to reconsider the eligibility of Respondent No. 1 for recommending him for appointment to the post of Lab Technician within a time-frame provided by the Court.

3. The Respondent No. 1 had applied against an advertisement published by the Commission, but was held to be not qualified enough for being considered. The reason for the same was that the Respondent No. 1 had obtained Diploma in Medical Laboratory Technician course from the



College of Commerce, Magadh University, which is not in the list of recognized institutions for the qualification to be considered for such recommendation.

4. The learned Single Judge has referred to the Bihar Laboratory Technician Cadre Rules, 2014 (*in short the Rules of 2014*).

5. Sections 5 and 6 of the Rules of 2014 provide for the *recruitment process* and the *minimum qualification*, namely, I.Sc./10+2 (Biology), along with Diploma course of Lab Technician from a government recognized institution.

6. On a plain reading of the aforesaid provisions of the Rules of 2014, the Rules having been framed under Article 309 of the Constitution of India, the decision of the Commission to shut out Respondent No. 1 from being considered was found to be faulty.

7. The appeal by the Commission has



been premised on the ground that only one body of Rules has been examined by the learned Single Judge, leaving aside another set of Rules applicable in the circumstance framed under Article 162 of the Constitution of India of the year 2005, viz., Bihar Para Medical and Para Dental Educational (Permission for Establishment of Institutions) Rules, 2005 (*the Rules of 2005*).

8. It has been submitted by Mr. Satyabir Bharti, the learned Advocate for the appellants/Commission that the Rules of 2014, which has been relied upon by the learned Single Judge, is only limited to the constitution of the Cadre and the basic minimum qualification for recruitment, whereas the Rules of 2005, referred to above, which has not been considered by the learned Single Judge, deals with establishment of institutions to impart Diploma in various branches of Para Medical Sciences including various Disciplines noted in the Act only.



9. The Rules of 2005 prohibit establishment and control of any Para Medical/Para Dental Educational Institutions against the provisions of the Rules framed therein. Thus, only such institutions stand recognized by the government which are in consonance with the Rules framed with respect to the infrastructure, the faculty and other necessary factors to be taken into account for running an institution for rendering Para Medical learning in various Disciplines.

10. With respect to the candidature of respondent No. 1, the objection of the Commission is that the College of Commerce under the Magadh University may be a recognized College of the University in the State of Bihar, but the course offered by the College in Laboratory Technology is of a lesser duration of one year and such course in the College is not included in the list of recognized institutions.



11. The afore-noted objection was sought to be repelled by Ms. Shama Sinha, the learned Advocate for the Respondent No. 1 by referring to Section 34 of the Rules of 2005, which provides that in case the norms/the courses of study or any other terms/conditions have already been laid down by the Medical Council of India/Dental Council of India/Pharmacology Council of India/Rehabilitation Council of India or any other Central Council for any course, then in the matter of those courses of study, the provisions of the concerned council shall prevail and the provisions of the Rules (2005) shall be deemed to be relaxed up-to that extent.

12. It was pointed out by Respondent No. 1 that the course in the College of Commerce, under the Magadh University, is U.G.C. sponsored and for starting such course, the seed-money was also provided by the U.G.C.

13. The other argument of Respondent



No. 1 is that even the government recognized the course offered by the College of Commerce, under the Magadh University, as the students pursuing the course were, in the past, permitted to take training in government recognized training institutes, imparting training in Para Medical Sciences.

14. Apart from this, it has been urged that the requirement under the Rules is with respect to Diploma from government recognized institutes which does not specifically speak about the duration of such course. The government recognized institutes have a two-year duration course in Lab Technology.

15. Be that as it may, a contempt petition was filed by the Respondent No. 1 because of non-implementation of the judgment and order passed by the learned Single Judge.

16. Mr. P.K. Shahi, the learned Advocate General, has brought to our notice a communication



made by the Director-in-Chief of Health Services, Health Department, Bihar, Patna addressed to the Bihar Staff Selection Commission, Patna (Appellant) dated 03rd of November, 2022, intimating to the Commission that there ought not to be any objection with respect to recognition of the certificate in Diploma course offered by College of Commerce, Magadh University in Lab Technology and the Commission has been asked to consider the case of Respondent No. 1 afresh with the afore-noted stand of the government.

17. The Bihar Staff Selection Commission is an examination taking body, which carries out the process of recruitment on the requisition of the State Government.

18. In the event of the State Government having no objection with respect to the recognition of the Diploma course offered by the College of Commerce, Magadh University, which is possessed



by Respondent No. 1, the Commission ought not to have any objection in considering the case of Respondent No. 1 afresh and make necessary recommendations.

19. The Bihar Staff Selection Commission has, therefore, no option in the matter, but to obey the directions of the learned Single Judge. The Commission has now been facilitated by the State Government, having cleared its stand that the Diploma course offered by the College of Commerce, Magadh University, also is deemed to be recognized by the State Government, in view of Section 34 of the Bihar Para Medical and Para Dental Educational (Permission for Establishment of Institutions) Rules, 2005.

20. The appeal, thus, fails and the directions of the learned Single Judge stands, which ought to be complied with as expeditiously as possible.



21. The appeal stands disposed off accordingly.

22. Interlocutory application/s, if any, also stand disposed off.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

Praveen-II/-

AFR/NAFR	AFR
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