

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7171 of 2021

Dr. Sangeeta Singh, Daughter of Navin Prasad Singh, Resident of Donar, P.S.
- Darbhanga Medical College Campus, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Health, Govt. of Bihar, Patna
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna
3. The Chairman Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, Patna 800001
4. The Special Secretary-Cum-Examination Controller Bihar Public Service Commission, 15- Jawaharlal Nehru Marg, Bailey Road, Patna, 800001
5. The Secretary, Bihar Public Service Commission 15, Jawaharlal Nehru Marg, Bailey Road, Patna - 800001

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Sr. Advocate Mr. Vikas Kumar, Advocate
For the State	:	Government Advocate – 10
For the BPSC	:	Mr. Sanjay Pandey, Advocate Mr. Nishant Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAVJUDGMENT

Date : 17-12-2024

1. The Petitioner has approached this Court under
Constitutional Writ Jurisdiction for the following relief: -

*“a. For direction to the respondent
Bihar Public Service Commission to allocate 10
marks for journals published by the petitioner
in terms of Clause-3 (kh) of Advertisement No.
20/2017 dated 24.04.2017 issued by Bihar
Public Service Commission for appointment of
1171 posts of Assistant Professor in different
medical colleges of State of Bihar.*



b. For direction to the respondent Bihar Public Service Commission to add the said 10 marks in total marks 31 obtained by petitioner in interview and recommend the name of petitioner for appointment on the post of Assistant Professor in OBST and Gynecology subject pursuant to Advt. No. 20/2017.

c. For direction to the respondent authorities to appoint the petitioner on the post of Assistant Professor in Medical College of State of Bihar in OBST and Gynaecology subject pursuant to Advt. No. 20/2017 dated 24.04.2017 issued by Bihar Public Service Commission.

d. For any other relief/reliefs for which the petitioner is found entitled too.”

2. Facts of the case which led the Petitioner to approach this Court is very short. Pursuant to Advertisement No. 20/2017, dated 24th of April, 2017, issued by the Bihar Public Service Commission (hereinafter referred to as “BPSC” for short), the petitioner submitted her candidature to the post of Assistant Professor in Medical College of the State of Bihar in Obstetrics and Gynecology.

3. As per advertisement notice, educational qualification / experience for the said post was 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.



3. The selection test was taken by an Expert Committee. The petitioner got 5 marks for MBBS, 5 marks for Speciliaty Subject, 10 marks for MD/MS/DNB, 00 (zero) marks for Ph.D./DM/MCH, 10 marks for experience in Government Sector and 00 (zero) marks for Published Journals. She also got 01 mark in the interview.

4. Thus, the petitioner got 31 marks under the selection test, whereas the cut-off mark in unreserved category was fixed at 37.5. The candidate having merit position in Sr. No. 27 was selected for the post of Assistant Professor. As the petitioner failed to secure the minimum cut-off marks, she was not selected in the said interview.

5. It is contended on behalf of the petitioner that the BPSC illegally and arbitrarily refused to allot 10 marks fixed for publication of articles in the journal. Actually, an article authored by the petitioner was selected for publication in a medical journal and it was intimated to the BPSC. Due to one reason or other, as for example, rotational turn for publication, specific limit of pages of the particular journal or other similar reason, the article of the petitioner was not actually published in the medical journal, but when the article of the petitioner was selected for publication, the Expert Committee, ought to have



held that the said article authored by the petitioner was accepted for publication and she ought to be awarded 10 marks for publication of articles in medical journal. Had it been so, the petitioner would have got 10 marks for publication of her paper in medical journal and she would have got 41 marks and selected to the post of Assistant Professor in the Medical College of the State of Bihar.

6. Thus, it is alleged that the decision of the Selection Committee under the authority of the BPSC was arbitrary, illegal and violative of Articles 15(1) and 15(3) of the Constitution of India.

7. Hence, the instant writ petition.

8. The Respondent Nos. 3 to 5, on behalf of BPSC, have filed a counter affidavit on 12th of January, 2022, stating, inter alia, that as the petitioner's paper was not published in any journal, she was not entitled to get 10 marks fixed for publication of scientific paper in medical journal. Thus, the petitioner was properly assessed and the writ petition is liable to be dismissed.

9. By filing a rejoinder to the counter affidavit, filed by the above-named respondents, the petitioner reiterated the affidavit dated 16th of July, 2024, that she submitted the



certificate issued by the Patna Journal of Medicine and Indian Medical Journal. The certificates are the part of the application form and at the time of interview, the said certificate was physically verified. Since the petitioner's paper was accepted by Patna Medical Journal, she claimed entitlement of the said 10 marks on account of publication.

10. At the time of admission of the instant writ petition on 1st of August, 2024, a Co-ordinate Bench of this Court directed the petitioner to implead the selected candidates in the Obstetrics and Gynecology Department to the post of Assistant Professor in different Medical Colleges situated in the State of Bihar on the basis of the advertisement in question, as such, the petitioner impleaded 31 candidates, who were appointed in the said selection process.

11. The said Interlocutory Application, however, has not pressed by the petitioner and no formal order was passed impleading the private respondents who were selected in the Department of Obstetrics and Gynecology as Assistant Professors in different Universities of the State of Bihar.

12. Mr. Sanjay Singh, learned Sr. Advocate appearing on behalf of the petitioner submitted that the only issue involved in the instant writ petition is as to whether an article selected for



publication by the editorial board of a medical journal should be declared as a published article or physical publication in the journal is necessary in order to get requisite marks for publication of academic papers for the post of Assistant Professor, is required to be considered in the instant writ petition.

13. In his usual fairness, the learned Sr. Advocate brings to the notice of this Court the decision of the Division Bench of this Court in L.P.A. No. 830 of 2014 along with similar other appeals, decided on 9th of March, 2018 (The Bihar Public Service Commission through its Chairman & Ors. v. Dr. Jagat Narayan Nayak & Anr.) In the said judgement, clause 4 (A) (ii) of the “Minimum Qualification for Teachers in Medical Institutions (Amendment) Regulations, 2009” was taken into consideration. The aforesaid provision runs thus: -

“3(a). In Clause 4(A) under the heading “Professor” as amended vide “Minimum Qualification for Teachers in Medical Institutions (Amendment) Regulations, 2009”, be further amended by inserting the following proviso in 4(A)(ii):-

“Provided that these research publications are published/accepted for publication in the Journals by the national



Associations/Societies of the respective specialities as the First Author. Further provided that the requirement of 4 research publications for promotion to the post of Professor should be taken on cumulative basis with minimum of 2 research publications must be published during the tenure of the Associate Professor”.

14. The Division Bench in paragraph 10 held as under: -

“10. What is important with regard to publication is that it must be propagated and brought to the knowledge of the people at large because the Hon’ble Supreme Court has taken a view that mere printing also may not amount to publication. A publication acquires the status of publication or having been published only after it is brought within the public domain and in this regard reliance has been placed on the case of Collector of Central Excise vs. New Tobacco Co. and others, reported in (1998) 8 SCC250. Paragraph 4 of the said decision is reproduced herein below:-

“4. Section 38 of the Act provides that all the rules made and notifications issued under the Act shall be published in the official Gazette. So, the requirement of Section 38 is publication of the rules and the notifications in the Official Gazette. The dictionary meaning of the word



“publish” as given in Webster’s Comprehensive Dictionary, International Edn., is “(1) To make known or announce publicly; promulgate; proclaim. (2) To print and issue to the public. (3) To communicate to a third person.” According to the Legal Glossary, published by the Legislative Department, Ministry of Law, Justice and Company Affairs, Government of India in 1992, it means “to make generally accessible or available; to place before or offer to public; to bring before the public for sale or distribution”. Thus the word “publish” connotes not only an act of printing but also further action of issuing or making it available to the public. Notification, according to Webster’s Third New International Dictionary, inter alia means “1. the act or an instance of notifying; Intimation, Notice; est: the act of giving official notice or information; 2. a written or printed matter that gives notice”. The Legal Glossary, referred to above, defines it as “a written or printed matter that gives notice”. Even if we go by the dictionary meaning the requirement of publishing the notifications would connote that what is intended to give notice or information to the public can be treated as published only when it is made available to the public so that they can know about it. (emphasis supplied) The requirement of publishing the notifications in the Official Gazette, which is an official journal or



a newspaper containing public notices and other prescribed matters, also indicates that the word “publish” in Section 38 should be so interpreted.”

15. The Division Bench on due consideration of factual aspect held in paragraph 14 of the aforesaid judgement as follows: -

“14. If such a leeway is granted to a candidate or candidates to acquire eligibility after the cut- off date then, in our opinion, there would be no uniform consideration and it will violate Articles 14 and 16 of the Constitution of India. There has to be a uniform yardstick and eligibility in every respect and it must be in place on the cut- off date fixed by the recruiting agency so that the authority does not exercise any kind of discrimination or providing leeway to any candidate lest there will be allegations of nepotism or favoritism.”

16. Ultimately, in paragraph 18, the Division Bench held that for the purpose of getting benefit of award of marks for publication for the post of Assistant Professor, the candidate must bring the publication in the public domain before the cut-off date and not after the cut- off date. Tendering or acceptance or certification by any editorial board or magazine of having accepted such articles for future publication is no publication in



the eye of law but it is only a process towards publication and not actual publication.

17. So in the aforesaid appeal, the Respondents / Candidates were not granted marks which they were entitled for publication of articles.

18. The learned Sr. Advocate appearing on behalf of the writ petitioner also submitted another decision of the Division Bench of the High Court of Judicature at Bombay, Nagpur Bench in *Writ Petition No. 1383 of 2022 (Dr. Sunil v. The State of Maharashtra & Ors.)*, decided on 13th of February, 2023.

19. Fact of the aforesaid decision is in brief is that the paper about which the Committee of Experts raised its objection was published after the due date, i.e., 26th of August, 2021, which was the last date of filing of the application. Hence, the petitioner was found ineligible. The Division Bench of Nagpur Bench of Bombay High Court held that the opinion of the Committee of Experts was perverse as it does not take into account the relevant fact and also the guidelines issued by the Medical Council of India. The guidelines of Medical Council of India shows that the requirement of publication of a research paper in the prescribed journal is fulfilled not only by its actual



publication in the journal but also by the fact that the research paper is “accepted for publication”, even though the research paper may not even actually published.

20. Taking note of the MCI Guidelines, the Division Bench of the High Court at Bombay, Nagpur Bench, held in paragraph no. 14 as follows:-

“14. Once it is established on record that the Medical Council of India considers the research papers accepted for publication as eligible for various posts and it is found that the fourth research paper of the petitioner was accepted for publication on 19.8.2021, much before the due date of 26.8.2021, the Committee of Experts could not have found the petitioner to be not eligible on the ground that the publication of the research paper of the petitioner was after the said due date. In fact, the publication of any research paper in an international journal is only a consequence of the decision to accept the research paper for publication and this consequence may ensue immediately after the acceptance of the research paper for publication or may visit after a gap of several days, months and even years. That apart publication of any research paper, which is already accepted for publication depends various factors such as availability of space in the journal, frequency of the journal



and so on the ground These things are not within the control of the researcher and, in fact, should not matter for determining the eligibility of a researcher for a particular post or qualification. What should matter in such a case is the date on which a research paper is accepted for publication as it is such acceptance only which indicates the worth of research paper for its publication. In our view, it is only the fitness or worthiness of research paper for its publication, which comes from a decision of its acceptance for publication, which should determine the issue of eligibility of the researcher for a particular post or qualification. The guidelines issued by the Medical Council of India, (document-A3), in our view, make sense and they only show that Medical Council of India accepts that it is only the finding about worthiness of research paper for its publication which matters and not its actual publication. The Committee of Experts, however, glossed over this most important aspect of the matter and reached a patently wrong and perverse conclusion. It, therefore, deserves to be interfered with.”

21. At this juncture, it is noticed by this Court that there are two contradictory decisions rendered by the Division Benches of two High Courts – one by the Home High Court and another by the High Court of Bombay, Nagpur Bench. It is



needless to say that when there is contradiction in respect of the ratio decided on legal principles, the decision of the Home High Court shall prevail. Therefore, this Court is bound to accept the decision of the Division Bench of the High Court at Patna in *The Bihar Public Service Commission through its Chairman & Ors. v. Dr. Jagat Narayan Nayak & Anr. (supra)*.

22. The learned Senior Counsel appearing on behalf of the petitioner invites this Court to decide the issue on equitable principle when there are contradictory decisions by the Division Benches of two High Courts.

23. In support of his contention, Mr. Singh relies upon the decision of the Hon'ble Apex Court in ***Charles K. Skaria & Ors. v. C. Mathew (Dr) & Ors.***, reported in ***(1980) 2 SCC 752***.

24. The aforesaid report was published on the factual issue of admission of some candidates in the Universities. The Rule contained provision for allotment of additional marks for a particular qualification. The Hon'ble Supreme Court held that the fact of attaining that particular qualification before the last date of application was essential and proof of such attainment may follow later. Fact of such attainment can be communicated to the Selection Committee before selection. Selection Committee may also inquire and confirm it. The guidelines or



provisions in the prospectus for enclosing such certificates along with the application was held directory by the Hon'ble Supreme Court.

25. In the said case, it was decided that 10 marks would be granted to the holders of Diploma in Ophthalmology in the selection of candidates of MS and MD.

26. The said decision was challenged before the Hon'ble Supreme Court being unreasonable or arbitrary.

27. The Hon'ble Supreme Court held that there is nothing unreasonable or arbitrary in adding 10 marks for holders of Diploma. It was, however, stipulated that in order to earn this extra 10 marks, the Diploma must be obtained at least on or before the last date of application, not later. Proof of having obtained a Diploma is different from the factum of having got it.

28. The question which came up for consideration before the Hon'ble Supreme Court is as to whether, the candidate, in fact, secured a Diploma before the final date of application for admission to the degree course. The Hon'ble Supreme Court found that the candidates obtained Diploma before the cut-off date but the certificate was issued later. Apart from deciding constitutional arbitrariness, the Hon'ble Supreme



Court was pleased to give reply to the question on the principle of equity. In the last line of paragraph no. 21 of the report, it is observed by the Hon'ble Supreme Court that "actual excellence cannot be obliterated by the choice of an incontestable but unorthodox probative process. Equity shall overpower technicality where human justice is at stake".

29. Subsequently, in paragraph nos. 23 and 24, the Hon'ble Supreme Court held:-

"23. We are aware that when a statute vests a public power and conditions the manner of exercise of that power then the law insists on that mode of exercise alone. We are here unconcerned with that rule. A method of convenience for proving possession of a qualification is merely directory. Moreover, the prospectus itself permits government to modify the method, as the learned Single Judge has pointed out. In this view, we see nothing objectionable with the government directive to the selection committee, nor in the communication to the selection committee by the university, nor even in their taking into consideration and giving credit for diplomas although the authentic copies of the diplomas were not attached to the application for admission. A hundred examples of absurd consequences can be given if the substance of



the matter were to be sacrificed for mere form and prescriptions regarding procedures.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and Government Orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities



informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a prospectus is not scripture and common sense is not inimical to interpreting and applying the guide-lines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks.”

30. The learned Senior Counsel appearing on behalf of the petitioner invites this Court to adjudicate the case of the petitioner on equitable principle of dispensation of justice, because the petitioner’s scientific paper was actually accepted by the journal before the cut-off date but it was not published on the date of her interview.

31. The learned Advocate appearing on behalf of the Respondents/BPSC, on the other hand, submitted that when the Division Bench of this Court clearly decided in an earlier appeal that acceptance of publication cannot be considered as publication for the purpose of getting extra marks in selection process to the post of Assistant Professor, this Court has no other alternative but to follow the said judgement. The ratio laid



down in the judgment of Bombay High Court is not applicable in the instant case.

32. Placing reliance on *Laxminarayan R. Bhattad & Ors. v. State of Maharashtra & Ors.*, reported in *(2003) 5 SCC 413*, it is submitted by the learned Advocate appearing on behalf of the Respondents/BPSC that when there is a conflict between law and equity, former shall prevail.

33. In *P.M. Latha & Anr. v. State of Kerala & Ors.*, reported in *(2003) 3 SCC 541*, this Court held that “equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written and settled law.

34. In *Nasiruddin & Ors. v. Sita Ram Agarwal*, reported in *(2003) 2 SCC 577*, the Hon’ble Supreme Court observed that “In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.”

35. In *E. Palanisamy v. Palanisamy [E. Palanisamy v. Palanisamy]* reported in *(2003) 1 SCC 123*, it has been held that “Equitable considerations have no place where the statute contained express provisions”.

36. Further, in *India House v. Kishan N. Lalwani*



[India House v. Kishan N. Lalwani, reported in **(2003) 9 SCC 393**, the Hon'ble Supreme Court held that "The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations".

37. On the same issue, the learned Advocate appearing on behalf of the Respondents/BPSC also refers to the decision of the Full Bench of the Hon'ble Supreme Court in the case of **New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.**, reported in **(2020) 5 SCC 757**. The Hon'ble Court in the said report held that "it is thus settled law that where the provision of the Act is clear and unambiguous, it has no scope for any interpretation on equitable ground."

38. The learned Advocate of the Respondents/BPSC also refers to another judgement of the Hon'ble Supreme in **Civil Appeal No. 9941 of 2016 (Mary Pushpam vs. Telvi Curusumary & Ors.)** decided on **3rd of January, 2024**. In paragraph no. 18 of the said judgement, the Hon'ble Apex Court relied on its earlier decision in **State of Punjab & Anr. v. Devans Modern Breweries Ltd. & Anr.** reported in **2004 11 SCC 26**, has discussed the principle of judicial discipline. It is held by the Hon'ble Supreme Court that :-



“339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench.

340. In Halsbury's Laws of England (4th Edn.), Vol. 26 at pp. 297-98, para 578, it is stated: “A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow.”

19. We have already discussed about the importance of ensuring judicial discipline and the same has also been upheld by various judgement of this Court. In Central Board of Dawoodi Bohra Community & Anr. vs. State of Maharashtra & Anr., this Court has summed up the legal position of rules of judicial discipline as follows:

*12. ****

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law



taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.”

39. Having heard the learned counsels for the parties, considering the factual circumstances of the case and the decisions placed and relied upon by the learned counsels for the petitioner and the respondents, I have no hesitation in saying that this Court is bound by the decision of the Division Bench of the High Court of Judicature at Patna, decided in LPA No. 830 of 2014 and this Court is duty bound to follow the Rule of Judicial Discipline and propriety and the doctrine of precedence that led to the consistency in judicial decisions.

40. When the law, rule and/or administrative instruction or notification is unambiguous and clear, the



principle of equity cannot be applied to overturn the decision taken by the respondent authority on the basis of such notification. The Advertisement in question clearly stipulated that a candidate would get 10 marks for publication. It is not stated that the 10 marks would be granted if a paper of a candidate is selected for publication in a medical journal. In such a case, there would be unequal treatment amongst the candidates whose papers were actually published and those whose papers were not published but accepted for publication. The factual aspect of the decision of the Hon'ble Supreme Court in *Charles K. Skaria* (supra) is different from the instant case, inasmuch as the candidates passed Diploma in Ophthalmology before the cut-off for their admission in MD/MS

41. Under such circumstances, the Hon'ble Supreme Court exercising equitable principle held that there would be denial of opportunity to the candidates who actually were Diploma holders on the date of application to the selection of MD/MS.

42. In the instant case, admittedly, the petitioner's paper was not published on the date of interview and even the petitioner did not disclose the subsequent date when her paper was published. The Court is unaware as to whether the said



paper was actually published or not. Thus, selection for publication, I am constrained to held, does not mean publication. The petitioner has not annexed a copy of the published paper along with the instant writ petition.

43. Under such circumstances, this Court is constrained to note that the equitable principle follows the law. Though, this principle is not universally true or this would never have been occasion for development of separate code of equitable principles, it means that equity towards the common law as laying the foundation of all jurisprudence, and it does not depart unnecessarily from legal principles.

44. In matters coming before it, which depends solely on legal rights, as in legal claims, arising in the course of an administrative action, equity applies the rule of law as appropriate system; in such cases, the rule of law are in fact binding in equity.

45. For the reasons stated above, as this Court already held that on the date of selection, the petitioner failed to produce the published paper in medical journal, she was rightly refused to grant 10 marks by the Expert Committee.

46. In view of such circumstances, I do not find any scope for interference against the administrative action by the



respondents and the instant writ petition is, accordingly,
dismissed, on contest.

However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/uttam

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