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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 398/2023, CM APPL. 21735/2023, CM APPL. 21737/2023, CM APPL. 9592/2024 & CM APPL. 23136/2025
INSTITUTE OF LIVER AND BILIARY SCIENCES
& ANR.Appellants

Through: Mr. Sanjay Poddar Sr. Advocate
alongwith Mr. Siddharth Panda, Adv,
Mr. Govind Kumar & Mr. Apurv
Kumar, Adv

versus

AJAY KUMAR SACHDEV & ORS.Respondents

Through: Mr. Abhimanue Shrestha and Mr.
Pritesh Patni, Counsel for the
Respondent No.1

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

ORDER

10.11.2025

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1. The present appeal is directed against the judgment dated 29.03.2023 passed by learned Single Judge in Writ Petition (Civil) No. 5737/2021 that was filed by the respondent no.1. The facts of the case lie in a narrow compass. The appellant-institute issued an advertisement for the post of Professor, Surgical Hepatology and issued advertisements dated 18.12.2016 and 19.10.2017, the petitioner's candidature was rejected in 2017, result whereof was declared in 2021 for which he filed a writ petition being W.P.(C) no. 1129/2021.

2. The petitioner's candidature was rejected on the ground of educational



qualification, which according to the appellant-institute was MCH, whereas the writ petitioner-respondent was possessing the qualification of MS(GI). In the said Writ Petition, the appellant-institute took a plea that the institute will be issuing a fresh advertisement and shall relax the condition of requisite educational qualification and they should consider petitioner's candidature accordingly. Consequently, a fresh advertisement dated 01.02.2021 was issued and the writ petition came to be disposed of the appeal by the order of 01.02.2021 itself which reads thus:

“4. Mr.Sanjay Poddar, learned Senior counsel for the respondent Nos. 1, 2 and 6, would submit, without admitting the allegations made in the writ petition and without prejudice to his rights and contentions, that after the application was submitted by the petitioner against an advertisement issued in the year 2017, as many as eight advertisements have been issued for the said post. He also states that a fresh advertisement has been issued today, i.e. February 01, 2021. He further states that the petitioner is at liberty to apply against the said advertisement and his application shall be considered by a screening committee as was considered vide the impugned communication. It is only after all the applications are screened that the Selection Committee shall consider the names of the screened candidates for Selection to the said post. He states that that upon consideration of the application of all the applicants including the petitioner for the said post by the Screening Committee, the decision of the Screening Committee shall be sent to the petitioner regarding his eligibility. He also states while considering so, the Screening Committee shall also take into consideration the Communication dated February 07, 2021 of Medical Council of India, on which reliance was placed by Mr.Harkauli.

5. This submission of Mr.Poddar is agreeable to Mr.Harkauli who states that right of the petitioner to seek such remedy, if he is aggrieved by any communication issued pursuant to the deliberations of the Screening Committee be left open. It is ordered accordingly.”

3. The respondent-writ petitioner and two other candidates applied to the said advertisement dated 01.02.2021 for the post of Professor Hepatology,



however candidature of all the three candidates was rejected and the respondent-writ petitioner was informed about the same by communication dated 22.05.2021. Said communication was challenged by the respondent-writ petitioner by way of filing W.P.C no. 5737/2021 and directed the appellant Institution to accord appointment to the respondent no.1.

4. It is pertinent to note that this time, petitioner's candidature was rejected on the ground of not having requisite publication, which was subject matter of the writ petition that was filed in 2021. During the course of pendency of the writ petition, learned Single Judge issued a notice to MCI on 01.04.2022 and elicited its response about the publications. The MCI filed an affidavit stating that the petitioner's publication (including numbers) conforms to the norms of MCI as per Regulation 19 of MCI Regulations, 2019.

5. Considering said affidavit and material on record, learned Single Judge allowed the writ petition filed by the respondent-writ petitioner and directed the respondents to appoint the petitioner- Ajay Kumar Sachdev therein on the post of Professor, as he remained to be the sole eligible candidate.

6. Learned counsel for the appellant argued that learned Single Judge has erred in issuing direction for appointment to the respondent no. 1- Ajay Kumar Sachdev while observing that the publications as possessed by the respondents were in accordance with the MCI regulation.

7. He submitted that as per the advertisements, the respondent was required to have 6 publications, whereas publications of Respondent no.1 were less than 6 out of 35. If the Court found the respondent eligible, a sweeping direction to appoint the respondent could not have been issued



inasmuch as there might be many other similar candidates, who did not apply for the post considering the terms of the advertisement.

8. Learned counsel submitted that as recorded in the proceedings of 01.05.2023, the Division Bench has noted the contention of the appellant that they are prepared to issue fresh advertisement. He submitted that the appellant Institute be allowed to issue fresh advertisement, so that other candidates who are/were eligible may also apply for the post.

9. Learned counsel for the respondent no.1 submitted that there is no error in the direction issued by the learned Single Judge inasmuch as the candidature of the writ petitioner has to be considered *vis-a-vis* the other competitive candidates who had applied. He alternatively submitted that if the appellant is allowed to issue fresh advertisement, it will find a new reason to non-suit him perhaps they would create an objection of age.

10. At this juncture, learned counsel for the appellant submitted that, so far as age is concerned, the appellant shall not reject his candidature on the ground of age and writ petitioner's candidature shall be considered in accordance with law subject of course to what has been held by learned Single Judge in two of his earlier writ petitions, more particularly in relation to the Equivalence MS (GI) Surgeon and the publication which have been held in his favor.

11. Having heard rival counsel, we are of the view that the appellant is justified in contending that learned Single Judge ought not to have issued a direction to appoint the respondent, as there might be many more eligible candidates, who did not apply for the post in light of the terms of the advertisement and MCI guidelines.

12. The present appeal is therefore disposed of by allowing the appellant



to issue a fresh advertisement, with relaxed educational qualification (as has been done in the advertisement dated 01.02.2021). The respondent no.1 shall, however, be free to apply under the freshly issued advertisement. However, while considering the candidature of all the applicants, it shall be required of the appellant to consider candidature of the writ petitioner (respondent no.1 herein) on merit, without being prejudiced in any manner. The respondent no. 1- Ajay Kumar Sachdev shall not be rejected on the ground of age and degree which he is already possessing so also on the ground of publication, as has been already held in his favor.

13. Since the recruitment is pending since 2017, the appellant is directed to issue fresh advertisement as early as possible preferably within a period of one month from today. The process be completed within a period of two months of issuance of the advertisement.

14. Needless to observe, that in case the respondent no.1's candidature is rejected, he shall be free to challenge the same.

15. Appeal stands disposed of.

DINESH MEHTA, J.

VIMAL KUMAR YADAV, J.

NOVEMBER 10, 2025/nk