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**(2018) 01 PAT CK 0058**

**In the Patna High Court**

**Case No :** 1439 of 2016?In?Civil Writ Jurisdiction Case No 12064 of 2008

Avinash Kumar Pandey & Anr

APPELLANT

Vs

The State of Bihar & Ors

RESPONDENT

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**Date of Decision :** 30-01-2018

**Acts Referred:**

**Citation :** (2018) 01 PAT CK 0058

**Hon'ble Judges :** Ajay Kumar Tripathi, Nilu Agrawal

**Bench :** Division Bench

**Advocate :** Banwari Sharma, Brajesh Kumar, Anjani Kumar, Sanjay Prasad

**Final Decision :** Dismissed

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## **Judgement**

1. The intra-court appeal is against the order, dated 4.11.2015, passed by a Learned Single Judge, who after taking note of the factual and legal position, dismissed the writ application.
2. A batch of writ applications, including that of the appellants, came to be filed for a direction upon the State Government for their absorption on teaching and non-teaching posts in what is known as Sri Dhanwantari Ayurvedic College, Ahirauli, Buxar. The College in question was taken over by an Act of 1985.
3. The case of the present appellant has been considered in paragraph nos. 344 to 351, which is reproduced hereinbelow: "344. In this case all the three petitioners are claiming absorption on the post of Laboratory Technician. According to the petitioners, petitioner no.1 was appointed on the post of Laboratory Technician on 9.11.1981 in the department of Ras Shastra, whereas petitioner no.2 was appointed on the post of Laboratory Technician in Sharir Kriya and petitioner no.3 Awadesh Chaubey on the post of Laboratory Technician in Maulik Sidhyant. According to the petitioners, their qualification of Intermediate in Science would be good enough for their appointment and absorption on the post of Laboratory Technician.

345. Let it be kept in mind that the cases of petitioners had earlier also been considered in the batch case of Dr. Satyadeo Pandey, wherein it was held as follows:

"In C.W.J.C.No. 19830 of 2008 the sole petitioner Ganeshji Pandey was denied absorption on the ground that he did not fulfil the qualifications laid down by the State Government for the post of Laboratory Technician. The petitioner has shown on the basis of Annexure 9 that persons having qualification of I.Sc. which petitioner has, are working as Laboratory Technician in Magadh University, petitioner was appointed in the year 1981 whereas Annexure 9 is of a later date. According to the counter affidavit of respondent no.4 essential qualification for medical Laboratory Technician has been fixed by the State Government because the CCIM does not fix qualifications for non-teaching staff. It has been asserted that the necessary qualification for the post is I.Sc. with two years training as Lab. Technician. It further appears that petitioner was a party to C.W.J.C.No.11673 of 1995 which was disposed of by remitting their case for decision by the Health Commissioner but ultimately the same was rejected by the State Government on the report of the Screening Committee. Neither the report of Screening Committee nor the counter affidavit discloses when the State Government prescribed the qualification claimed by the State. It is also not clear how the State Government could prescribe qualification for the college when ordinarily it should have been done by the Bihar University to which the college was affiliated. Petitioner has a good case on the basis of order of Magadh University contained in Annexure 9 but since the Bihar University is not a party to the writ petition, there is nothing on record to show whether Bihar University had laid down qualification for the post of Lab Technician for affiliated Colleges or not. If the Bihar University at the relevant time had laid down qualification for the post in question the same should be made the yardsticks for deciding the claim of Laboratory Technician otherwise the State Government will be at liberty to apply the qualification laid down by it if such decision was in existence at the time of appointment of the petitioner in the year 1981 as Laboratory Technician. This may be treated as a further direction for deciding claims of Laboratory Technicians in addition to general directions even by this Court earlier in this order."

346. Pursuant thereto, the petitioners have tried to emphasize that the Bihar University had given in writing on 2.6.2008 that the qualification of Laboratory Technician was only Intermediate in Science. Learned counsel for the petitioners thus had submitted that all the three petitioners would be deemed to have been qualified on account of their being Intermediate in Science and thus, fit for being absorbed. Since this stand of the Bihar University was contested by the learned counsel for the State this Court had directed the Bihar University to file a fresh affidavit and the Bihar University in its latest affidavit dated 10.11.2013 had clarified as follows:

"2. That it is stated that the then Registrar BRA Bihar University had issued two

letters bearing no. B/270 and B/2148 dated 21.1.2011 and 11.10.2014 respectively wherein it was stated that the requisite qualification for Laboratory Technician was "I.Sc." 3. That it is stated that the basis of the said statement, submitted to State Government, was a previous letter issued by the State Government bearing letter No. 9690 dated 17th August, 1979. 4. That it is further stated that the University proceeded on the basis of qualification prescribed, in the said letter bearing letter no. 9690 dated 17th August, 1979, for Laboratory In-charge to state that the required qualification for Laboratory Technician was "I.Sc." 5. That it is further stated that the University has not prescribed any qualification or framed any statute with regard to qualification required for appointment in Class III and IV as they were merely assigned the task to conduct examinations in the Ayurvedic Colleges and nothing more."

347. It, thus, became clear that the Bihar University had fixed no norms for appointment on the post of Laboratory Technician. As per the judgment and directions of this Court in the case of Dr. Satyadeo Pandey (supra) in absence of qualification laid down by the Bihar University the qualification fixed by the State Government had to be followed. The State Government in the year 1981 had already fixed the qualification for the post of Laboratory Technician, wherein it was prescribed as follows:

"VERNACULAR MATTER OMITTED"

348. Thus, from the reading of the aforementioned letter produced by Mr.D.K.Sinha, learned AAG, it becomes very clear that the Review Committee had committed no error in relying on the Government decision with regard to qualification of MLT to be a condition precedent for appointment on the post of Laboratory Technician.

349. Judged in this background this Court will not find any merit in the case of the petitioners for their absorption on the post of Laboratory Technician, inasmuch as none of them in their appointment made in the year 1981 had undergone or completed even one year MLT course which now for the present has been enhanced to two years DMLT course.

350. The petitioners in fact are bound by the inter-party judgment, wherein it was made clear that in absence of qualification prescribed by the Bihar University for the post of Laboratory Technician, the qualification laid down by the State Government could be made applicable for examining their cases of absorption. That having been done this Court cannot now take any different view in view of the aforesaid Government decision becoming final and conclusive between the parties.

351. In the result, this writ application fails and is, accordingly, dismissed."

4. Counsel for the appellant submits that no qualification as such was prescribed by the Bihar University for the post of Laboratory Technicians, therefore, applying the yardstick, fixed by the State Government for considering their cases, is unfair

and inequitable. According to them, they had I.Sc. Qualification, which should be good enough for their consideration for absorption.

5. It may be correct that the Bihar University as such never laid down any yardstick for appointment of a Laboratory Technician, but since the question of regularization was subject matter of consideration by the State Government on a taken over Ayurvedic Medical College and since even alternative method of treatment, like Allopathic, Unani and Homeopathic, are now a recognized and established branches under the State of Bihar, and there ought not to be any distinction between the Allopathic branch of treatment or hospitals for the yardstick and standards required therein.

6. If that be so, then, if the Hon"ble Single Judge went by the stand of the State that the qualification and experience required for a Laboratory Technician was laid down in the year 1981 for Patna Medical College and Hospital, then extending the same yardstick for consideration of the eligibility in relation to the qualification, cannot be said to be irrational.

7. Effort has to be maintained to maintain certain standards in the quality of service, which is required to be rendered to the citizens, even it be an Ayurvedic College and the same cannot be diluted with the object of providing employment to an otherwise unqualified or under-qualified claimants of such benefit.

8. In view of the above, we are not inclined to interfere with the decision of the Learned Single Judge in this appeal.

9. Appeal has no merit, it is dismissed.