

(2007) 02 PAT CK 0129

In the Patna High Court

Case No : Letters Patent Appeal No's. 1174 and 1507 of 1995

State of Bihar and Others

APPELLANT

Vs

Dr. Satyendra Narayan Singh and Others
 Dr.
Vishwendra Kumar Sinha Vs State of Bihar and Others

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Citation : (2007) 2 BLJR 1757 : (2007) 2 PLJR 717

Hon'ble Judges : Navaniti Prasad Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Lalit Kishore, AAG III and Piyush Lall, JC to AAG III, in LPA No. 1507 and 1518 of 1995 and Devendra Kr. Sinha and Narendra Kr. Sharma, in LPA No 1174/1995, for the Appellant; Pushkar Nr. Shahi, Ritesh Kr. No. 1 and Onkar Nath, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh and Navaniti Prasad Singh, JJ.—A writ petition was filed by Dr. Satyendra Narain Singh and Dr. Sudhansu Kumar Jain. Another writ petition was filed by Dr. Praveen Ballabh. Both the writ petitions sought awarding of six marks for evaluation of the merit of the writ petitioners inasmuch as they obtained Diplomat National Board Qualification. When these writ petitions were being heard, an Intervener intervened and contended that the petitioners were not entitled to six points as was claimed by them. The State Government opposed the writ petitioners and contended that the petitioners were not entitled to six points and accordingly, they were not awarded such points. The writ petitions were heard analogously and by one single judgment, a learned Single Judge allowed both the writ petitions and directed the State Government to give six more points to each of the petitioners for evaluation of their merit and thereupon to place them in the select list in their appropriate position. Aggrieved thereby, the State Government has preferred two appeals and the intervener has preferred the other. Inasmuch as the issues are common and the same have been decided on the same rationale by a single judgment, we thought it

convenient to decide the appeals at one go.

2. There appears to be no dispute that there is no statutory rule governing the recruitment procedure of Assistant Professors and Registrars in different Medical Colleges of the State. The State Government published an advertisement and thereby invited applications for filling up the posts of Assistant Professors and Registrars in the Medical Colleges of the State. The advertisement provided, inter alia, that for the post of Assistant Professors and Registrars, the applicant must possess MD, MS, FRCS (UK), MRCP (UK), MRCPG (UK) or a post graduate Qualification from American Board of Speciality or any other post graduate qualification which has been accepted by the Medical Council of India to be equivalent to the above mentioned Qualifications. The advertisement made it clear that post graduate qualifications obtained from UK after 11th November, 1978 will not be considered.

3. This part of the advertisement, therefore, made it abundantly clear that in the event, a candidate though is neither a MD or MS or FRCS or MRCP or MRCPG or a post graduate from American Board of Speciality, but has a post graduate Qualification which has been accepted by the Medical Council of India to be equivalent to either MD or MS or FRCS or MRCP or MRCPG or post graduate qualification from American Board of Speciality, he is eligible for the post of Assistant Professor as well as Registrar.

4. There is no dispute, as would be evidenced from records, that the Medical Council of India has accepted Diplomate National Board qualification as equivalent to MRCP as well as FRCS. Therefore, a candidate who has obtained Diplomate National Board qualification is entitled to be appointed as an Assistant Professor as well as a Registrar in terms of the said advertisement even if he is not a MD or MS or FRCS or MRCP or a post graduate from American Board of Speciality.

5. From the documents brought on record in the counter affidavit filed by the State to the writ applications, it appears that the Medical Council of India has recognized a candidate, who has obtained Diplomate National Board Qualification, as a person entitled to be appointed to the post of Registrar and has also recognised such a candidate, as a person entitled, to be appointed in a teaching post, that is to the post of Assistant Professor, provided in addition to such qualification, he has research experience of one year. Be that as it may, each of the petitioners, in the Instant case, has obtained MD or MS in addition to Diplomate National Board qualification and, accordingly, since they have either MD or MS, they are entitled to be appointed as Assistant Professor as well as Registrar in terms of the said advertisement.

6. In a portion of the said advertisement, it was indicated that certain points shall be given to the candidates for the purpose of evaluating their merit. The criteria set down, therefore, provided that a candidate shall be entitled to four points if he has MD or MS certificate from American Speciality Board or other equivalent qualification in the concerned subject. Inasmuch as the petitioners are

either MD or MS, they were given four points. The petitioners contended that inasmuch as in addition to MD/MS. they have obtained Diplomat National Board Qualification and such Qualification being equivalent to MD/MS, they were entitled to additional four points for Diplomat National Board qualification. The learned Single Judge while delivering the judgment did not go into this claim. However, since this was one of the points raised in the writ petitions, it is our duty to deal with this point. A look at the clause set out in the advertisement would suggest that it was held out in the advertisement that four points would be awarded to a person who has MD/MS certificate from American Speciality Board or has other equivalent qualification in the concerned subject. The clause made it clear that the person shall only be entitled to four points for the MD/MS certificate or the equivalent certificate and not four points each for more than one certificates. This has also been clarified by the foot note (2) appended to the advertisement, which clearly mentions that for obtaining same qualification from more than one University in the same subject extra point will not be given. In other words, it made absolutely clear that if a person has obtained MD/MS certificate from American Speciality Board and has also obtained a similar certificate or qualification from an Indian University, he shall be entitled to only four points and not 4+4 points. Another clause under the merit evaluation criteria in the advertisement makes the same further clear. This clause provides that if a person has obtained qualification of MD/MS from American Speciality Board or has obtained equivalent qualification in the concerned subject and in addition thereto has obtained equivalent Qualification on any other subject, he shall be entitled to six points. Therefore, if a person has obtained MD or MS in the concerned subject, he will get four points, but if he gets similar qualification in yet another subject, he will get six points. If the person concerned gets MD or MS for one subject from one University or Board and obtains equivalent qualification in the same subject from yet another University or Board, he gets no further point.

7. The learned Counsel for the writ petitioners contended before us that the word "University" as used in the foot note (2) is significant and, therefore, if a person has obtained MD or MS from one University and equivalent qualification from yet another University then for the equivalent qualifications, he will not be entitled to four more points but if he obtains the same from a Board, he will be entitled to such points and in the instant case inasmuch as the qualification of DNB has been obtained by the petitioners from a Board, they are entitled to four more points.

8. A look at the advertisement would make it abundantly clear that foot note (2) was intended to control and qualify, that clause which gave benefit to a candidate holding MD/MS qualification from American Speciality Board or other equivalent qualification in the concerned subject. Therefore, in case of a MD or MS is obtained from the Board, as mentioned in the advertisement, that is, the American Speciality Board, if the word "University" as used in foot note (2) is read in the restricted sense of University alone, the foot note would not fulfil the

purpose for which the same had been given. In such event there will be a distinction between the qualification awarded by the American Speciality Board and equivalent qualifications awarded by the Indian Universities. Such an intention cannot be culled out from the foot note or from the advertisement. The word "University" as was used in the foot note, therefore, denoted the authority granting the qualification. The word "University" also meant the authority granting the Qualification must be authorised to do so. In those circumstances, we are unable to uphold the contention of the writ petitioners that inasmuch as DNB Qualification was obtained by the petitioners from a Board they were entitled to additional four points for such Qualification in addition to four points given to them for having obtained MD/MS.

9. The said advertisement also mentions that a candidate shall be entitled to six points if he has obtained MRCP/MRCPG/FRCS prior to 11th November, 1978 in the concerned subject. As aforesaid, the Medical Council of India has in no uncertain terms held out that DNB qualification is equivalent to MRCP or FRCS. The petitioners, therefore, contended in the writ petition that since DNB is equivalent to MRCP or FRCS, by reason of what has been mentioned in the advertisement, they were entitled to six more points in addition to the four points they have been given for MD or MS. The learned Single Judge, while dealing with the writ petitions, held that inasmuch as the Medical Council of India has accepted DNB qualification as equivalent to MRCP or FRCS, the State Government had no justification in not treating the DNB qualification as equal to MRCP or FRCS and to deny six points to the candidates, who have obtained DNB qualification. On this ground, the writ petitions have been allowed with a direction to the State to grant six more points to each of the petitioners. While doing so, the learned Judge overlooked foot note (1) to the advertisement which provides that total points shall be limited to eight points and, therefore, for having had obtained four points for MD/MS, at the best for DNB, the petitioners could be awarded four more points, as provided in the advertisement, totalling to eight points.

10. Be that as it may, the contention of the State Government before the learned Single Judge, which has been repeated before us, was that inasmuch as for the recruitment for the posts in question there is no statutory rule, the State Government was bound by each word used by it in the advertisement and, accordingly, it could not deviate from what had been set down in the advertisement. It was contended before the writ Court as well as before us that while equivalence was mentioned in the advertisement in relation to MD/MS, the advertisement did not mention equivalence of MRCP or MRCPG or FRCS. It is the contention of the State Government that the State Government having had published advertisement, was estopped by representation from acting contrary to the advertisement. It was submitted that the State Government through the advertisement represented to the world at large that it would act in the manner as it has represented in the advertisement. Therefore, without altering the advertisement, it could not act contrary to the representation as was made in the

said advertisement. It was stated that the qualifications of MRCP, MRCPG and FRCS entailed six points. The advertisement did not say that a person who has obtained equivalent qualification as that of MRCP, MRCPG and FRCS would also be entitled to six points. The State Government, therefore, contended that they could not act contrary to the norms laid down by them to guide their actions pertaining to merit evaluation criteria as had been set down by them and represented through that advertisement. We think there is great substance in what has been submitted on behalf of the State Government.

11. It is now well settled in law that once rules have been framed for doing a thing, in order to do the thing, the rules have to be followed. By the advertisement itself, the rules had been framed and the same had been brought to the notice of the world. The rules as laid down in the advertisement were binding on the State Government as well as on any one who responded to the advertisement. The rules as were laid down could be challenged and it could be urged that it was arbitrary on the part of the State Government in awarding six points to MRCP/MRCPG/FRCS, but not awarding of six points to a candidate who is holding equivalent qualification, but then, when such a challenge had not been thrown and the advertisement was responded without reservation, it could not be urged by a person responding to the advertisement that inasmuch as he holds a Qualification equivalent to MRCP or MRCPG or FRCS, he should also be accorded six points.

12. It must be kept in mind that there may be a large number of people, who did not respond to the said advertisement, for they knew, by reading the advertisement, that though they have equivalent qualification as that of MRCP, MRCPG or FRCS, but such equivalent qualification would not qualify for six more points and, accordingly, it would be better not to respond to the advertisement. If after the advertisement is published and the same is acceded to by responding thereto, the terms of the advertisement are altered either directly or indirectly, many people to whom also representations had been made through the advertisement would suffer and, accordingly, in public interest, it is impermissible to alter any of the clauses of the advertisement.

13. For the reasons as above, we have no other option but to interfere with the judgment and order under appeal. The same is, accordingly, set aside and the appeal is allowed.