

(2018) 03 PAT CK 0050

In the Patna High Court

Case No : Letters Patent Appeal No.830 of 2014,1139 of 2014,829 of 2014, 881 of 2014, 576 of 2015, 966 of 2014

The Bihar Public Service Commission through its Chairman &
ors

APPELLANT

Vs

Dr. Jagat Narayan Nayak

RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:

Constituion Of India, — Article 14, 16

Citation : (2018) 03 PAT CK 0050

Hon'ble Judges : Ajay Kumar Tripathi;Nilu Agrawal

Bench : Disvision Bench

Advocate : Ashok Kumar Singh;M. N. Parbat ;Shivendra Kishore

Final Decision : Allowed

Judgement

1. All these appeals were taken up and heard separately, but since common questions of law emerge for consideration, they are being finally disposed

off by a common judgment.

2. These appeals have been preferred by Bihar Public Service Commission (BPSC) against the order of the learned Single Judge dated 14.02.2014

since the learned Single Judge allowed the writ applications of all the private respondents giving a direction upon the BPSC, the appellant, to consider

their case for appointment on the post of Assistant Professors in different streams for the medical colleges of the State of Bihar. In these appeals, the

issue before the learned Single Judge was whether the BPSC was correct in its view of not calling the private respondents for interview because they

refused to award marks under publication and since the minimum cut- off 10 marks was not reached, the private respondents approached the High

Court through writs.

3. The learned senior counsel representing the appellant- BPSC submits that the learned Single Judge committed a serious error of law as well as fact

by giving an interpretation as well as a direction that articles, which were not even published but only submitted for publication, was as good as

publication and, therefore, they deserved to be granted marks against the would be publications or the publication, which saw the light of the day after

the cut- off date, which was fixed as 31.07.2011 or even beyond the last date of application, which was fixed as 18.08.2011.

4. The thrust of the argument on behalf of the BPSC is that it is settled law that no candidate or a person can claim benefit of any kind in terms of

eligibility which may have been acquired after the cut- off date. Contra, it is the stand of the learned senior counsel that all eligibility and requirements

in terms of the advertisement for consideration for the post in question must be in place before the cut- off date. If it is not so then the BPSC has

committed no wrong by not considering any publication which was published after the cut- off date or having been brought into existence just before

the interview.

5. For Assistant Professors, requirement of publication is a must for award of marks under the head for publication. Marks can be awarded only for

those publications which are in public domain of all the candidates before the cut- off date. They cannot draw advantage by making statements or

producing certification that they have submitted their articles for publication before the cut- off date and that the editorial board of the respective

medical journals had accepted those articles for future publication, though, admittedly, final publications came into existence only before the interview

of the respective candidates. There is no dispute that before the cut- off date none of these candidates or respondents had publications in their favour.

They had only produced certification that the publication was in the process.

6. Submission on behalf of the private respondents made are that the learned Single Judge has rightly considered the position emerging from the

Minimum Qualification for Teachers in Medical Institutions (Amendment) Regulations, 2009, where publication include even matters accepted for

publication. Such view has been taken by the learned Single Judge in the impugned order wherein reliance has been placed on clause 4 (A) (ii), which

has been reproduced as part of the order and since arguments and rational of the learned Single Judge is based on the said provision, it is reproduced

herein below as part of this order as well :

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.

7. An interpretation has been given by the learned Single Judge based on the extract of the regulation that wherever the word publication has

been referred it has been qualified as accepted or published. According to him, a harmonious interpretation is required to be given to the word

publication in the requirement as laid down in Senior Resident/ Tutor/ Bihar Medical Education Service Cadre Recruitment, Appointment

and Promotion Rules, 2008.

8. Learned senior counsel for the appellant- BPSC submits that the learned Single Judge seems to have missed out on a significant aspect of the

regulation and by his interpretation he has read more into the provisions or the rules than what the legislature had envisaged. What has been extracted

by the learned Single Judge from 2008 MCI Regulation, he omitted to notice that the word publication or accepted for publication has been talked

about with regard to the two senior positions i.e. of a Professor or an Associate Professor. There is no corresponding provision of such kind with

regard to Assistant Professors. Argument is that it is deliberate on the part of the legislature not to use such interpretation with regard to Assistant

Professors for the reason that they join the teaching cadre at the very threshold whereas Associate Professors and Professors are already people with

experience and exposure having sufficient seniority and, therefore, they do not have to establish or prove their achievements in the area of research or

publication. Exceptions, therefore, have been made for Associate Professors or

Professors that even if their articles or research papers have been submitted or accepted for publication it will be considered as a publication.

9. However, because the recruitment is being made at the bottom of the teaching cadre, which is the post of an Assistant Professor, they must have publications to their credit and the publications must be within the realm of public knowledge and mere submission of publication or its acceptance by any journal for future publication cannot be said to be "publication" but only a process towards publication.

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 SCC 250. 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.

11. A matter is said to have been published only when it is made known to the public at large which may include the concerned community or section of the community, but by no stretch of imagination mere tendering or acceptance of a research paper or article with an assurance of its future publication can be said to have acquired the status of publication.

12. While going through the records of these cases, it is not a coincidence that all the candidates, who had applied for consideration for appointment on the post of Assistant Professors, had tendered their article for publication just before the cut-off date, which is mostly in the month of June or July or thereafter in the year 2011. The Court would again point out that the cut-off date was 31.07.2011 in terms of the advertisement. The candidates had annexed certificates from the publishers of the journal saying that they have accepted the articles for publication and emphasis has been laid on the fact that since in the cases of Professors or Associate Professors even acceptance for publication is considered as good as publication, therefore, the same analogy and logic should be extended in the case of Assistant Professor.

13. The Medical Council of India (MCI) no doubt is a professional body, which regulate the standards of medical education, therefore, if they in their regulation did not provide for similar kind of provisions in relation to Assistant Professor, which has been done with regard to Associate Professor and Professors, then obviously there is an object behind it and that object cannot be diluted by reading into the regulation of the MCI or the 2008 Bihar Rules to mean that articles tendered for publication should be considered to have been published. It again be highlighted that none of these articles had seen the light of the day before the cut-off date. The printing has been done only before the date of interview of the respective candidates.

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.

15. In some of the cases, we have noticed that in terms of the rules, especially Rule 5 of 2008 Rules, a requirement of certification by the Professor

In-charge and Head of Department has been talked about. That certification has been provided for in 2008 Bihar Rules with the object of certifying

that the articles so published is the original article of the author and that it is not a case of copying or somebody's else work passed off as original

work of the author. We have noticed from records that some candidates have claimed benefit in the writ application on the basis of those certificates

issued by Professor In-charge or Head of Department by the candidates who were working under them and even this is sought to be passed off as

acceptance for publication. With due respect such certification has to be there only to prove the authenticity of the publication and that stage will only

come after the article is published and the certification cannot be used as a publication or tendering of publication or acceptance for publication. This

aspect of the matter is also reflected from the advertisement which anyway seems to be an extract or reproduction from the 2008 Rules.

16. Since in none of these cases any of these candidates had their articles published or was brought within the public domain before the cut- off date

which is 31.07.2011 then this Court has difficulty in accepting the interpretation given by the learned Single Judge that even tendering of articles for

publication should be treated as publication and benefit of award of marks for those publications must accrue in favour of the candidates.

17. The learned Single Judge, therefore, has committed error by reading something into the regulation which does not provide for the post of Assistant

Professors as well as missing out the significant milestone, which is the cut- off date. Since all these candidates, who are respondents in these appeals,

have failed to satisfy this Court that any of them had successful publications before the cut- off date, any publication brought thereafter cannot be of

any avail and to that extent the BPSC cannot be compelled to award marks to them on the basis of those publications. We, therefore, come to a

conclusion that the interpretation and direction given by the learned Single Judge

on the issue of publication seems to be erroneous.

18. We reiterate this position in law that any person, who is looking for the benefit of award of marks for publication, for the post of Assistant

Professor must bring in 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.

19. In one appeal, which is LPA No.576 of 2014 which arose out of CWJC No.12736 of 2012, which is the case of Dr Sujata Kumari, a plea is taken

that her articles had earlier been published in certain foreign journals in USA and UK. Those were already in place in the year 1991 and thereafter

those articles are also available on the internet. However, on a closer examination it emerges that the articles, which Dr Sujata Kumari is talking

about, are articles published not in a medical journal but a patent journal. Even a plea was taken on behalf of Dr Sujata Kumari that she had certain

inventions to her credit and that the Commissioner of Patent and Trade Marks of USA has given patent on certain discovery made by her.

20. Such arguments have been accepted by the learned Single Judge, who seems to have been carried away more by the fact that some of these

publications have been made abroad and, therefore, of a higher order of stature and credibility. However, what has been lost sight of by the learned

Single Judge is that the requirement for publication has to be in a medical journal of repute and not any journal including a journal which publishes

article on patent and trade marks. No publication has been shown by Dr Sujata Kumari even before us to have been published before the cut- off date

in medical journal. In her case also certificate showing that articles have been submitted or tendered for publication has been brought on record. This

does not help the cause of Dr Sujata Kumari in any manner for the reason that the arguments earlier made and noticed in earlier part of our order that

publications not brought in public domain before the cut- off date, are no publication in the eye of law especially if it not before the cut- off date i.e.

31.07.2011. The argument will also apply to the case of Dr Sujata Kumari.

In totality, therefore, these appeals stand allowed. The order of the learned Single Judge dated 14.02.2014 stands set aside.