

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.20694 of 2018**

Dr. Pawan Kumar S/o Late Surendra Mohan Resident of Flat no. A-31, 3rd floor, Jagat Ajanta Apartment, Naya Tola, Patna-800004

... .. Petitioner/s

Versus

1. Indira Gandhi Institute Of Medical Science, Sheikhpura, Patna-14 through its Director
2. Head of the Department Orthopedics, Indira Gandhi Institute of Medical Sciences, Sheikhpura, Patna
3. Dr. Nishant Kashyap S/o Late Ramjanam Prasad Sahu R/o Block-A, flat no.-G1, Terrace Gardenia Apartment, Shivshambhu Colony, Asiana Digha Road, Patna
4. Dr. Kumar Chandan, Assistant Professor orthopedics Indira Gandhi Institute of Medical Sciences, Patna

... .. Respondent/s

**Appearance :**

For the Petitioner : Mr. Umesh Prasad Singh, Sr. advocate  
Mr. Rakesh Kumar  
Mr. Abhimanyu Vatsa  
Mr. Rajni Kant Singh  
Mr. Sameer Sawaran  
For the Respondent No. 1 & 2 : Mr. P. K. Shahi, Sr. advocate  
Mr. Sunil Kumar Singh  
For the respondent No.3 : Mr. Mithilesh Kumar Rai, advocate  
For the respondent No.4 : Mr. Ankit Katriar

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**

**ORAL JUDGMENT**

**Date : 05-03-2021**

Heard Mr. Umesh Prasad Singh, the learned senior counsel for the petitioner, Mr. P. K. Shahi, the learned senior counsel duly assisted by Mr. Sunil Kumar Singh, the learned counsel, for the respondent No.1 and 2, Mr. Mithilesh Kumar Rai,



the learned counsel for the respondent No.3, and Mr. Ankit Katriar, the learned counsel for the respondent No.4.

2. The petitioner by filing this writ petition seeks quashing of the order of appointment of respondent No.3 and 4 dated 19.09.2018 issued under the signature of Director, Indira Gandhi Institute of Medical Sciences, Patna (hereinafter referred to as the IGIMS). The petitioner further prays for issuance of writ of Mandamus commanding the respondents to consider the case of the petitioner for appointment on the post of Assistant Professor in pursuance to the advertisement No. 04/Faculty/IGIMS/Estt./2018 and to pass such other order/ orders, direction/ directions as this court may deem fit and proper in the facts and circumstances of the case.

3. The facts bereft of unnecessary details but relevant for this case are that the petitioner did his MBBS from Patna Medical College Hospital, Patna in the year 2006. He also did his MS, Orthopedic from PMCH in the year 2011. The petitioner did his Senior Residency from IGIMS for the period 30<sup>th</sup> January, 2013 to 29<sup>th</sup> July, 2016. The petitioner applied for the post of Assistant Professor (Orthopedic) vide advertisement No. 04/Adhoc- Faculty appointment/IGIMS/Estt./2017 and he being eligible for the post was appointed as Assistant Professor, Orthopedic on adhoc basis. An advertisement No. 04/Faculty/IGIMS/Estt./2018 was issued for appointment on Faculty posts for various departments in



IGIMS. The petitioner also applied for appointment on the post. The petitioner was called for interview on 03.07.2018 but when result was published vide memo No. 3956/Admn dated 19.09.2018 the petitioner found his name in the waiting list. Respondent No.3 and 4 were selected for appointment on the post of Assistant Professor, regular, in Orthopedic department. The petitioner, being dissatisfied and aggrieved with the appointment of respondent No. 3 and 4 on the ground that they have got lesser qualification and lesser experience as compared to the petitioner but they were appointed filed this writ petition.

4. Mr. Umesh Prasad Singh, the learned senior counsel for the petitioner, submits that petitioner was earlier appointed as Assistant Professor (Orthopedic) on adhoc basis after following the appointment procedure and he discharged his duties as Assistant Professor (Orthopedic) from 31.07.2017 to 30.04.2018. Four posts of Assistant Professors (Orthopedic) were again advertised (annexure- P/4) and out of four posts three posts were for general category (unreserved) and one post was reserved for SC. It is submitted that according to advertisement (annexure- P/4) the essential qualification for appointment on the post of Assistant Professor (Orthopedic) is that a candidate must have MBBS/MS/MD degree in subject concerned or an equivalent degree of recognized institution by the MCI as also three years teaching and/or research experience in recognized institution. It is



further submitted that a committee was constituted for interviewing the candidates on the basis of their qualification.

5. The learned senior counsel further submits that petitioner got MBBS and MS degree in orthopedic from PMCH and also got four years teaching experience as Senior Residency and also Assistant Professor (Orthopedic) for the post on which substantive appointment to be made. The petitioner published nine journals out of which six are indexed journals and the petitioner is first author in two indexed journals and second author in other two indexed journals whereas in three non-indexed journals he is first author in two journals. When the merit list was prepared the petitioner compared his qualification and experience with the selected candidates and found that respondent No.3 and 4 have no better qualification than the petitioner and they have lesser experience than the petitioner but they were granted more marks in the head of publication of journals and in the head of experience. It is further submitted that from perusal of the document, Annexure-B annexed with the counter affidavit of respondent No.1 and 2, it would appear that members of the committee had fixed 100 marks out of which 70 marks for educational qualification, experience, award/ distinction, research publication, paper presentation and 25 marks for interview. It is further submitted that from perusal of evaluation sheet, it would appear that very irregular and illegal



method has been adopted for awarding marks and evaluation of candidates.

6. The learned senior counsel for the petitioner further submits that petitioner obtained the detailed information of qualification etc. of each candidate under Right to Information Act. The documents were provided by Mr. K. N. Pd. Chaurasia, who sworn affidavit on behalf of respondent No.1 and 2. The aforesaid document has been annexed as Annexure- P/9 on behalf of the petitioner. It is submitted that in Annexure- P/9 detailed qualification of each candidate has been given. Kumar Chandan, respondent No.4, is at serial No.13, Nishant Kashyap, respondent No.3 is at serial No. 16 and name of petitioner is at serial No.20. So far as respondent No.3 is concerned he has annexed his application as Annexure- R/5 to his counter affidavit and there is no conflict with entries made in Annexure- P/9. In the application in the column indexed journal he has mentioned one as 1<sup>st</sup> author whereas as serial No. 2, 3,4 as second author, the details are in Annexure- P/9 which refers only 8 numbers of journals. Respondent No.1 and 2 has annexed copy of application of respondent No.3 as Annexure- D and there appears that some interpolation is made in Annexure- D as instead of 3 as second author 4 has been overwritten. Mr. K. N. Pd. Chourasia, who has sworn affidavit on behalf of respondent No. 1 and 2 had maintained silence but failed to notice that 3 marks was allowed



for this interpolation in column VII of evaluation sheet (Annexure-B) and instead of 12 marks he has been given 15 marks and thus according to marks to be awarded respondent No.3 should have been awarded only 12 marks and this fact proves the irregular manner of awarding marks in selection of the candidates for the Assistant Professor.

7. It is further submitted that respondent No.3 got three years teaching experience as Senior Resident but he has been treated to have experience of five years and two extra marks have been illegally allotted for extra teaching experience in column-V.

8. The learned senior counsel for the petitioner further submits that as per detailed qualification of respondent No.4, it would appear that respondent No.4 in his application claimed that he passed MBBS in 2007 in 1<sup>st</sup> attempt but had not mentioned the name of college etc. nor a copy of certificate was enclosed. He claimed to pass DNB in December, 2014. The respondent No.4 did not mention the fact as to from where he obtained his DNB qualification but when the petitioner challenged his claim possessing equivalent degree of MD/MS, respondent No.4 after filing of the writ petition has enclosed the copy of a so called certificate dated 28.12.2019 with the supplementary counter affidavit although counter affidavit was filed much earlier. From the certificate annexed by respondent No.4 it appears that he was doing his DNB during the period 03.05.2011 to 02.05.2014 from



Baby Memorial Hospital, a Multi-disciplinary Super Specialty Hospital at Kozhicode but neither respondent No.4 in the supplementary counter affidavit nor respondent No.1 and 2 in their counter affidavit have disclosed that the concerned hospital on the relevant date when respondent No.4 was doing his DNB was recognized by the Medical Council of India. The respondent No.4 himself stated that he was doing DNB from 03.05.2011 to 02.07.2014 but at the same time he claimed teaching experience from 03.05.2014 to 02.07.2017- three years one month and 21 days from Amrita Institute of Medical Science as non recognized institution. Thus, respondent No.4 claimed teaching experience of 3 years 11 months and 17 days. The respondent No.4 further claimed two publication one as 1<sup>st</sup> author and the other one as second author but from perusal of chart, it would appear that instead of 4 marks Kumar Chandan, respondent No. 4, was given 15 marks and thus both respondent No.3 and respondent No.4 should have been given less marks than the petitioner and they have illegally been appointed and the petitioner is placed in waiting list at serial No.1.

9. The learned senior counsel for the petitioner further submits that from the facts aforesaid, it would clear that respondents have adopted selective and opaque method for choosing a candidate of their choice and the appointment on any public post must be confirmed with the command of public



confidence. The opaque procedure adopted in appointment on the public post such as the present one is fit to be set aside.

10. Mr. P. K. Shahi, the learned senior counsel appearing for respondent No. 1 and 2, the IGIMS, duly assisted by Mr. Sunil Kumar Singh, learned counsel, submits that according to terms of advertisement the requisite qualification is mentioned in the advertisement. The State Government vide letter No. 172 dated 10.10.1991 (Annexure-F) directed that AIIMS, New Delhi rules will be followed in IGIMS. In AIIMS, New Delhi appointment/selection on faculty posts is done on the basis of interview. In pursuance to advertisement the petitioner and others applied. Interview for appointment on the post of Assistant Professor (Orthopedic) was held on 03.07.2018 and the petitioner and other appeared in interview. The selection committee consisting of eight members of experts was constituted. The standing selection committee prepared evaluation sheet of selection to the post of Assistant Professor (Orthopedic) and total marks was 100 including 25 marks for interview. The respondent No.3 and 4 got 55 and 62 marks respectively while aggregate marks of petitioner was 54 (Annexure- C). Accordingly, respondent No.3 and 4 were appointed on 19.09.2018. It is further submitted that petitioner challenged appointment of respondent No. 3 and 4 on the ground that he is better qualified than respondent No. 3 and 4 and he has experience of working as Assistant Professor on ad-hoc basis. It is



further submitted that petitioner had participated in the selection process and appeared in the interview without raising any objections to selection process and thus the petitioner had already waived his right to challenge the recruitment process. The law is well settled that once a person takes part in the process of selection and is not found fit for appointment, the said person is stopped from challenging the process of selection. The learned senior counsel placed reliance on the following judgements:-

(i) AIR 1995 SC 1088- Madan Lal v. State of Jharkhand

(ii) (2017) 9 SCC 478 -D. Saroj Kumari v. R. Helen  
Thikaka

(iii) (2010) 12 SCC 576- Manish Kumar Sahi v. State of  
Bihar

(iv) (2013) 11 SCC 309- Ramesh Chandra Sah & Ors v.  
Anil Joshi & Ors.

11. Mr. Shahi, the learned senior counsel for the IGIMS, further submits that the selection committee has given experience of three years Senior Resident or more after MD/MS one mark and experience of some other field has been give one mark each. The respondent No.3 is MS (Orthopedic) and MS (Anatomy) and has experience of Senior Resident from 21.01.2015 to 26.01.2018 and, thereafter, he has experience of surgical oncology on Orthopedics patients, therefore he has been given two marks in experience. The respondent No.4 has experience of Senior Residency from T.D.



Medical College, Kerala from 03.05.2014 to 02.07.2017 and respondent No.4 thereafter underwent one year Fellowship in Spine Surgery from Amrita Institute of Medical Sciences, Kochi, which is MCI recognized institute. It is further submitted that Spine Fellowship comes under teaching/ research experience and respondent No.4 has rightly allotted two marks. The petitioner has experience of senior resident in Orthopedics only and, therefore, he has been given one mark and no mark can be given to petitioner as he has worked on ad-hoc Assistant Professor (Orthopedic).

12. It is further submitted that so far marks given on research papers publication for appointment of Assistant Professor is concerned, marks were given to 1<sup>st</sup> author and correspondence author. Marks for research publication of the subject is three marks for journal published in national/ international journal and one mark in allied subject. List of Index journals is published by MCI. The marking of research paper publication is given by the standing selection committee on the basis of quality of research papers, journal in which it has been published, subject of papers etc. Considering all these aspects, it has been found that research papers of respondent Nos. 3 and 4 have been published in national/ international journal and they have been given 15 marks respectively and petitioner has been given 11 marks in accordance with his publication.



13. It is further submitted that respondent No.4 attended two state level conferences and presented papers and the standing selection committee awarded marks for it. The respondent No.4 was student of DNB from Baby Memorial Hospital and his DNB course was completed on 02.05.2014 and he joined Senior Residency in T.D. Medical College, Alappuzha, Kerala on 03.05.2014 and left the same on 02.07.2017 and, therefore, respondent No.4 has teaching experience of three years, one month and 26 days. Respondent No.4 underwent one year Fellowship in spine surgery from Amrita Institute of Medical Sciences, Kochi which is a MCI recognized Institute. Baby Memorial Hospital is recognized and reputed institution and its bed capacity is more than 500 beds and DNB Supervisors qualify as Post Graduate Teachers as per MCI regulation. There is no need of additional training to make DNB degree equivalent to MD/MS when bed capacity of medical college is more than 500 beds. Thus, it is not necessary for respondent No.4 to do one year additional training. The learned senior counsel submits that once the expert committee fixed modes for giving marks in appointment of Assistant Professor (Orthopedic), the court ought not to interfere with selection or decision made by expert about suitability of the candidate to be appointed. He placed reliance on the judgements of the Hon'ble Supreme Court reported in (i) 2010(3) PLJR 190 SC- Dr. Basavaiah v. Dr. H.L.Ramesh and (ii) 2014 (4) PLJR 45 SC-



Madras Institute of Development Studies v. Dr. Sivasnramasiyan & Ors and submits that the writ petition is devoid of any merit and fit to be dismissed.

14. Mr. Mithilesh Kumar Roy, the learned counsel for the respondent No.3, submits that petitioner was appointed on the post of Assistant Professor (Orthopedic) on ad-hoc basis and the respondent No.3 was appointed on the same post in unreserved category after being selected. The petitioner is not entitled for regularization as the appointment letter itself says that the appointment was made temporarily.

15. The learned counsel for the respondent No.3 further submits that petitioner developed his case in the background that full credit shall be given to first author/ second author which has been very smartly deviated to favour the selected candidates and further research work of answering respondent has been interpolated as 1+4 instead of 1+3 but the petitioner has not challenged the eligibility of respondent No.3. So far as academic qualification of respondent No.3 is concerned, he is superior to the petitioner as respondent No.3 is MBBS from PMCH, Patna, M.S. (Ortho) from Tribhuwan University, Kathmandu, Nepal and MS (Anatomy) from DMCH, Darbhanga and all the courses are completed in single attempt. The respondent having double MS degree has got better qualification than the petitioner besides the fact that respondent completed some special training course such



as AO spine principle and advance course from Kathmandu, AO Trauma course basic principle of fracture management from Kathmandu, training in surgical oncology from IGIMS, Patna, Ponseti technique from URE India, New Delhi and Fellowship Royal College of General Practice (FCGP). From the counter affidavit of respondent No. 1 and 2 it would appear that petitioner obtained only 52 marks but the same has wrongly been mentioned as 54 marks. It is further submitted that marking of research paper publication is given on the basis of quality of research paper, the quality of journals in which it has been published, subject of papers as well as first or second or corresponding or index or non index, related to the subject or other, quality of study as well as impact factor of the journal and above all the subjective satisfaction of the selection committee for objective consideration of suitability of candidates, therefore, the same cannot be questioned. It is further submitted that courts have got no expertise to scrutinize merits of candidates and courts are not required to sit in appeal over opinion of experts and placed reliance on the following judgements of the Supreme Court:-

(I) 2010 3 PLJR 190 SC (Dr. Basavaih vs. Dr. H.L. Ramesh) and (ii) AIR 1965 SC 491(The University of Mysore vs. C.D. Govinda Rao & anr).

16. It is further submitted that malafide has not been asserted positively and a candidate cannot challenge the



correctness of selection process particularly when the candidate appeared in the selection process and became unsuccessful and, therefore, the writ petition is fit to be dismissed.

17. Mr. Ankit Katriar, the learned counsel for the respondent No.4, submits that petitioner raised grievance against selection and appointment of respondent No.4, Dr. Kumar Chandan, on the post of Assistant Professor (Orthopedic) on misconceived ground which is not proper and tenable. It is submitted that IGIMS as compared to general Medical College is differently constituted with different objective. The standing selection committee, while being mindful of its needs, rightly paid attention to better academic side of the candidates with a view to develop an apex center for delivery of health and medical care of highest standard, to train specialists in different branches and to develop clinical as well as training programs etc. In this background, the selection body cannot shut its eyes to persons possessing higher qualifications and have indulged in extraordinary academic pursuit in the subject concern. It is further submitted that the advertisement only prescribes minimum eligibility criteria for the post indicated with the term essential but the same cannot preclude selection committee for including higher qualification for consideration and fixing parameters for selection. From perusal of selection process, as brought on record by respondent No. 1 and 2, it is apparent that selection committee has



made selection in transparent way. The selection committee formulated 10 different scales for measurement of merit of candidates in objective manner. Points have been prescribed for (i) academic qualification as well as (ii) academic activities of individual candidate. Points for special training/ qualification have also been fixed. Only 25 points were allotted for viva voce and 70 points were fixed for evaluating skills of academic pursuit in different way. The petitioner unnecessarily disputes the points awarded to respondent No.4 and placed reliance on the judgement of the Supreme Court in the case of Duddla Srinivasa Sharma & Ors vs. V. Chrysolite, reported in 2014 (2) PLJR SC 36.

18. The learned counsel for the respondent No.4 further submits that the claim of the petitioner that points mentioned at the top of marking sheet column can be given on the basis of experience and other qualification is thoroughly misconceived. It is submitted that points were dependent on the appreciation of experts for the subject. It is further submitted that such grounds of allotting marks, which is more dependent on subjective consideration of the experts cannot be questioned in court of law unless a malafide and elements of biasness has been raised against any member allotting marks. Moreover, the experts in selection committee can do marking and assessment of merit in research papers, assessment of quality papers presented and assessment of quality of conference attended by the candidates. The court of law



cannot sit in review of marking as desired by the petitioner and placed reliance on the judgement of Supreme Court in the case of Madras Institute of Development Studies and Dr. S. Anandi & Ors v. Dr. K Shivsubramaniyam & Ors reported in 2015(4) PLJR 45 SC in which the Apex Court held in paragraph 18 that it is well settled that the decision of the Academic Authorities about the suitability of a candidate to be appointed as Associate Professor in a Research Institute cannot normally be examined by the High Court under its writ jurisdiction.

19. The learned counsel for respondent No.4 further submits that petitioner is not entitled to be regularized on the post of Assistant Professor on the basis of his appointment as Assistant Professor (Orthopedic) on ad-hoc basis. The respondent No.4 got 62 points to his credit out of total 100 points but the petitioner got only 52 points and has rightly been placed in the waiting list. In fact the petitioner should have been placed at serial No.2 of the waiting list inasmuch as one candidate who has secured 53 points was placed at serial No.2 of the waiting list. So far as criteria of educational qualification, degrees and experience is concerned, respondent No.4 has rightly been awarded marks/ points on the basis of experience and the educational qualification. So far as research publication and marking on it is concerned, the topic presented by respondent No.4 are of rare nature. Both the publications are very rarely done studies. Both the publications



done by respondent No.4 are good indexed Copernicus value. The topic published are the major focus areas of orthopedics subject and has explored on untouched areas of orthopedics. These publications have been done in different years, 2016-17 and are genuine study done by respondent No.4 on rare subjects. The petitioner has published three journals back to back in the same journal of same volume and of the same year and, therefore, the expert committee has rightly given more marks on publication and subject training to respondent No.4, therefore, the writ petition is fit to be dismissed.

20. Having heard the submissions of both sides and on perusal of the entire records, I find that petitioner initially assailed the preparation of merit list on the basis of non disclosure of selection procedure and also for his regularization on the post of Assistant Professor (Orthopedic) on the basis of his appointment on the post of Assistant Professor (Orthopedic) on ad-hoc basis in the year 2017 but when the counter affidavits have been filed on behalf of respondent No. 1 and 2, the IGIMS, the petitioner confined his prayer and assailed the appointment of respondent No. 3 and 4 on the ground that selection committee has adopted an in-transparent way for awarding marks to the candidates although as it appears from Annexure- B that marks to the candidates should be given in a definite way on their educational qualifications, experience, award/ distinction, publication of journals and



presentation of papers and special training such as if the candidate passed MBBS examination in first attempt, such candidate shall be awarded 10 marks. The petitioner assailed the manner of awarding points to respondent No.3 and 4 deviating from the criteria mentioned in the Annexure- B. The petitioner also drew attention that on the day of submission of application form in pursuance of the advertisement respondent No.4 had no special training or paper presentation but respondent No.4 got marks on the basis of assertion that he presented papers and got special training after date of submission of application form. Suitability of the candidates shall be considered on the last date of submission of application form and any degree or training awarded after due date of eligibility should not be considered and thereby the selection committee after taking into consideration the training of respondent No.4 after last date of submission of application form and awarding marks on such is illegal. So far as the judgements on which the learned counsel for the respondents placed reliance such as Duddla Srinivasa Sharma & Ors vs. V. Chrysolite, reported in 2014 (2) PLJR SC 36, AIR 1995 SC 1088- Madan Lal v. State of Jharkhand, (2017) 9 SCC 478 -D. Saroj Kumari v. R. Helen Thikaka, (2010) 12 SCC 576- Manish Kumar Sahi v. State of Bihar, (2013) 11 SCC 309- Ramesh Chandra Sah & Ors v. Anil Joshi & Ors, I find that none of the points with regard to process of appointment, opinion of expert committee and criteria to be fixed



during the process of appointment are in dispute in the present case and, therefore, the law laid down by the Apex Court in these cases are not helpful to the respondents.

21. In order to appreciate the submissions and contentions of the parties it would be convenient/ profitable to reproduce Annexure-B, the evaluation sheet, for selection to the post of Assistant Professor (Orthopedic) in IGIMS, Patna which gives how marks to the candidates are to be awarded by the selection committee, which reads thus:-

**Annexure-B**  
**INDIRA GANDHI INSTITUTE OF MEDICAL SCIENCE: SHEIKHPURA: PATNA-14**  
**(AN AUTONOMOUS INSTITUTE OF GOVT. OF BIHAR)**

Evaluation sheet for selection to the post of **ASSISTANT PROFESSOR: ORTHOPAEDICS: IGIMS, PATNA-14**

Advt. No. 04/Faculty/IGIMS/Estt./2018: Date of Interview - 03-07-2018 Time- 02-30 PM No. of Post- 04: Reservation-SC-01 & U/R-03

I	II	III	IV	V	VI	VII	VIII	IX	X	
Sl. No.	Name of the Candidate	MBBS 10: Marks (-) 01 for each extra attempt	MD/MS (10: Marks) Marks (-) 01 for each extra attempt	Experience (Max: 10 Marks) 01 for each extra year	Award/ Distinction (Max: 05 marks) 1. Hons. In the subject: 02 marks. Extra: 01 marks for each	Research Publications (25 marks), National/International I 8. Indexed Full credit 1 <sup>st</sup> & 2 <sup>nd</sup> . author 3. Jn. of the subject 03 4. Jn of allied subject-01 <b>Non-Indexed</b> 5. In the subject-01 6. In the allied subject-0.5	Paper Presentation in Conference- International National (02 for each) State Level-01 for presentation (Max. Marks: 10)	Special Training If any in the concerned speciality: (05 marks)	Interview 25: Marks	Total Marks 100
1.	Dr. Arnab Sinha	10	10	01	0	10	01	0	08	40
2.	Dr. Arvind Prasad Gupta	10	10	03	0	05	04	01	20	53
3.	Dr. P.V. Siddhartha	10	10	02	0	10	02	02	09	45
4.	Dr. Barada Prassana Samal									
5.	Dr. Kumar Shashi Kant	10	10	04	0	10	01	01	09	45
6.	Dr. Vikash Raj									
7.	Dr. Harindra Himanshu									
8.	Dr. Rajnand Kumar	10	10	01	0	05	01	0	10	37
9.	Dr. Vinay Prabhat	10	10	01	0	07	0	0	08	36
10.	Dr. Manish Raj	10	10	01	0	05	0	0	09	35
11.	Dr. Amit Kumar	10	10	01	0	10	01	0	20	52
12.	Dr. Kumar Chandan	10	10	02	0	15	02	03	20	62
13.	Dr. Abhijit Subhash	10	10	02	0	08	03	01	17	51
14.	Dr. Rajeev Ranjan	10	10	01	0	02	0	0	07	30
15.	Dr. Nishant Kashyap	10	10	02	0	15	0	0	18	55
16.	Dr. Niraj Narain Singh	10	10	04	0	06	0	0	10	40
17.	Dr. Barun Kumar	10	10	02	0	02	0	0	10	34
18.	Dr. Wasim Ahmad	Selected As Associate Professor								
19.	Dr. Indrajeet Kumar	10	10	06	0	14	0	0	20	60
20.	Dr. Pawan Kumar	10	10	01	0	11	0	0	20	52
21.	Dr. Amit Kumar	10	10	01	0	03	0	0	08	32
22.	Dr. Ashutosh Kumar	10	10	02	0	10	0	0	18	50



22. On careful glimpse of Annexure- B, it is abundantly clear that selection committee has to award particular marks on each and every head such as (i) Bachelor degree (ii) Post graduate degree (iii) Experience maximum 10 marks and, 1 for each extra year (iv) Award-Distinction-maximum 5 marks- Hons in subject-2 marks Extra 1 marks for each subject (v) Research Publications- maximum 25 marks-national/ international- Index full credit 1<sup>st</sup> author and 2<sup>nd</sup> author- Journal of the subject-3 marks, Journal allied subject-1 marks- non-Indexed- in the subject- 1 marks and in the allied subject 0.5 marks (vi) Paper publication- maximum 10 marks- in conference- International/ National 2 marks for each publication and in State level-1 marks for each publication (vii) Special training- maximum 5 marks- if any in the concerned specialty (viii) Interview- maximum 25 marks and thus no space is left to the selection committee to award marks to candidate in different way on their subjective satisfaction in different way other than prescribed in Annexure- B save and except in the head of interview in which different marks can be awarded to each and every candidate on the basis of their performance in interview .

23. Annexure-8, Annexure- D and Annexure- E are the application forms duly filled and submitted by the petitioner, respondent No.3, Nishant Kashyap and respondent No.4, Kumar Chandan respectively. They fully described in their forms about



their education qualification, experience, research and special training on the date of submission of their forms.

24. Respondent Nos. 1 and 2 prepared abridged chart (vide Annexure-9) of each and every candidate about their qualification, experience, research and special training.

25. Annexure- B is the evaluation sheet for selection of Assistant Professor (Orthopedic) IGIMS, Patna obtained by each candidate on different heads including interview and the aggregate marks obtained by the candidates in last column.

26. From perusal of application form (Annexure- D) of Nishant Kashyap, respondent No.3, and Annexure- B, the evaluation sheet for selection to the post of Assistant Professor (Orthopedic) IGIMS, Patna, it appears that he did his MBBS degree in 2005 in first attempt and he has rightly been awarded 10 marks in Column-III of the evaluation chart. He did his MS (Ortho) from Tribhuwan University, Kathmandu and passed in first attempt and, therefore, he has rightly been awarded 10 marks in Column-IV of Annexure -B. He also did his MS (Anatomy) from LNMU, Darbhanga in the session 2007 to 2010 but no marks is to be given to a candidate for doing post graduate course in any other subject and he was not given any marks. He did not get any award and distinction in any subject and he has rightly been awarded no marks in Column-VI of the evaluation sheet.



Respondent No.3 has stated in his application form for appointment on the post of Assistant Professor (Orthopedic) submitted on 21.04.2018 with regard to teaching experience that he did work of Senior Resident (Ortho) from 27.01.2015 to 26.01.2018, i.e. for three years and working on Senior Resident (Surgical Oncology) from 10.04.2018 and he did the work of Senior Resident (Surgical Oncology) for only 11 days till date of submission of his form on 21.04.2018 but for teaching experience he was given 2 marks. Three years teaching experience is the minimum qualification for appointment on the post of Assistant Professor and 1 (one) marks is given for that. For each extra year of teaching experience one extra marks is to be given. Respondent No.3 has only three years teaching experience, therefore, he should have been awarded only one marks but two marks instead of one marks in Column-V have wrongly been allotted to him.

Respondent No.3 has stated in his application form with regard to research publication at serial No.10 that there are eight indexed journals. From perusal of serial 10 of the application form, it appears that in one index journal respondent No.1 is 1<sup>st</sup> author and in other seven he is second author or co-author. In another place he stated that he is 1<sup>st</sup> author in one and 2<sup>nd</sup> author in four but from perusal of disclosure made by respondent No.3 himself in his application form, it appears that



he is 1<sup>st</sup> author in one and second author in three publications and in rest of the publications he is 3<sup>rd</sup> or 4<sup>th</sup> author for which no mark can be allotted. If research publication is published as 1<sup>st</sup> Author or second Author in the journal of the subject, 3 marks is given for each such publication and in the journal of allied subject one marks is given. Respondent No.3 has not stated about the publication of research paper in journal of the subject or journal of the allied subject. Even if it presumed that his research paper is published in the journal of the subject and he has in his credit only one as 1<sup>st</sup> author and three as second author, he is entitled to get only 12 marks but has wrongly been awarded 15 marks. Respondent No.3 did not have any special training and therefore no mark was given to him. He got 18 marks in interview. Respondent No.3 is shown to have obtained 55 marks instead of 51 marks.

27. From perusal of application form of respondent No.4, Kumar Chanda (Annexure- E ) and Annexure- B, the evaluation sheet for selection to the post of Assistant Professor (Ortho) IGIMS, Patna, it appears that respondent No. 4 did his MBBS in October, 2007 in first attempt. He has rightly been given 10 marks in Column-III. He did his DNB (Orthopedics) which is equivalent to MS (Ortho) in December, 2014 in first attempt and he has rightly been given 10 marks in Column-IV.



Respondent No.4 submitted his application form on 28.04.2018 in IGIMS. He stated in the column meant for teaching and research experience that he worked as Senior Resident from 03.05.2014 to 02.07.2017 (three years one month and 26 days) and he is doing fellowship in spine from 03.07.2017 and continuing the course on the date of submission of form. At one place he has written in the form that he did his DNB (Ortho) in December, 2014 and therefore his experience of teaching as Senior Resident from 03.05.2017 does not appear to be correct and he has got experience of teaching only for two years and six months and experience of spine fellow for nine months till the date of submission of his form, i.e. 28.04.2018. Three years teaching experience is minimum qualification and for that one mark is allotted. For each extra year of teaching experience one mark is given.

From perusal of Column-V of Annexure- B, in which the name of respondent No.4 appears, it appears that two marks is given to him but he is entitled to get only one marks and he is not entitled to get any extra mark as he has not got experience of teaching for one extra year to get one extra point.

Respondent No.4 in his application form stated that in the year 2017 his one research paper is published as 1<sup>st</sup> author in the journal of the subject and another research paper is published in which he is second author and he should have been



awarded only 6 marks in Column-VII but the selection committee illegally awarded him 15 marks.

Respondent No.4 in his application form did not mention that he presented any paper in conference in National/ International or State level but in Column-VIII he has wrongly been awarded two marks. It further transpires that for special training respondent No.4 has been awarded 3 marks but from perusal of the application form of respondent No.4, it appears that he was doing spine fellow since 03.07.2017 and he also included that period in his teaching experience. He has not completed his special training in spine and the period of such training has not stated in the application form. Therefore, it appears that selection committee has wrongly awarded 3 marks for such training of respondent No.4. The petitioner did not dispute about the marks obtained by respondent No.4 in interview. Thus, it appears that respondent No.4 got only 46 marks but the selection committee has illegally awarded him 62 marks.

28. Now I take the case of petitioner. From perusal of application form of the petitioner (Annexure-8) and the evaluation sheet prepared by the selection committee for appointment to the post of Assistant Professor (Orthopedic), IGIMS, Patna (Annexure- B), it appears that petitioner stated in his application form that he did his MBBS from PMCH, Patna in



December, 2004 in first attempt and, therefore, in Column-III he has rightly been awarded 10 marks. The petitioner did his MS (Ortho) in April, 2011 in first attempt and for that in Annexure- B the petitioner has rightly been awarded 10 marks. The petitioner has stated that he worked as Junior Resident from 02.04.2008 to 21.04.2011, that is, for three years in PMCH, Patna but no mark is required to be allotted for experience as Junior Resident. The petitioner further stated that he worked as Senior Resident in IGIMS, Patna from 30.01.2013 to 29.07.2016, i.e. three years and six months. The petitioner also stated that he worked as Assistant Professor (Orthopedic), duly appointed on adhoc basis, from 31.07.2017 till the submission of application form in the month of April, 2018 and, therefore, he got teaching experience of more than nine months as Assistant Professor and altogether he got teaching experience of four years and five months but he was awarded only one mark in Column-V of Annexure- B. It has been pointed out that the petitioner should have been awarded and is legally entitled to get two marks. One mark for three years teaching experience and extra one mark for extra one year of teaching experience.

The petitioner further stated that petitioner has got as many as nine research publications in his name. Three research publications are as first author and rest are published in non indexed journals. Therefore, the petitioner is entitled to get nine



marks for three research publications in journal of subject as first author and six marks for research publication in non indexed journal as one mark is allotted for each publication in non indexed journal. Altogether the petitioner should have been awarded 15 marks in Column-VII but the petitioner got only 11 marks. The petitioner got 20 marks in interview and, therefore, in aggregate the petitioner should have been given 57 marks instead of 52 marks (wrongly mentioned as 54 marks as there is mistake in calculation in Annexure- B).

29. One thing is also to be noticed that respondent No.4 got DNB degree which is equivalent to PG degree but the same is based on training in the subject. For teaching post the PG degree holder should always be preferred in place of DNB degree holder, which is equivalent to PG degree.

30. From the comparative discussions made above, I find that respondent No.4, who should have been given 46 marks, has illegally been appointed by the selection committee and name of the petitioner is shown in the waiting list whereas the petitioner should have been appointed as he got more marks than respondent No. 3 and 4. Two vacancies are available, therefore, respondent No.3 has rightly been appointed but the appointment of respondent No.4 cannot be sustained as he got only 46 marks much less than marks obtained by the petitioner and his appointment is fit to be set aside.



31. In the result, this writ petition is allowed and appointment of respondent No.4 is set aside. The respondent No.1 and 2 are directed to consider the case of the petitioner for appointment on the post of Assistant Professor (Orthopedic), IGIMS, Patna in accordance with law within a period of three months from the date of receipt of this order.

**(Prabhat Kumar Jha, J)**

BKS/-

<b>AFR/NAFR</b>	NAFR
<b>CAV DATE</b>	N.A.
<b>Uploading Date</b>	25.03.2021
<b>Transmission Date</b>	N.A.

