DR. (MAJOR) MEETA SAHAI

v.

STATE OF BIHAR & ORS.

(Civil Appeal No. 9482 of 2019)

DECEMBER 17, 2019

[DEEPAK GUPTA AND SURYA KANT, JJ.]

Service Law:

Bihar Health Service (Appointment and Service Conditions) Rules, 2013 – rr. 2(a), 5 and 6(iii) – Advertisement for appointment of Medical Officers – By State Public Service Commission – Mandating that only work experience in the hospitals of State Government was to be considered for granting marks for 'Work Experience' – Appellant's work experience in Army Hospital was not considered – Writ Petition challenging such clause in the advertisement being arbitrary and contrary to rr. 5 and 6 (iii) – Writ Petition was dismissed by Single Judge of High Court – Writ appeal was also dismissed by Division Bench of High Court – Appeal to Supreme Court – Held: Rules 5 and 6 (iii) cannot be construed by applying principle of literal interpretation – The expression 'Government Hospital' cannot be construed by importing definition of 'Government' in s. 2(a) – The purpose behind formulation of the Rules was to recognize unique challenge of hospitals in the State and incentivise doctors to work in non-private hospitals – Any attempt to discriminate between hospitals run by the State Government and Central Government or Municipalities/Panchayati Raj Institutions is bound to hit the very ethos of Constitutional governance set up – Therefore, rr. 5 and 6(iii) are construed to include the experience gained by a doctor in any hospital run by the State Government or its instrumentalities, as well as any other non-private hospital run by Central Government, Municipalities and Panchayati Raj Institutions or other public authorities within the territory of the State – Constitution of India – Art. 14.

Estoppel:

Challenge to selection process – After having failed, going through such process – Whether estopped – Held: The principle

A *of estoppel prevents a candidate from challenging the selection process after having failed in it – However, this principle is differentiated insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it – If the challenge alleges misconstruction of statutory rules and discriminating consequences arising therefrom,*
B *the same cannot be condoned merely because a candidate has partaken in it – Moreover, unless the candidate participates in the selection process, may not have* locus *to assail the illegality or derogation of the provisions.*

Interpretation of Statutes:
C

Construction of statutory provision – Held: As a first step the Courts ought to interpret the text of the provision and construct it literally – This tool of interpretation can only be applied where the text of the enactment is susceptible to only one meaning – Where there is ambiguity in the meaning of the text, the Courts must also
D *give due regard to the consequences to remedy such deficiency – When there are two plausible interpretations, the one which promotes constitutional values must be preferred.*

Allowing the appeal, the Court

E **HELD: 1.1The principle of estoppel prevents a candidate from challenging the selection process after having failed in it. The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second**
F **chance. [Para 17] [287-F; 288-B-C]**

1.2 However, this principle is differentiated insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory
G **rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in**
H **the selection process. [Para 18] [288-C-D]**

1.3 The appellant has rightly not challenged the selection procedure but has narrowed her claim to only against the respondents' interpretation of 'work experience' as part of merit determination. Since interpretation of a statute or rule is the exclusive domain of Courts, and given the scope of judicial review in delineating such criteria, the appellant's challenge cannot be turned down at the threshold. [Para 20] [289-A-B]

Manish Kumar Shahi v. State of Bihar **(2010) 12 SCC 576 – relied on.**

2.1 It is a settled cannon of statutory interpretation that as a first step, the Courts ought to interpret the text of the provision and construct it literally. Provisions in a statute must be read in their original grammatical meaning to give its words a common textual meaning. However, this tool of interpretation can only be applied in cases where the text of the enactment is susceptible to only one meaning. Nevertheless, in a situation where there is ambiguity in the meaning of the text, the Courts must also give due regard to the consequences of the interpretation taken. [Para 21] [289-C-D]

Nathi Devi v. Radha Devi Gupta **(2005) 2 SCC 271: [2004] 6 Suppl. SCR 1141 – relied on.**

2.2 It is the responsibility of the Courts to interpret the text in a manner which eliminates any element of hardship, inconvenience, injustice, absurdity or anomaly. A legislation must further its objectives and not create any confusion or friction in the system. If the ordinary meaning of the text of such law is non-conducive for the objects sought to be achieved, it must be interpreted accordingly to remedy such deficiency. [Para 22] [289-E]

Madan Lal v. State of J&K **(1995) 3 SCC 486 : [1995] 1 SCR 908 – relied on.**

Principles of Statutory Interpretation by GP Singh **(14th Edn., 2016) Pp. 145-170 – referred to.**

2.3 There is no doubt that executive actions like advertisements can neither expand nor restrict the scope or

object of laws. It is therefore necessary to consider the interpretation of the phrase 'Government hospital' as appearing in the Rules. [Para 23] [289-F]

2.4 Rule 2 of Bihar Health Service (Appointment and Service Conditions) Rules 2013 is a definitional provision and defines 'Government' as a noun. However, it would not necessarily govern instances where the word has been used in another form. Under Rule 5, the operative phrase is "any Government hospital". Here, 'Government' is restrictively defining the noun 'hospital' to exclude those run by certain entities. Thus, 'Government' as part of 'Government hospital' is a noun adjunct and has been used as an adjective. Such usage of a noun in its adjectival form changes its character altogether and it would be unwise to import the meaning of its noun form. This is especially true considering how the prefatory portion of Rule 2 explicitly provides that the definitions as prescribed thereunder shall be referred to unless otherwise required in context. The phrase 'Government hospital' therefore cannot be construed to exclude other non-private hospitals which are otherwise run exclusively with the aid and assistance of the Governments. Additionally given the difference in common usage wherein 'government hospital' refers to all non-private hospitals and not hospitals established by a particular government, Rule 5 & 6(iii) would not be bound by Rule 2(a). [Para 24] [290-C-F]

Navinchandra Mafatlal v. CIT, **[1955] 1 SCR 829 – relied on.**

FCC v. AT&T Inc. **562 U.S. 397 (2011) – referred to.**

2.5 Presence of the word 'any' in Rule 5 is also critical. It indicates a legislative intent to bestow a broad meaning to hospitals eligible for accrual of work experience. Importing the restrictive definition of Rule 2(a) would hence lead to an anomalous situation in having both expansive and restrictive adjectives applied to the same underlying noun. Consequently, the Court is inclined to adopt an expansive interpretation of the phrase, and not lay weight on Rule 2(a). [Para 25] [290-G; 291-A]

2.6 In addition to this, adopting the respondents' interpretation would increase uncertainty and create practical difficulties. When Rule 2(a) is applied to 'Government hospital' there is substantial ambiguity created as to whether or not hospitals run by instrumentalities of the Government, which are not strictly owned by the Government of Bihar would be included within Rule 5. Such issues are bound to arise repeatedly in any selection process. Given how there is no simple answer to such questions, the rigid interpretation adopted by the Government would only lead to friction in the system and cause interpretative chaos which would undermine the fair and just right to compete for public employment. [Para 26] [291-B-D]

2.7 Further, if faced between a choice in which only a few people would be eligible versus a fairly large group, the latter ought to be adopted to have a diverse pool of applicants. This would promote merit, bring better doctors and further the Constitutional scheme of providing equal opportunity in public employment to the masses. Thus, the provisions of the Rules in the present case cannot be construed or explained by applying the principle of literal interpretation. [Para 27] [291-E]

2.8 Therefore, it is necessary to resort to purposive interpretation of the provisions of the Rules, in the light of its objectives. Otherwise also as per the prefatory part of Article 309 of the Constitution, the Rules framed thereunder must be in conformity with all other Constitutional provisions, which necessarily includes Part III. Dealing with recruitment in Government hospitals, it is clear that the object and purpose of the Rules too must satisfy the test of Article 16. [Para 28] [291-F-G]

2.9 Further, given the absence of express definition of 'Government hospitals' under the Rules, the Court deems it fit to make use of Constitutional values as a tool of statutory interpretation. The Constitution must not only be seen as a benchmark for testing the validity of legislations, but also as an inspirational document to guide State action. When there are two plausible interpretations, the one which promotes Constitutional values must be preferred. [Para 29] [291-H; 292-A-B]

R v. Jarvis, **2019 SCC 10 – relied on.**

2.10 Under the constitutional scheme, obligations and duties of the 'State' have eloquently been divided using a three-tier system of governance. The Union of India at the national level, individual State Governments at the State Level and various Municipalities/Panchayats at the local level, parallelly discharge their respective Constitutional duties for the welfare of the general public. In deference to their duties to raise the standard of living, ensure adequate nutrition and public health of its people under Article 47 of the Constitution, both the Central as well as the State Governments formulate various welfare schemes and establish institutions including hospitals/ primary health centres. Still further, under Article 243G read with Entry 23 of Schedule XI of the Constitution, the legislature of the State can entrust the functions of *"Health and sanitation, including hospitals, primary health centres and dispensaries"* to the Panchayati Raj Institutions. Similarly, the State legislature may entrust under Article 243W read with Entry 6 of Schedule XII, the functions of *"Public health, sanitation conservancy and solid waste management"* to Municipalities. Hospitals of these local governments are often run on the back of funds derived from the Consolidated Fund of the States. It may thus be seen that the Constitution envisages the setting up of hospitals by many different public authorities, including the Central Government, State Government, Municipalities and Panchayati Raj Institutions. [Para 30, 31] [292-B-F]

2.11 In addition, several hospitals throughout the country have been set up by instrumentalities of the Central or State Governments, more notably the Employees' State Insurance Corporation Hospitals, to cater to the need of poor and needy persons. These hospitals, therefore, are at par with other government hospitals for all intents and purposes, and the experience gained by a doctor in such hospitals subsume the characteristics acquired in a hospital set up by the Bihar Government. [Para 32] [292-G; 293-A]

2.12 Other hospitals are also established by instrumentalities of the States and the Centre in pursuance of Constitutional obligations under Part IV. These although not strictly covered within the ambit of the Rules as propounded by

the respondents, nevertheless serve the same purpose of providing best medical facilities to public at large. An apt example is of Army hospitals, and there is little reason to ignore and overlook the experience gained in such hospitals. [Para 33] [293-B]

2.13 It is hence irrational to urge that the work experience in any such hospital is different from that in a Government of Bihar hospital. Hence, it would be constitutionally unjust to allow differentiation between the experience gained by doctors at these hospitals established by Panchayats or Municipalities or by the Central Government and its instrumentalities in the territory of Bihar vis-à-vis those run by the Bihar Government. Any attempt to discriminate between hospitals run by the State Government and the Central Government or Municipalities/Panchayati Raj Institutions is bound to hit the very ethos of the Constitutional governance setup. [Para 34] [293-C-D]

2.14 Having said so, the Court is not oblivious to the fact that equality does not imply that there can be no classification. Instead, sometimes it may be necessary to treat unequals unequally, for equal treatment of persons with unequal circumstances creates an unjust situation. Such classification, however, must not be arbitrary but rationally founded on some quality or characteristics which are identifiable within the class of people so created and absent in those excluded from such classification. [Para 35] [293-E]

Indira Sawhney v. Union of India **(1992) Supp. 3 SCC 217 : [1992] 2 Suppl. SCR 454 – followed.**

2.15 The purpose behind formulation of the Rules was to recognize the unique challenges of hospitals in Bihar and incentivise doctors to work in non-private hospitals. Experience in a non-private hospital instills sensitivity in its doctors, making them more adept to understand the ail and agony of poor patients. Such experience will undoubtedly be useful in furthering the object of Government hospitals and must be given due weightage while selecting suitable candidates. Interpreting 'Government hospitals' to include only a small class of persons who have worked under the Government of Bihar, is thus clearly erroneous and anti-merit. Such an objective would not be

defeated by the understanding of the Rules as has been construed. [Para 36] [293-F-G; 294-A-B]

2.16 Therefore, Rule 5 & 6(iii) of the Bihar Health Service (Appointment and Service Conditions) Rules, 2013 are construed to include the experience gained by a doctor in any hospital run by the Bihar Government or its instrumentalities, as well as any other non-private hospital (including those run by the Central Government, Municipalities and Panchayati Raj Institutions; or other public authorities) within the territory of Bihar. Respondents are accordingly directed to rework and prepare a fresh merit list by granting due weightage to the appellant and other similarly placed candidates. [Para 37] [294-C-D]

Dr. Dharmbir Kumar v. State of Bihar **(2015) 2 PLJR 916 ;** *Ram Surat Mishra v. State of U.P.* **(2008) 7 SCC 409 ;** *M/s J.K. Jute Mills Co. Ltd. v. State of U.P.* **AIR 1961 SC 1534 [1962] SCR 1 – referred to.**

Case Law Reference

(2015) 2 PLJR 916	**referred to**	**Para 6**
(2008) 7 SCC 409	**referred to**	**Para 8**
[1962] SCR 1	**referred to**	**Para 8**
(2010) 12 SCC 576	**relied on**	**Para 17**
[2009] 5 SCR 89	**relied on**	**Para 21**
[2004] 1 Suppl. SCR 668	**relied on**	**Para 22**
[2004] 6 Suppl. SCR 1141	**referred to**	**Para 22**
[1955] 1 SCR 829	**relied on**	**Para 24**
562 U.S. 397 (2011)	**referred to**	**Para 24**
(2019) SCC 10	**relied on**	**Para 29**
[1992] 2 Suppl. SCR 454	**followed**	**Para 35**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9482 of 2019.

From the Judgment and Order dated 24.11.2016 of the High Court of Judicature at Patna in LPA No. 1860 of 2016.

Gaurav Agrawal, Adv. for the Appellant. A

Shivam Singh, Harpreet Singh Gupta, Gopal Singh, Navin Prakash, Advs. for the Respondents.

The Judgment of the Court was delivered by

SURYA KANT, J. B

1. Leave granted.

2. The present appeal has been preferred against the order dated 24.11.2016 passed by a Division Bench of Patna High Court in LPA No. 1860/2016, whereby appellant's work experience in an Army Hospital was not considered for grant of weightage and consequential C selection and appointment as General Medical Officer in the State of Bihar, on the ground that Rule 6(iii) of the Bihar Health Service (Appointment and Service Conditions) Rules, 2013 (hereinafter, "Rules") mandated that only services rendered in employment of a hospital run by the Government of Bihar could count under the head of work D experience.

FACTUAL MATRIX

3. Ostensibly to rectify a constant shortage of doctors in Bihar which was adversely impacting public health, the State of Bihar decided to fill vacant posts in hospitals. Accordingly, an advertisement was E published by the Bihar Public Service Commission (hereinafter, "Commission") in various local newspapers on 18.07.2014, inviting applications from eligible candidates for filling up 2301 vacant posts of General Medical Officer in Bihar. The selection process was elucidated in Clause 5 of the Advertisement wherein general sub-cadre doctors were to be selected on the basis of a merit list prepared by giving F weightage for academic qualifications (marks obtained in MBBS - 50 marks, and higher degree - 10 marks), work experience (5 marks per year for a maximum of 25 marks) and marks obtained in interview (out of 15 marks). It is important to reproduce the relevant portion of the advertisement to aptly comprehend the selection criteria which is to the G following effect:

> *"**5. Selection Process** – For appointment of the doctors in the general sub cadre the candidates shall be selected on the basis of the merit list prepared on the basis of the academic qualification, work experience and the marks* H

obtained in the interview. In case there are more applications than the vacancy/vacancies, five times candidates shall be invited for the interview as against the vacancy/vacancies prescribed reservation wise.

100 marks shall be prescribed for academic qualification, work experience and interview. The 100 marks shall be counted as under-

Marks obtained in M.B.B.S. – total 50 marks

Master's degree or higher degree – total 10 marks

Work experience after appointment on regular/contract basis in the Government hospitals (the work experience of the Government hospital of the Government of Bihar only shall be counted) – total 25 marks

But 05 marks shall be given for the work experience of the whole year, thus, maximum 25 marks shall be given.

Oral interview – total 15 marks.

Note – (a) The marks given to any candidate on the basis of the M.B.B.S. course shall be on multiplication of 0.5 with the total of all the examinations of the said course, viz., if the total of the total marks obtained by any candidate in all examinations of the M.B.B.S. coms to 50%, then he shall be given 50% x 0.5 = 25 marks.

(b) (sic)

(c) There shall be requirement of minimum 30 marks on the basis of academic qualification, work experience and interview for consideration of any candidate for appointment in the general duty sub cadre."

(emphasis supplied)

4. Pursuant to this advertisement, the appellant also applied for the post of General Medical Officer. She was called for an interview where she was informed that no marks could be granted under the head of 'work experience' as she lacked experience in a hospital run by the Government of Bihar. Post conduction of interview, a merit list was prepared. The appellant was unsuccessful in securing a place in the merit list as she had obtained only 42.61 marks which did not meet the prescribed cut off of 53.04 marks for the General Category.

5. The aggrieved appellant filed a writ petition before the Patna High Court challenging Clause 5(iii) of the advertisement issued by the Commission to the extent it mandated that only work experience in hospitals of Government of Bihar shall be considered for awarding marks for 'work experience'. The appellant contended that this Clause of the advertisement was in contravention of the Rules (which didn't prescribe any such limitation of work experience only being in hospitals of the Government of Bihar). She was upset that her work experience in the Army Medical Corp Hospital had been disregarded while others who served in Bihar Government hospitals were given due weightage. She felt that if not for this erroneous interpretation of the Rules, she would have been selected for the post of General Medical Officer. Similarly, some other candidates also approached the Patna High Court, agitating their exclusion pursuant to the non-consideration of work experience in non-private hospitals other than those administered by the Government of Bihar.

6. A Learned Single Judge of the High Court dismissed all these writ petitions with a brief order holding that the validity of such provision had already been upheld by a Division Bench of the Patna High Court in ***Dr. Dharmbir Kumar v. State of Bihar***[1] and, therefore, the appellant could not plead that exclusion of service rendered in Army Hospitals, while evaluating work experience, resulted in discrimination.

7. Unsatisfied with this Order, the appellant filed a Letter Patent Appeal, with the foremost plea that the condition in the advertisement which restricted the work experience to only hospitals of Government of Bihar, was contrary to the Rules which gave weightage for experience in any Government hospital for the purpose of drawing the merit list. Further, it was highlighted that in ***Dharmbir (supra)*** the Division Bench had dismissed a petition relating to appointment of Dentists wherein a challenge had been made against grant of benefit of experience to contractual employees. This was contended as being different from the present case. Additionally, the appellant placed reliance on the English version of the analogous Bihar Dentist Service Rules, 2014 which explicitly defined the term 'Government hospital' to include hospitals run by both Central and State Government, to show that the same should be transposed to the present instance.

[1] 2015 (2) PLJR 916

8. The Division Bench placed reliance on several decisions of this Court including ***Ram Surat Mishra v. State of U.P.***[2] and ***M/s J.K. Jute Mills Co. Ltd. V. State of U.P.***[3]**,** and followed the dictum therein to note how the Hindi version only referred to Government of Bihar and there being a conflict between English and Hindi versions, the latter version of the Bihar Dentist Service Rules, 2014 would prevail. The Bench further observed that Rule 2(a) of the Dentist Rules defined 'Government' as Government of Bihar and that thus work experience under Rule 6(iii) must be read conjointly with Rule 2(a) which would show that only work experience in hospitals of Government of Bihar ought to be considered for awarding marks under the head of work experience. The intra-court appeal was thus dismissed, giving rise to further challenge through this Special Leave Petition.

CONTENTION OF PARTIES

9. Learned Counsel for the appellant vehemently argued that the Division Bench judgement was erroneous. He hammered clause 5(iii) of the advertisement and urged that the restriction of work experience to only hospitals of Government of Bihar was arbitrary and contrary to Rule 5 and Rule 6(iii) of the Rules, which read as under:

> *"5. For appointment in General Duty Sub Cadre minimum educational qualification shall be MBBS degree from a recognized university:*
>
> ***Provided that the postgraduate or higher degree holder in any subject of Medical science and the doctors appointed on regular/contract basis in any Government hospital shall be given weightage for work experience.***
>
> *6. For selection of doctors to appointment in General sub-cadre, candidates shall be given marks for their educational qualification and work experience. Apart from that, they shall also be given marks for the oral interview.*
>
> *A total 100 marks shall be for educational qualification, work experience and interview. The break up of these 100 marks shall be as follows:*
>
> | | |
> |---|---|
> | *(i) Marks obtained in MBBS* | *Total 50 Marks* |
> | *(ii) PG or Higher Degree* | *Total 10 Marks* |

[2] (2008) 7 SCC 409
[3] AIR 1961 SC 1534

(iii) ***Work Experience after appointment in Government hospital on contract/ regular basis.*** *Total 25 Marks*

Provided that for each complete one year of work experience, candidates will be given 5 and thus maximum 25 marks will be given.

(iv) Interview *Total 15 Marks*

Note: (a) The determination of marks to be given to candidate for MBBS shall be in multiple of 0.5 of total percentage of marks obtained in the examination of said course. Thus, if a candidate has obtained 50% marks, he/ she shall get 50 x 0.5 = 25 marks

(b) Minimum 30 marks will be required for consideration for the appointment in the General sub cadre and specialist sub cadre."

(emphasis supplied)

10. He argued that the Rules did not define the term 'Government hospital' and that hence its common meaning be taken. Since the Rules have been formulated under Article 309 of the Constitution, they carried the same force as a legislation and the Commission or the State Government could not have restricted the meaning of "any Government hospital" to "Government hospital of the Government of Bihar only" through the advertisement. It was also argued that exclusion of services rendered in non-Bihar Government hospitals would be discriminatory for it failed to further the object of the Rules to promote recruitment of better qualified doctors and recognize technical knowledge or expertise gained in this field. The learned Counsel although admitted that the work experience gained in Government hospitals was different than private hospitals owing to doctors' interactions with poor patients and them being accustomed to working with minimal infrastructure, nevertheless contended that the services rendered in hospitals of Government of Bihar offered no special experience as compared to other non-private hospitals in the State; and that no public purpose was served for both categories similarly gave medical treatment to swarms of patients, in return for a meagre salary.

A 11. The counsel for appellant further based his argument on Rule 5 & 6(iii) of the Rules which contain the expression 'any Government hospital', to contend that it must be interpreted to include all Government hospitals in Bihar, including those run by the Central Government and other public bodies to avoid any unconstitutionality. It was contended that the definition of 'Government' as under Rule 2(a) of the Rules did not control the meaning of the term 'Government hospital' since presence of 'any' as a prefix to 'Government hospital' was indicative of the fact that the Rules envisaged all Government hospitals in its ambit. He made a pointed reference to the definitional clause contained in the Rules, which has been extracted below:

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> ***"2. Definitions. – In this Rule unless anything otherwise requires in the context:***
>
> ***(a) 'Government' means Government of Bihar.***
>
> *xxxxxxxxx"*

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(emphasis supplied)

12. It was also urged that the observation of the High Court with respect to the ascendancy of Hindi version over English version of the Bihar Dentist Service Rules, 2014 would be inapplicable to the present case since the issue at hand pertains to a different enactment which did not have any conflict between versions. The appellant stated that reference to the English version of the Dentist Rules which explicitly defined 'Government hospital' as both Government of Bihar and Central Government hospitals, was merely illustrative to support an argument that 'Government hospital' can have a different meaning than 'Government' and thus her case ought not to have been dismissed on this count.

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13. On the other hand, learned counsel for Respondents questioned the maintainability of the appellant's challenge and urged that once a candidate had participated in a recruitment process, he/she could not at a later stage challenge its correctness merely because of having failed in selection. It was contended that the appellant was taking 'two shots' at success, and her challenge was opposed for being opportunistic. Further it was argued by the respondents that the appellant's attempt to draw inference from the Dentist Rules has rightly not been accepted by the High Court. Moreover, the advertisement was shown as being

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merely clarificatory in stating that marks shall only be granted for work experience in hospitals of Government of Bihar.

14. Additionally, the Commission has filed a separate counter affidavit supplementing the stand taken by other respondents with the plea that the Courts ought not to interfere with the selection procedure as stipulated by the employer unless it was found to be patently illegal. It is urged by the Commission that the Division Bench correctly interpreted the meaning and ambit of the term 'Government hospital' in light of Rule 2(a) of the Rules which defines 'Government' as Government of Bihar, and hence ruled that the advertisement is in accordance with the subject Rules.

FINDINGS AND ANALYSIS

15. We may at the outset clarify that question of reconciling the Hindi and English versions does not arise in the present case for both versions of the Rules are similarly worded. We thus proceed under the assumption that Hindi will prevail over the English version in case of any conflict.

Preliminary Issues

16. Furthermore, before beginning analysis of the legal issues involved, it is necessary to first address the preliminary issue. The maintainability of the very challenge by the appellant has been questioned on the ground that she having partaken in the selection process cannot later challenge it due to mere failure in selection. The counsel for respondents relied upon a catena of decisions of this Court to substantiate his objection.

17. It is well settled that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it as iterated by this Court in a plethora of judgements including ***Manish Kumar Shahi v. State of Bihar***[4], observing as follows:

> *"16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamed*

[4] (2010) 12 SCC 576

A *of challenging the selection. The appellant invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit*
B *any error by refusing to entertain the writ petition."*[5]

The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.
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18. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be
D condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.

E 19. The question of permissibility of giving weightage for 'work experience' in government hospitals is also not the bone of contention in this case. Medicine being an applied science cannot be mastered by mere academic knowledge. Longer experience of a candidate adds to his knowledge and expertise. Similarly, government hospitals differ from private hospitals vastly for the former have unique infrastructural
F constraints and deal with poor masses. Doctors in such non-private hospitals serve a public purpose by giving medical treatment to swarms of patients, in return for a meagre salary. Hence, when placing emphasis on the requirement of work experience, there is no dispute on such recognition of government hospitals and private hospitals as distinct
G classes. Instead such recognition ensures that the doctors recruited in not-so-rich states like Bihar have the requisite exposure to challenges faced in those regions.

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[5] See also: Madan Lal v. *State of J&K* [(1995) 3 SCC], *Marripati Nagaraja* v. *State of A.P.*[(2007) 11 SCC 522], *Dhananjay Malik* v. *State of Uttaranchal* [(2008) 4 SCC 171]
H and *K.A. Nagamani* v. *Indian Airlines* [(2009) 5 SCC 515]

20. The appellant has thus rightly not challenged the selection procedure but has narrowed her claim to only against the respondents' interpretation of 'work experience' as part of merit determination. Since interpretation of a statute or rule is the exclusive domain of Courts, and given the scope of judicial review in delineating such criteria, the appellant's challenge cannot be turned down at the threshold. However, we are not commenting specifically on the merit of appellant's case, and our determination is alien to the outcome of the selection process. It is possible post what is held hereinafter that she be selected, or not.

Statutory Interpretation

21. It is a settled cannon of statutory interpretation that as a first step, the Courts ought to interpret the text of the provision and construct it literally. Provisions in a statute must be read in their original grammatical meaning to give its words a common textual meaning. However, this tool of interpretation can only be applied in cases where the text of the enactment is susceptible to only one meaning.[6] Nevertheless, in a situation where there is ambiguity in the meaning of the text, the Courts must also give due regard to the consequences of the interpretation taken.

22. It is the responsibility of the Courts to interpret the text in a manner which eliminates any element of hardship, inconvenience, injustice, absurdity or anomaly.[7] This principle of statutory construction has been approved by this Court in ***Modern School v. Union of India***[8], by reiterating that a legislation must further its objectives and not create any confusion or friction in the system. If the ordinary meaning of the text of such law is non-conducive for the objects sought to be achieved, it must be interpreted accordingly to remedy such deficiency.

23. There is no doubt that executive actions like advertisements can neither expand nor restrict the scope or object of laws. It is therefore necessary to consider the interpretation of the phrase 'Government hospital' as appearing in the Rules. Two interpretations have been put forth before us which can be summarized as follows:

a. Only hospitals run by the Government of Bihar.

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[6] Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 271 ¶ 13.
[7] GP SINGH ON PRINCIPLES OF STATUTORY INTERPRETATION (14th edn., 2016) pp. 145-170.
[8] (2004) 5 SCC 583 ¶62.

A b. Hospitals run by the Bihar Government or its instrumentalities, as well as any other non-private hospital within the territory of Bihar.

The former interpretation to the term, as accorded to it by the respondents, forms a narrower class whereas the latter interpretation B used by the appellant is broader and more inclusive.

Literal Interpretation

24. At the outset, the respondents' contention that meaning of the term 'Government hospital' would be bound by the restrictive definition of 'Government' under Rule 2(a) of the Rules, does not sound C well. It is settled that grammatical rules must be given due weightage during statutory interpretation.[9] Rule 2 is a definitional provision and defines 'Government' as a noun. However, it would not necessarily govern instances where the word has been used in another form.[10] Under Rule 5, the operative phrase is "any Government hospital". Here, D 'Government' is restrictively defining the noun 'hospital' to exclude those run by certain entities. Thus, 'Government' as part of 'Government hospital' is a noun adjunct and has been used as an adjective. Such usage of a noun in its adjectival form changes its character altogether and it would be unwise to import the meaning of its noun form. This is E especially true considering how the prefatory portion of Rule 2 explicitly provides that the definitions as prescribed thereunder shall be referred to unless otherwise required in context. The phrase 'Government hospital' therefore cannot be construed to exclude other non-private hospitals which are otherwise run exclusively with the aid and assistance of the Governments. Additionally given the difference in common usage F wherein 'government hospital' refers to all non-private hospitals and not hospitals established by a particular government, Rule 5 & 6(iii) would not be bound by Rule 2(a).

25. Presence of the word 'any' in Rule 5 is also critical. It indicates a legislative intent to bestow a broad meaning to hospitals G eligible for accrual of work experience. Importing the restrictive definition of Rule 2(a) would hence lead to an anomalous situation in

[9] Navinchandra Mafatlal v. CIT, (1955) 1 SCR 829 ¶6.

[10] *See* FCC v. AT&T Inc. 562 U.S. 397 (2011); where the Supreme Court of the United States held that definition of 'person' as a noun would not be applicable to H its use as an adjective.

having both expansive and restrictive adjectives applied to the same underlying noun. Consequently, we are inclined to adopt an expansive interpretation of the phrase, and not lay weight on Rule 2(a), as urged by the respondents.

26. In addition to this, adopting the respondents' interpretation would increase uncertainty and create practical difficulties. When Rule 2(a) is applied to 'Government hospital' there is substantial ambiguity created as to whether or not hospitals run by instrumentalities of the Government, which are not strictly owned by the Government of Bihar would be included within Rule 5. When a pointed question was put forth to learned counsel for the respondents as to whether a hospital established by the municipality or one run by an institute substantially funded by State money would be included in their definition, no clear answer was forthcoming. Such issues are bound to arise repeatedly in any selection process. Given how there is no simple answer to such questions, the rigid interpretation adopted by the Government would only lead to friction in the system and cause interpretative chaos which would undermine the fair and just right to compete for public employment.

27. Further, if faced between a choice in which only a few people would be eligible versus a fairly large group, we feel that the latter ought to be adopted to have a diverse pool of applicants. This would promote merit, bring better doctors and further the Constitutional scheme of providing equal opportunity in public employment to the masses. We are thus of the view that the provisions of the Rules in the case-at-hand cannot be construed or explained by applying the principle of literal interpretation.

Purposive Interpretation

28. In pursuance to the above analysis, we are of the view that it is necessary to resort to purposive interpretation of the provisions of the Rules, in light of its objectives. Otherwise also as per the prefatory part of Article 309, the Rules framed thereunder must be in conformity with all other Constitutional provisions, which necessarily includes Part III. Dealing with recruitment in Government hospitals, it is clear that the object and purpose of the Rules too must satisfy the test of Article 16.

29. Further, given the absence of express definition of 'Government hospitals' under the Rules which is the central stage of

A this debate, we deem it fit to make use of Constitutional values as a tool of statutory interpretation. It is well known the Constitution must not only be seen as a benchmark for testing the validity of legislations, but also as an inspirational document to guide State action. When there are two plausible interpretations, the one which promotes Constitutional values must be preferred.[11]

B

30. Under our constitutional scheme, obligations and duties of the 'State' have eloquently been divided using a three-tier system of governance. The Union of India at the national level, individual State Governments at the State Level and various Municipalities/Panchayats at the local level, parallelly discharge their respective Constitutional

C duties for the welfare of the general public.

31. In deference to their duties to raise the standard of living, ensure adequate nutrition and public health of its people under Article 47 of the Constitution, both the Central as well as the State Governments formulate various welfare schemes and establish institutions including

D hospitals/primary health centres. Still further, under Article 243G read with Entry 23 of Schedule XI of the Constitution, the legislature of the State can entrust the functions of *"Health and sanitation, including hospitals, primary health centres and dispensaries"* to the Panchayati Raj Institutions. Similarly, the State legislature may entrust

E under Article 243W read with Entry 6 of Schedule XII, the functions of *"Public health, sanitation conservancy and solid waste management"* to Municipalities. Hospitals of these local governments are often run on the back of funds derived from the Consolidated Fund of the States. It may thus be seen that the Constitution envisages the setting up of hospitals by many different public authorities, including the

F Central Government, State Government, Municipalities and Panchayati Raj Institutions.

32. In addition, it is a well-known fact that several hospitals throughout the country have been set up by instrumentalities of the Central or State Governments, more notably the Employees' State

G Insurance Corporation Hospitals, to cater to the need of poor and needy persons. These hospitals, therefore, are at par with other government hospitals for all intents and purposes, and the experience gained by a

[11] *See* R v. Jarvis, 2019 SCC 10; where the Supreme Court of Canada held that the Canadian Charter of Rights and Freedoms could be used as an interpretive tool in

H certain cases.

doctor in such hospitals subsume the characteristics acquired in a hospital set up by the Bihar Government.

33. Other hospitals are also established by instrumentalities of the States and the Centre in pursuance of Constitutional obligations under Part IV. These although not strictly covered within the ambit of the Rules as propounded by the respondents, nevertheless serve the same purpose of providing best medical facilities to public at large. An apt example is of Army hospitals, and there is little reason to ignore and overlook the experience gained in such hospitals.

34. It is hence irrational to urge that the work experience in any such hospital is different from that in a Government of Bihar hospital. Hence, it would be Constitutionally unjust to allow differentiation between the experience gained by doctors at these hospitals established by Panchayats or Municipalities or by the Central Government and its instrumentalities in the territory of Bihar vis-à-vis those run by the Bihar Government. Any attempt to discriminate between hospitals run by the State Government and the Central Government or Municipalities/ Panchayati Raj Institutions is bound to hit the very ethos of our Constitutional governance setup.

35. Having said so, we are not oblivious to the fact that equality does not imply that there can be no classification. Instead, sometimes it may be necessary to treat unequals unequally, for equal treatment of persons with unequal circumstances creates an unjust situation.[12] Such classification, however, must not be arbitrary but rationally founded on some quality or characteristics which are identifiable within the class of people so created and absent in those excluded from such classification.

36. We are of the view that the purpose behind formulation of the Rules was to recognize the unique challenges of hospitals in Bihar and incentivise doctors to work in non-private hospitals. There is some substance in the submission of learned counsel for the respondents that Bihar is predominantly poor and thus requires doctors having exposure to such challenging environment as compared to their counterparts in private hospitals. Experience in a non-private hospital instills sensitivity in its doctors, making them more adept to understand the ail and agony of poor patients. Such experience will undoubtedly be useful in furthering

[12] Indira Sawhney v. Union of India 1992 Supp. (3) SCC 217 ¶ 415.

A the object of Government hospitals and must be given due weightage while selecting suitable candidates. Interpreting 'Government hospitals' to include only a small class of persons who have worked under the Government of Bihar, is thus clearly erroneous and anti-merit. Such an objective would not be defeated by the understanding of the Rules as has been construed by us.

B

CONCLUSION

37. For the reasons stated above, the appeal is allowed. Rule 5 & 6(iii) of the Bihar Health Service (Appointment and Service Conditions) Rules, 2013 are construed to include the experience gained C by a doctor in any hospital run by the Bihar Government or its instrumentalities, as well as any other non-private hospital (including those run by the Central Government, Municipalities and Panchayati Raj Institutions; or other public authorities) within the territory of Bihar. Respondents are accordingly directed to rework and prepare a fresh merit list by granting due weightage to the appellant and other similarly D placed candidates, within two months. We however clarify that grant of weightage on the basis of work experience shall have no bearing on the suitability of a candidate.

Kalpana K. Tripathy Appeal allowed.