

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15814 of 2015

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Jagdish Jha, Son of Late Upender Jha, Resident of Mohalla Balbhadrapur, PS
Laheria-Sarai, District Darbhanga.

.... Petitioner

Versus

1. The State of Bihar, through Principal Secretary, Human Resources Development Department (Higher Education), Government of Bihar, Patna.
2. The Secretary, Department of Education, Government of Bihar, Patna.
3. The Additional Secretary, Department of Education, Government of Bihar, Patna.
4. The Bihar Public Service Commission, through its Secretary, 15 Jawaharlal Nehru Marg, Baily Road, Patna-1.
5. The Secretary, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Baily Road, Patna-1.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Rajesh Kumar Singh, Advocate
		Mr. Vijay Shankar Shrivastava, Advocate
For the State	:	Mr. Brajesh Kumar, AC to AAG-11
For the BPSC	:	Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 15-12-2015

Petitioner is one of the applicants for the post of Assistant Professor for which advertisement was issued by Bihar Public Service Commission (hereinafter referred to as "the BPSC"). Since, the petitioner has not been permitted to participate in the process of selection and the reason thereof is said to be a communication issued by the Department of Education, Government of Bihar, petitioner has decided to challenge the said order dated 10.04.2015 which is Annexure-5 to the writ application.

2. The basic facts are not a matter of dispute. Petitioner claims that he had passed the Bihar Eligibility Test (BET) conducted by the erstwhile University Service Commission (now dissolved years ago) and that qualification makes him eligible to participate in the process of selection because BET has to be treated at par with NET/SLET which is an equivalent test conducted by UGC.

3. Petitioner is not unique in being singled out from zone of consideration because many similarly situated persons who had passed BET examination decades ago, also applied in terms of the advertisement contained in Annexure-1. When the applications were scrutinized by BPSC based on the strict parameters laid down in advertisement as to the qualification and eligibility, large number of persons were excluded from the zone of consideration and not called for interview. One set of people related to such candidates who had Ph.D. degrees but the said degree was not accepted to be valid degree. Those cases were dealt with separately and decisions have been rendered upholding the stand of the BPSC not to permit such people especially, after the decision was rendered on such Ph.D. degrees which were not obtained in terms of 2009 Regulation issued by the UGC. The decision of the Hon'ble Apex Court rendered in the case of *P. Suseela & Ors. v.*

University Grants Commission & Ors., reported in 2015(3) PLJR 278(SC) fortified the stand of the respondents.

4. Petitioner is aggrieved by the fact that even though he has qualified in what was known as BET way back in the year 1995, there is no obligation upon him to now clear NET/SLET or SET as recognized by the UGC.

5. Since, there were large number of people who were prevented from being called for interview, BPSC was flooded with applications and protest by candidates falling in that category. BPSC in its wisdom, therefore, decided to approach the State Authorities, at whose instance and requisition the advertisement had been issued. The communication or the clarification which BPSC sought from the Principal Secretary, Department of Education, Government of Bihar is part of record as Annexure-E to the counter affidavit of BPSC. This letter is dated 10.03.2015. There is a specific query from the State Government as to what is required to be done with regard to holders of qualification of BET.

6. It is the answer given by the State which has become the bone of contention in the present writ application. The said communication is Annexure-5 to the writ application, which is impugned and is also Annexure-F to the counter affidavit of BPSC.

7. So far as stand of the BPSC is concerned, they go by

the wisdom and the dictates of the State Government. They take a plea that after the Education Department, Government of Bihar clearly indicated the position that BET is not equivalent to NET, no leeway was required to be extended to holders of BET by exempting them from passing NET.

8. So far as the stand of the State is concerned, their stand is that whatever decision has been taken has been taken in terms of and in conformity of the law prevalent before the issuance of the advertisement in this regard. They draw the attention of this Court to the various provisions of the Bihar State Universities Act, 1976 as amended from time to time with special reference to Section 57 of the Act. The provisions further as amended in the year 2013 has also been reproduced in paragraph -8 and the court also reproduces the same for ready reference:-

"That, it is also relevant to state here that Section 3(I)(iii) of the Bihar State University (amendment) Act, 2013 read as follow:

".....(ii) The Commission on the recommendation of the State Government may organize an eligibility test to be called 'State Eligibility Test' for appointment to the post of Teacher (Assistant Professor) in the Universities and Constituent/Affiliated colleges under them. In this behalf, Commission shall invite subject wise applications only from such candidates who have obtained the qualifications prescribed in the UGC Regulations, 2010 or as may be prescribed by the University Grants Commission from time to time. Provided that, such test shall be conducted by the Commission in

the light of the order issued by the State Government in conformity with the Regulations made by the University Grants Commission."

9. Besides the statutory provision governing the Bihar State Universities regulations and provisions of the University Grants Commission has also been talked about in the counter-affidavit of the State. This is what they say in paragraph-10.

"3.3.1. NET/SLET/SET shall remain the minimum eligibility condition for requirement and appointment of Assistant Professor in Universities/Colleges/Institution.

Provided however, that candidates, who are or have been awarded a Ph.D Degree in accordance with the University Grants Commission (Minimum Standard and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for requirement and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions."

10. The sum essence of the two provisions, according to the State is that with the new amendments and changes in the Law/Statute and the Rules read with the Regulation of UGC equivalence which the petitioner is looking for by virtue of having cleared BET is not available to him.

11. It is not very difficult for this Court to understand as to why the rigors and the requirements of making NET as the minimum qualification for consideration for appointment as teachers across the board has been taken. There has to be

uniformity in standards which is required to be maintained in this country for appointment as Assistant Professors etc. Those provisions which have been referred to above has been introduced by the State by amending the provisions of Section-57 to make it in conformity with the requirements laid down by the UGC.

12. The standards of education is changing. The dynamics of education and requirement is changing. What was good in the last century may not hold for the dynamics of teaching in 21st Century.

13. The advertisement, therefore, will be guided by the requirements laid down by the UGC as well as the Provisions under the Bihar Universities Act, 1976 and as amended up-to-date.

14. This court finds it surprising that the petitioner who is so sanguine about having qualified BET is not aware of the changing requirements of UGC and the Regulations which have been notified and the statutory changes brought about by the State of Bihar. If he was that serious about getting considered for such posts in terms of the advertisement, he should have fortified himself by qualifying NET examination on a regular basis as laid down by UGC.

15. The Court, therefore, is not willing to lower the standards and the requirements laid down under the statutory

provisions as well as the advertisement, which is for betterment of higher education.

16. Whatever be the contention of the counsel for the petitioner with regard to equivalence in view of the legal provisions, the writ application has no merit and is required to be dismissed.

17. Writ is dismissed.

(Ajay Kumar Tripathi, J.)

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