

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2159 of 2015

IN

Civil Writ Jurisdiction Case No. 17596 of 2015

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1. Jayanti Prabha Bharti, daughter of Sri Braj Kishore Prasad Sinha, resident of Mohalla- Mahatma Nagar, South of Budha Dental College, P.S. Patrakar Nagar, District & Town- Patna.

.... Appellant/s

Versus

1. The State of Bihar
2. Principal Secretary, Science & Technology Department, Govt. of Bihar, Patna.
3. Director, Science & Technology Department, Govt. of Bihar, Patna
Vishreshraiya Bhawan, Patna-1.
4. Bihar Public Service Commission through its Chairman, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna-1.
5. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Patna-1.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Prasad Singh, Sr. Advocate

For the Respondent/s : Mr. Ritesh Kumar- SC-33

For B.P. S. C : Mr. Pushkar Narain Shahi, Sr. Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 09-12-2015

The appellant, in the present appeal, under Clause 10 of the Letters Patent of this Court, has assailed the order, dated 27.11.2015, passed, in CWJC No. 17596 of 2015, by a learned single Judge, whereby a writ application filed under Article 226 of the Constitution of India by the appellant came to be dismissed.

2. She had preferred the writ application for treating the



date, namely, 05.05.2015, as the last date of submission of application, which had been extended to enable only *AMIE* degree holders, who were earlier debarred from doing so, for the purpose of recruitment to the post of Assistant Professor in Government Engineering College of the State of Bihar pursuant to advertisement No. 20 of 2014 issued by the Bihar Public Service Commission on 22.08.2014. The last date for submission of application form, in terms of the advertisement, was fixed as 23.09.2014, but on the said date the appellant had, admittedly, not held the qualification of M. Tech, which was the requisite qualification for appointment as Assistant Professor, in terms of the advertisement inasmuch as the result of the M. Tech was, admittedly, declared on 22.10.2014, after the last date of submission of the application form had lapsed on 23.09.2014.

3. Evidently thus, if 05.05.2015 would have been treated to be the last date of submission of the application for all aspirants, the appellant would have been held to be qualified to participate in the process of selection.

4. This gave, the appellant cause of action to approach this Court, under Article 226 of the Constitution of India, seeking a direction, *inter alia*, to allow her name to be included in the list of eligible candidates for appointment to the post of Civil Engineering in Government Engineer Colleges of the State of Bihar pursuant to the

said advertisement and treat 05.05.2015 as the last date of submission of the application for the purpose of determining the minimum eligibility criteria in terms of educational qualification.

5. The facts, in the present case, are not at all in dispute.

6. The Bihar Public Service Commission came out with an advertisement, dated 22.08.2014, inviting applications from eligible candidates for their appointments to the posts of Assistant Professor in the various subjects, including Civil Engineering, in the pay scale of Rs. 15600-39100/-, with grade pay of Rs. 6000/-, in various Engineering Colleges, under the Science and Technology Department, Government of Bihar. The advertisement prescribed following educational qualification for a candidate to be eligible to the posts so- advertised:-

“1. Good academic record as defined by the concerned University with at least 55% marks(or and equivalent grade is a point scale wherever grading system is followed) at the Master’s Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign University.

2. Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC like SLET/SET.

3. Notwithstanding anything

contained in sub-clauses (1) and (2) candidates, who are Ph.D 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”.

7. The said advertisement also prescribed that the degree or diploma obtained through AMIE mode will not be treated to be valid qualification. To be specific, relevant portion of the said advertisement, in this regard, is quoted hereinbelow inasmuch as the said clause goes to the root of the matter:-

“1. (B.E/B.Tech. and M. E./ M. Tech. in relevant branch with First Class or Equivalent either in BE/B. Tech or M. E./M.Tech).

2. (Degree or Diploma received through Distance mode/AMIE mode shall not be accepted)”.

8. The last date for receipt of the applications before the Controller of Examination, Bihar Public Service Commission, was prescribed as 29.03.2014 up to 5 P.M.

9. The appellant, claiming herself to be eligible for appointment as Assistant Professor, Civil Engineering, in terms of the advertisement, applied and her application was received within

the time prescribed by the BPSC in terms of the said advertisement. It is not in dispute that as on the last date, prescribed in the advertisement for submission of application, the appellant's final result of M. Tech examination was not declared. Her result was, admittedly, declared on 22.10. 2014. Indisputably, thus, as on the date, when she had submitted her application, she did not hold the minimum educational qualification prescribed for the post in terms of the advertisement.

10. Subsequently, on 15.04.2015, the Commission came out with a corrigendum to the aforesaid advertisement, dated 22.08.2014, to the extent it was mentioned therein that degree or diploma, obtained through AMIE mode, will not be acceptable. The corrigendum was issued in the light of provisions under Bihar Engineering Education Service Rules, 2014, wherein the degree, obtained through AMIE mode, has been treated to be recognized equivalent qualification for appointment as Assistant Professor/Lecturer for such candidates, who were having "enrollment with permanent recognition" till 31.05.2013. In order to enable such candidates, who had acquired degree/diploma through AMIE mode, to participate in the process of selection initiated through the said advertisement, dated 22.08.2014, the Commission allowed them to submit their applications by

05.05.2015 up to 5 P.M. The said corrigendum/notice, which is Annexure-6 to the writ application, was confined only to such candidates, who had acquired requisite qualification through AMIE mode.

11. It is the case of the appellant, in this background, that the date of submission of application form having been extended to 15.05.2015, though confined to candidates, who had acquired the requisite qualification through AMIE mode, her candidature should also be accepted as she acquired the requisite qualification.

12. The plea, taken by the appellant, did not find favour with learned single Judge on the reasoning that the corrigendum was confined to such persons only, who were having degrees through AMIE mode and who were initially debarred from participating in the process of selection and appointment in terms of the advertisement itself. Learned single Judge held that if at all, the date had to be extended for the petitioner, in the light of subsequent corrigendum making a AMIE degree holders eligible, it would be required to be extended across the Board for all such candidates, who had acquired the requisite qualification after last date of submission, i.e. 29.03.2014 and before the last date for AMIE degree holder, i.e. 05.05.2015.



13. Mr. Rajendra Prasad Singh, learned Senior counsel, appearing on behalf of the appellant, has argued that with the issuance of the corrigendum, permitting AMIE degree holders to apply in terms of the advertisement, till 05.05.2015, last date for submission of application stood automatically extended for all candidates to 05.05.2015. Mr. Singh, learned Senior Counsel, has, accordingly, submitted that the appellant had, admittedly, acquired the requisite qualification much before 05.05.2015 and as he had submitted her application, her application ought to have been considered by the Commission as eligible for the post and she ought to have been allowed to participate in the process of selection. Mr. Singh, learned Senior Counsel, has, in this regard placed reliance on *Mohd. Sartaj and others vs. State of U.P and another*, reported in *(2006) 2 SCC 315*, and contend that minimum qualification prescribed should be determinable as on the date of recruitment and not on the date of last date of submission of application form.

14. Mr. Pushkar Narain Sahi, learned Senior counsel appearing, on behalf of the respondent- Bihar Public Service Commission, submits, in the background of the admitted facts as noted above, that the appellant did not, admittedly, have the requisite qualification as on the last date of the application, i.e.

23.09.2014, in terms of the advertisement, dated 22.08.2014. He has submitted that the appellant cannot take advantage of fixing another date for submission of application forms by way of corrigendum notice issued by the Commission since it was confined to a class of persons, i.e., those, who, under the statutory rules, held the requisite qualification for selection and appointment, but were wrongly and inadvertently debarred from participating in the process of selection, because of specific prescription in the advertisement. He has contended that fixing last date of submission of the application through the said corrigendum notice, confined to degree holders from AMIE mode, did not amount to extension of last date of submission of application form as prescribed in the original advertisement, dated 22.08.2014. He has also drawn our attention to last sentence of Clause (3) of the corrigendum notice, which required that other conditions of the advertisement shall be the same as laid down therein. He has, accordingly, submitted that no candidate, who acquired requisite qualification for recruitment/appointment to the post of Assistant Professor after the last date of submission of application, i.e. 23.09.2014, as prescribed in the advertisement, dated 22.08.2014, could be held eligible for recommendation/appointment to the said post. This submission has been made in response to the contention

of Mr. Rajendra Prasad Singh, learned Senior Counsel, appearing for the appellant, that such AMIE degree holder, who acquired the requisite qualification after 23.09.2015 and before 05.05.2015, would also stand qualified for recruitment, 05.05.2015 being the last date of submission of their application.

15. Mr. Shahi, learned Senior Counsel, has placed reliance on Supreme Court decision in the case of *Ashok Kumar Sonkar vs. Union of India*, reported in (2007)4 SCC 54, in support of his contention that in the absence of any cut-off date prescribed for possession of qualification in the advertisement, last date for filing application should be considered to be the last date for possessing requisite qualification. Mr. Shahi, learned Senior Counsel, has also pressed into service, another Supreme Court's decision in the case of *Diptimayee Parida vs. State of Orissa and others*, reported in (2008) 10 SCC 687, in support of his said submission.

16 We find force in the submission made by Mr. Shahi, learned Senior Counsel, appearing on behalf of the Commission, that last date of submission of application form is to be the relevant date for determination of requisite qualification of a candidate, if the advertisement or the service rules do not lay any specific provisions for such cut-off date. Reliance placed upon a



Supreme Court decision in case of ***Mohd. Sartaj and another vs. State of U.P. & others*** (supra) by Mr. Singh, learned Senior for the appellant, has no application to the present facts and circumstances of the case. In the said case, facts were entirely different as the persons, whose appointment were sought to be challenged, did not have the requisite qualification even on the date of interview. The said decision of Supreme Court does not, in any manner, lay down a law that a date subsequent to the last date for submission of application, in terms of the advertisement, must be treated to be the date for determination of eligibility conditions.

17. The Supreme Court, in case of ***Ashok Kumar Sonkar Vs. Union of India*** (supra), considering the question regarding the cut-off date for determination of eligibility qualification in the absence of any prescription in the advertisement and the extant rules, held, in paragraph 20, as follows:-

“20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the

advertisement, the law therefore, as held by this Court would be the last date for filing the application.”

18. In the case of ***Rekha Chaturvedi Vs. University of Rajasthan and ors.***, reported in ***1993 Supp (3) SCC 168***, the Supreme Court had occasioned to consider the legality of the Selection Committee to take into consideration the requisite qualification as on date of selection; rather, then, on the last date of preferring application. The Supreme Court, in clear terms, has held, in ***Rekha Chaturvedi*** (supra), that such decision of the Selection Committee was patently illegal, rendering the selections, in question, liable to be quashed.

19. In the case of ***Ashok Kumar Sharma & ors Vs. Chander Shekhar and another***, reported in ***(1997) 4 SCC 18***, the Supreme Court elaborated the reason behind the proposition as to why, in the absence of any prescription in the advertisement or the rules, the last date of submission of application forms should be treated to be the cut-off date for determining the eligibility condition of an aspirant. The Supreme Court held, in ***Ashok Kumar Sharma*** (supra), that if it were known to the persons, who had obtained qualifications after the last date of submission of the application, other similarly placed persons could also have applied

notwithstanding that they did not have the prescribed qualification, as on the last date of submission of the application. On the basis that appellant applied despite not having the requisite qualification she could not be treated on a preferential basis, in the matter of selection. Paragraph 6 of **Ashok Kumar Sharma** (supra), being relevant for the present case, is extracted hereinbelow-

“6. So far as the first issue referred to in our order dated 1.9.1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr. T.K. Thommen and V. Ramaswami,JJ.) is unsustainable in law. The proposition that where applications are called for, prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that

they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in Rekha Chaturvedi V. University of Rajasthan 3. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.”

20. Considering the authoritative pronouncements of the Supreme Court, as noted above, to the effect that the last date of submission of the application form shall be treated to the cut-off date for determining requisite educational qualification, we do not find any infirmity in the order, under appeal, passed by the learned single Judge.

21. It is, however, made clear that no person having

acquired requisite degree through AMIE Mode after last date of submission of application form as prescribed in the original advertisement, i.e. 29.03.2014, can be treated to be fulfilling the requisite qualification for the purpose of selection/appointment, in question, as this would amount to extending the last date of submission of application form, which cannot be done in view of the stand taken on behalf of the respondents.

22. In the result, this appeal fails and shall stand disposed of without interfering with the order passed by the learned single Judge, but with the observation as above.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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