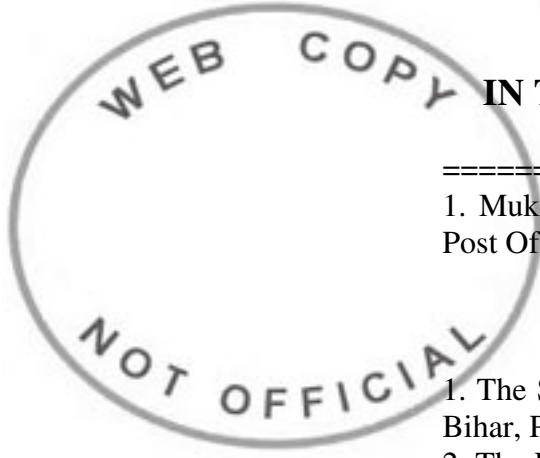




IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9353 of 2011

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1. Mukesh Kumar Rai S/O Late Ramawtar Mahto R/O Village- Aungari,
 Post Office- Aungari, Police Station- Aungari, District- Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar Represented Through The Chief Secretary, Govt. Of Bihar, Patna
2. The Principal Secretary Human Resource Development, Government Of Bihar, Patna
3. The Director, Anugrah Narayan Sinha Institute Of Social Studies, Patna
4. The Registrar Anugrah Narayan Sinha Institute Of Social Studies, Patna
5. Dr. Ajit Kumar Hansda S/O Late Sri Subodhan Hansda R/O Village- Korapara (Mihijam), Post Office- Mihijam, Police Station- Mihijam, District- Dumka (Jharkhand)
6. Dr. Minaketan Behera S/O Prafulla Chandra Behera R/O Village- Raitundi, Post Office - Kendrapara, Police Station- Kendrapara, District- Kendrapara (Orissa)

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Advocate Mr. Ajit Kumar, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Advocate Mr. Piyus Lal, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

24 04-09-2015 The petitioner seeks quashing of the advertisement, inviting application for the post of Lecturer/Reader in different subjects of Social science of Anugrah Narain Sinha Institute of Social Studies, Patna (in short 'A.N. Sinha Institute') as being violative of rules of reservation and accordingly to set aside the entire selection process and appointment made pursuant thereto being



also violative of guide lines of the University Grant Commission as well as identification of posts in complete derogation of direction indicated in the government notification based on rules of reservation applicable in the State of Bihar. The petitioner has further sought direction to the respondents to advertise the post of Lecturer strictly in terms and guide lines of UGC as well as rules of reservation applicable in the State of Bihar. In alternative, the petitioner has prayed for direction to issue writ in the nature of mandamus, order(s), directing the respondents concerned to appoint/adjust the petitioner against the vacancies reserved for Extremely Backward Class Category.

2. Before I examine the grounds on which the impugned order has been assailed, it will be relevant to notice the facts of the case in brief. The A.N.Sinha Institute is a premier interdisciplinary institute established and financed by Government of Bihar, recognized and supported by the Indian Council of Social Sciences Research (ICSSR) engaged primarily in research work. The Institute invited application for the post of Lecturer/Reader in different subjects of Social Sciences, namely Economics, Political Science, Sociology, Psychology and Statistics, in which roster



rules of Government of Bihar was made applicable. As per advertisement, two posts of Lecturers were meant for Scheduled Castes, whereas one each for Scheduled Tribes, EBC, BC-1 and General-1. For the post of Reader, there was one post which was meant for General Category candidate. In other words, according to the roaster, the allocation of post, category wise were in the following manner:

- i) Lecturer – SC-2, ST-1, EBC-1, BC-1, GEN-1
- ii) Reader – GEN-1

A copy of the advertisement is at Annexure-1.

3. It was set out in the advertisement that UGC norms would be applicable in as far as essential qualifications are concerned. Besides, the essential qualification, the desirable additional qualification prescribed for the post of Lecturer/Reader was that a candidate should have published at least one or two research paper under reputed professional peer reviewed journal. As per the advertisement, preference was to be given to the candidates with better quality of publication evidence. The petitioner along with other candidates applied for the advertised post. There were 51 applicants for the post of lecturers and 6



applicants for the post of Reader. However, only 41 applicants appeared for interview for the post of lecturer and 5 applicants appeared for interview for the post of Reader. The Selection Committee evaluated the applicants on the basis of their qualifications set out in the advertisement. The interview was held by the Expert of respective faculties. The petitioner also appeared in the interview. The Selection Committee forwarded its recommendation to the Board of Control of A.N. Sinha Institute for its consideration. The Board vide its resolution dated 29.7.2010 approved the recommendation. The relevant extract of subject wise panel for the post of Lecturer is quoted herein below:

“ Political Science

Selected: Dr. Ajit Kumar Hansda (ST)

Waiting: Nil

Economics

Selected: 1. Dr. Minaketan Behra (EBC), and 2. Dr. Abdhesh Kumar (SC)

Waiting: 1. Dr. Meeta Krishna (EBC), and 2. Dr. Shailesh Kumar (SC)

Sociology

Selected: 1. Ms Ahuja (BC)

Waiting: 1. Dr. Shrawan Kumar Singh (BC)

Psychology

(b) None was found suitable for the post of Reader.

The BOC approved and adopted the recommendations of the Selection Committee and the Director was authorized to implement the recommendations”.



4. The petitioner's name, however, did not figure amongst the successful candidates for the post of lecturers in Political Science under UGC category. Being aggrieved, he has filed the instant writ application challenging the selection particularly that of Dr. Ajit Kumar Hansda (ST).

5. The case of the petitioner is that he fulfills the requisite qualification as well as desirable additional qualification. His research paper was published in reputed journals having its ISSN number like Social Research Journal. He performed well before the Selection Committee with all requisite documentary evidence. A copy of the research work published in reputed journal is at Annexure-3. The candidate selected for the post of Lecturer belongs to State of Jharkhand who ought not to have been given the benefit of reservation over the candidate of State of Bihar in view of Government circular, dated 11.6.1996, as contained in Annexure-11 and reiterated on 18.4.2000 (Annexure-12). As per the qualification, the State Government has taken a decision that candidates belonging to reserved category of other State shall not be considered against the reserved seat which would be confined to candidates belonging to the reserved category of State of Bihar.



The respondents have accepted the resignation of Dr. Mienaketan Behra (Respondent No.6) who was selected against the post of Lecturer in Economics, as he was selected as an OBC candidate instead of Scheduled Caste candidate. The petitioner has assailed the impugned selection on the following main grounds:

i) The advertisement is silent over the issue as to whether the reservation is post wise or subject wise. In any case, the selection of the candidate does not fall in any of the criterias;

ii) Dr. Ajit Kumar Hansda ought not to have been given the benefit of reservation in view of the specific condition in the advertisement that the rules of Government of Bihar would be applicable in the selection process. Further more, the A.N. Sinha Institute of Social Studies Act, 1964 read with its regulation of 1996 and rules of service conditions framed under clause 16 of Regulation, 1956 make it clear that in matter relating to conditions of service, the rules framed by the State Government are alone to regulate the service conditions. A copy of the Act 1964 and Regulations, 1956 are at Annexure-13;

iii) The selection process suffers from vagueness and violative of procedural fairness which is an essential requirement



of any selection process. The petitioner in support of his submission has relied upon a decision in the case reported in ***1992(Suppl)2 SCC 481;***

iv) The respondents have failed to explain as to how the distribution of roaster point vis-a-viz the post of the subject has taken place and as such the working of the roaster was entirely vague.

5. In spite of the order of this Court, the respondents have failed to produce the comparative chart of the petitioner vis-a-viz Dr. Ajit Kumar Hansda (respondent No.5), which makes one wonder whether all has been fair in selection of the candidates. Despite valid service of notice, no counter affidavit has been filed on behalf of the contesting respondent, namely, Dr. Ajit Kumar Hansda. However, counter affidavit and supplementary counter affidavit has been filed on behalf of Respondent Nos.3 and 4, which are on record.

6. Mr. Lalit Kishore, learned Senior counsel appearing for the A.N. Sinha Institute duly assisted by Mr. Piyus Lal, learned counsel submits that once the petitioner has participated in the examination and has not challenges the advertisement, he cannot



subsequently turn around and challenge the advertisement and selection process. In support of his submission, learned counsel has relied upon decisions reported in *(2002)5 SCC 533, para-19, (2008)4 SCC 171, paras 7 and 11 and (2012) 2 PLJR DB18, paras 8,9 and 10*. Similarly, it would equally be not open for the petitioner to challenge the wisdom of Selection Committee in academics matter after having been declared unsuccessful. Reliance has been placed upon a decision in the case reported *in (1990) 1 SCC 305, para 12*. He further submits that roaster was applied post wise and not subject wise. The petitioner thus being aware that roaster was applicable post wise accepted the terms and conditions of the advertisement and participated in the selection process without raising the issue of roaster. The reservation policy has been duly applied. Thus, the claim of the petitioner that roaster policy was not followed is devoid of any merit.

7. I have heard learned counsel for the parties.

8. The scope of judicial review in matters of selection in academic field on behalf of the unsuccessful candidates is limited in its scope and is confined in a very narrow compass. Only in cases where constitution of Selection Committee is illegal or there



is a violation of reservation rules, or if there is a proven mala fide, the Court can intervene in appropriate cases. Reliance can be made in the cases of *Raj Kumar v. Shakti Raj, reported in (1997) 9 SCC 536* which duly noticed the decision rendered in the case of *Madan Lal vs. Jammu & Kashmir, reported in (1995)3 SCC 482 para 60; Dalpat Aba Saheb Solunke v. T.S. Mahajan, reported in (1990)1 SCC 305*. As such, it is difficult to accept the submission of the respondents that in no circumstance, an unsuccessful candidate can challenge the selection process even if the grounds mentioned above are attracted.

9. In light of law laid down by the Hon'ble Apex Court, I would examine the submissions of the parties.

10. The case of the petitioner is that the roster point is not followed either post wise or subject wise. The petitioner's case is that respondent No.5 has wrongly been given the benefit of reservation as a ST category while selecting him for the post of Lecturer of Political Science in preference to his candidature. He submits that respondent no.5 belonged to the State of Jharkhand and as such would not be entitled to benefit of reservation in view of policy of the government contained in letter dated 11.6.1996



and 18.4.2000, contained in Annexures-11 and 12 respectively. The A.N. Sinha Institute of Social Studies Act, 1964 and clause 16 of the Regulation, 1956 specify that in matters relating to conditions of service, the rules framed by the State Government would alone regulate the service conditions of the Staff of the Institute. The department of Personnel and Administrative Reforms, Government of Bihar, vide its letter dated 11.6.1995 (Annexure-10) took a policy decision that candidates belonging to reserved category of other State would not be considered against the reserved seat and the same would be confined to candidates belonging to reserved category of State of Bihar only. The aforesaid policy decision was again reiterated by the Department of Personnel and Administrative Reforms, Government of Bihar vide its letter dated 18.4.2000 (Annexure-12). The advertisement also stipulated that roster rules of Government of Bihar would be applicable.

11. In view of the statutory rules as well as policy decision of Government of Bihar, respondent no.5 ought not to have been given the benefit of reservation. He ought to have been treated as a general candidate, which is not the situation in the instant case. As



such, the selection of respondent No.5 against the reserved category seat is bad in law and is accordingly set aside with liberty to the respondents to fill up the post by issuing a fresh advertisement in accordance with law. No direction can be issued in the facts of the case for appointment of the petitioner against the said post as there was no wait list. However, it would be open for him to apply against the fresh advertisement.

12. In the result, this writ application is allowed to the extent indicated above.

(Samarendra Pratap Singh, J)

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