

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13891 of 2015

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1. Dr. Ram Pravesh Singh, son of late Muni Lal Singh, resident of c/o Late Braj Ballabh Kumar, Nandgaon, P.s Shashtri Nagar, Town& District- Patna.
 2. Dr. Anil Kumar Sinha, son of Sri Sheo Prasad Singh, Resident of Ramnagar, P.O & P.S. Silao ,District -Nalanda.
 3. Dr. Sarangdhar Singh, son of late Dip Narayan Singh, resident of At & P.O. Kumarkhand, P.S. Kumarkhand, District -Madhepura.
 4. Dr. Pramod Kumar son of Sri Paramhans Roy, Resident of Village- Bajidpur, P.O Bajidpur Saidat, P.S Bidupur Distirctn Vaishali.
 5. Dr. Kumar Amitabh son of Sri Arvind kumar Singh, Resident of Mohalla- Bharat Raut, Katra, Hajipur, District -Vaishali.
 6. Dr. Anupama, daughter of Sri Nawal Kishore Prasad Singh, Resident of Anand Suman Niwas, Bhisasur, Kumhar Toli, Ranchi Road, Biharsharif, District Nalanda.
 7. Dr. Ashok Kumar son of Dudheshwar Singh, Village- Tarari, P.O. Tarari, P.S Daudnagar, District Aurangabad.
 8. Dr. Manoj kumar Singh son of late Shiv Nandan Singh, resident of Shaligram Sadan Upper Tola, J.P. Pande Lane, Jogsar, P.O. Naya Bazar, P.S Adampur, District Bhagalpur.
 9. Dr. Sarygu Mandal son of late Jamuna Mandal, resident of Sri Mohan Thakur Lane ,P.O. & P.S Barari, District Bhagalpur.
 10. Dr. Swetambara, Daughter of Prof. Lalan Jha, Resident of Ward No. 18 , Lane of Mohan Singh Office, Gangjala, Nagarpalika Road, P.S Saharsa, District Saharsa.
 11. Dr. Ena Bahan son of Dr. Ramadhar Prasad, Resident of 7 M. F-4/2 Bahadrupr Housing Colony, Kankarbagh, Town & District -Patna
 12. Dr. Bidyanand Mahto son of Sri Janak Mahto, resident of Village & P.O Mohammadpur Koari, P.S Waini, Via- Waini, District- Samastipur.
 13. Dr. Mukesh Kumar Sinha son of late Ram Chandra Prasad, resident of Ram Raji Road, Maripur, P.O. Muzaffarpur, P.S. Kazi Mohammadpur, Town & District Muzaffarpur.
 14. Dr. Rajeev Kumar Jha son of late Prabodh Kumar Jha, Resident of Co-operative Colony, 52, Bigha, Laxmi Sagar, P.S Vishwaridyalaya Thana, District Darbhanga.
 15. Dr. Jay Prakash Yadav, son of Sri Kokay Yadav, Resident of At- Ramdularpur, P.O. Champanagar, P.S. Nathnagar, District Bhagalpur.
 16. Dr. Dhananjai Singh son of Sri S.N. Sinha, Resident of Village- Kumhra, P.O. Karkain, P.S Ghoswari, District Patna.
 17. Dr. Rajnish Kumar Singh son of Sri Devendra Singh, Resident of At & P.O. Kauria Tole Raman Rai, P.S Bhagwanpur Hat, District Siwan.
 18. Dr. Rajeshwar Rai Son of Sri Mukhtar Rai, Resident of Village- Tawakil, P.O. Dayalpur, P.S Ekma, District Chapra(Saran)
 19. Dr. Manoj kumar Singh, son of Sri Raj Narayan Singh, resident of Shiv Shakti Colony Road NO. 24 K, P.S. Rajiv Nagar, Rajiv Nagar, District Patna.
 20. Dr. Ali Akbar son of Sri Shamsuddin Ansari, Resident of At- Daulatpur, P.O. Rajpur, P.S. Raghunathpur, District Siwan.
 21. Dr. Sima Kumari, Daughter of Sri Sudhir Prasad Jaiswal, resident of 203 G.B. Colony Tilka Manjhi, P.S. Tilka Manjhi, Town & District Bhagalpur.
 22. Dr. Sagar Kumar son of Sri Chamak Lal Sharma, Resident of At- Aliganj, P.O. .Mirjanhat, District Bhagalpur.
 23. Dr. Arun Kumar son of Sri Suba Yadav, Resident of village- Paharpur , P.O. &

P.S Kaler, District Arwal.

24. Dr. Suraj Singh Sisodia, Son of Chandrika Singh, Resident of Gahlot Niwas, Kazi Mohalla, District Nalanda.

25. Dr. Minal Vijay, Daughter of Dr. H.B. Singh, Resident of 21, Nirala Nagar, Digha, Town & District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Science & Technology Department, Government of Bihar Technology Bhawan, Bailey Road, Patna.

2. The Principal Secretary, Science & Technology Department, Government of Bihar Technology Bhawan, Bailey Road, Patna.

3. The Deputy Secretary, Science & Technology Department, Government of Bihar Technology Bhawan, Bailey Road, Patna.

4. The Director, Science & Technology Department, Government of Bihar Technology Bhawan, Bailey Road, Patna.

5. The Bihar Public Service Commission, through its chairman, 15, Bailey Road, Patna

6. The Chairman, Bihar Public Service Commission, Bailey Road, Patna

7. The Secretary, Bihar Public Service Commission, Bailey Road, Patna

8. The Joint Secretary-cum-Examination controller, Bihar Public Service Commission, Bailey Road, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 13946 of 2015

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1. Dr. Neelu Basant wife of Dr. Gajendra Kumar Singh resident of 39, Kavi Raman Path, East Boring Road, P.S. - Buddha Colony, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Science & Technology Department, Bihar, Patna.

2. Bihar Public Service Commission, Patna through its Secretary.

3. Chairman, Bihar Public Service Commission, Patna.

4. Secretary, Bihar Public Service Commission, Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 13891 of 2015)

For the Petitioner/s : Mr. Dhruba Mukherjee Sr. Advocate
Mr. Md. Nazir Ansari

For the Respondent State: Mr. DHURJATI KR PRASAD, GP 7

For the B P S C : Mr. P N Shahi, Sr. Advocate
Mr. Sanjay Pandey

(In CWJC No. 13946 of 2015)

For the Petitioner/s : Mr. Abhinav Srivastava

For the Respondent State: Mr. Rajeev Kumar Singh, GP2

For the B P S C : Mr. P N Shahi, Sr. Advocate
Mr. Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
C.A.V. JUDGMENT
Date: 16-12-2015

Both the writ applications arise from common question of law and since the Court was addressed in both the matters together, they are being disposed of by this common judgment.

2. An advertisement was issued by the Bihar Public Service Commission (in short, BPSC) for appointment on the post of Assistant Professors in the Engineering Colleges being run under the Department of Science and Technology, in subject like Mathematics, Physics, Chemistry and English.

3. The petitioners, 25 in number (in CWJC No. 13891/2015) and 1 (in CWJC No.13946/2015) have filed the writ applications because by virtue of notification issued by the BPSC, contained in Anneuxre-1 series (in CWJC No. 13891/2015), they have been shown to be ineligible. This has the effect of nipping the aspirations of these petitioners from being considered for such selection and appointment on the post of Assistant Professor. A prayer was made to restrain the respondents from holding any written examination or allow them to complete the process of selection.

4. The pleading in the writ applications is that these petitioners are already working as Assistant Professor on contract basis in various degree level Engineering Colleges, under the Science

and Technology Department, of the State of Bihar. There is no complaint against their work or performance of duty.

5. On 22.8.2014, the Department of Science and Technology, while exercising power under Article 309 of the Constitution of India, notified a rule for appointment to different posts of teachers in Government Engineering Colleges or Institutions. Rule was also supposed to take care of career advancement and to regulate their service conditions. Rule is Annexure-2 to the first writ application i.e. CWJC No. 13891/2015. The said rule also lays down qualifications and experiences which are needed for direct appointment in what is known as Bihar Engineering Education Service Rule 2014. Appendix –I, Table No.1 of the said Rule indicates the qualification, which is needed for Teachers or aspirants of Humanities and Sciences. The provisions have also been quoted in para 7 of the first writ application.

6. The stand of the counsel representing the petitioners is that a plain reading of the required qualification laid down in the Service Rule of 2014 indicates that persons who are holders of Ph.D. degree are exempted from passing NET/SLET/SET. Barring them from participation and consideration for such appointment is doing violence not only to their right guaranteed under Articles 14 and 16 of the Constitution of India but also doing violence to the provisions

laid down under the rules.

7. Since Annexure-1 does not indicate the reason as to how they have become ineligible, they have been compelled to rush to this Court seeking a direction upon the respondents, especially BPSC, not to proceed with such selection.

8. The submission and plea of the petitioners necessitated a direction upon the respondents to explain the reasons as to why these petitioners have been shown in the category of ineligible candidates.

9. The stand of the BPSC in the counter affidavit is that the advertisement has been published in terms of the requisition sent by the State Government and the said advertisement is in conformity with the rules and regulations, which is Annexure-2, annexed by the petitioners themselves. There is no infirmity in the decision of the BPSC because the requirements laid down in the Engineering Service Rules, 2014 is what the advertisement indicates. Petitioners are misreading the provisions with regard to exemption by virtue of holding Ph.D. degree. It is not that all the Ph.D. degree holders are exempted from qualifying in NET/SLET/SET examination. Those candidates who have been awarded Ph.D. degree in accordance with the University Grants Commission (Minimum Standard and Procedure for Award of Ph.D. Degree) Regulations, 2009 can only be exempted from the requirement of minimum eligibility conditions of

NET/SLET/SET. The petitioners by misreading the provision urge that every Ph.D. degree holder, even in contravention of the Regulations of 2009, is eligible for exemption.

10. BPSC also sought certain clarification from the Department of Science and Technology since some kind of confusion was sought to be created by the candidates like present petitioners. The communication, which is letter No. 1760 dated 3.8.2015, contained in Annexure-G to the counter affidavit of BPSC, clarifies that not every Ph.D. degree holder can avail the benefit of exemption from NET etc.

11. Para 13 of the counter affidavit of the BPSC has indicated the clear reason for ineligibility of these petitioners, which has been produced in form of a chart. The final underlying reason in all the cases of these petitioners is that they do not have NET qualification and their Ph.D. has not been obtained in conformity with 2009 Regulation.

12. BPSC further clarified from the Department of Science and Technology about the validity of certification of Bihar Eligibility Test (BET) and they have been informed by the department vide letter dated 16.7.2015 (Annexure-I) that the BET Certificates are not valid certification for appointment as Assistant Professors in the Engineering Collages. Even otherwise, BPSC is bound by the advice

and directives issued by the department which has sent requisition for such selection and appointment.

13. Petitioners' counsel thereafter tries to take a plea that the rule of the game is sought to be changed midway by bringing certain clarification and notification after the initial advertisement, which is not permissible as held by Hon`ble Apex Court in several cases. Reliance is placed on the decision rendered in the case of **Kalyani Mathivanan Vs. K. V. Jeyaraj and others, (2015) 6 SCC 363** [Para 27 and 56] as well as the decision rendered in the case of **P Mahendran and others Vs. State of Karnataka and others, AIR 1990 SC 405.**

14. The State has also taken an identical plea as the BPSC. They support the decision of the BPSC in toto and they are fortified in taking such a stand based on a recent decision of the Hon`ble Apex Court in identical situation with regard to validity of Ph.D. degree contrary to 2009 UGC Regulations. In a detailed decision rendered by the Hon`ble Apex Court in the case of **P Suseela and others vs. University Grants Commission and others, 2015 (3) PLJR 278 (SC).** The Hon`ble Supreme Court had this to say in para 5 of the said decision.

“5 In pursuance of the said directive, the UGC promulgated the impugned Regulations of 2009, the 3rd Amendment of which provides as

follows:

“NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/Institutions:

Provided, however, that candidates, who are or have been awarded Ph.D. Degree in compliance of the “University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent position in Universities/Colleges/Institutions.”

The proviso referred to a number of new conditions relating to the maximum number of Ph.D. students at any given point of time, stringent admission criteria for a Ph.D. degree, research papers being published, the Ph.D. thesis being evaluated by at least two experts, one of whom shall be an expert from outside the State etc. ”

15. In view of the decisive pronouncement of the Hon`ble Supreme Court , petitioners who are all claimants for appointment on the post of Assistant Professor in Social Science have no case for consideration as they cannot walk away with exemption merely on the basis of Ph.D. degree which they have acquired contrary to the

UGC 2009 Regulation. If there was any doubt on the issue, the Hon`ble Apex Court has shut out any scope for argument on this score.

16. Counsel for the BPSC also draws the attention of the Court to a Division Bench decision rendered in the case of **Dr. (Mrs.) Renuka Sharma Vs. Bihar Public Service Commission, 2007 (4) PLJR 762**. Para 7 and 12 which are reproduced herein below also stares the petitioners in their face and in view of the same they cannot overcome the ineligibility indicated against their names by the BPSC.

17. Para 7 and 12 of the above decision reads as follows:

“7. In the instant case, an advertisement was published by the Bihar Public Service Commission inviting applications from candidates for being appointed as Teachers in two of the Colleges controlled and managed by the Government. In the advertisement, it was indicated that while the selector will be the Bihar Public Service Commission, the appointment will be given by the Government for being appointed in the said Government Colleges. The advertisement indicated the qualifications to be had by the persons eligible to apply. In that, it had not been indicated that such candidates would be required to have passed those examinations as are required to be passed for being appointed as Teachers in

Affiliated Colleges or Constituent Colleges.

12. A person, who has not acquired such qualification upon passing either of those examinations successfully, is not competent to be appointed as a Teacher in any University either in its Affiliated Colleges or in its Constituent Colleges. A Government College has no exception. A Government College without affiliation does not get the privileges of the University and accordingly, should be an Affiliated College to enjoy all the privileges of the University.”

18. The sum essence of the above submission is that neither the State nor the BPSC can be said to have erred in barring these petitioners from participation or consideration for appointment as Assistant Professors in the Engineering Colleges being run by Government of Bihar. Merely because petitioners have been engaged as stop-gap measure on contract, it is not a certificate of eligibility because their eligibility has to be tested on the basis of the Rule which is in place w.e.f. 22.8.2014 (Annexure-2) and the advertisement, which is in conformity with the said Rule.

19. Writ applications are devoid of merit and are dismissed.

(Ajay Kumar Tripathi, J)

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