

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5580 of 2012

1. Ranjeeta Sonkar @ Ranjeeta Daughter Of Mr. Rajkumar Sonkar Resident Of 433/1483, Balaganj Chauraha, Lucknow 226003, Address For Correspondence : College Of Art & Craft, Faculty Of Fine Art, Lucknow University, Taigore Marg, Lucknow 226006

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Govt. Of Bihar, Patna
3. The Vice-Chancellor, Patna University, Patna
4. The Registrar, Patna University, Patna
5. Mazhar Elahi Son Of Mr. Manzoor Elahi Resident Of H.N.O. 150, Okhla Village P.O. Jamia Nagar, New Delhi 110025

.... Respondents

with

Civil Writ Jurisdiction Case No. 3751 of 2012

1. Dinesh Sharma S/O Sri Bangali Sharma R/O Village- Koyri Bigha, P.S.- Barbigaha, District- Sheikhpura

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary Education Department, Govt. Of Bihar, Patna
3. The Vice-Chancellor, Patna University, Patna
4. The Registrar, Patna University, Patna
5. Abinash Das S/O Late Nityanand Das R/O Mohalla- 310, Shahid Udham Singh Nagar, P.O. And P.S.- Jalandhar-1, Punjab
6. Shashi Ranjan Prakash S/O Sri Ramchandra Ram R/O H. No. 770, Ward No. 32, Peonibagh, Baswaria, P.O. And P.S.- Betiah, District- West Champaran

.... Respondents

with

Civil Writ Jurisdiction Case No. 3785 of 2012

1. Anil Bihari S/O Late Shiv Lal Mandal R/O Mohalla-Mungeriganj, P.S. Begusarai, Distt-Begusarai

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department Govt. Of Bihar, Patna
3. The Vice Chancellor, Patna University Patna
4. The Registrar, Patna University Patna
5. Dr. Chandra Bhushan Shrivastava S/O Sri Avinash Chandra Lal R/O Moh-

House No.02, Azad Nagar, P.S.Jangipur, Distt-Jangipur(UP)
6. Dr. Reeta Sharma W/O Sri Gautam Sagar Rana R/O 174, Kautilya Nagar,
P.O.B.V.College, P.S. Shastri Nagar, Distt-Patna

.... Respondents

with

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Civil Writ Jurisdiction Case No. 4611 of 2012

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1. Rajesh Kumar Singh S/O Late Ram Bali Singh R/O B-300, Sidharth Banglows,
Samay Sabhali Road, Baroda, Gujrat-390022

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary Education Department, Govt. Of Bihar, Patna
3. The Vice-Chancellor, Patna University, Patna
4. The Registrar, Patna University, Patna
5. Dr. Umesh Kumar Singh S/O Sri Samar Bahadur Singh R/O N-9/87d-15, Janki Nagar Lane No. 1, P.O.- Bazar, Diha, Varanasi - 221106

.... Respondents

with

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Civil Writ Jurisdiction Case No. 5744 of 2012

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1. Dinesh Kumar Son Of Late Shiv Muniram Resident Of Village Jamuaon, P.S. Piro, District Bhojpur (Arah), At Present Address C/O Ramu Kumar, Mohalla Dhobi Tola, P.S. Danapur, District Patna

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Govt. Of Bihar, Patna
3. The Vice-Chancellor, Patna University, Patna
4. The Registrar, Patna University, Patna
5. Dr. Chandra Bhushan Shrivastava Son Of Sri Avinash Chandra Lal Resident Of Mohalla House No. 02, Azad Nagar, P.S. Jangipur, District Jangipur (UP)
6. Dr. Reeta Sharma Wife Of Sri Gautam Sagar Rana Resident Of 174 Kautilya Nagar, P.O. B.V. College, P.S. Shastri Nagar, District Patna

.... Respondents

with

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Civil Writ Jurisdiction Case No. 5456 of 2012

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1. Amresh Kumar S/O Jagadish Singh R/O Flat A, G.G. Complex, Behind Rajendra Nagar, Post Office And Police Station- Kadamkuan And District- Patna

.... Petitioner

Versus

1. The State Of Bihar

- 2. The Principal Secretary Education Department, Govt. Of Bihar, Patna
- 3. The Vice-Chancellor, Patna University, Patna
- 4. The Registrar, Patna University, Patna
- 5. Ajay Kumar Pandey S/O Shri Krishna Pandey R/O F 44/5, Near Mcd School, Mohalla- Rajpur, Extension, P.S.- Meharauli, New Delhi, At Present Teacher Art And Craft College, Patna

.... Respondents

with

Civil Writ Jurisdiction Case No. 5860 of 2012

- 1. Ramu Kumar Son Of Late Sitaram Pandit Resident Of Mohalla-Dhobi Tola, P.S.-Danapur Cantt, District-Patna

.... Petitioner

Versus

- 1. The State Of Bihar
- 2. The Principal Secretary, Education Department, Govt. Of Bihar, Patna
- 3. The Vice-Chancellor, Patna University, Patna
- 4. The Registrar, Patna University, Patna
- 5. Ajay Kumar Pandey Son Of Sri Krishna Pandey Resident Of F 44/5, Near MCD School, Mohalla-Rajpur, Extension, P.S.-Meharauli New Delhi At Present Teacher Art And Craft College, Patna

.... Respondents

with

Civil Writ Jurisdiction Case No. 5039 of 2012

- 1. Navin Kumar Son Of Late Shri Rajdeo Sharma Resident Of Village-Raghu Bigha, Post Office-Sansa Police Station-Daudnagar And Distt.-Aurangabad (Bihar)

.... Petitioner/s

Versus

- 1. The State Of Bihar
- 2. The Principal Secretary, Education Department, Govt. Of Bihar, Patna
- 3. The Vice-Chancellor, Patna University, Patna
- 4. The Registrar, Patna University, Patna
- 5. Rakhee Kumari D/O Mahavir Singh Resident Of Mohalla- Kankarbagh, P.S.- Kankarbagh, Distt.-Patna
- 6. Sujai Mukharjee Son Of Dr. S.N. Mukherjee Resident Of 561, Dakshindari Road, Laho Bazar, P.O.-Sribhuni, Calcutta-700048, West Bengal At Present Posted As Lecturer, Art And Craft College, Patna, Vidyapati Marg, P.S.-Budha Colony, Patna-1

.... Respondent/s

**Appearance :
(In CWJC No. 5580 of 2012)**

- For the Petitioner : Mrs. Mahasweta Chatterjee, Advocate
Mr. Samir Kumar Sinha, Advocate
- For the State : Mr. Subhash Pd. Singh GA7

For the University : Mr. Vindhya Keshri Kumar, Sr. Advocate
For the Respondent No.5 Mr. Nafisuzzoha, Advocate

(In CWJC No. 3751 of 2012)

For the Petitioner : Mrs. Mahasweta Chatterjee, Advocate
Mr. Samir Kumar Sinha, Advocate

For the State : Mr. Rajeev Roy, GA7

For the University : Mr. Vindhya Keshri Kumar, Sr. Advocate

For the Respondent No.5 & 6: Mr. Anil Kr. Sinha, Advocate

(In CWJC No. 3785 of 2012)

For the Petitioner : Mrs. Mahasweta Chatterjee, Advocate
Mr. Samir Kumar Sinha, Advocate

For the State : Mr. Prashant Pratap, GP 6

For the University : Mr. Vindhya Keshri Kumar, Sr. Advocate

For the Respondent No.5: Mr. Anil Kr. Sinha, Advocate

For the respondent No.6: Mr. Shivendra Kishore, Sr. Advocate

(In CWJC No. 4611 of 2012)

For the Petitioner : Mrs. Mahasweta Chatterjee, Advocate
Mr. Samir Kumar Sinha, Advocate

For the State : Mr. Anjani Kr. Sharan, SC 9

For the University : Mr. Vindhya Keshri Kumar, Sr. Advocate

For the Respondent No.5 Mr. Anil Kr. Sinha, Advocate

(In CWJC No. 5744 of 2012)

For the Petitioner : Mrs. Mahasweta Chatterjee, Advocate
Mr. Samir Kumar Sinha, Advocate

For the State : Mr. S. K. Sharma GA3

For the University : Mr. Vindhya Keshri Kumar, Sr. Advocate

For the Respondent No.5 & 6: Mr. Shivendra Kishore, Sr. Advocate

(In CWJC No. 5456 of 2012)

For the Petitioner : Mrs. Mahasweta Chatterjee, Advocate
Mr. Samir Kumar Sinha, Advocate

For the State : Mr. Nivedita Nirvikar, GP3

For the University : Mr. Vindhya Keshri Kumar, Sr. Advocate

For the Respondent No.5 Mr. Anil Kr. Sinha, Advocate

(In CWJC No. 5860 of 2012)

For the Petitioner : Mrs. Mahasweta Chatterjee, Advocate
Mr. Samir Kumar Sinha, Advocate

For the State : Mr. GA6

For the University : Mr. Vindhya Keshri Kumar, Sr. Advocate

(In CWJC No. 5039 of 2012)

For the Petitioner : Mrs. Mahasweta Chatterjee, Advocate
Mr. Samir Kumar Sinha, Advocate

For the State : Mr. Rajesh Singh, GP 16

For the University : M/s. A. K. Keshri & Soni Srivastava, Advocates

For the Respondent No.5 Mr. Kumar Alok, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date: 29 -04-2015

1. In this batch of writ applications, a notification issued

by the Patna University dated 25.01.2012 under the signature of

the Registrar of the University whereby, nine persons have been appointed as Assistant Professors in different subjects in the faculty of Fine Arts (college of Arts and Crafts), Patna under Patna University Service, is under challenge.

2. By the said notification, nine persons have been appointed as Assistant Professors in the subjects of Painting, Applied Arts, Sculpture, History of Art, Photography and Graphics. The petitioners, were also aspirants for the said posts and had applied pursuant to Advertisement No. G. Admn./01/11 inviting applications for the posts and had participated in the process of selection, but were unsuccessful. The Appointees, pursuant to the said notification have been impleaded as Respondents in different writ applications. They were noticed, pursuant to which they have appeared through their counsel and have filed counter affidavits.

3. As the dispute in the present batch of writ applications arose out of same selection process, held in the light of same advertisement, and involve common issues and almost identical questions to be decided, they have been heard together and are being disposed of by the present common judgement.

4. Pursuant to an order of this court, the original records pertaining to process of selection have been produced before this court which have been perused by me.





5. Before I advert to the rival pleadings of the parties in different cases, I think it appropriate to first deal with the advertisement inviting applications from the eligible candidates for appointment as Assistant Professors, in the faculty of Fine Arts in Patna University through the said Advertisement No. G. Admn./01/11, which has been brought on record by way of annexure to the writ applications. I shall also be dealing with the relevant statutory provisions governing selection for appointment to the post of Assistant Professors in the college under Patna University.

6. By the said Advertisement No. G. Admn./01/11, the Patna University invited applications for appointment against 11 vacant posts of Assistant Professors in the faculty of Fine Arts in different subjects. Following were vacancies shown against different posts:-

Subject	No. of vacant posts
Painting	2
Applied Arts	2
Sculpture	2
History of Art	2
Photography	1
Graphic	2

7. Out of 11 posts so advertised, five were shown to have been unreserved. 1, 3 and 2 posts were shown to be reserved for candidates belonging to Extremely Backward Class (EBC), Scheduled Caste (SC) and Backward Class (BC) respectively, without mentioning the subjects in which the posts were reserved. Following was the requisite qualification prescribed for a candidate applying for the posts:-

“(i) *Good academic record with at least 55% of the marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master Degree level in the relevant subject or an equivalent degree from an Indian/Foreign University.*

(ii) *Besides fulfilling the above qualifications, candidates must have cleared the National Eligibility Test (NET) for lecturers conducted by the UGC, CSIR, or similar test accredited by the UGC. Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause 4.4.2.3, candidates, who are, or have been awarded a Ph. D. Degree, in accordance with 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/SET for recruitment and appointment of Assistant Professors or equivalent positions in Universities/ Colleges/ Institutions.*

(iii) *Without prejudice to the above, NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted.*

OR

i. *A Professional artist with highly commendable professional achievement in the concerned subject, who should have:*

- 1. First class Diploma in Visual (Fine) arts discipline from the recognized institution of India/Abroad*
- 2. Five years of experience of holding regular regional/National exhibitions/ Workshops with evidence; and*

3. Ability to explain the logical reasoning of the subject concerned and adequate knowledge to teach theory with illustrations in that discipline.”

8. Clause (i) of the advertisement required that a candidate must possess good academic record with at least 55% of marks at the Master Degree level in the relevant subject or an equivalent degree from an Indian/ Foreign University.

9. Upon reading of Clause (ii) under the heading requisite qualification, of the advertisement, it is evident that qualification of having cleared National Eligibility Test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC was laid down as an essential criteria. This essential qualification was exempted only in cases where the candidates had been awarded Ph. D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph. D. Degree) Regulations, 2009 (hereinafter referred to as 2009 regulations of UGC).

10. Clause (iii) of the said advertisement provided that eligibility of NET or SLET or SET shall not be required for such Masters Programmes, in the disciplines, for which no such tests are conducted.

11. The University Grants Commission has laid down the norms for selection/ appointment of Assistant Professors, which has been brought on record by way annexure-5 to CWJC No.



5580/ 2012. Clause 5.1.1 of the said norms reads thus:-

“5.1.1 Assistant Professor in the University:

(a)The Selection Committee for the post of Assistant Professor in the University shall have the following composition.

(1)The Vice Chancellor shall be the Chairperson of the Selection Committee.

(2)Three experts in the concerned subject nominated by the Vice Chancellor out of the panel of names approved by the relevant statutory body of the University concerned.

(3)Dean of the concerned Faculty, wherever applicable.

(4)Head/ Chairperson of the Department/School.

(5)An academician nominated by the Visitor/Chancellor, wherever applicable.

(6)An academician representing SC/ ST/ OBC/ Minority/ Women/ Differently-abled categories to be nominated by the Vice Chancellor or Acting Vice Chancellor, if any of the candidates representing these categories is the applicant and if any of the above members of the selection committee do not belong to that category

(b)At least four members, including two outside subject experts shall constitute the quorum.”

12. These pleadings on behalf the petitioners are not in dispute and no issue or dispute has been raised that the requirements as noted above are not mandatory.

13. I consider it appropriate to mention here that prior to an amendment in the year 2007, the Bihar State Universities (Constituent Colleges) Service Commission was the body to make selection for appointment to the post of teachers etc. in Patna University. The Patna University Act, 1976 came to be amended by Patna University (amendment) Act, 2007 and in place of the said Commission, a Selection Committee was constituted. By

Section 4 of the Patna University (amendment) Act, following came to be substituted in place of Section 56 of the Patna University Act, 1976:-

“56 (i)-subject to the provisions of this Act and the statute made thereunder appointment to the post of teachers and officers (other than Vice Chancellor, Pro Vice Chancellor, Registrar and the Dean of Faculty) of the University shall be made by the University on the recommendation of the Selection Committee consisting of the following member:-

- (1) The Vice Chancellor;*
 - (2) One member to be nominated by the Chancellor*
 - (3) One member to be nominated by the Government.*
 - (4) Three experts not connected with the University to be nominated by the Vice- Chancellor from a panel of not less than seven names approved by the Academic Council for each post, out of which at least one member should belong to scheduled caste/ scheduled tribes and two shall be from outside the State.*
 - (5) The head of the department of the discipline concerned.*
- (ii) The selection committee shall prepare a merit list for appointment of teachers and officers from amongst the eligible candidates and make recommendation for their appointment according to merit in conformity with the reservation roster prepared by the University in accordance with law relating to reservation in appointment in force in the State.*
- (iii) **Quorum for meeting of the selection committee-** Quorum for meeting of the selection committee shall be five in which presence of at least two experts shall be necessary.”*

It is in the light of the said amendment that selection in the present case has been made by a Selection Committee

constituted in terms of Section 56 of the Act as it is existed when the process of selection was on.

14. A committee was constituted comprising four experts, one Chancellor's nominee, one State Government nominee with the Vice Chancellor of the Patna University as its Chairman for making selection and recommending names for appointment of Assistant Professors in all subjects pursuant to the said advertisement. The details of the committee so constituted is given herein below, which has been taken from a supplementary counter affidavit filed on behalf of the respondent- Patna University in CWJC No. 5580 of 2012:-

- “ (i) (Prof. Sunil Kumar, Expert, Prof. & Director, SOPVA, IGNOU, New Delhi*
(ii) Prof. Madan Singh Rathore, Expert, Prof. & Head, Dept. of Visual Arts, M. L. Sukhadia University, Udaipur, Rajasthan
(iii) Prof. Dr. Anupa Pande, Prof. & Head, Dept. of History of Art, New Delhi
(iv) Prof. S. N. Lahiri, Expert, Head, M.F.A. (Applied Art), College of Art, 20-22, Tilak Marg, New Delhi
(v) Dr. Srinarayan Sinha- Chancellor's Nominee
Sri Lakshman Kumar Sinha, State Govt. Nominee
(vi) Vice Chancellor, P.U-Chairman.” (sic)

15. From the list of members of the Selection Committee, it will appear that Prof. Sunil Kumar, one of the experts was a Professor & Director, SOPVA, IGNOU, New Delhi



whereas the other expert Prof. Madan Singh Rathore was a Professor & Head, Dept. of Visual Arts M. L. Sukhadia University, Udaipur, Rajasthan. Prof. Dr. Anupa Pande, the other expert was a Professor & Head, Department of History of Art, New Delhi and Prof. S. N. Lahiri was Head, M.F.A. (Applied Art), College of Art, New Delhi. There is no controversy, however, over other members of the committee, i.e., the Chancellor's nominee, the State Government's nominee and Vice Chancellor of Patna University himself as Chairman of the Selection Committee.

16. The controversy, which has been raised by the petitioners in the present writ applications, is that separate set of three experts should have been appointed or nominated for constitution of selection committee for each distinct subjects, which were advertised, since it was mandatory in view of the guidelines issued by the UGC to appoint experts in the concerned "subject". Since a dispute was raised as regards the qualification of experts to become member of the selection committee for making recommendation to appoint Assistant Professors in different subjects, this court by an order dated 22.08.2014 had directed the Registrar of the Patna University to indicate the qualifications and experience of experts of the selection committee. In response to the said order, the Registrar, Patna University has filed an affidavit, relevant portion of paragraph 8 of which reads as

follows:-

“However, so far as experience of the experts is concerned, the details in this regard are not readily available in the office. However, the University administration is initially contacting the experts and the same will be brought on record as soon as it is made available by the experts.”

17. It is patent from the statement in the counter affidavit as noted above that at the time of selecting such persons, to be members of the selection committee as experts, the University was not even knowing their respective qualifications and experience and the field of their expertise. They had to contact the experts themselves, only after this court passed an order, to ascertain their qualification in order to justify their appointment as expert of the selection committee, for a particular subject. This shows the manner in which the experts were selected.

18. The main grounds for assailing the entire selection process for appointment to the post of Assistant Professors, pursuant to the said Advertisement No. G. Admn./01/11, are that three experts in different distinct subjects were essentially required to constitute the selection committee among others, which was not done and, therefore, the entire selection and recommendation made by an illegally constituted, incompetent selection committee is unsustainable in the eye of law. Secondly, the selected candidates, who have been impleaded as respondents in the writ applications, did not hold the qualification in a particular subject for which they



have been selected and appointed and some of them did not hold the mandatory qualification of having cleared the NET/SLET and none of them held Ph. D. Degree as per University Grants Commission (Minimum Standards and Procedure for Award of Ph. D. Degree) Regulations, 2009 on the basis of which they could have been granted exemption from clearing NET qualification or other similar qualifications as mandatorily required under the advertisement etc., in terms of the advertisement.

19. In support of the plea that selected candidates do not hold the minimum eligibility educational qualification in terms of the advertisement, the petitioners have made specific averments in their writ applications, which are being taken note of with reference to the respective writ applications, which are as follows:-

20. **CWJC No. 5580 of 2012** relates to appointment against solitary post of Assistant Professor in the subject photography. The petitioner has claimed that she completed Bachelor of Fine Arts in 1st class from College of Arts and Craft, Lucknow under Lucknow University in the year 2005 and passed Master of Visual Arts with specialization in Photography with 1st class from Arts and Craft College, Lucknow in the year 2008. It is her specific averment in the writ application that the subject Photography is taught in the Lucknow University. She qualified NET in the year 2009 and had been teaching in College of Art and



Craft, Lucknow since 2008. In the counter affidavit respondent No.5, Mazhar Elahi, who has been selected and appointed against the post has stated that he has qualification of M. F.A (Applied Arts) from Jamia Milia Islamiya, New Delhi which degree he acquired in the year 1995. He was given certificate in Creative Photography by the Board of Professors, Fine Arts and Art Education of Jamia Milia Islamiya, New Delhi. He qualified for lecturership after having cleared UGC- NET examination in the year 1998. He has, thus, claimed that he possess qualification as required under the advertisement inviting applications for appointment to the post of Assistant Professor, Photography. He has also contended that he joined as Senior Lecturer, Founder, Head of Applied Art and Photography Department in Institute of Fine Arts, Modi Nagar, Merrut University, U. P. and worked as visiting faculty to teach photography in Apeejay Institute of Design, Tughlakabad, New Delhi. He has, thus, defended the decision to select and appoint him on the post of Assistant Professor in the subject of Photography as, according to him, he possesses the qualification of Master degree with 55% of marks in the concerned subject, i.e., photography. He has brought on record, by way of annexure to his counter affidavit, a certificate issued by the UGC showing of him having cleared the UGC NET examination in the subject “Visual Arts”. This stand of respondent



No.5 has been rebutted by the petitioner with a contention that respondent No.5 might have cleared the NET held by the UGC in the subject Visual Arts but on that basis it cannot be said that he was qualified for appointment as Assistant Professor in the subject of Photography. By way of rejoinder to the supplementary counter affidavit filed on behalf of respondent- Patna University, the petitioner has brought on record list of NET subjects for which the tests are held, which includes Visual Arts and a plea has been taken that Visual Arts does not include Photography. Specific plea has also been taken that the subject Photography is not taught in Jamia Milia Islamiya and there is no subject Photography in the stream Master of Fine Arts.

21. **CWJC Nos. 3785 of 2012 & 5744 of 2012** relate to the subject Painting. The petitioners have challenged appointments of respondents Nos. 5 and 6, i.e., Dr. Chandra Bhushan Srivastava and Dr. Reeta Sharma. The petitioner of CWJC No. 5744 of 2012 claims that after having obtained the degree of Master of Fine Arts from Banaras Hindu University with specialization in painting with 55% of marks, he cleared the NET in the said subject in the year 2009. The University in its counter affidavit filed on 24.01.2014 has taken stand that private respondents Nos. 5 and 6 hold Ph. D. Degree in the faculty of Art and were, thus, eligible for appointment to the posts of Assistant Professors as per clause-(ii)

of the advertisement.

22. I do not find any stand taken with respect to respondents Nos. 5 and 6 that they were having NET or other equivalent qualification.

23. Respondents No. 5 and 6 in CWJC No. 3785 of 2012 are respondents Nos. 5 and 6 in CWJC No. 5744 of 2012 also in which they have filed exhaustive counter affidavit. From the averments made in the counter affidavit, it appears that they claim to have qualification of Ph. D. Degree and, therefore, the minimum qualification prescribed under the advertisement inviting applications. There is no averment that they possess the said Ph. D. Degree qualification in terms of 2009 Regulations of UGC.

24. **CWJC No. 4611 of 2012** relates to appointment of Assistant Professors in the subject History of Art wherein appointment of respondent No.5, Dr. Umesh Kumar Singh is under challenge on the ground that he does not have the minimum qualification in the concerned subject. A counter affidavit has been filed on behalf of respondent No.5 wherein he has asserted that he completed his Master of Arts degree in the subject Ancient Indian History and Archaeology from Banars Hindu University with specialization in Arts and Archaeology in the year 2001 with 1st division and also cleared UGC NET in Archaeology. It is his plea that he has, thus, qualification in the subject History of Art.

WE
NOT

25. **CWJC Nos. 5456 of 2012 and 5860 of 2012** relate

to subject Sculpture where appointment of respondent No.5 as Assistant Professor in the subject is under challenge. He is said to have obtained degree of Master of Fine Arts in the year 1996 and cleared the UGC test in the subject Visual Art. The petitioner of CWJC No. 5456 of 2012 has claimed that he did Bachelor of Fine Arts in Sculpture and Master of Fine Arts (Plastic Art) in the year 1995. He is also said to have qualified at the UGC NET lecturership in the year 1999 in the subject Visual Art. He has claimed that he has more qualification and has better merits than respondent No.5. It is also his claim that reservation rule has not been followed in making appointments. The plea of petitioner of CWJC No. 5860 of 2012 is almost similar and he claims to have greater work of higher value to his credit than respondent No. 5, who has been selected.

26. **CWJC No. 5039 of 2012** relates to the subject

Graphic. The petitioner claims that he passed the Bachelor of Painting examination from Patna University and thereafter was conferred with the degree of Master Arts (Fine) (Graphic Arts). He claims to be handicapped because of imputation of right wrist. As regards qualification of respondent No.5, in her counter affidavit she has claimed that she obtained Ph. D. Degree in Visual Arts. She has also stated in paragraph 9 of her counter affidavit that she

has qualified NET examination in Visual Arts and, therefore, her eligibility to be appointed as Assistant Professor in Graphic Arts cannot be questioned.

27. **CWJC No. 3751 of 2012** relates to Applied Arts.

The petitioner has challenged appointments of respondents Nos. 5 and 6, i.e., Abinash Das and Shashi Ranjan Prakash. The petitioner claims that after having obtained the degree of Bachelor of Fine Arts from Patna University in the year 1988 in Applied arts with 1st class passed M. F. A. in the year 1991 and also passed M. Phil in the year 2006 with 1st class and has done Ph.D.

28. Now I shall deal with the minimum qualification requirements to become eligible for being considered for appointment to Assistant Professors in terms of Advertisement No. G. Admn./01/11 first, after having taken note of few facts relating to claim of the parties. Relevant clause of the advertisement has already been quoted hereinabove. It is discernible from bare reading of the advertisement that for a person to be qualified for appointment to the post so advertised by the Patna University, he must have good academic record with at least 55% of marks at the Master Degree level in the relevant subject or an equivalent degree from any Indian or Foreign University. Additionally, he is required to have cleared the NET (National Eligibility Test) for lectureship conducted by the UGC, CSIR or similar test accredited by the



UGC. There is exemption, however, provided for such candidates who have been awarded Ph. D. Degree in accordance with University Grants Commission (Minimum Standards and Procedure for Award of Ph. D. Degree) Regulations, 2009 from the qualification of having cleared NET or other similar test as noted above. In none of the cases, none of the parties have taken a plea they possess Ph. D. Degree in accordance with the said 2009 Regulations of the UGC and are, therefore, exempted from the requirement of having cleared NET examination. Therefore, I have no hesitation in holding here itself that no candidate, whose appointment is under challenge or who are applicants pursuant to the advertisement in question could claim exemption from having cleared the requirement of clearing the NET or equivalent test, for appointment to the post of Assistant Professors. Selection and appointment of any person on the basis of his/ her qualification of Ph. D. Degree to the post of Assistant Professors, by granting exemption of clearing NET examination or similar test is absolutely illegal as they cannot be said to be having minimum eligibility qualification in terms of the advertisement and such appointment or selection cannot be sustained.

29. In course of argument, a plea has been taken on behalf of the respondents, whose appointments are under challenge, that they have the qualification of being professional



artists with highly commendable professional achievement in the concerned subject. It is difficult to accept such argument in view of the pleadings on record compared with the requirements in the advertisement. There were requirements for being considered to be qualified in the said category which includes five years of experience of holding regular regional/ National exhibitions/ Workshops with evidence in support of the claim that they had five years of experience of holding regional/ National exhibitions/ Workshops. If someone claims to be qualified as per the alternative qualification prescribed in the advertisement, he or she was required to establish with evidence that he/ she had been regularly holding such exhibitions/ workshops and stray examples of having held such workshops is not sufficient to make a person eligible for being considered for appointment in terms of the said part of the, Advertisement No. G. Admn./01/11, which is being extracted hereinbelow:-

“OR

i. A Professional artist with highly commendable professional achievement in the concerned subject, which should have

1. First class Diploma in Visual (Fine) arts discipline from the recognized Institution of India/Abroad.

2. Five years of experience of holding regular regional/ National exhibitions/ Workshops

with evidence; and

3. Ability to explain the logical reasoning of the subject concerned and adequate knowledge to each theory with illustrations in that discipline.”

30. On the basis of what has transpired from records and submissions made, I am of the considered view that none of the selected candidates have been able to convince me that any of them could be said to be fulfilling the alternative qualification prescribed in the advertisement, quoted under paragraph 29 above, which applies to the persons who have excelled in different fields of Art because of high standards of achievements and performance.

31. There is a common plea taken in all the writ applications on behalf of the petitioners that constitution of selection committee is illegal and in violations of guidelines issued by UGC. As noted above, they contended that there were six posts in different subjects advertised and, therefore, subject-wise three experts, having qualification and expertise in the particular subject should have constituted the selection committee for assessing, evaluating and selecting meritorious candidates of that subject. It has been submitted that a person having no qualification and experience in the subject concerned, cannot evaluate and assess the relative merit of candidates for the subject concerned, who are competing with each other. As is evident from the advertisement,





posts of Assistant Professors were advertised in the subject, Painting, Applied Arts, Sculpture, History of Art, Photography and Graphic. I have taken note of the stand of the University in their counter affidavit that qualifications of experts were not available even to the University at the time of constitution of the selection committee. It is suggestive of the casual and cavalier manner in which an august educational institution like Patna University proceeded for making appointments to the post of Assistant Professors. The experts, who constituted the selection committee might be men of eminence in their own field, but they cannot be said to be qualified as experts in “all subjects” in which the appointments to the post of Assistant Professors were required to be made. Till the date when hearing concluded, the respondents failed to bring on record the qualification and filed of expertise of the experts who constituted the selection committee, except of one Somendra Nath Lahiri, who is said to be qualified in Applied Arts having Masters degree in the said subject. A resume’ containing experience and qualification of said S. N. Lahiri has been brought on record, showing him to be officiating Principal of Art College, New Delhi. A long list of achievements and award to his credit is there in the said resume’, which appears to have been prepared by him. I have no comments to make upon the credentials of the information given in the said resume’ but from the list of NET

subjects, which has been brought on record by the petitioner in CWJC No. 5580/2012, in reply to the supplementary counter affidavit filed on behalf of respondent- Patna University, it appears that almost all the subjects which were advertised, i.e., Painting, Applied Arts, Sculpture, History of Art, Photography and Graphic were different subjects of genre, Visual Arts. From the constitution of the selection committee, which has been noted hereinabove, it appears that Prof. S. N. Lahiri, was only expert in Applied Art, Dr. Anupa Pande was only expert in the History of Art. The filed of expertise of Prof. Sunil Kumar has not been given. As regards Prof. Madan Singh Rathore, he has been described to be Prof. and Head of the department of Visual Art. Thus, for none of the subjects for which the applications were invited, three experts were appointed to constitute the selection committee in order to satisfy the requirement of the guidelines issued by the UGC this regard. In course of submission, a plea has been taken on behalf of the Patna University and the private respondents that all the subjects of the Advertisement No. G. Admn./01/11 were from Visual Arts and all the expertise are from Visual Arts, therefore, the selection and appointment should not be interfered with on that ground. It is difficult to accept the contention that because the experts, who constituted the selection committee were from different fields of Applied Arts, History of Art etc. they can be





treated to be experts in Visual Arts and, therefore, the selection committee, which required at least three experts in each subject was duly constituted. As has been noted above, the subjects advertised were distinct and different though of the same genre: Visual Arts. Visual Art is stream and subjects for which the posts were advertised were distinct subjects under that stream. A similitude can be drawn from various regular courses which are taught at University level in Arts and Science subjects. A person having qualification and experience and achievements in the subject Economics cannot be allowed to evaluate the competence of a person to be appointed as Assistant Professor in Political Science, on the ground of such person having qualification of Master of Arts. These are various distinct subjects in the stream of Arts. Similarly degree of M. Sc. is awarded in Physics and Chemistry and different other Science subjects. On the basis of having qualification, experience, research and even excellence in one of the science subjects, a person cannot be said to have expertise to function as an expert and assess and evaluate the relative merits of aspiring candidates for the purpose of their selection in other science subject/ subjects as Assistant Professor.

32. Mrs. Mahasweta Chatterjee, learned counsel for the petitioners, has rightly placed reliance upon the Supreme Court decision reported in *(1990) 4 SCC 510 (Dr. Triloki Nath Singh v.*



Bhagwan Din Mishra) wherein the court held that Hindi language literature and linguistic are two different subjects. The Supreme Court clarified in paragraph 14 that merely because the post of Reader in linguistic was required in the department of Hindi, it could not be held that such Reader in linguistic was to teach the subject of linguistic as well as the subject of Hindi language and literature. The reasoning assigned by the Supreme Court in case of *Triloki Nath Singh v. Bhagwan Din Mishra* (supra) applies with full force in the present case in which different subjects were specifically mentioned for which Assistant Professors were required to be appointed in the faculty of Art in Patna University. The subjects so advertised may be part of Visual Arts, for that reason all the subjects cannot be said to be one. For being qualified for appointment as Assistant Professors in a particular subject the person concerned is required to have qualification in that subject and not in any general subject. In the present case also, separate set of experts were required to be appointed for making selection to the post of Assistant Professors in each of the subjects. This has, apparently, not been done.

33. It has been submitted in course of the argument on behalf of the University that since an order of this court passed in CWJC No. 9514 of 2004 dated 18.04.2011 was required to be complied with and University officials were under the threat of



contempt, the University did not have much time to wait for appointing separate set of experts for each of the subjects and, therefore, with one set of experts, the selection committee was constituted in all subjects and appointments have been made accordingly. A University is an august institution. It is highly undesirable for such institution to compromise with the mandatory legal requirements particularly when it comes to appointment of teachers at that level as the teachers lay the foundation for the future of students, and they are the pillars composing the edifice of such institution. The University cannot afford to breach such mandatory legal requirements laid down for a definite purpose. The well accepted proposition reiterated consistently by various courts of this country including the Supreme Court, though does not require to be restated that when an act or rule prescribes a particular mode or manner in which certain things are to be done by an authority, it could be done only in the mode or manner prescribed by the Act or not at all; I would again lay emphasis on the principle.

34. In the present case, I find that selection committee was not duly constituted and the experts in fact were not qualified to evaluate and assess the relevant merits of the candidates who had applied for different subjects for their appointment as Assistant Professors.



35. There is specific and obvious purpose behind requirement of selection committee of having at least three experts in the concerned subject for appointment to the post of Assistant Professors to be made. The purpose is to ensure that relative merits of the candidates are duly evaluated with maximum possible precision. By tinkering with the said mandatory statutory requirement, the respondents-University, as a matter of fact, compromised with the sanctity of entire selection process. I find substance in the submission made on behalf of the petitioners placing reliance upon a division Bench judgement of this court reported in **1979 PLJR 510 (Ashok Kumar Jha v. Patna University.)** that the rule relating to constitution of selection committee was required to be mandatorily complied with so as to ensure that right persons are selected through genuine process of selection, in which presence of persons with special knowledge in the subject concerned was essentially required. Relevant extracts from paragraphs 9 and 10 are quoted hereinbelow:-

“9. After hearing learned counsel for the parties and after going through the various provisions and the Act, Regulations and course of study, I am of the considered opinion that the subjects for which advertisements had been made have to be treated as different from each other and for that experts in those very subjects were necessary for interviewing candidates in order to test their merit. The proposition of learned Advocate General that the expert in Education is competent to act as an expert in all those subject having different Methodology is too wide and cannot be accepted. For example, a professor of



English, who is an educationist of repute, is called as an expert for interviewing candidates for the post of Lecturer in Hindi. Can it be said that he has specialized knowledge to test the merit of the candidate in that subject, even of he be a reputed scholar and a man of learning? The answer must be in negative. The external expert in the instant case; on his own admission was not an expert in History Methodology with which we are only concerned in this case, and still he was called as an expert. In my opinion, therefore, he was definitely not capable of testing the merits the merits of the candidates in that subject. Relying on Section 26(2) (iii), it has been contended by the learned Advocate General that experts have to give advice to the Members of the Commission and they have no right to vote and, therefore, those Members are at liberty to ignore the opinion of the expert. I am unable to accept this submission. They are experts, and they are called with some purpose, and their opinion is bound to weigh with other Members while making recommendation; and so, I have said earlier, their opinion is bound to play an important part in selecting candidates. Therefore, it cannot be said that it is an empty formality. Experts do play an important part in selecting candidates; it is their questions which are put at the time of the interview and the answers given thereto can be correctly understood by them alone and not by the other Members, who have no specialized knowledge for the same and, naturally, they have to depend on the experts' advice.

10. This contention also cannot be accepted. If experts are not called for the interview, what will be its effect is not the question for consideration here. But once experts are called, they must be experts; in the true sense, qualified in that subject for which their service are requisitioned. I am also not prepared to accept that there has been substantial compliance of Section 26 of the Act."

36. Thus, in the facts and circumstances of the case, the entire selection process appears to be vitiated. The illegality in

constitution of the selection committee, as noted above, has to be considered in the background of the fact that some of the persons obviously not fulfilling basic eligibility criteria in terms of educational qualification prescribed in the advertisement, have been selected.

37. Mr. Vindhya Keshri Kumar, learned senior counsel appearing on behalf of the Patna University, assisted by Mr. Ashok Kr. Keshri, learned counsel, have tried to convince this court that the experts belonged to the same discipline of the subjects in which posts of Assistant Professors were required to be filled up. They have, therefore, contended that for appointment of experts to constitute selection committee, specific qualification of such experts in particular subject was not required. Unfortunately, the University has not given this court, despite specific direction, any opportunity to ascertain and examine whether the experts so appointed were experts in each field/ subjects in which the appointments were required to be made. According to own admission made by the officials of the University in their counter affidavit, the University did not know about the qualification of such experts at the time of their selection to become expert members of the selection committee. As a matter of fact, only in response to a query made by this court and specific order passed in this regard on 22.08.2014, asking the Registrar of

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the Patna University to indicate the qualification of the experts of the selection committee, it appears that, the University started collecting information regarding qualification and experience of such experts from the experts themselves. It is not at all discernible from the records produced by the University as to what was the consideration and basis for selection of experts. The manner in which the experts have been selected to constitute the selection committee is highly deplorable and cannot be approved at all. Mr. Vindhya Keshri Kumar, learned senior counsel has, however, in his usual fairness, has agreed that to ensure fair selection for such posts of Assistant Professors, persons with special knowledge in subject should have formed the selection, committee maintaining the spirit of the requirement of having experts in the subject concerned in the selection committee. This court would place on record high appreciation for the stand taken by Mr. Vindhya Keshri Kumar, learned senior counsel, who has acted befitting the status of responsible senior advocate of this court and which can be source of inspiration for the members of the Bar.

38. Mr. Shivendra Kishore, learned senior counsel appearing on behalf of one of the private respondents, has placed reliance upon a decision of this court reported in **2014 (3) PLJR 128 (Ranjan Kumar v. the State of Bihar)**. Referring to paragraphs 13 to 16 of the said decision, he has contended that

after having participated in the process of selection and having become unsuccessful, the petitioners cannot question the constitution of selection committee itself. There cannot be any dispute over the legal proposition that once having participated in the process of selection the persons after having been declared unsuccessful cannot question the constitution of selection committee itself. This established and consistently followed general rule has no application in the admitted facts and circumstances of the present case. Such facts, which also constitute a ground for challenge to the selection process, are admitted and have not been denied. The constitution of selection committee was not known to these petitioners. There is averment in the writ applications, of which there is no denial, that a written test was held on 07.01.2012 and viva voce on 08.01.2012. Nothing has been stated as regards result of the written test. The notification appointing the respondents was issued on 25.01.2012 whereby they were required to join in the office of the Registrar within a fortnight. It was not known to the candidates that the result would be published on 25.01.2012, till the date of publication of result. It has been stated in CWJC No. 5580 of 2012 that respondent No.5, a resident of Jangipur (U.P.) joined in morning of 25.01.2012 without even waiting for issuance of formal appointment letter which, according to the petitioner was



indicative of the fact that the candidates who became successful, knew the result and were just waiting for a formality to be completed.

39. I am unable to accept the contention of Mr. Kishore, learned senior counsel, that in the circumstances, as noted above, the petitioners could not have questioned the validity of constitution of selection committee. He has also placed reliance upon a Supreme Court judgement in case of **Basavaih v. H. L. Ramesh** reported in (2010) 8 SCC 372 and submitted that recommendation made by an expert committee should not be interfered with normally by this court by acting as an Appellate Authority. As noted above, this court has not gone into the relative merits of the candidates to come to a conclusion that the recommendations made by the committee were bad nor this court intends to substitute its view in place of decision of a duly constituted selection committee. I am rather of the opinion that not only the constitution of the selection committee was bad, such persons also came to be appointed, who did not have the minimum qualification as per the advertisement, to be appointed as Assistant Professors.

40. Mr. Anil Kumar Sinha, learned counsel appearing on behalf of respondents Nos. 5 and 6 in CWJC No. 3751 of 2012, has attempted to convince this court that in Fine Arts, the subjects

are normally interlinked and are interrelated. The topics which the students pursue in one subject normally overlap with topics in the other subject. Therefore, he submits that the selection should not be held to be illegal either on the basis that a particular candidate did not hold the qualification exactly in the subject prescribed or the expert constituting the selection committee did not hold the qualification in the subject prescribed.

41. I have already dealt with such aspects in the present judgement, as above. I am of the view that selection made pursuant to Advertisement No. G. Admn./01/11 and the appointments made on such basis to the post of Assistant Professors in the faculty of Fine Arts in Patna University by the notification issued vide memo No. 29/R dated 25.01.2012 cannot be sustained and is, accordingly, quashed. The respondents are directed to proceed afresh in the matter of appointment of Assistant Professors, in accordance with law, in different subjects so advertised vide Advertisement No. G. Admn./01/11 from the stage of having received the applications for such posts. The selection will be confined to such persons who had applied pursuant to the advertisement in question. The selection and appointment will be made only after constituting a proper selection committee, with the experts as prescribed under the Rules and Regulations dealing with such selection. The exercise must begin

forthwith and must be completed within a period of six months from today.

42. Section 56 of the Patna University Act, 1976 has again been amended by Patna University (Amendment) Act, 2013 (Act 18 of 2013) whereby, the Bihar Public Service Commission has been assigned to perform the function of selection and making recommendation for appointment to the posts of teachers of the University. In view of the said amendment, I direct the Vice Chancellor and the Registrar of the University to transmit all records pertaining to the said selection to Bihar Public Service Commission forthwith. As has been noted above, the Bihar Public Service Commission will proceed on the basis of applications received pursuant to advertisement in question and conclude the process of selection and making recommendation within the period prescribed by the present order and in terms of the observations made therein. It will be open to the Bihar Public Service Commission to seek clarification if any, from this court, for implementation of the order, but without any delay.

43. I am of the view that in terms of Advertisement No. G. Admn./01/11, apart from the qualification of good academic record with at least 55% marks at the Master Degree level, qualification of having cleared the NET conducted by UGC, CSIR or similar test accredited by the UGC is an essential qualification





for appointment as Assistant Professors. The exemption from clearing such test can be granted only to such candidates who have been awarded Ph. D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph. D. Degree) Regulations, 2009 otherwise no exemption from passing NET or similar test can be granted on the basis of award of Ph. D. Degree. It is a different matter that as per clause (iii) of the said advertisement itself NET/SLET/SET shall not be required for such Masters Programmes in disciplines for which such test is not conducted.

44. Though I do not intend to comment for the present, on clause (iii) of the said advertisement, from the records I find that no Masters Degree is involved in the present case for which such tests (NET/SLET/SET) are not conducted. There is an alternative qualification prescribed to clause (i) (ii) and (iii) of the advertisement which has been quoted in paragraph 29 above. The said qualification can be considered for the purpose of selection by experts but in view of the manner in which the selections are being made at this level, I am constrained to observe that if the selection committee intends to select any person, applying the said alternative qualification as prescribed in the advertisement, the committee will have to record in writing specific reason as to how a particular candidate fulfils the criteria under the said alternative

qualification prescribed in the advertisement.

45. From the pleadings on record and the submissions made on behalf of the parties it appears that there is acute shortage of teachers in faculty of Art in Patna University and in view of quashment of the selection procedure and appointment of teachers in the light of present order, the teaching work will virtually come to stand still. I, therefore, direct that such persons, who are working as Assistant Professors, upon their selection and appointment pursuant to advertisement in question and hold qualification of having cleared NET or other similar eligibility test, will continue to work till conclusion of the process of selection in the light of order of this court and their further continuance will depend upon the outcome of final selection done and appointments made pursuant to present order upon afresh selection held in the light of present order of this court. The appointees who did not have qualification of having cleared NET/ SLET/ SET will not be allowed to continue as Assistant Professors any more and the University is directed to stop taking work from them.

46. These writ applications are allowed but with the directions/ observations, as above.

47. Let a copy of this order be transmitted to the Chairman, Bihar Public Service Commission, by the Registry.

48. Let original records of Patna University produced in



the present proceeding be returned to learned counsel for the University.

49. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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