

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.98 of 2016

IN

LPA 1657 of 2015

- =====
1. Vidya Bhushan S/o Brij Nandan Prasad R/o - Village + P.O. - Banarashi Bigha, P.S. - Islampur, Distt. - Nalanda, Bihar.
 2. Rakesh Kumar Azad S/o Baidyanath Prasad R/o Village + P.O. - Chakwai, P.S. - Warsaliganj, District - Nawada, Bihar.
 3. Anjali Kumari D/o Uday Kumar Mehta R/o - Prabhat Colony, Purnia, District - Purnia, Bihar.
 4. Mithilesh Kumar S/o Upendra Kumar R/o Village - Rupchhap, P.O. - Durgamatihaniya, P.S. - Bishamvarpur, District - Gopalganj, Bihar.
 5. Vikash Bharti S/o Phulena Paswan R/o Village - Karimtol, P.O. - Muzeffara, P.S. - Birpur, District - Begusarai, Bihar.

.... Petitioners

Versus

1. The State of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
4. The Additional Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
5. The Principal Secretary, General Administration Department, Bihar, Patna.
6. The Inspector General of Registration, Govt. of Bihar, Patna.
7. The Chairman, Bihar Staff Selection Commission, Govt. of Bihar, Patna.
8. The Secretary, Bihar Staff Selection Commission, Govt. of Bihar, Patna.

.... Respondents

WITH

=====

Civil Review No. 200 of 2016

=====

1. Rakesh Kumar Azad, son of Baidyanath Prasad, resident of village and Post Office Chakwai, Police Station Warsaliganj, District Nawada
2. Anjali Kumar, daughter of Uday Kumar Mehta, resident of Prabhat Colony, Purnea
3. Vidya bhushan, son of Brijnandan Prasad, resident of village Post Office Banarshi Bigha, Police Station Islampur, District Nalanda

.... Petitioner/s

Versus

1. The State of Bihar

- 
2. The Chief Secretary, Government of Bihar, Patna
 3. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
 4. The Director, Department of Revenue and Land Reforms, Government of Bihar, Patna
 5. The Additional Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna
 6. The Inspector General of Registration, Govt. of Bihar, Patna
 7. The Principal Secretary, Ministry of Labour and Employment Department, Government of Bihar, Patna
 8. The Director, Department of Science and Technology, Government of Bihar, Patna
 9. The Principal Secretary, Department of Science and Technology, Government of Bihar, Patna
 10. The Principal Secretary, Human Resource Department, Government of Bihar, Patna
 11. The Chairman, Bihar Staff Selection Commission, Government of Bihar, Patna
 12. The Secretary, Bihar Staff Selection Commission, Government of Bihar, Patna
 13. The Additional Director General (A.D.G.), Vigilance, Bihar, Patna
 14. Ravi Shankar Sinha, son of Arjun Prasad Ambastha, resident of village Tilak Nagar, Police Station Town Begusarai, District Begusarai
 15. Md. Adil Hussain, son of Md. Yasim, resident of Agarwa, near Masjid, Post Office and Police Station Motihari Town, District East Champaran at Motihari
 16. Ajay Prasad, son of Shivnandan Prasad, resident of village Allahabad, Post Office and Police Station Belaganj, District Gaya
 17. Narayan Chaudhary, son of Late Bansi Chaudhary, resident of village Kanauli, Police Station Jehanabad, district Jehanabad
- Respondents

=====

Appearance :

(In both the cases

For the Petitioners	:	Mr. Binod Kumar Kanth, Sr. Adv. Mr. Dharmendra Kumar, Advocate Mr. Jai Prakash Tiwari, Advocate
For the State	:	Mr. Anjani Kumar, AAG 4 Mr. Amit Kumar Jha, AC to AAG 4
For the BSSC	:	Mr. Kamala Kant Upadhyay, Advocate Mr. Chandra Bhushan Dubey, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

AND

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER

C.A.V.

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 04-10-2016

These two applications have been filed seeking review of our common judgment and order, dated 10.12.2015, delivered in LPA No. 1657 of 2016 and LPA No. 1730 of 2015.

2. The petitioners seek review of the said judgment and order on the sole ground that the Bihar Amin Cadre Rules, 2013 (hereinafter referred to as 'the Rules'), to regulate recruitment/appointment and other service conditions of the Amins, have no statutory force, for the reason that the these have not been published in the Official Gazette and this Court fell in error in the judgment and order under review, while relying on particular provisions of the said Rules, which lay down the basic minimum qualification for a person to be appointed on the said posts.

3. On the basis of materials on record, it has emerged that it is true that though the said Rules have been notified by the Department of Revenue and Land Reforms, Government of Bihar, Patna, the same have not been published in the Official Gazette. A copy of the notification, dated 23.12.2013, has been brought on record by way of counter affidavit filed, on behalf of the State of Bihar, from which it appears that a copy of the notification was forwarded to certain



offices, including the Superintendent, Government Press, Gulzarbagh, Patna, with a request to him to publish the notification in the next Extra-Ordinary issue of Bihar Gazette for the knowledge of general public. It seems that the said communication, for reasons best known to the concerned Department, could, in fact, be not communicated to the Superintendent of Gulzarbagh Government Press and the notification, therefore, could not be published in the Official Gazette.

3. In order to appreciate the controversy raised in the present review applications, it would be apt to refer to certain facts, which are not disputed and which have been taken note of in our judgment and order under review. These facts are as follows:

(a) The Government of Bihar has framed Rules under Article 309 of the Constitution of India, known as "Bihar Amin Cadre Rules, 2013" (hereinafter referred to as the "Rules"), to regulate recruitment/appointment and other service conditions of the Amins for the (i) Districts, (ii) Directorate of Consolidation and (iii) Directorate of Land Record and Survey, Government of Bihar. Rule 6 of the Rules deals with the appointment to the post of Amin and it requires that such appointments can be made on the basis of recommendation obtained from Bihar Staff Selection Commission through

competitive examination.

(b) Sub-rule (3) of Rule 6 of the Rules provides essential qualification for a candidate to be appointed as Amin. Rule 6 of the Rules is being extracted hereinbelow for quick reference:-

"6. Appointment. *-(1) The direct appointment to the post of Amin shall be made on the basis of the recommendation obtained from Bihar Staff Selection Commission through competitive examination conducted for the post of Amin.*

(2) Separate requisition of the District sub-cadre, Directorate of Consolidation sub-cadre and Directorate of Land Records and Survey sub-cadre will be sent to the commission and receive the recommendation from commission separately too.

(3) It would be essential for the candidate to have certificate of Intermediate (10+2) or equivalent qualification from a recognized Board or equivalent institution and Degree of Amanat from a Government recognized institute or success in the training of surveyor from I.T.I."

(Emphasis added)

(c) On the basis of requisition received from the Revenue and Land Reforms Department, Government of Bihar,



the Bihar Staff Selection Commission, Patna, (in short, "the Commission") invited applications for filling up 721 posts of Amin. In the advertisement, the minimum educational qualification was prescribed as intermediate and essential technical qualification as *"ITI Surveyor"* or *"Certificate Holder of Amanat"* from a *"recognized training institute"*.

(d) The petitioner and several others applied against the said posts.

(e) Before we advert to other relevant facts, it is to be noted, at the outset, that indisputably, the review petitioners / writ petitioners neither have the qualification of ITI Surveyor nor do they have Degree of Amanat from a *"Government recognized institution"*. They claimed to have obtained such certificates from private institutions, which are, admittedly, not recognized by the State Government or the Central Government or any other Government body.

(f) The Commission held preliminary as well as final examination on the basis of the said advertisement and recommended 820 names of the applicants for appointment vide Memo No. 4089, dated 27.11.2014. While making such recommendation, the Commission appears to have advised the Department to ensure that at the time of offering appointment letter, the educational qualifications and other certificates be verified in compliance of the earlier resolution of the

Department bearing No. 2082, dated 2.5.2013.



(g) In course of verification of the documents of the candidates, whose names were recommended by the Commission, the Department found that only 3 candidates held the requisite qualification as prescribed, in the advertisement, in conformity with the Rules. Rest of the candidates failed to produce any proof of recognition of the institutions, for conducting training for Amanat or Surveyor, duly accredited by the competent authority, from where the certificates of having successfully completed training of Amanat were issued in their favour. They produced documents of registration of the respective societies, conducting such courses, under the Societies Registration Act, 1860. It was in this background that appointment letters were issued in favour of those 3 candidates only, who held the requisite qualification as per the advertisement and the Rules.

(h) It appears that by filing a writ petition, which gave rise to CWJC No. 2763 of 2015, some of the aspirants to the posts had earlier challenged recommendations made by the Commission of 820 candidates for appointment as Amin on the ground that they did not hold the requisite qualification as per the advertisement and in accordance with the Rules.

(i) As has been noted above, the State Government had decided not to appoint the persons, who did not hold

qualification prescribed under the advertisement and as per the Rules. The said CWJC No. 2763 of 2015, thus, came to be allowed by the order under appeal, dated 11.08.2015. Following order was passed by the learned Single Judge in CWJC No. 2763 of 2015, which led to the filing of LPA No. 1730 of 2015:-

"Now that a clear and categorical affidavit has been filed on behalf of Respondent Nos. 3 to 6 representing Revenue and Land Reforms Department, accepting the position which was thrown up by the Vigilance Department in their enquiry with regard to recommendation of names for appointment as Amin, the petitioners succeed to the extent that none of the recommended candidates, except three, by the Staff Selection Commission are required to be appointed as Amin as they lack basic qualification.

The State Government has also clearly indicated that they would not like to appoint such people keeping in mind the Cadre Rules, which have now been framed in the year 2013. Writ application is allowed."

(j) The review petitioners had, however, a grievance against their non-appointment, despite there being a

recommendation in their favour by the Commission. This led to filing of a writ application, under Article 226 of the Constitution of India, by them giving rise to the CWJC No. 4964 of 2015. The learned Single Judge dismissed the said writ application, by the order under appeal, in the following terms:-

"Keeping in mind the order passed in CWJC No. 2763 of 2015 and the stand taken by the State, no direction in favour of these petitioners can be issued for their appointment on the post of Amin.

Writ application is dismissed."

4. While considering the provisions of the said Rules and the qualification as prescribed in the Advertisement, we held, in our judgment and order under review, in paragraph 13, that no recruitment or appointment could be made in deviation of the prescribed qualification in terms of the Advertisement and the Rules governing such appointment because any deviation from Advertisement, particularly, with reference to qualification would render the process arbitrary, illegal and discriminatory, being in breach of Articles 14 and 16 of the Constitution of India. We held, in our judgment and order under review, that the person who was ineligible for appointment, because he did not fulfill the qualification as prescribed in the Advertisement, cannot claim appointment

merely on the basis that for some reason, he was allowed to participate in the process of selection and was finally declared successful.

5. The notice inviting applications for appointment to the said posts specifically provided essential technical qualification as "ITI Surveyor" or "a certificate of Amanat, awarded by a recognized training institute". Similar is the qualification prescribed in the Rules, as has been noticed above.

6. While construing Rule 6 (3) of the Rules, which is identical with the qualification with only difference that in place of "recognized by the State Government" as prescribed under the Rules "recognized" was prescribed in the Advertisement, we held, in our judgment and order under review, that the review petitioners did not have any right to be considered let alone to be appointed to the post in the cadre of Amin. We also held that the fact that the Commission had recommended the names of the petitioners for appointment to the post, in question, the same did not vest in them any indefeasible right to demand appointment when they do not meet the prescribed essential qualification.

7. As has been indicated above, the sole ground, which has been taken for review of our judgment and order, dated 10.12.2015, is that the Rules, having not been published

in the Official Gazette, have no statutory force and since this Court relied upon said Rules, in the judgment and order under review, the same needs to be reviewed.

8. We have heard Mr. Binod Kumar Kanth, learned Senior Counsel, appearing on behalf of the petitioners, and Mr. Anjani Kumar, learned Additional Advocate General No. 4, the State of Bihar, at length.

9. Before we enter into the merit of the contentions raised on behalf of the petitioners for reviewing our judgment and order, it has to be noticed that at no point of time, either before the learned single Judge or before us, any plea was taken that the said Rules had no application, because the same was not published in the Official Gazette. Secondly, it has never been the case of the review petitioners that they did not have any knowledge about issuance of the said notification, containing the Rules "Bihar Amin Cadre Rules, 2013".

10. Mindful of the facts, as noted above, we are of the considered view that these applications, seeking review, cannot succeed for the following reasons:

(i) Even in the absence of Rules, it was open for the State to lay down minimum basic qualification for appointment to a post having nexus with the duties to be performed by a person to be appointed to the said post.

(ii) The review petitioners, admittedly, did not fulfill



the criteria, as laid down in the Advertisement, as they did not possess qualification of successful training from a *recognized institute*. Their plea that since they had acquired such qualification from such institutes, which were registered under the Societies Registration Act and, therefore, they should be treated to be in possession of certificates issued by recognized institutes, has already been rejected by us in our judgment and order under review. The plea taken on behalf of the petitioners that because of non-mentioning of "recognized by the State Government" in the Advertisement, the petitioners ought not to have been held disqualified, has not convinced us for the simple reason that registration, under the Societies Registration Act of the societies, from where the review petitioners claim to have obtained the certificates of training, cannot confer the said societies the status of recognized institutions.

(iii) Rule 1 of the Rules prescribes that it shall come into force from the date of publication of notification. The said notification does not contemplate its publication in the Official Gazette.

(iv) Last, but not the least, we can gainfully refer to Supreme Court's decision, in the case of **Chandigarh Administration through The Director Public Instructions (Colleges), Chandigarh v. Usha Kheterpal Waie and**

Others, reported in **(2011) 9 SCC 645**, wherein the Supreme Court has held, in paragraphs 17, 18, 19 and 20, as follows:

“**17.** In *Abraham Jacob v. Union of India*, reported in 1998 (4) SCC 65, this Court held that where draft rules have been made, an administrative decision taken to make promotions in accordance with the draft rules which were to be finalized later on, was valid. In *Vimal Kumari v. State of Haryana*, reported in 1998 (4) SCC 114, this Court held that it is open to the Government to regulate the service conditions of the employees for whom the rules were made, even if they were in their draft stage, provided there is a clear intention on the part of the Government to enforce those rules in the near future.

18. In this case, the High Court however rejected the advertisement on the ground that the regular rules were not notified by the President of India even after five years, when the High Court decided the matter. But what is relevant to test the validity of the advertisement, was the intention of the Appellant when the advertisement was issued. At that time, the Appellant had the clear intention to enforce the



Recruitment Rules in future as they had been made in consultation with UPSC, in accordance with the UGC guidelines and the Rules had been sent to the Central Government for being notified by the President and the matter was pending consideration for a few months when the advertisement was issued. The Appellant at that time had no inkling that there would be inordinate delay or the Rules may not be notified by the President. Therefore, the advertisement in terms of the 2000 Recruitment rules was valid.

19. Even in the absence of valid rules, it cannot be said that the advertisement was invalid. In exercise of its executive power, the Appellant could issue administrative instructions from time to time in regard to all matters which were not governed by any statute or rules made under the Constitution or a statute. In fact it is the case of the Respondents that the Appellant had issued such instructions on 20.8.1987 directing that the lecturers from UT cadre should be promoted as principals. In fact, the administrator of Appellant had issued a notification on 13.1.1992 adopting the corresponding Punjab Rules to govern the service conditions of its

employees. If so, the administrator of Appellant could issue fresh directions in regard to qualifications for recruitment.

20. The Recruitment Rules made by the Administrator were duly notified. Though they were not rules under Article 309, they were nevertheless valid as administrative instructions issued in exercise of executive power, in the absence of any other Rules governing the matter. Once the recruitment rules, made by the Administrator, were notified, they became binding executive instructions which would hold good till the rules were made under Article 309. Therefore, the advertisement issued in terms of the said Recruitment Rules was valid."

11. The Supreme Court, in most unambiguous terms, in the case of **Abraham Jacob v. Union of India**, reported in **(1998) 4 SCC 65**, held that an administrative decision to act in accordance with the draft rules, which were to be finalized later, would be valid, where such draft rules have been framed.

12. In the case of **Vimal Kumari v. State of Haryana**, reported in **(1998) 4 SCC 114**, the Supreme Court held that it is open to the Government to regulate the service

conditions of the employees for whom the Rules have been framed, even if they were in draft stage, provided there is clear intention, on the part of the Government, to enforce those Rules in near future.

13. In the case of **Usha Kheterpal Waie** (supra), the Supreme Court categorically held that even in the absence of Rules, the Advertisement, incorporating qualification, could not be held to be invalid and even in exercise of its executive powers, the appellant could issue administrative instructions from time to time with regard to all matters.

14. Considering the above noted decisions of the Supreme Court, we have no hesitation in concluding that the State Government's decision to lay down qualification in the Advertisement has to be read in accordance with the said notification, dated 13.12.2013, whereby the Rules were framed and notified. Since there is no dispute that the intention of the Government is clearly to enforce the Rules, the action of the respondents cannot be faulted with. In any event, since it is not the case of the review petitioners that they were completely unaware of the said notification, dated 13.12.2013, which laid down qualification for the post, in question, their plea that since the notification was not published in the Official Gazette and, therefore, they were qualified for the post in question, is wholly untenable.



15. Before we part with, we must express our anguish over the manner in which the Departments of the State Government of Bihar have acted in the matter of publication of the said notification in the Official Gazette. From Memo No. 604 (4) ra Patna-15, dated 13/12/2013, issued by the Principal Secretary of the Department, it appears that it was the intendment of the Government to publish the notification in the Official Gazette.

16. It has emerged from what have been pointed out above that as a matter of fact, the communication, which was meant to be sent to the Superintendent, Government Press, Gulzarbagh, Patna, was never sent. Such lapses, on the part of the Government Officials/employees, can have major consequences, which they appear to have failed to realize.

17. In the present matter, such lapse, at least, generated some hope in the minds of the litigants and it left considerable confusion on the question as to whether non-publication could have the effect of altering our judgment and order under review.

18. By the present order, we forewarn the concerned functionaries to be careful in such matters and ensure that lapses of such nature, which may have serious consequences, do not recur.

19. It goes without saying that in the era of

computerization and internet, the State Government of Bihar may take appropriate decision for choosing an alternative for adequate publication of such circulars/notifications/subordinate legislations by prescribing and following due procedure so as to avoid such technical plea to be taken for questioning their decision, which may be, otherwise, just, proper and reasonable.

20. For the reasons stated above, we do not find any merit in these applications, which are accordingly dismissed.

21. There shall be no order as to the costs.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, CJ.: I agree.

(I. A. Ansari, CJ.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	06.09.2016
Uploading Date	04.10.2016
Transmission Date	N.A.