

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12822 of 2016

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1. Neha Sharma, daughter of Sri Jagdish Prasad Sharma, Resident of House No. 10/9, Indrapuri, P.O. – Keshri Nagar, P.S. – Patliputra, District – Patna
 2. Tulika Shekhar, daughter of Chandra Shekhar Chaudhary, Resident of Village- Bharsar, P.O. – Lahri Tiwari Dih, P.S. – Piro, District – Bhojpur at Ara, presently residing at 184 /12, Mithapur Extension Part -30.09.2016 Agrawal Dharmashala Road, Badarpur, New Delhi
 3. Nevedita Pooja, daughter of Sri Ajay Kumar Sinha, Resident of New Colony, South Ram Krishna Nagar, P.S. – Ram Krishna Nagar, District – Patna, presently residing at Flat No. 303, Basera Apartment, Gachi Bowli, Miyapur Road, Hyderabad, P.O., P.S. and District – Hyderabad (Telangana)
 4. Runa Shree, daughter of Dr. Ravindera Nath Sharma, Resident of Mohalla – Aam Gola, Pankha Toli, Near Madya Vidyalaya, P.O. – Ramna, P.S. – Muzaffarpur Town, District – Muzaffarpur
 5. Namrata Vilochan, daughter of Nalin Vilochan, Resident of Shambhavi Niwas, Bankers Colongy, Rahanganj, Laheriasarai, P.O. and P.S. – Laheriasarai, District – Darbhanga, presently residing at A-44, Nandan House Apartment, Khojpora, Bailey Road, Patna, P.S. – Shastri Nagar, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary – cum – Chairman, Bihar Vikas Mission, Government of Bihar, Patna
2. The Development Commissioner – cum – Member, Bihar Vikas Mission, Government of Bihar, Patna
3. The Principal Secretary, Cabinet Secretariat Department – cum – Member Secretary, Bihar Vikas Mission, Government of Bihar, Patna
4. The Mission Director, Bihar Vikas Mission, Bihar State Building, Construction Corporation Campus, Hospital Road, Rajhanshi Nagar, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 15175 of 2016

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1. Pooja, Daughter of Amrendra Kumar Chaudhary, resident of Mohalla- Mishratola, P.S. Town, District- Darbhanga.
2. Preeti Sinha, Daughter of Ajit Sinha, Resident of Flat No. 103, Rameshwar Sushila Complex South Mandiri, P.S.- Budha Colony, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Patna.
2. Bihar Vikash Mission through its Member Secretary-cum- Principal Secretary, Cabinet Secretariat, Government of Bihar, Patna.
3. The Development Commissioner, Bihar Vikash Mission, Cabinet Secretariat, Government of Bihar, Patna.
4. The Mission Director Bihar Vikash Mission, Cabinet Secretariat, Government of Bihar, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 13235 of 2016

1. Shashi Karn Prasad Akela, son of Sri Deo Kumar Ram, Resident of village and P.O. Rampur Chaura, P.S. Rampur Chaura, District- Arwal.
2. Sharda Nandan Raju, son of Sri Sukhdeo Prasad Yadav, Resident of village- Jalapur, P.O. Ekdanga, P.S. Belchhi, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary-cum- Chairman, Bihar Vikas Mission, Government of Bihar, Patna.
2. The Development Commissioner-cum- Member, Bihar Vikas Mission, Government of Bihar, Patna.
3. The Principal Secretary, Cabinet Secretariat Department -cum- Member Secretary, Bihar Vikas Mission, Government of Bihar, Patna.
4. The Mission Director, Bihar Vikas Mission, Bihar State Building, Construction Corporation Campus, Hospital Road, Rajbanshi Nagar, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 14096 of 2016

1. Mohammad Jamshed son of Mahboob Alam Quraishi Resident of 57/2, Millat Colony, Bari Road, Police Station- Civil Line, District- Gaya

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Cabiner Secretariat, Government of Bihar, Patna
2. The Member Secretary, Bihar Vikas Mission- cum-Principal Secretary, Cabinet Secretariat, Govt of Bihar, Patna
3. The Director, Bihar Vikas Missin, Bihar State Building Corporation Campus, Hospital Road, RajvanshiNagar, Patna- 800023

.... Respondent/s

Appearance :

(In CWJC No.12822 of 2016)

For the Petitioner/s	:	Mr. Anita Kumari Advocate
For the Bihar Vikas Mission	:	Mr. Lalit Kishore, Sr. Advocate Mr. Piyush Lall, Advocate
For the State	:	Mr. K. K. Jha, A.A.G.-8 Mr. Amish Kumar, AC to A.A.G.-8

(In CWJC No.15175 of 2016)

For the Petitioner/s : Mr. Gajendra Kumar Jha
Mr. Bam Bahadur Jha
Mr. Ashok Kumar Jha
Mr. Surya Kant Jha
For the Respondent/s : Mr. Kaushal Kishore Jha,
A.A.G.-8
Mr. Raisul Haque
Mr. Piyush Lall
(In CWJC No.13235 of 2016)
For the Petitioner/s : Mr. Anita Kumari
For the Respondent/s : Mr. Prashant Pratap-GP2
(In CWJC No.14096 of 2016)
For the Petitioner/s : Mr. Sanjeev Kumar, ad,
Mr. R. Tiwary
Mr. Ram Pravesh Nath Tiwari
For the Bihar Vikas Mission : Mr. Lalit Kishore, Sr. Advocate
Mr. P. Lall, Advocate
For the State : Mr. K. K. Jha, A.A.G.-8
Mr. Amish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 05-10-2016

There are four set of writ applications with many a petitioners in the same, who have all chosen to file the writ application, because they have failed to find employment under what is known as “Bihar Vikas Mission” (“Mission” for brevity).

An advertisement was issued on 23rd of February, 2016, a copy of which has been annexed as Annexure-2 in C. W. J. C. No. 12822 of 2016, which is the lead case. The requirement, the eligibility and the yardstick, which was required to be followed for the said selection would emerge from the entirety of Annexure-2, which runs into 22 pages.

The common refrain or submission across the board in the writ applications is that the respondent-authorities have themselves not followed the yardstick, which they had initially laid



down in the advertisement. They have also failed in the objective of such recruitment, because many a posts have remained vacant, even though they were especially reserved for a particular category of candidates. It is also urged that subsequently by raising the bar for such selection in terms of Annexure-3, dated 25.07.2016, the whole process of selection, if not the actual selection, stands vitiated.

To put it simply, after Annexure-2 was issued and after the exercise was gone through, including the interview, authorities of the Mission held a meeting and decided certain parameters, which was to form the basis for final selection. The parameters in question is paragraph 4 of Annexure-3, which is reproduced hereinbelow :

“4. After the completion of interview, as per the need and required proficiency of the organization like BVM and to maintained the quality of the professions / technical experts, a cut-ff marks for interview and total cut-off marks were decided by the selection committee. In interview, the cut-off marks for General category is 60 marks, for BC & MBC category is 55 and for SC & ST category is 50. Over all cut-off for General category is 80, for BC & MBC category is 70 and for SC & ST category was decided to be 60. As per the above process following lists are being uploaded :-

I. Marking of all accepted candidates. Annexure

II. List of candidates (two times of vacancy) called for interview. Annexure – II

III. Marks of candidates called for interview (with change of marks at the time of verification of documents) with interview marks. Annexure – III

IV. List of candidates finally selected as per the decision of selection committee. Annexure – IV

V. List as per para 2. Annexure – V”

The thrust of the argument is directed against paragraph 4 of Annexure-3 that this has been done as an afterthought. What has been decided in Annexure-3 was not part and parcel of the advertisement, contained in Annexure-2. The Courts have held and opined that the rule of the game must be known before the game begins and any tinkering thereafter is not permissible. Another limb of argument that even the vacancies, which were especially reserved for the women category candidates or other category of reservation have not been filled up, because of the irrational or arbitrary decision taken in Annexure – 3. This has defeated the right of these petitioners from consideration. The objectivity in the interview has not been maintained. Candidates, who have had even better marks in the academic and other parameters, have finally lost out, because of award of less marks.



Learned senior counsel, Mr. Lalit Kishore submits that the recruitment and appointment under the “Bihar Vikas Mission” is not a routine kind of hiring, which is being done by the State. The Mission is a registered society and it is a special purpose vehicle, which has been created to bring about rapid development in the State of Bihar by identifying seven missions, also described as “Nischay” or “Resolve”, which are going to be the primary thrust areas. Only such persons who are highly talented and motivated, are supposed to be selected for providing inputs and monitoring the ongoing projects for achieving a better rate of growth and to make a difference to the people’s life in the State of Bihar. The Mission has offered very high salary, besides perks, which itself is an indication as to the kind of talent the Mission was looking for.

Taking off from the above facts, the stand of the learned senior counsel for the respondents is that it is not a routine exercise for hiring by a State agency or authority with the object of providing employment. These are people who are required to make a difference and they have to be different from the rest.

After the process of selection was completed, the true profile, the talent and capability of the candidates was analyzed. The committee sat and took a decision that the objective behind such recruitment, may not be achieved by recruiting people on the basis of basic yardstick, which was indicated in the advertisement, contained in Annexure-2. It was felt that the bar or the standards

was required to be raised to ensure that the best of the available lot are selected who could inspire confidence that their hiring will be fruitful and they will be able to deliver on the basis of responsibility, which is expected to be thrust upon them.

The decision, contained in Annexure-3, which is the main object of attack, in all these writ applications, was not a flash in the pan kind of decision. The background is evident from the minutes of the meeting dated 01.07.2016, a copy of which has been annexed as Annexure – B to the counter affidavit filed on behalf of the Mission. If the content is gone through, it will reflect that the reason for such decision of modifying the yardstick was necessitated to make sure that the best of talent from the lot be picked up and appointed. The Court is not required to extract from the said decision since the decision is available for everybody and anybody to see.

The Court after going through Annexure – B does come to the considered opinion that the decision has an object. There is no element of arbitrariness or mischief. The objective behind such a decision, which culminated into the notification, dated 25.07.2016, was taken, keeping in mind the kind of talent, which was being presented before the selection body and keeping in mind the objective behind such high profile recruitment.

The learned senior counsel submits that keeping in mind the objective of such selection certain yardstick in the



interview was fixed, as has been done in Annexure – 3. The object was only to raise the bar, which is permissible in law and the same cannot be considered to be vulnerable in any manner. In this regard reliance has been placed on the ratio of a decision rendered by the Hon'ble Apex Court in the case of ***Yogesh Yadav versus Union of India, reported in 2013 (14) SCC 623***. Since paragraph 10 to 14 lays down the essence of the said decision, which squarely covers the case of the present lot of petitioners, the Court is tempted to reproduce those paragraphs for ready reference, which reads as under:

“10. In the aforesaid backdrop, the question that falls for consideration is as to whether fixation of benchmark would amount to change in the criteria of selection in the midstream when there was no such stipulation in that regard in the advertisement.

11. Mr. Jayant Bhushan, the learned senior counsel appearing for one of the appellants submitted that the case is squarely covered by the ratio of judgment of this Court in Himani Malhotra vs. High Court of Delhi. That case pertained to recruitment to the Higher Judicial Service in Delhi. The mode of selection was written test and viva voce. 250 marks were assigned for written test and 750 marks prescribed for viva voce test. When the advertisement was given there was no stipulation prescribing the minimum marks/cut off marks at viva voce test after the written test was held. The persons who qualified the written test were called for interview. The interview was, however, postponed by the interview committee and it felt that it was desirable to prescribe minimum marks for the viva



voce test as well. The matter was placed before the Full Court and the Full Court resolved to fix minimum qualifying marks in viva voce which were 55% for general category, 50% for SC/ST candidates. After this change was effected in the criteria thereby prescribing fixation of minimum qualifying marks, the interviews were held. The petitioners in that case were not selected as they secured less than 55 % marks. Those two petitioners filed the Writ Petition submitting that prescribing minimum cut off marks in the viva voce test, after the selection process had started, when there was no such stipulation at the time of initiation of recruitment process, was unwarranted and impermissible. The Court, taking notice of its earlier judgments in Lila Dhar vs. State of Rajasthan and K.Manjusree vs. State of A.P. held that when the previous procedure prescribing minimum marks was not permissible at all after the written test was conducted, the ratio of the case is summed up in paragraph 15 of the Judgment, as under: (Hemani Malhotra case, SCC p. 17)

“15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce test was illegal.”

12. This very argument based on the aforesaid judgment was taken in the LPAs before the High Court as well. However, the High Court took the view

that the aforesaid judgment was not applicable in the instant case as the factual scenario was altogether different. Since we are agreeing with the view of the High Court, it would be apposite to take notice of the relevant discussion on this aspect:

“18. From the aforesaid pronouncement of law, it is vivid that an amended rule cannot affect the right of a candidate who has qualified as per the terms stipulated in the advertisement and is entitled to claim a selection in accordance with the rules as they existed on the date of the advertisement; that the selection can be regulated by stipulating a provision in the rule or laying a postulate in the advertisement for obtaining minimum marks both in the written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of the selection process, the authority, during the selection process or after the selection process, cannot add an additional requirement/qualification that the candidate should also secure minimum marks in the interview; that the norms or rules as existing on the date when the process of selection begins will control such selection and that revisiting the merit list by adopting a minimum percentage of marks for interview is impermissible.

19. The factual scenario in the present case has a different backdrop. The advertisement stipulated that the short listed candidates would be called for interview before the final selection and mere fulfilling of minimum qualifications by itself would not entitle any applicant for being called for interview. Thereafter, in the instructions, the marks were divided. Regard being had to the level of the post and the technical legal aspects which are required to be dealt with, a concise decision was taken to fix 65% marks for OBC category in toto, i.e., marks

obtained in the written examination and marks secured in the interview. It is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement. A standard was fixed for the purpose of selection.”

13. Instant is not a case where no minimum marks prescribed for viva voce and this is sought to be done after the written test. As noted above, the instructions to the examinees provided that written test will carry 80% marks and 20% marks were assigned for the interview. It was also provided that candidates who secured minimum 50% marks in the general category and minimum 40% marks in the reserved categories in the written test would qualify for the interview. The entire selection was undertaken in accordance with the aforesaid criterion which was laid down at the time of recruitment process. After conducting the interview, marks of the written test and viva voce were to be added. However, since benchmark was not stipulated for giving the appointment. What is done in the instant case is that a decision is taken to give appointments only to those persons who have secured 70% marks or above marks in the unreserved category and 65% or above marks in the reserved category. In the absence of any rule on this aspect in the first instance, this does not amount to changing the “rules of the game”. The High Court has rightly held that it is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement, standard was fixed for the purpose of selection. Therefore, it is not a case of changing the rules of game. On the contrary in the instant case a decision is taken to give appointment to only those who fulfilled the benchmark prescribed. The fixation of such a benchmark is permissible in law. This is an

altogether different situation not covered by Hemani Malhotra case. (emphasis mine)

14. The decision taken in the instant case amounts to short listing of candidates for the purpose of selection/appointment which is always permissible. For this course of action of the CCI, justification is found by the High Court noticing the judgment of this Court in the State of Haryana vs. Subash Chander Marwaha. & Ors. In that case, Rule 8 of the Punjab Civil Service (Judicial Branch) Service Rules was the subject-matter of interpretation. This rule stipulated consideration of candidates who secured 45% marks in aggregate. Notwithstanding the same, the High Court recommended the names of candidates who had secured 55% marks and the Government accepted the same. However, later on it changed its mind and High Court issued Mandamus directing appointment to be given to those who had secured 45% and above marks instead of 55% marks. In appeal, the judgment of the High Court was set aside holding as under: (SCC pp 226-27, para 12)

“12. It is contended that the State Government have acted arbitrarily in fixing 55 per cent as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(ii), Part C speaks of “selection for appointment”. Even as there is no constraint on the



State Government in respect of the number of appointment to be made, there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for mere eligibility. (emphasis mine)

If the facts of the case of Yogesh Yadav (supra) are gone into, coupled with the ratio of the decision reproduced in the earlier part of the order, the exercise done by the “Mission” in the selection process, which they have taken, squarely fits the bill and is covered by the decision of the Hon'ble Apex Court.

The Court, therefore, holds that there is nothing amiss, which any way has not even been pleaded or urged, in the writs. The selection has been done by raising the bar and setting certain high standards for such selection which was the need of the hour.

It is also held by the Court that merely because there are certain posts which was especially reserved for a category of people, it is not required to be filled up as a matter of routine with the object of providing employment to such kind of people for whom reservation has been made. The yardsticks and the standards even for the reserved posts are of a paramount

importance and are integral to the process of such selection.

In view of the totality of the facts and law, noted above, none of the writ applications have merit to succeed, they are dismissed, accordingly.

(Ajay Kumar Tripathi, J)

SKM/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	06.10.2016
Transmission Date	