

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.227 of 2016

In

Civil Writ Jurisdiction Case No. 15814 of 2015

Jagdish Jha Son of Late Upendra Jha, resident of Mohalla -
Balbhadrapur, Police Station – Laheria-sarai, District - Darbhanga

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department (Higher Education), Government of Bihar, Patna
2. The Secretary, Department of Education, Government of Bihar, Patna
3. The Additional Secretary, Department of Education, Government of Bihar, Patna
4. The Bihar Public Service Commission, through its Secretary, 15 Jawaharlal Nehru Marg, Baily Road, Patna 1
5. The Secretary, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Baily Road, Patna 1

.... Respondent/s

with

Letters Patent Appeal No.511 of 2016

IN

Civil Writ Jurisdiction Case No. 16253 of 2015

Dr. Shanker Kumar Mishra son of Shri Brahma Deo Misha
resident of Village - Karama, Post - Bhagipur, P.S. - Pureni,
District - Madhepura.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. Additional Secretary, Education Department, Bihar, Patna.
3. Bihar Public Service Commission, Patna through its Secretary.
4. Chairman, Bihar Public Service Commission, Patna.
5. Secretary, Bihar Public Service Commission, Patna.
6. Md. Salahuddin son of Md. Muslim resident of Mohalla - Hajipur, Ward No. - 17, Post - Khagaria, P.S. - Khagaria, District - Khagaria.
7. Dr. Anand Kumar Singh son of Shri Sadanand Singh, resident of Village + P.O. - Dumra, P.S. - Bhawanipur (Rajdham), District - Purnea.
8. Dr Ramnandan Prasad Singh son of late Ramlekha Mahto, resident of At - Garibnagar, Post - Kawadpur, P.S. - Suryagarha, District - Lakhisarai.
9. Dr. Binay Kumar son of Sri Brahma Deo Paswan, resident of At-Nanhku Mandal Tola, P.O. - Durgapur, P.S. - M-Khagaria, District - Khagaria.

10. Dr Anil Kumar Ranjan, son of lae Siro Mandal, resident of
At - Dukhatola, Post - Maheshkhund, P.S. - Gogri, District -
Khagaria.

.... Respondent/s

Appearance :

(In LPA No.227 of 2016)

For the Appellant/s : Mr. Vijay Shankar Shrivastava

For the Respondent/s : Mr. Ashok Kumar Kesari- Aag11

(In LPA No.511 of 2016)

For the Appellant/s : Mr. Abhinav Srivastava

For the Respondent/s : Mr. Avinash Kumar- Sc30

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

JUDGEMENT AND ORDER

(CAV)

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

4 21-09-2016 With the consent of learned counsel appearing on

behalf of the parties, these appeals have been heard together and

are being disposed of, at the admission stage itself, by this

common order.

2. Letters Patent Appeal No.227 of 2016 arises out of
the judgment and order, dated 15.12.2014, passed in CWJC No.
15814 of 2015, whereby and whereunder a learned single Judge
of this Court has rejected the contention of the writ petitioner that
having cleared the BET (Bihar Eligibility Test), which was,
according to the writ petitioner, equivalent to the National
Eligibility Test (NET)/ State Eligibility Test (SET), he was being
illegally denied consideration for the post of Assistant Professor
for which advertisement, dated 13.09.2014, had been published

by the Bihar Public Service Commission.

3. By order, dated 29.01.2016, passed in C.W.J.C. No. 16253 of 2015, which has given rise to Letters Patent Appeal No. 511 of 2016, a learned single Judge has dismissed the writ petition aforementioned on the ground that similar issue has already been dealt with, in detail, in, and has been decided by, judgment and order, dated 15.12.2014, passed in CWJC No. 15814 of 2015, which stood impugned in Letters Patent Appeal No.227 of 2016.

4. For the sake of convenience, we would refer to the pleadings of Letters Patent Appeal No.227 of 2016.

5. The grievance of the writ petitioner (appellant herein) arose out of the writ application, which has, as its background, the following facts:-

(i) By advertisement, dated 13.09.2014, bearing advertisement No. 44 of 2014 to 84 of 2014, the Bihar Public Service Commission ((hereinafter referred to as 'the BPSC') invited applications from eligible candidates for appointment to the posts of Assistant professor for different subjects under different universities and its constituent colleges in the State of Bihar. The said advertisement provided that the following

education qualifications were to be the criteria for eligibility :

“(a) A candidate should have throughout good academic record with minimum 55 percent marks at the Master’s degree or equivalent (or equivalent grade). Relaxation of 5 per cent marks of SC/ST candidates of the state, while physically challenged persons from any part of the country will be given relaxation of 5 percent marks at Master’s Degree. But both benefits shall not be admissible to any such candidate.

(b) A candidate must have passed NET/SET or equivalent test accredited by UGC.

(c) The candidates have gained Ph.D. Degree on the basis of Minimum Standard and Procedure Regulation, 2009 framed by the University Grants Commission for M.Phil/Ph.D. Degree, shall be exempted from passing the National Eligibility Test.

(d) NET/SET shall also not to be required for such Masters Programmes in disciplines for which NET/SET is not conducted.”

6. In response to the aforementioned advertisement, the appellant submitted his application on 15.11.2014 and, upon due scrutiny of his application, since his application was found to be correct in all respects, he was allotted

Roll No. 48010110.

7. The appellant possesses the following qualification:-

‘(i) Master of Arts in Maithili from Lalit Narayan Mithila University having secured 60.25 marks in the year 1991.

(ii) The petitioner appeared in BET in 1995 conducted by the Bihar State Enter University (Constituent Colleges) Services Commission, accredited to the University Grant Commission and successfully passed the said examination which was held in 18.06.1995.’

8. By letter No. 15/m-1-130/2013-763, dated 10.04.2015, respondent No. 3, namely, Additional Secretary, Department of Education, Government of Bihar, informed the BPSC that as per Section 3 (KA) (iii) of the Bihar State University (Amendment) Act, 2013, only those candidates were eligible, who had passed LET/SET held by the University Grants Commission (UGC)/Council for Scientific and Industrial Research (CSIR) and, therefore, the candidates, who had passed the examination held in the year 1996 for BET by the Bihar State University (Constituent Colleges) Service Commission, Patna, cannot be held to be equivalent to LET/SET.

9. By letter No. 1203, dated 22.09.2015, the Public Information Officer of the BPSC accordingly sent the information that BET qualified candidates have not been considered for the posts of Assistant Professor.

10. Thereafter, between 29.09.2015 and 08.10.2015, BPSC proceeded with the selection process for the subject *Maithili*.

11. The appellant contended that the Bihar State University (Constituent Colleges) Service Commission, Patna, had held examinations for BET in the years 1995, 1996 and 1997 and all these examinations were accredited to the University Grants Commission (in short “UGC”).

12. The impugned letter, dated 10.04.2015, only debarred those candidates, who had passed the BET examination held in the year 1996, whereas the appellant had passed the BET examination held in the year 1995 and, hence, debarring the candidates, who had passed the BET examination held in the years 1995 and 1997, is illegal and bad for the reasons discussed hereinafter:

Section 3 of Bihar State University

(Amendment) Act, 2013, has amended Section 57 of Bihar

Act 23, 1976, by inserting new sub-section (1), which reads as follows:-

(1) (i).....

(ii).....

(iii) *Every year the Commission shall invite subject wise application for appointment to the posts of Teacher (Assistant Professor) in the Universities and their constituent College only from such candidates who have passed the National Eligibility Test Conducted by the University Grants Commission/Council for Scientific and Industrial Research/State Eligibility Test and obtained minimum qualification prescribed by the University Grants Commission Regulations, 2010 or as may be prescribed from time to time.*

Provided that, the candidates who have obtained Ph.D. Degree on the basis of Minimum Standard and Procedure Regulation, 2009 framed by the University Grants Commission for M.Phil/Ph.D. Degree, shall be exempted from passing the National Eligibility Test.

(iv)

13. The Central Board of Secondary Education (an autonomous body, under the Ministry of Human Resource Development, Government of India), has issued a notification for conducting the UGC-NET June – 2015 for eligibility criteria/conditions for recruitment and appointment to the post of Assistant Professor for university/colleges/institutions. Clause 5 of the aforesaid notification provides for exemption (eligibility for Assistant Professor) and reads as follows:

“5) EXEMPTION (ELIGIBILITY FOR ASSISTANT PROFESSOR)

(i) NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities/Colleges/Institutions.

Provided, however, that 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 the Ph.D. Degree) Regulation, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SELT/SET for recruitment and appointment of Assistant Professor or equivalent positions in

Universities/Colleges/Institutions.

(ii) The candidates, who have passed the UGC/CSIR JRF examination prior to 1989, are also exempted from appearing in NET.

(iii) For SET candidates: The candidates who have cleared the States Eligibility Test (SET), accredited by UGC for eligibility for Assistant Professor held prior to 1st December, 2002, are exempted from appearing in NET, being eligible to apply for Assistant Professor anywhere in India. For SET held from 1st of December, 2002 onwards, the qualified candidates are eligible to apply for the post of Assistant Professor only in the Universities/Colleges situated in the State from where they have cleared their SET.

14. The University Grants Commission (Minimum Qualifications for appointment of teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards of Higher Education) Regulations, 2010, clearly provides, at Clause 3, that the UGC will withhold the grants, proposed to be made out of the fund of the Commission, in the event, the UGC finds that any of the Universities has

contravened any of the provisions of the Regulations, Rules and Acts of the UGC.

15. Thus, it is mandatory for all the Universities to follow the instructions/regulations, etc., issued by the UGC from time to time failing which UGC will withhold the funds proposed to be allotted to such University.

16. Clause 4.0.0 of annexure to aforementioned University Grants Commission (Minimum qualification for appointment of teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulation, 2010, clearly provides for minimum educational qualification for appointment by way of direct recruitment. Clause 4.4.0 provides educational qualification for the post of Assistant Professor, which reads as under:

- (i) *Good academic record as defined by the concerned university with at least 55 per cent marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.*
- (ii) *Besides fulfilling the above qualifications, the candidate must have*

cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC the SLET/SET.

- (iii) *Notwithstanding anything contained in sub clauses (i) and (ii) to this Clause 4.4.1, candidates, who are, or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standard 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 Professor or equivalent position in Universities/Colleges/Institutions.*
- (iv) *NET/SLET/SET shall not be required for such Masters Programme in discipline for which NET/SLET/SET is not conducted.*

17. It was in the backdrop of such rules and regulations that the writ petitioner claimed that the action of the respondent authorities, debarring a candidate, who had cleared the examinations held by the Bihar State University (Constituted Colleges) Service Commission, Patna, accredited to the UGC, was



illegal and arbitrary as the impugned letter, dated 10.04.2015, issued by respondent No. 3, namely, Additional Secretary, Department of Education, Government of Bihar, only debars the candidates, who had qualified the BET in the examination held in the year 1996 by Bihar State University (Constituent Colleges) Service Commission, Patna; whereas the appellant had qualified the BET in the year 1995.

18. Thus, the appellant, in his writ petition, mainly sought for issuance of writ of mandamus for directing/commanding the respondent Bihar Public Service Commission to allow the petitioner to appear in the interview which commenced from 29.09.2015. However, no such relief was granted by the learned single Judge. The writ petitioner has, therefore, preferred this *intra* Court appeal.

19. Learned counsel, appearing on behalf of the appellant, submits that the Bihar Public Service Commission issued advertisement No. 44 of 2014 to 84 of 2015, all dated 13.09.2014, inviting applications from the eligible candidates for appointment to the posts of Assistant Professor for different subjects under different universities and its constituent colleges in the State of Bihar. It is submitted by learned Counsel for the appellant that as per the advertisement, including the

advertisement No. 48 of 2014 (Maithili subject), the required essential qualification for appointment as Assistant Professor for the University of Bihar had been fixed as follows:-

- 
- (i) *A candidate should have throughout good academic record with minimum 55 per cent marks at Masters' Degree or equivalent (or equivalent grade). Relaxation of 5 per cent marks for SC/ST candidate of the State, while physically challenged persons from any part of the country will be given relaxation of 5 percent at Masters' Degree. But both benefits shall not be admissible to any such candidate.*
 - (ii) *A candidate must be passed NET/SET or equivalent test accredited by U.G.C.*
 - (iii) ***The candidate, who have obtained Ph.D. Degree on the basis of Minimum Standard and Procedure Regulation, 2009, framed by the U.G.C. for M. Phil/Ph.D Degree, shall be exempted from passing the NET.***
 - (iv) *NET/SET shall also not be*

required for such Masters' Programmes in disciplines for which NET/SET is not conducted.

20. The advertisement aforementioned was issued, on 13.09.2014, on the basis of requisition sent by the State Government, vide its letter No. 980, dated 21.05.2014, and also the Bihar State University (Amendment) Act, 2013 and statutes for appointment of teachers (Assistant Professors) of the University of Bihar, 2014, approved by the Chancellor and notified by Memo No. B-25/2014-1359 GS (1), dated 11.09.2014. The appellant, having passed the Bihar Eligibility Test (BET), thus, became eligible for consideration as per Clause 2 of the advertisement, dated 13.09.2014.

21. It is contended by the learned counsel for the appellant that the appellant had passed the Bihar Eligibility Test (BET) in the year 1995 itself and was, thus, eligible to be considered, as a candidate, for the post of Assistant Professor. However, they were debarred and excluded from the zone of consideration for the reason that the Government had taken a policy decision not to treat the BET equivalent to either NET/SET.

22. It was, thus, contended that such a decision, on the part of the State Government, was illegal and arbitrary and



sought to infringe the fundamental right of the appellants. It was argued that the said policy decision, taken by the State after issuing advertisement, was but illegal and against the settled principles of service jurisprudence inasmuch as the terms of the advertisement could not have been changed once the selection process had commenced and the appellants were issued admit cards by the BPSC.

23. Learned counsel for the appellant submitted that it was contended by the appellants, in the writ petition, that the appellant had passed the BET, which was equivalent to NET conducted by the UGC, CSIR, or similar test accredited to the UGC like SLET/SET. The appellant had qualified in the BET examination held in the year 1995, but the State of Bihar, by its impugned Letter No. 15/M.1.-130/2013-763, dated 10.04.2015, debarred the candidates, who had qualified BET in the examination held in 1996 by Bihar State University (constituent Colleges) Service Commission, Patna; whereas the appellant had passed the BET in the year 1995 itself, which, at that point of time, stood accredited as per guidelines issued by the UGC and, in view of such stipulations in the impugned letter, it was contended by learned Counsel for the appellant that the appellant ought not to have been disqualified and, therefore, the process of selection

stood vitiated for having adopted wrong principles and accordingly was fit to be set aside.

24. Seriously contesting the issue, learned Counsel, appearing on behalf of the respondents Nos. 2 and 3, submitted that it was contended by the appellants, in the writ petition, that the appellants were not entitled to be considered for appointment on the posts of Assistant Professor in different colleges of Bihar on the ground that the Government had taken a policy decision not to treat BET equivalent to either NET/SET. They contended that the decision of Government in not treating BET equivalent to NET/SET is valid on the following grounds :-

- (i) *Firstly, it is on the basis of the amendment in Section 3(I) (iii) of the Bihar University (Amendment) Act, 2013 (in short the Act, 2013), which governs the eligibility, provides the methodology for conducting SET examination, which could not have been followed for BET.*
- (ii) *Secondly, the decision, is in line with fulfilling the object of the UGC Regulation, 2009, which is to maintain excellence in the standards of higher education.*
- (iii) *Thirdly, the decision is in the larger*

public interest as the government does not want to compromise the excellence of teaching standards in the colleges governed by the UGC.

25. It was further contended by the respondents that such decision is neither arbitrary nor discriminatory as (a) Firstly, the decision applies uniformly to all persons, who had passed BET whatever their session/year may be; (b) Secondly, the purpose for doing so is in the larger public interest of the government that it does not want to compromise the excellence of teaching standards in the colleges governed by the UGC. Even such purpose has been held to be valid in ***P. Sushila Vs. University Grants Commission***, reported in 2015(3) PLJR (SC) 278; (c) Even if it may have created a classification, the same has to be treated as valid for the reasons that it has a rationale nexus with the object sought to be achieved, which is to maintain excellence in the standards of higher education.

26. Justifying the action further, learned Counsel for the BPSC submitted that the advertisements, for different posts of Assistant Professor in different Universities Advertisement Nos. 44/2014 to 84/2014 (Annexure- A to the counter affidavit) including the Advertisement No. 48/2014 (Maithili Subject), were issued on the basis of requisition sent by the State Government

vide its letter No. 980, dated 21.05.2014, Bihar State University (Amendment) Act, 2013, and Statutes for Appointment of Teachers (Assistant Professors) for the Universities of Bihar 2014, approved by the Chancellor and notified by Memo No. BSU-25/2014-1359GS(1), dated 11.09.2014.

27. Learned Counsel for the BPSC further submits that one of the required essential qualifications, as per the advertisement, was that a candidate must have passed NET/SET or equivalent test accredited by U.G.C. As such, the BPSC enquired from the Education Department, through its letter No. 2803, dated 10.03.2015, about the validity of the certificates of Bihar Eligibility Test (BET) (Annexure- B to the counter affidavit).

28. It is further submitted that the Education Department responded, through its letter No. 763, dated 10.04.2015, by stating that the candidates, who had passed the Bihar Eligibility Test (BET), conducted by the erstwhile Bihar State University (Constituent Colleges) Service Commission (currently dissolved), in the year 1996, cannot be treated equivalent to the NET/SET (Annexure-C to the counter affidavit).

29. Moreover, it is contended that the Supreme Court, in *P. Suseela and Others etc. v. Universities Grants*

Commission and Others Etc. reported in **2015(3) PLJR (SC) 278**, has, in no ambiguous terms, observed and held that the NET is the essential eligibility condition for appointment of Assistant Professor in Universities and Colleges and those candidates shall be exempted from requirement of passing the NET, who have been awarded Ph.D. Degree in compliance of the Universities Grants Commission (Minimum Standard and Procedure For Award of Ph.D Degree Regulation), 2009.

30. Further-more, the Education Department, Government of Bihar, vide its letter No. 1122, dated 16.06.2015, (Annexure-D to the counter affidavit), informed the BPSC that the Supreme Court, in **P. Suseela** (supra), has put to rest the controversy, with respect to exemption of candidates from passing the NET test, who have been awarded Ph.D./M.Phil degree prior to the University Grants Commission (Minimum Standard and Procedure for Award of Ph.D. Degree Regulation) 2009. It is further submitted that from a reading of the said judgment, it is apparent that for appointment on the post of Assistant Professor, in Universities/Colleges, passing of NET is essential requirement and those candidates would be exempted from passing the NET test, who have been awarded Ph.D. Degree, in compliance of the University Grants Commission (Minimum Standard and

Procedure for Award of Ph.D. Degree Regulation), 2009, and the candidates' passing of NET was an essential qualification.

31. It is submitted that Clause -III of Chapter 3 of the Statutes for appointment of teachers (Assistant Professor Grade) and the Rules provide that only the candidates passing NET could be considered for appointment and/or if they were in possession of Ph.D degree and, as such, requisition for said post was sent to the Bihar Public Service Commission and request was made to take necessary action in the light of the judgment and order passed by the Supreme Court.

32. We have heard learned Counsel for the parties and perused the materials, which have been placed on records.

33. We note that the advertisement was issued on 13.09.2014, wherein the terms and conditions of educational qualification, at the relevant point of time, the amendment in Section 3 (i) (iii) of the Bihar University (Amendment) Act, 2013 (in short the "Act, 2013"), which governs the eligibility and provided the methodology for conducting SET examination, had already been adopted. So far as the BET is concerned, the same had been discontinued with the dissolution of the Bihar State University (Constituent Colleges) Service Commission in the year



1996. The criteria, to be adopted in the advertisement, for which the appellant was a candidate, was clearly set out in the advertisement, which prescribed that it was on the basis of the requisition sent by the State Government, vide its letter No. 980, dated 21.05.2013, and Statutes for appointment of Teachers (Assistant Professors), Universities of Bihar, 2014, approved by the Chancellor and notified by Memo No. BSU-25/2014-1359GS(1), dated 11.09.2014, that the appointments were to be made.

34. Learned Counsel for the appellants has referred to Section 3 of the Bihar State University (Amendment) Act, 2013, whereby Section 57 of the Bihar Act 23 of 1976 was amended by inserting a new sub-Section (1). The relevant extract of newly added sub-Section (1), for the purpose of present case, is reproduced hereunder:-

“1 (i) Subject to the provision mentioned in this Act and Statutes as far as possible the Commission shall perform the same function in respect of the appointments to the sanctioned posts of the teachers of Universities as are assigned to it by Article 320 of the Constitution of India in relation to the State Services.



(ii) *The commission on the recommendation of the State Government may organize an eligibility test to be called “State Eligibility Test” for appointment to the posts of Teacher (Assistant Professor) in the Universities and Constituent/Affiliated colleges under them. In this behalf, Commission shall invite subjective applications only from such candidates who have obtained the qualifications prescribed in the UGC Regulations, 2010 or as may be prescribed by the University Grants Commission from time to time.*

(iii) *Every year the Commission shall invite subject wise applications for appointment to the posts of Teacher (Assistant Professor) in the Universities and their constituent College only from such candidate who have passed the National Eligibility Test conducted by the University Grants Commission/ Council for Scientific and Industrial Research/State Eligibility Test and obtained minimum qualifications prescribed by the University Grants Commission Regulations, 2010 or as may be prescribed from time to time.”*

35. Moreover, we have also noted that the Central

Board of Secondary Education (an autonomous organization under the Ministry of Human Resources Development, Government of India) has issued notification UGC-NET-June 2015 for eligibility of Assistant Professor only or Junior Research Fellowship and eligibility of Assistant Professor both. Clause 5 (iii) of the said notification provides for exemption (eligibility for Assistant Professor), which reads as follows:-

“5) EXEMPTION (ELIGIBILITY FOR ASSISTANT PROFESSORS)

(iii) For SET candidates: The candidates who have cleared the State Eligibility Test (SET) accredited by UGC for eligibility for Assistant Professor held prior to 1st December 2002, are exempted from appearing in NET, being eligible to apply for Assistant Professor anywhere in India. For SET held from 1 December 2002 onwards, the qualified candidates are eligible to apply for the post of Assistant Professor only in the University/Colleges situated in the State from where they have cleared their SET”.

36. Sub clause (iii) of Clause 5 of the notification clearly states that those candidates, who had passed SET, accredited by UGC, for eligibility for Assistant Professor held

prior to 1st December, 2002, are exempted from appearing in NET and will be eligible to apply for Assistant Professor anywhere in India. For SET, held from December, 2002 onwards, the qualified candidate are eligible to apply for the post of Assistant Professor only in the University Colleges situated in the State from where they have cleared their SET (Annexure-7).

37. We have also noted earlier that Clause 4.0.0 of the aforementioned University Grants Commission (Minimum qualification for appointment of teachers and other staff) clearly provides for minimum educational qualification for appointment by way of direct recruitment. Clause 4.4.(ii) reads as such :-

“Clause 4.4. (ii)

“Besides fulfilling the above qualification the candidate must have cleared the national eligibility test conducted by the UGC, CSIR, or similar test accredited by the UGC like SLET/SET”.

38. It would, thus, be appropriate to conclude that the UGC allowed the Central Board of Secondary Education, which conducts the NET test, to exempt those candidates, who had cleared the SET, accredited to the UGC, as being eligible for being appointed to the post of Assistant Professor, held prior to 1st

December, 2002, from appearing in the NET and they could apply for the post of Assistant Professor anywhere in India.

39. Thus, it follows, as a natural corollary, that the appellants, who had cleared the BET, which is the state eligibility test of Bihar, prior to 1st December, 2002, would be eligible for apply for the posts of Assistant Professor, in the State of Bihar, particularly, in response to the advertisement issued by the BPSC. The certificate (Annexure -2) also indicates that it was issued as being accredited to the University Grants Commission, New Delhi.

40. We have also noted that, initially, the appellants were permitted to apply and were issued admit cards and allotted roll numbers having fulfilled the eligibility criteria and upon due consideration of their certificate. It was only when the appellants could not download their admit cards and ascertain the date of their interview, which were scheduled to be held between 29.09.2015 and 08.10.2015, that they contacted the office of the BPSC, whereupon they came to know that their names had been included in the list of ineligible candidates as they had not passed the NET nor did they hold Ph.D. Degree. On further inquiry, they came to know that they had been debarred from facing interview and their candidature had been rejected as they had passed BET



and not NET/SET. The Public Information Officer, vide letter 1203, dated 22.09.2015, shared the information that BET qualified candidates, including the appellants and other similarly situated person, were not eligible for the post of Assistant Professors. The impugned letter, dated 16.06.2015, contained in Education Department, Government of Bihar, letter No. 1122, is the basis of the decision taken by the BPSC. The Education Department, in its decision, has referred to an order, dated 16.03.2015, passed in SLP No. 36023-36032 of 2010, whereby the controversy, with respect to exemption of candidate for passing the NET, who had been awarded Ph.D/M.Phil Degree prior to University Grants Commission (Minimum standard and procedure and award of Ph.D. regulation), 2009, stood decided, held that it is apparent that for appointment on the post of Assistant Professor, passing of NET test is essential.

41. The respondents accordingly contended that the appellants have neither qualified NET/SLET/SET nor they are Ph.D. holders, on the basis of Minimum Standard And Procedure Regulation, 2009, framed by the UGC, for M.Phil/Ph.D Degree, and, therefore, their lack of qualification was the sole basis for rejection of their candidature by the Bihar Public Service Commission, stating to the effect that the appellants had neither



NET nor Ph.D qualification. Learned counsel for the respondents have also referred to a decision of this Court, in *Rakesh Kumar Singh & Ors Vs. Union of India & Ors and its analogous cases*, reported in **2015 (4) PLJR page 477**, to sustain their arguments. However, both the judgments, referred to above, relate to the minimum standard and procedure for award of Ph.D. Regulation, 2009, and the issue at hand, relating to exemption from NET/SET, has not been considered therein.

42. Thus, the rationale adopted, in the above mentioned cases, can be distinguished from the cases of the present appellants as they are not in the category of Ph.D Degree holders being governed by the Ph.D. Regulation, 2009. Moreover, even as on date, the candidates, possessing State Eligibility Test certificate, prior to the year 2002, have been considered to be exempted from appearing in the NET examination held by the Central Board of Secondary Education, which, thus, clearly indicates that SET examination, conducted by the State, through institutions, accredited to the UGC, would be exempted from appearing in NET examination.

43. In the result, we have no hesitation in holding that the present appellants have been wrongly debarred from appearing in the interview on the basis of the impugned order,

which is based on unsound rationale and mis-appreciation of law. However, since the selection process has, now, come to an end, no positive direction would be appropriate in the interest of justice.

44. In view of the above, the appeals are allowed. The impugned order, dated 10.04.2015, is hereby set aside.

(Anjana Mishra, J)

(I.A. Ansari, CJ): I Agree

(I.A. Ansari, CJ)

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