

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12366 of 2015

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Dr. Sita Ram Singh, Son of Late Shesh Nath Singh, Resident of Village Kotwali,
P.S. Rajaun, District Banka.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Science and Technology, Government of Bihar, Patna.
3. The Additional Secretary, Department of Science and Technology, Government of Bihar, Patna.
4. The Director, Department of Science and Technology, Government of Bihar, Patna.
5. The Bihar Public Service Commission through its Secretary.
6. The Chairman, Bihar Public Service Commission, Patna.
7. The Secretary, Bihar Public Service Commission, Patna.
8. The Accountant General, Bihar.
9. Sri Barun Kumar Roy, Principal, Government Women Polytechnic, Muzaffarpur.
10. Sri Anil Kumar Singh, Principal New Government Polytechnic, Patliputra, Patna.
11. Smt. Kumari Anima, Principal, Government Women Polytechnic Phoolwarisharif, Patna.
12. Sri Chandra Shekhar Singh, Principal Government Polytechnic, Muzaffarpur.
13. Dr. Fazle Sarwar, Principal, Government Polytechnic, Motihari, Bihar.
14. Sri Ganesh Prasad, Principal Incharge Mining Institute Kodarma, State of Jharkhand.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Yugal Kishore, Senior Advocate Mr. V. Prasad, Advocate Mr. Ugranath Malik, Advocate
For the State	:	Mr. Ashok Kumar Choudhary, A.A.G.13 Mr. Anil Kumar Tiwary, A.C. to A.A.G.13
For the B.P.S.C.	:	Mr. Zaki Haider, Advocate
For Res. Nos.9 to 13	:	Mr. Y.V. Giri, Senior Advocate Mr. Ashish Giri, Advocate
For Res. No.14	:	Mr. Sanjay Kumar Verma, Advocate Mr. Bijay Bihari Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

CAV JUDGMENT

Date: 30-03-2016

Petitioner is seeking quashing of Annexure-6, dated
04.06.2015 by virtue of which the Bihar Public Service

Commission (hereinafter referred to be as 'B.P.S.C.') has made recommendations for appointment on the post of Principals in different Government Polytechnics. The recommended persons have also been made respondents.

2. In addition to above, the petitioner is also seeking quashing of Annexure-11, dated 01.07.2015 by virtue of which the private respondents have been notified and appointed as Principals for different Polytechnics on the pay scale indicated therein.

3. I.A. No.8507 of 2015 has also been filed seeking quashing of Annexure-12, dated 08.09.2015 by virtue of which respondent no.14 came to be appointed on the post of Principal despite the fact that he had a degree in Mining which is not good enough for such selection and appointment as a Principal of a Polytechnic college in Bihar as is their stand.

4. At the outset, the counsel for the private respondents and the State raise objection against maintainability of the writ application on the ground that the petitioner participated in the process of selection knowing fully well the rule of the game now having failed to make it he cannot turn around and question the selection on make believe objections with regard to qualification and the eligibility. The objections which have been raised on behalf of the petitioner even before B.P.S.C. was looked



into by the State Government and appropriate clarifications had been issued to the B.P.S.C. and thereafter they have gone ahead and made recommendations based on which these appointments have been done which are legal and valid. The ratio of the decision rendered in the case of *Ramesh Chandra Shah v. Anil Joshi*, reported in (2013) 11 SCC 309 is the case in point. Attention of the court has been drawn to paragraphs-18, 21, 22 and 25 of the said decision.

5. The other principle of law which have been pressed into service is the ratio of the Apex Court decision rendered in the case of *Basavaiah (Dr.) v. Dr. H.L. Ramesh*, reported in 2010 (8) SCC 372 which lays down the view that the expert's recommendation and views cannot be ignored. The relevant paragraphs are 30, 31, 32 and 38.

6. The main thrust of the attack made on behalf of the petitioner represented through senior counsel is that some of these persons are holders of A.M.I.E. Degree which has no recognition and the basic qualification laid down for such appointment is in the guidelines issued by A.I.C.T.E. The validity of the degree of A.M.I.E. is no longer an issue of debate in view of the notification issued by the Department of Science and Technology dated 01.04.2015. In addition to the notification, as mentioned above,

respondent no.9 has also brought two notifications with his counter affidavit which are Annexures-9 and 10 which certify the position about the validity of the degree issued by A.M.I.E.

7. The other ground for attack made by the petitioner is that some of the selected candidates did not fulfill the requirement of the advertisement as they were not working in the A.G.P. of Rs.9,000/-. On this aspect of the matter, a notification issued by the State has also been pressed into service and has been brought on record with the counter affidavit of respondent nos.10, 11 and 12 as R/2 which clarifies that people who have been working for three years as Senior Lecturers would be entitled to the A.G.P. of Rs.9,000/- and since the candidates so recommended and appointed had worked in the capacity as Senior Lecturers, therefore, they were in the A.G.P. of Rs.9,000/- and thus became eligible for selection and appointment and they do not incur any kind of disqualification on that count.

8. A detailed counter affidavit has also been filed on behalf of B.P.S.C. They support the recommendation and take a stand that before making the recommendation based on the objections raised by the petitioner against the selection, the Secretary, B.P.S.C. sought a detailed response with regard to the various candidates which would be evidenced from the



communication dated 22.05.2015 which is Annexure-H to their counter affidavit. The Department of Science and Technology sent their response dated 28.05.2015 with regard to the objections on each and every candidate. Areading of the said response of the Department of Science and Technology satisfies not only the Court but also satisfied the B.P.S.C. that none of the short-listed candidate before recommendation really suffered from any serious infirmity which could compel the B.P.S.C. not to recommend them for appointment as Principals of Polytechnics Colleges in the State of Bihar.

9. Respondent no.14 has also filed a detailed counter affidavit defending his recommendation and appointment on the ground that holding of a Mining branch of engineering is no disqualification merely on the ground that mining engineering as a subject was not being taught in the Polytechnics of Bihar. Even on this aspect of the matter, a clarification was given by the State of Bihar and it is only then that the B.P.S.C. made its recommendation and the State of Bihar appointed the said respondent on the post of a Principal.

10. After having given a very detailed hearing to the learned senior counsel representing the petitioner not only with the object of satisfying the judicial mind of the Court but to test the



veracity whether any recommendation and appointment has been made on gross violation of the advertisement or the guidelines issued by A.I.C.T.E. or not. The Court comes to a considered opinion that none of the grounds urged against the recommendation and selection of the private respondents are good and valid grounds to strike down Annexures-6, 11 or Annexure-12. The reasons pleaded and urged on behalf of the petitioner are contrived kind of reasons only because the petitioner did not make it to the list of recommended candidates.

11. As a desperate measure, during the course of hearing I.A. No.9647 of 2015 was filed, this time seeking an amendment to the prayer as well as addition of a prayer in the writ application seeking a mandamus upon the B.P.S.C. and the State that since the name of the petitioner was at serial no.8 of the merit list, he can now be recommended and appointed due to a vacancy position and he tried to prevail upon the Court for such a relief.

12. Such a prayer made in the interlocutory application is required to be rejected on the sole ground that any vacancy position emerging after the exercise of appointment having been completed cannot accrue in favour of the short-listed candidate as a matter of course because such vacancies would be required to be filled up in the next round of exercise or

advertisement which may be issued. The writ application, therefore, is required to be dismissed as being devoid of merit as well as the objections raised on behalf of the respondents with regard to the maintainability which this Court is satisfied is applicable in the given facts of the case.

13. Writ application, therefore, is dismissed.

(Ajay Kumar Tripathi, J.)

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