

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 10076 of 2015

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1. Bhuvneshwar Singh, S/o Late Satandeo Singh, Lecturer (Selection Grade), Government Polytechnic, Muzaffarpur.
 2. Anjani Kumar Mishra, S/o Sri Ramakant Mishra, Lecturer (Selection Grade), Government Polytechnic, Muzaffarpur.
 3. Shyam Bihari Prasad, S/o Late Kesho Prasad, Lecturer (Selection Grade) New Government Polytechnic, Patliputra Industrial Estate, Patna - 800013.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Deptt. of Science & Technology, Govt. of Bihar, Patna.
3. The Director, Deptt. of Science & Technology, Govt. of Bihar, Patna.
4. The Union of India represented through the Chairman, All India Council for Technical Education (AICTE), New Delhi.
5. The Secretary, AICTE, Northern Regional Office, In the Campus of Govt. Polytechnic, adjoining Directorate of Technical Education, Vikash Nagar, Kanpur - 208002.
6. The Accountant General, Bihar.
7. The Secretary, Bihar Public Service Commission, Patna.
8. Anil Kumar Singh, Lecturer, New Govt. Polytechnic, Patliputra Industrial Estate, Patna - 800013.
9. Smt. Kumari Anima, Asstt. Secretary, State Board of Technical Education, Technology Bhavan, Vishwasraiya Campus, Bailey Road, Patna.
10. Chandrashekhhar Singh, Controller of Examination, State Board of Technical Education, Technology Bhawan, Vishwasraiya Campus, Bailey Road, Patna.
11. Ganesh Prasad, Principal Incharge, Govt. Polytechnic, Koderma, Distt. Koderma, State - Jharkhand.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Vivekanand Prasad Singh
For the Respondent No. 11:	Mr. Sanjay Kumar Verma
For the B.P.S.C.:	Mr. P. N. Shahi, Sr. Advocate
	Mr. Sanjay Pandey
For Respondent No. 8, 9, 10:	Mr. Y. V. Giri, Sr. Advocate
	Mr. Ashish Giri
For the Respondent/s :	Mr. Sunil Kumar Mandal
	Mr. Bipin Kumar
For the Union of India:	Mr. Abhay Jha

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

C.A.V.JUDGMENT

Date: 30-03-2016

The three petitioners together have filed the writ

application for quashing of Annexure-9, by virtue of which the results of the selection carried out by Bihar Public Service Commission (hereinafter referred to as "B.P.S.C." for short) for appointment on the post of Principal of Government Polytechnics in the State of Bihar was published and recommended.

The alternative prayer is that they be appointed on the post of Principal, because they have the requisite qualifications and experience as per the Advertisement No. 2 of 2015 (Annexure-1).

At the outset, a preliminary objection has been raised on behalf of the private-respondents as well as the State that the petitioners can not challenge the exercise of selection so done by the B.P.S.C. after participating in the process of selection and having failed to make the cut or the recommendation for the post of Principal of Polytechnic Colleges in the State of Bihar.

Such objection seems to be sustainable, because the objections so raised by these petitioners against the selection of private respondents was gone into by the State Government and to a query raised by the Secretary of B.P.S.C., the Principal Secretary, Science and Technology wrote a letter to the Secretary, B.P.S.C., dated 22.05.2015, which is Annexure-H series, wherein each and every query and objections, which was urged at the bar, whether it related to the pay-scale, lack of teaching experience for 10 years, or one of the selected candidate, having a Mining Degree, had been considered in detail, and the query and the doubts so raised has

been answered specifically with regard to each and every candidate. A reading of Annexure-H series satisfies the Court that none of the recommended and selected candidates and now appointed, suffer from any kind of ineligibility or suffer disqualification, which warrants interference with the recommendation of the B.P.S.C. or the appointment made by the State of Bihar.

In fact, since the statement made in paragraph no. 14 to 20 of the counter affidavit of B.P.S.C. crystallizes, not only the stand of the B.P.S.C., but also the guidelines and clarifications issued by the State on such selection and are very pertinent for the present disputes raised by the petitioners, the same are reproduced hereinbelow:-

“14. That it is humbly stated that the Expert Committee scrutinized all the 86 applications and submitted its report to Commission in which it had recommended 34 candidates provisionally admitted subject to verification of their documents at the time of interview and 52 applications were rejected on various grounds. The Commission in its meeting held on 09.05.2013 accepted the reports of the Committee. In the light of the report of the Committee, the Commission published the interview programme in the newspapers on 10.05.2015 and issued interview letters to 34 provisionally candidates and directed the candidates to bring certificate issued by the controlling authority of the institution and the notification of the Government that the candidates are working on the post of Lecturer (Selection Grade) or equivalent for three years in pay band PB-IV (Rs. 37,400-67,000) with Academic Grade Pay (AGP) of Rs. 9,000 as per the Department of Science and Technology, Government of Bihar Letter No. 1464, dated 30.05.2013 as contained in

Annexure-A Series to this Counter Affidavit. Therefore, the clause-3 of interview programme published by the Commission in the newspapers is rightly covered by the guidelines given by the Department. It is also submitted that on the basis of that letter the Commission had also allowed teachers working in Engineering Colleges (degree) level for attending the interview, if he or she is working in the pay band of Rs. 37,400-67,000 with AGP of Rs. 9,000/-.

The petitioners were called provisionally for appearing in the interview.

15. That after completing all the process, the merit list was prepared on the basis of academic marks and interview marks. The selection was made as per the merit list and result of 07 selected and successful candidates was published. The recommendation of the successful candidates was sent to the Department concerned vide letter no. 22, dated 04.06.2015. The appointment has been made by the department concerned vide notification memo no. 1431, dated 01.07.2015. Thus, the selection process under the Advertisement No. 02/2015 is over.

16. That it is relevant to state that the petitioners could not be declared successful because they have secured – 48.658, 49.775 and 51.840 marks respectively which are lesser than the cut-off marks – 57.714 of General category (01). The selection has been made up to merit position – 6 where the vacancies of General category exhausted and the petitioners have been placed at merit position-13, 9 & 7 respectively. Thus they do not come in the zone of selection and so they were not selected and recommended.

17. That it is humbly submitted that after the conclusion of the interview, the commission had enquired through letter no. 573, dated 22.05.2015 from the Department of Science & Technology about the candidates who were working under the Department of Science & Technology on different posts on the points of 10 years experience and Rs. 9,000/- AGP. The Department of Science &

Technology had replied to the Commission through letter no. 1204, dated 28.05.2015 regarding 11 candidates and had reported that 10 candidates were fulfilling the required 10 years' experience and having the required AGP of Rs. 9,000/-. On the basis of the above-mentioned letter of the Department, the Commission had published the result in which private respondents had succeeded as per merit list prepared on the basis of academic and interview marks.

18. That with regard to the statements made in context of the recommended candidates (respondents) Para-15 to 25 of the writ petition, it is humbly submitted that on the basis of the above-mentioned letter of the Department, the Commission has found them eligible on the grounds of experience and required AGP and included them in the merit list. In such condition, the charges leveled by the Petitioners are baseless.

19. That it humbly submitted that the rules and regulations for the appointment for the post of Principal, Government Polytechnic / Women Government Polytechnic are based on AICTE guidelines, norms and conditions regarding Pay Band and Grade Pay. All these norms have been adopted by the Government of Bihar and are defined in Department of Finance, Government of Bihar Notification No. 7027, dated 29.07.2011.

20. That it is relevant to state here that the Commission is bound to act on the instructions and guidelines given by the concerned Department, i.e., Science & Technology Department, Government of Bihar. In the present matter, on the basis of aforesaid instructions, guidelines and requisition of the said Department, the Commission has published the Advertisement as mentioned above for the appointment of Principal in Government Polytechnic / Government Women Polytechnics of the State of Bihar."

A reading of the above paragraphs is a complete answer to the objections urged at the bar against the selection and

appointment of the private respondents on the post of Principal.

At the cost of repetition, it is also noticed that the objection against selection of one Ganesh Prasad, private respondent no. 11 on the ground that he had a Mining Engineering Degree and since such course is not taught in the Polytechnic in the State of Bihar, his selection was wrong is also misplaced. In this regard the Science and Technology Department did go into this objection prior to recommendation and selection and an Expert Committee, set up to look into the matter, opined that such a degree was not a disqualification for the candidate to hold the post of a Principal. In fact, the employer knows best with regard to the utility and eligibility. A reading of the advertisement in no manner supports the contention of the counsel for the petitioners about the ineligibility of Respondent No. 11.

A detailed counter affidavit even on behalf of the Department of Science and Technology has been filed. They have specifically dealt with the eligibility of each and every recommended candidate and they have also brought on record the guidelines, governing such appointment, including the rules, which have been notified by the State of Bihar with regard to such selection / appointment. The relevant rule in this regard is known as Bihar Polytechnic Education Service Rules, 2014 and the said rule is part of record.

The Court deliberately entertained the submissions of the

counsel representing the petitioners only to test and satisfy the judicial conscious whether the selection and the recommendation suffers from any legal vice or not. The Court comes to a considered opinion that it is a case of failed candidates, who have not made to the merit position. It is a desperate effort on their part to somehow find a berth on the post of Principal in the Government Polytechnic in the State of Bihar.

The writ has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

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