

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14179 of 2015

1. Rajesh Kumar, S/o Sri Ram Lakhan Mahto, Mohalla- Mahadeo Math, Ward No-1, P.O.- Rosera, District Samastipur, at present posted as Lecturer, Govt. Polytechnic College, Darbhanga.
2. Sanjiv Kumar, S/o Sri Ram Anup Roy, R/V- Gangapur, P.S.- Musarigharari, District- Samastipur, at present posted as Lecturer, Govt. Polytechnic College, Darbhanga.
3. Shiv Prakash Kumar, S/o Sri Jai Prakash Singh, R/V- Chandauli, P.O.- Chandauli, District- Sitamarhi, at present posted as Lecturer, New Polytechnic College, Patna 13.
4. Shiv Ranjan Kumar, S/o Sri Surendra Prasad Singh, At + P.O.- Rashatpur, District- Darbhanga, at present posted as Lecturer, Govt. Polytechnic College, Muzaffarpur.
5. Md. Noman Arshad, S/o Abdul Matten, R/V Beni Bari, P.S.- Balia Baloon, District- Katihar, At present posted as Lecturer, Govt. Polytechnic College, Katihar.
6. Dr. Nitya Nand Sah, S/o Late Deo Dutta Sah, R/V- Parmanandpur, P.S.- Shreenagar, District- Madhepura, At present posted as Lecturer, Govt. Polytechnic College, Katihar.
7. Lakshman Kumar, S/o Late Bhola Prasad Yadav, R/V- Garhia, P.O.- Kumar Khand, District- Madhepra, At present posted as Lecturer, Govt. Polytechnic College, Purnia.
8. Brjesh Kumar, S/o Pramod Kumar, R/V Moni, P.S.- Tekari, District- Gaya, At present posted as Lecturer, Govt. Polytechnic College, Gaya.
9. Afshana Zarrin, D/o Ahanul Hoda, At- Baitul Hada Khan Chauk, Mohalla- Faizullah Khan, District- Darbhanga, at present posted as Lecturer, Govt. Polytechnic College, Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Home Secretary, Government of Bihar, Bihar.
3. The Principal Secretary, Department of Science and Technology, Government of Bihar, Patna.
4. The Additional Secretary, Department of Science and Technology, Government of Bihar, Patna.
5. The Bihar Public Service Commission through its Secretary B.P.S.C Bailey Road, Patna.
6. The All India Council of Technical Education through its Secretary, A.I.C.T.E., New Delhi.

.... Respondent/s

Appearance :

For the Petitioner	:	Mr. Ajay Kumar, Advocate Mr. Suraj Narain Yadav, Advocate Mr. Sunil Kumar Karn, Advocate
For the Respondent-State:		Mr. Ranjeet Kumar, A.C. to PAAG
For the Respondent- BPSC:		Mr. Sanjay Pandey, Advocate
For the Respondent-AICTE:		Mr. M.M.P. Singh, Advocate

Mr. Nagendra Upadhyay, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
CAV JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)
Date: 11-05-2016

In the present writ application, the petitioners seek issuance of (i) a writ, in the nature of *certiorari*, quashing the Bihar Polytechnic Education Service Rules, 2011 (hereinafter referred to as “2011 Rules”) so far as it relates to Table No.-2 of Schedule-1 to the extent it provides only 5% weightage for the experience gained by the candidate for the post of Lecturer of Engineering Technology. (ii) The petitioners further seek issuance of appropriate writ quashing the Resolution, as contained in Memo No.166, dated 20.1.2015, published under the signature of respondent No.4, namely, Additional Secretary, Department of Science and Technology, Government of Bihar, whereby amendment, in Table No.-2 Schedule-1 of the Bihar Polytechnic Education Service Rules, 2014 (hereinafter referred to as “2014 Rules”) has been made. The said amendment has been made for the requisition sent in the year 2014 alone and is, according to the petitioners, *ultra vires* and opposed to the guidelines of the University Grants Commission (UGC) as well as those of All India Council for Technical Education (A.I.C.T.E.). (iii) The petitioners have further sought for a writ, in

the nature of *mandamus*, commanding the respondents to grant 30% weightage to the candidates for the experience on the basis of their work on contractual basis in the Department for the purpose of appointment, as has been provided by the Rules of other services.

2. The factual matrix of the present writ application is that the petitioners before this Court are Assistant Professors, working in different Polytechnic Colleges, on contractual basis, since the year 2008, under the Department of Science and Technology, Bihar, after having been selected by the Bihar Public Service Commission ((hereinafter referred to as 'the BPSC')).

3. The petitioners, being eligible for being selected for the posts of Assistant Professor in the Polytechnic Colleges in the State of Bihar, considered themselves as potential candidates for appointment as Assistant Professors/Lecturers in the Engineering and Polytechnic Colleges of the State of Bihar established and run under the control of Department of Science and Technology.

4. The contention of the writ petitioners is that in the year 2007, 20% weightage was accorded for the work experience, while considering the candidature for the post of Lecturer/Assistant Professor/Senior Professor in Engineering and Polytechnic Colleges.

5. Thereafter, on 30.6.2010, the UGC, vide its notification, framed the UGC Regulations, fixing the minimum qualifications for

appointment of Teachers and other academic staff, which was published in the Gazette of India, on 18.9.2010. By the said notification, 30% weightage was given for work knowledge and teaching skill.

6. On 17.1.2011, this Court, vide order passed in CWJC No.12071 of 2010, directed the respondents to give 20% weightage to the candidates, who were working on contract basis as Lecturers in Engineering Colleges, for their appointment as regular Lecturers. Thereafter, the A.I.C.T.E. framed Regulations for Teachers and other academic staff in Technical Institutions/Diploma. Table-II(B) of the Regulations was communicated, vide notification, dated 8.11.2012, published in the Gazette of India. The said Regulations, framed for direct recruitment to the post of Lecturer/Assistant Professor, provide weightage of (i) 50% for academic performance, (ii) 30% for work experience and Teaching Skill and (iii) 20% for Interview.

7. The grievance of the petitioners arose, when the State of Bihar, in the Department of General Administration, took a decision, vide Resolution, contained in Memo No.8025, dated 21.5.2013, to appoint Teachers on regular basis through the BPSC.

8. Thereafter, the State Government, in the Department of Science and Technology, took a decision, vide Resolution



contained in Memo No.1412, dated 27.5.2013, to grant maximum 5% weightage (1% for each year of work experience) to the Lecturer for regular appointment in the Government Engineering Colleges and the Polytechnic Colleges. It is relevant to mention that prior to the aforementioned resolutions, an advertisement was made on 26.5.2012, by the BPSC for appointment on contract basis to teaching cadre posts in Engineering and Polytechnic Colleges. The BPSC, having held selection process published a merit list, which was challenged in CWJC No.19919 of 2012. The said merit list was quashed, vide order, dated 14.5.2013.

9. An appeal was preferred against the order of the Writ Court and during the pendency of L.P.A. No.811 of 2013, the Rules for Recruitment of Teachers in Engineering and Polytechnic Colleges were framed, which was named as Bihar Engineering Education Rules, 2014, and the Bihar Polytechnic Service Rules, 2014 (hereinafter referred to as 'the new Rules'). The Rules came into effect, vide notification contained in Memo No.897, dated 28.3.2014 (Annexure 5).

10. As the new Rule was framed, the cause of action of the writ petitioners did not survive and the LPA filed by the State against the order, dated 14.5.2013, was allowed, vide order, dated 1.8.2014. In effect, the order, dated 14.5.2013, passed, in CWJC

No.19919 of 2012, was set aside. Thus, no appointment was made on contract basis pursuant to the advertisement, dated 26.5.2012.

11. It is submitted by the petitioners that an amendment was made in the 2014 Rules, vide Notification No.1730, dated 17.7.2014, issued by the Science and Technology Department, Government of Bihar in Schedule-1 Table No.-2 of 2014 Rules and, in terms of the said amendment, for the requisitions sent for the calendar year 2014, the following arrangement was made:

- (a) 15% marks obtained in B. Tech. in relevant branch
- (b) 5% of percentage marks obtained in M. Tech. in relevant branch.
- (c) Ph.D.-5%
- (d) Weightage-5% (Maximum)

12. Thus, according to the petitioners, such a classification for only those requisitions of the year 2014 was discriminatory and violative of the Constitutional mandate.

13. The amendment, so made by the Government of Bihar, vide Notification No.1730, dated 17.7.2014, was put to test in CWJC No.14480 of 2014 and by order, dated 10.9.2014, a Division Bench of this Court quashed the amendment made to the Rules by the said notification.

14. However, soon thereafter, the State Government came



out with a Resolution, vide Memo No.166 dated 20.1.2015, under the signature of respondent No.4, purported to have been issued in exercise of the powers conferred under Article 309 of the Constitution of India, whereby the State Government made an amendment in Table No.-2 Schedule-1 of the Rules by giving 10% maximum weightage adjusting 5% towards the qualification of M. Tech. and Ph. D., for which 15% was fixed for M. Tech. and 5% for Ph.D. However, it was made clear in the said notification that weightage would be applicable only to the extent of requisition sent for the year 2014. In the present writ petition, the petitioners have, thus, sought to assail the said Memo No.166, dated 20.1.2015, on, amongst others, the grounds detailed hereunder.

GROUND:

(a) The primary ground urged before this Court is that the respondents, in issuing the impugned Memo No.166, dated 20.1.2015, have acted in contravention to the notification, dated 8.11.2012, of the AICTE Regulations, 2012, and the same is also *ultra vires* the aforementioned notification, dated 8.11.2012, of the AICTE Rules, 2012, published in the Gazette of India. Further, it also runs contrary to the UGC Regulations, published, in this regard, on 30.6.2010 and 18.9.2010 respectively. It is urged by the petitioners that the grant of 10% weightage for the work experience

adjusting 5% of the same towards qualification and 10% weightage for marks awarded in M. Tech. and Ph. D was far from being justified.

(b) The other contention urged is that by not providing any weightage for work experience, in the Bihar Polytechnic Technical Service Rules, 2014, the State has acted in a partisan and discriminatory manner as in other services, like Bihar Health Service, such a provision has been given in the said Rules.

(c) It is further urged that the amendment tried to satisfy and mollify the candidates of the year 2014 as the amendment has been made in the Rules only for the year 2014, which was, admittedly, arbitrary. It was under such circumstances that the petitioners have been constrained to move this Court for a declaration that the petitioners, having been selected on the posts of Assistant Professor on contract basis after following the due appointment procedures as conducted by the BPSC and after undergoing the due process of selection, are entitled to have the weightage for the work experience added to their credit. It is contended that denial of such weightage will result in deprivation of their rights and will also be violative of Article 21 of the Constitution of India.

15. The respondent-State of Bihar has countered the



arguments advanced by the petitioners by referring to the amendment and resolution as contained in Memo No.166, dated 20.1.2015 (Annexure 8). It is stated that the lacuna, if any, which had crept in the earlier notification, has been corrected, vide Memo No.166, dated 20.1.2015. The said Annexure 8 was, again, challenged before this Court in CWJC No.18398 of 2014, which has been dismissed by the learned single Judge on 28.1.2016.

16. In the present case also, the impugned notification has been assailed and the petitioners have sought for a declaration that the impugned notification is perverse inasmuch as it is in contravention of the UGC guidelines and also the Bihar Polytechnic Education Service Rules, 2014. Such a contention is wholly misconceived.

17. It is pointed out by the learned counsel for the State that though an effort has been made by the petitioners to draw the benefit of UGC guidelines, but by referring to Schedule-1 Table No.-2 of the Bihar Polytechnic Education Service Rules, 2014, the UGC guidelines could not be taken advantage of by the present petitioners, as they were contractual teachers working in Polytechnic Colleges in the State of Bihar. The UGC guidelines, which have been sought to be relied upon by the petitioners, as contained in Annexure 1, are meant for career progression of the Colleges and



University Teachers and Appendix-3 Table 2(c) cannot be said to be discriminatory as in the said Regulation, 30% weightage has been given for work knowledge and teaching skill to the University Teachers alone. It is urged that the notification, dated 30th June, 2010, relied upon by the petitioners, does not hold good for the Teachers employed, on contract basis, in the Technical Training Institutions run by AICTE.

18. Learned Counsel for the State further drew the attention of this Court to the fact that the rules, referred to in Annexure 2 and relied upon by the petitioners, are also those rules issued by the AICTE, which run diploma courses and are meant for teaching and non-teaching staff employed therein. They have been issued for the purpose of Career Advancement Scheme. The grant of 30% weightage as per the said Appendix-2 is for Career Advancement only. Appendix-2 of the said Rules, as referred to in Annexure 2, is for the purpose of determining Academic Performance Index and not for fresh appointments to be made by the Department of Science and Technology.

19. The stand taken by the petitioners that 30% weightage was to be given to work experience and teaching skills, thus, it is clear, does not hold good in the case of the petitioners as they had been appointed on contract basis and could not have availed the said

benefit.



20. Having heard learned counsel for the petitioners and the learned counsel appearing on behalf of the State and after having perused the materials, which have been placed on record before us, it appears that the petitioners have sought to assail the action of the respondents on the basis of two sets of rules; one published by the U.G.C., which is a notification issued by the University Grants Commission fixing the (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) Regulations, 2010. The said Regulations have nothing to do with the institutions, which have been set up by the AICTE and are governed by the AICTE. The present petitioners are seeking employment having worked as contractual employees in the Bihar Polytechnic Institutions and are governed by the Bihar Polytechnic Service Rules, 2014, framed by Notification No.897, dated 28.3.2014 (Annexure 5).

21. The amendment to the aforementioned Rules made in pursuance of Memo No.1412, dated 27.5.2013, was sought to be corrected, vide notification contained in Memo No.1730, dated 17.7.2014 (Annexure 6). Under the said notification, the anomaly, which arose under Notification No.897, dated 28.3.2014, was sought



to be rectified. The said order was issued by the Science and Technology Department, Government of Bihar, and an amendment in Schedule-1 of Table-2 of the 2014 Rules, was made, whereunder 5% of work experience (1% per year) was given adjusting it in 30% of weightage given for academic record and research only for the requisitions sent for the calendar year 2014. A Division Bench of this Court has held that the aforementioned Rules were bad for not having been made under Article 309 of the Constitution of India and, therefore, the same was quashed and set aside without examining the merits of the challenge to the said amendment.

22. It is, thus, evident that this Court in CWJC No.14480 of 2014 has not gone into the merits of the issues, but merely allowed the same for having not been issued in accordance with law. This lacuna has been subsequently made good by the present impugned rules, which have been issued in exercise of the powers conferred on the State by Article 309 of the Constitution of India. It appears from the counter affidavit filed in the subsequent writ petition, bearing CWJC No.18398 of 2014, that the order impugned in the present case, was also brought on record in the said case and a Single Bench of this Court has already dismissed the writ application.

23. In view of the above discussions and after perusing



in depth Annexures 1 and 2, the first being the UGC guidelines, which are not applicable to the case of the petitioners, who are Assistant Professors working, on contractual basis, in the Polytechnic Colleges, having been set up under the Bihar Polytechnic Education Service Rules, and the other relating to the Assured Career Progression Scheme for the appointees of the Institutions set up by the AICTE, we find and hold that both have no relevance and are of no help to the present petitioners as they are, on contract, in the Institutions, set up by the Polytechnic Education Service Rules, 2014. The advantage of weightage, contained in the aforesaid two Rules, can accrue to the petitioners only after they are directly recruited to the said service. However, in the case of the petitioners, the State Government is fully empowered to frame policies for regulating appointments made by the Department of Science and Technology.

24. In the result, we, thus, find and hold that the 2014 Regulations, which do not provide for weightage for work experience and teaching skills, are neither arbitrary nor discriminatory and the Regulations, in no way violate the constitutional rights of the petitioners.

25. The writ application, therefore, fails and is, accordingly, dismissed. However, in the facts and circumstances of

the case, there shall be no order as to costs.

(Anjana Mishra, J)

I.A. Ansari, ACJ.:

I agree.

N.A.F.R.
PNM

(I. A. Ansari, ACJ)

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