

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2021 of 2016

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1. Niraj Kumar Son of Tripurari Prasad Sinha, resident of village - Goh, P.S. Goh, District - Aurangabad at Present C/o Tripurari Prasad Sinha, District Statistical office Bokaro Camp - 2, Near DC Office Bokaro/Jharkhand Pin 82700

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Science & Technology Department, Bihar, Patna
2. The Additional Secretary, Science & Technology Department, Bihar, Patna
3. The Principal Secretary, Personal and Administrative Reforms Department, Bihar, Patna
4. The Bihar Public Service Commission, through the Secretary, 15 Jawaharlal Nehru Marg, Patna
5. Joint Secretary cum Examination Controller Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Patna
6. The Examination Controller, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anand Kishore Prasad Sinha
For the State	:	Mrs. Nivedita Nirvikar, GA 10 Mr Manish Dhari Singh, AC to GA 10
For BPSC	:	Mr Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

CAV JUDGMENT

Date: 13 - 07-2016

The notification contained in Annexure- 7, dated 8.9.2015 has been challenged by the petitioner and he seeks its quashing. By virtue of this notification, the Department of Science and Technology, Government of Bihar has doubled the weightage point from 5% to 10% for persons working on contract in matter of direct recruitment on the post of Assistant Professors, for Bihar Polytechnic Engineering Colleges and Bihar Engineering Education Service.

2. The main reason for filing the present writ application by the petitioner, who is also an aspirant, is that people, who are working on contract, will get undue advantage by virtue of the decision contained in Annexure- 7, which will tilt the balance in their favour and will work against the interest of the petitioner.

3. By virtue of Annexure- 5, an advertisement was issued by Bihar Public Service Commission, which was advertisement no.16 to 28 of 2014. In the advertisement, besides other parameters, only 5 marks was awarded for working experience. However, just before the written examination was held, the impugned notification came to be issued, which also has the effect of changing the rule of the game as is the stand of the counsel representing the petitioner.

4. The examination was held on 28.11.2015. Annexure- 7, the impugned order, is dated 8.9.2015 and the writ application has been filed challenging the said notification of 29.1.2016. The above facts have significance keeping in mind the stand of the BPSC and the State.

5. At the very outset, GA 10 representing the State submits that the writ application of the petitioner is not maintainable since petitioner has participated in the examination and after having done so he cannot be permitted to turn around and challenge the terms and conditions under which the examination was held. Obviously, the writ



application filed is an afterthought because the change with regard to grant of weightage from 5 to 10 for people with working experience was notified well before the examination, therefore, every candidate knew very well as to the changes brought about before the candidates participated in the examination and not after.

6. After the advertisement was issued by BPSC, a large number of representations were received by the State Government on the ground that the weightage, which has been given for work experience, is on lower side. Since similar kind of weightage to the extent of even 25% has been given in the case of other Departments, there should be some parity in matters of such policy decision, of the State. The matter was examined by the State and the Department of Science and Technology as a onetime measure limited to the 2014 recruitment decided to give weightage of 10% instead of 5%. The resolution of the Science and Technology Department dated 20.1.2015 has been brought on record. Soon thereafter the notification was issued and based on the said corrigendum or amendment, all the candidates have now participated. It is too late in the day to challenge the said amendment on the ground that the rules cannot be changed midway.

7. Attention of the Court has also been drawn to Annexure- E to the counter affidavit filed on behalf of the State. This was challenged earlier in a writ application, vide CWJC No.18398 of

2014. A Bench of this Court vide order dated 28.1.2016 dismissed the writ application and refused to quash the advertisement or the notification granting weightage in terms of Annexure-E. Annexure-E is the resolution of Science and Technology Department, which formed the basis for Annexure-7.

8. The Court has examined some of the provisions of similar nature where weightage has been given of a higher order than what has been extended to aspirants, who have been working on contract in such institutions for long. Since Annexure- E is a onetime measure and grant of such weightage as such has not been held by any Court to be irrational or arbitrary, the Court would not like to exercise its discretion with regard to such change keeping in mind that the petitioner is trying to assail the said provision as an afterthought after having participated in the examination for such recruitment.

Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

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AFR/NAFR	AFR
CAV DATE	29.6.2016
Uploading Date	13.7.2016
Transmission Date	