

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4728 of 2017

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Rupak Kumar Sinha, Son of Srikant Prasad Sinha, Resident of Mohalla - Indrapuri
Road No. 2, P.O. Keshrinagar, P.S. Patliputra, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Personnel and Administration Reforms (Now General Administration Department) Department, Government of Bihar, Patna
2. The Principal Secretary, Department of Personnel and Administration Reforms (Now General Administration Department) Department, Government of Bihar, Patna
3. The Secretary, Bihar Karmachari Chayan Aayog (Staff Selection Commission), Bihar, Patna
4. The Principal Secretary, Bihar Karmachari Chayan Aayog (Staff Selection Commission), Bihar, Patna
5. The Chairman, Bihar Staff Selection Commission, Post - Veterinary College, Patna - 800014
6. The Principal Secretary, Nagar Vikas and Aawash Bibhag, Bihar
7. The Joint Secretary Cum Examination Controller, Bihar Lok Seva Aayog, 15, Jawaharlal Nehru Marg, (Bailey Road), Patna 800001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shekhar Kumar Singh, Advocate
For the State : Mr. Saroj Kumar Sharma, A.C. to AAG-3
For the SSC : Mr. Kamalakant Upadhyay, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 17-05-2017

Challenging a rule formulated by the State Government
under Article 309 of the Constitution vide notification dated
05.01.2015 (Annexure-4), namely, Rules for Appointment of Bihar
Nagar Prabandhak, 2014, this petition has been filed under Article
226 of the Constitution to challenge Clause 5 of the aforesaid rule



which prescribes award of 10 marks for experience subject to the maximum of 30.

2. It is the case of the petitioner that in the selection process total 100 marks have been prescribed, out of which 70 marks has been prescribed for written examination. However, in the rule it is indicated that such employees who have worked as Nagar Prabandhak on contract basis shall be entitled to 10 marks for each year's experience subject to maximum of 30, *inter alia* contending this provision providing for bonus mark for experience is arbitrary and illegal, the writ petition has been filed.

3. Making of a rule for appointment is the prerogative of the competent authority entitled to legislate into the matter and a rule can be termed as *ultra vires* or illegal only if it is found to be made beyond the legislative competence of the authority and the provision of the rule is found to be arbitrary, irrational, unreasonable and not in accordance to the requirement of law. In this petition, except for contending that the rule granting bonus mark to a candidate who has worked on contract basis in the department is prejudicial to the interest of the petitioner, no provision of law, rule or regulation is pointed out based on which the decision to formulate such a provision in the rule can be termed as irrational, arbitrary or unconstitutional. Employees already working in the department on contract basis have



a right to compete with other candidates and seek their regular appointment in the department and if for the experience gained by them in the department having worked on contract basis certain bonus marks was granted, the same cannot be termed as arbitrary or unreasonable. Merely because the petitioner feels so, the justification for the same as pointed out by learned counsel for the State is to give some benefit to already working contract employees to seek regular appointment in the department, accordingly, considering the fact that they are already working on the post on contract basis if some marks for experience is granted to them, we see no illegality in the same to term it arbitrary or unreasonable. The rule has a reasonable nexus for the purpose it is framed and merely because it is not to the liking of the petitioner, we see no reason to hold the rule as *ultra vires*. On this count, indulgence into the matter is not called for.

4. The second ground canvassed was that right from the year 2009 advertisements were issued but the process of recruitment could not be done as a result petitioner who had appeared in the year 2009 has become overage and as there is no provision for age relaxation to persons like the petitioner, it is said that the advertisement and the action for recruitment be declared as illegal. In support of the aforesaid contention, learned counsel tried to bring to our notice certain judgments of the Division Bench of the Rajasthan



High Court which prescribes that in such cases age relaxation may be granted.

5. Merely because age relaxation is not granted, which is a legislative function, we cannot make any indulgence into the matter. The question of granting age relaxation on account of the fact that recruitment could not be held right from 2009 is a policy decision, administrative in nature, to be taken by the departmental authorities and it is for the petitioner to represent to the authorities and seek age relaxation. On such count, no mandamus can be issued to the respondents.

6. Accordingly, granting liberty to the petitioner to represent and take up the issue of age relaxation with the department, finding no indulgence to be made into the matter, we dismiss the writ petition.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	23.05.2017
Transmission Date	

