

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6657 of 2017

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1. Sandeep Kumar, Son of Nand Kishore Pandey, resident of Village & Post-Bithuna, P.S.- Basantpur, District- Siwan.
 2. Priti Bala, Daughter of Braj Nandan Yadav, resident of West of Girls High School, Lohiya Nagar, Ward No. 19, P.S.- Madhepura, District- Madhepura.
 3. Jitendra Kumar, Son of Sri Sidheshwar Prasad, resident of Flat No. 504, Block-D, Newton Garden, Murlichak, Jagdeo Path, P.S. Airport, District- Patna.
 4. Ranjeet Kumar, Son of Chandra Bhushan Rai, resident of At & P.O.- Malikour Via Digra, P.S.- Pusa, District- Samastipur.
 5. Md. Sayeed Alam, Son of Fakir Mohammad, resident of At & P.O.- Bishunpur Kesho Via Kanti, P.S. Minapur, District- Muzaffarpur.
 6. Seema Kumari @ Sima Kumari, Daughter of Ram Keshwar, resident of Narain City Apartment, Block- D, Flat No. 301, Pillar No. 68, Brahmasthani Road, Raja Bazar, P.S. Shashtri Nagar, District- Patna.
 7. Amit Kumar Choudhary, Son of Sri Shambhu Prasad Choudhary, resident of E-4, Grand Pollar Apartment, J.C. Road, Anta Ghat, P.S.- Pirbahore, District- Patna.
 8. Ashutosh Kumar, Son of Shashi Bhushan Sinha, resident of Sheopuri, Sanchi Patti, P.S.- Hazipur, District- Vaishali.
 9. Talhat Jahan, D/o Md. Asmat Berar, resident of Sakarpura, P.S.- Bakhri, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Police) Department, Govt. of Bihar, Patna.
2. The Director, Forensic Science Laboratory, Govt. of Bihar, Patna.
3. The Bihar Public Service Commission through its Chairman.
4. The Secretary, Bihar Public Service Commission, Patna.
5. The Examination Controller, Bihar Public Service Commission, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv.
For the Respondent/s : Mr. Ujjawal Kumar Sinha, A.C. to AAG-3
For the BPSC : Mr. Lalit Kishore, Sr. Adv.
Mr. Sanjay Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-05-2017

Heard learned counsel for the parties.



The nine petitioners herein holding the post of Senior Scientific Assistant pray for issuance of a writ in the nature of certiorari for quashing the notice dated 19.4.2017 impugned at Annexure-9 whereby the objections filed by the petitioners and some others has been rejected by the Bihar Public Service Commission (hereinafter referred to as 'the Commission') as communicated by the Special Secretary-cum-Examination Controller thus upholding the disqualification of the petitioners for not possessing the required experience of 3 years on the post of Senior Scientific Assistant. While the list of ineligible candidates so published by 'the Commission' has been impugned by the petitioners vide Annexure-5 series to the writ petition and Annexures-11, 12, 13, 14, 15 and 16 series to the supplementary affidavit filed on 18.5.2017, the notice dated 19.4.2017 is impugned at Annexure-9 to the writ petition.

Facts of the case briefly stated is that these petitioners, a Post Graduate in Science, were initially appointed as Scientific Assistant on contract basis with the Forensic Science Laboratory at Patna. The contract of the petitioners has been renewed from time to time. It is the case of the petitioners that vide notification bearing Memo No.1661 dated 28.2.2014, the Bihar Police Manual was amended and vide paragraph 2(1) of the amended notification the post of



Technical Officer/Senior Scientific Assistant/Technician/ Scientific Assistants/ Laboratory Assistants were redesignated as Senior Scientific Assistant. The amendments were brought in force with immediate effect as manifest from Annexure-1 to the writ petition.

It is following the amendment at Annexure-1 that the State Government came out with another amendment in the Bihar Police Manual vide Notification bearing No.3373 dated 18.5.2015 whereby the recruitment Rules for the post of Senior Scientific Officer and Senior Scientific Assistant was framed and paragraph 6 of the amendment notification prescribes a three years experience on the post of Senior Scientific Assistant or on an equivalent post for appointment against the post of Senior Scientific Officers. The stipulation further provides that those having a post graduate degree in Forensic Science were exempted from any work experience.

An advertisement was issued by the Bihar Public Service Commission for appointment on the post of Senior Scientific Officers, a copy of which is placed on record at Annexure-3 and while prescribing the educational qualifications for appointment as a Senior Scientific Officer in different disciplines, in so far as the work experience is concerned, the applicants were required to have a three



years work experience on the post of Senior Scientific Assistant or on an equivalent post in any recognized Forensic Science Laboratory which is in tune with the statutory rules as it stood amended vide Annexure-2. The petitioners responded to the advertisement at Annexure-3 for appointment on the post of Senior Scientific Officer in different disciplines. Since there were no restrictions on filing applications against the different disciplines the petitioners herein filed their applications for more than one disciplines and the details of which has been placed at paragraph 11 of the supplementary affidavit filed on 18.5.2017. The petitioners have enclosed the certificate issued in favour of the petitioner No.1 at Annexure-4 series to demonstrate that he possessed the required 3 years work experience and it is stated that similar certificates were also issued to the other petitioners.

A list of ineligible candidates was issued by the Bihar Public Service Commission in reference to the applicants against each of the advertisements and which contains the name of these petitioners who were held ineligible on grounds that they did not possess the required experience.

The list of ineligible candidates against advertisement No. 15 of 2015 is impugned at Annexure-5 which was for appointment of a Senior Scientific officer in the Biology branch and the list consists the



name of petitioner No.1 at Serial No.110, the petitioner No.2 at Serial No.122, the petitioner No.3 at Serial No.18, the petitioner No.6 at Serial No.120 and the petitioner No.6 at Serial No.121.

Similarly, Annexure-11 to the supplementary affidavit is the list of ineligible candidates in the Chemistry Branch bearing advertisement No.9 of 2015 and the name of the petitioner No.1 appears at Serial No.32, the petitioner No.4 is at serial No.39, the petitioner No.5 is at Serial No.16, the petitioner No.8 is at Serial No.34 and the petitioner No.9 is at Serial No.28.

Annexure-12 series is the list of ineligible candidates in Advertisement No.10 of 2015 which relates to the Explosive branch and the name of the petitioner No.4 appears at Serial No.28, petitioner No.5 is at Serial No.12, the petitioner No.7 is at serial No.7, the petitioner No.8 is at Serial No.24 and the petitioner No.9 is at Serial No.21.

Annexure-13 is the list of ineligible candidates who applied against advertisement No.12 of 2015 which is for the Toxicology branch and the name of the petitioner No.4 appears at Serial No.25, the name of petitioner No.5 appears at Serial No.9, the petitioner No.8 at Serial No.22 and the petitioner No.9 at Serial No.18.

Annexure-14 is the list of ineligible candidate in Advertisement



Nos.14 which is the Serum Branch and the name of the petitioner No.1 appears at Serial No.72, the name of the petitioner No.2 appears at Serial No.82, the name of petitioner No.3 appears at Serial No.56 and the name of petitioner No.6 appears at Serial No.80.

Annexure-15 is the list of ineligible candidates in Advertisement Nos. 16 of 2015 which for the Narcotic Branch and the name of petitioner No.5 appears at Serial No.7, the petitioner No.8 appears at Serial No.21 and the petitioner No.9 appears at Serial No.18.

Annexure-16 is the list of ineligible candidates for Advertisement No. 17 of 2015 i.e the D.N.A. Branch and the name of the petitioner No.1 appears at Serial No.60, the name of the petitioner No.2 appears at Serial No.67, the name of petitioner No.4 appears at Serial No.47 and the name of petitioner No.6 appears at Serial No.66.

A plain reading of the remarks column of the list of ineligible candidates would show that all of them have been held ineligible on grounds that they did not possess the required work experience on the post of Senior Scientific Assistant. The petitioners filed their representation before the Special Secretary-cum-Examination Controller, a copy of which is present at Annexure-6A of the writ petition with similar representations being filed before the petitioners



and while the matter was pending consideration before the respondent-Commission that a clarification was issued by the Home (Police) Department through their letter dated 27.10.2016 addressed to the Secretary, Bihar Public Service Commission whereby the Home (Police) Department taking note of the dispute has clearly advised the Secretary, Bihar Public Service Commission to count the work experience gained by the Technical Officers, the Senior Scientific Assistant, the Technician, the Scientific Assistant and the Laboratory Assistant on their respective posts as a work experience against the post of Senior Scientific Assistant, in view of the Departmental Notification bearing No.1661 dated 28.2.2014, a copy of which is placed at Annexure-1 to the writ petition. Despite the advisory so issued by the Home (Police) Department to the respondent-Commission at Annexure-7 to the writ petition and despite the matter having been clarified yet the respondent-Commission vide notice impugned at Annexure-9 has been pleased to reject the objections so filed by the applicants including the petitioners as against their declaration of ineligibility. Feeling aggrieved they are before this Court.

Mr. Prashant Sinha has appeared on behalf of the petitioners while the State is represented by Mr. Ujjawal Kumar Sinha learned



A.C. to AAG 3 and the Bihar Public Service Commission is represented through Mr. Lalit Kishore, PAAG 1 who appears along with Mr. Sanjay Pandey learned counsel for the Commission.

It is the contention of Mr. Prashant Sinha learned counsel appearing for the petitioners that in view of the amendment in the Bihar Police Manual vide Notification bearing Memo No.1661 dated 28.2.2014 redesignating the post of Technical Officers, Senior Scientific Assistant, Technician, Scientific Assistant and Laboratory Assistant as Senior Scientific Assistant, there was no occasion for the respondent-Commission to have raised any objections on the experience gained by these petitioners and even if there existed any confusion in their mind, it should have been put to rest in view of the advice tendered by the Home (Police) Department vide letter dated 27.10.2016 present at Annexure-7. He further submits that the order of rejection of objection at Annexure-9, is a one line order which does not give reasons for rejection. Learned counsel has referred to a certificate subsequently issued in favour of the petitioner No.1, a copy of which is enclosed with the representations at Annexure-8 series to submit that the Forensic Science Laboratory, Bihar Patna has issued a certificate certifying the experience gained by the petitioners on the post of Senior Scientific Assistant but it has made no difference to the



Commission.

While Mr. Ujjawal Sinha, A.C. to AAG3 by filing a counter affidavit has practically accepted the situation as advanced by Mr. Prashant Sinha appearing for the petitioner, the main resistance has come from the Commission and Mr. Lalit Kishore learned Senior counsel appearing on their behalf has submitted that a mere redesignation of the post by the amendment notification dated 28.2.2014 ipso facto would not entitle the petitioners to count the experience gained by them on the post of Scientific Assistant as an experience against the post of Senior Scientific Assistant. Learned counsel has referred to the amending notification at Annexure-1 to submits that it was brought into force with immediate effect i.e.28.2.2014 and thus whatsoever experience that was gained by the petitioners prior to the said date would be an experience against the post of Scientific Assistant and not an experience against the post of Senior Scientific Assistant. He thus submits that the Commission is bound to follow the statutory rules and since according the Commission these petitioners did not possess the required experience as Senior Scientific Assistant hence they were declared ineligible

I have heard learned counsel for the parties and I have perused the records.



The facts are not in dispute rather the dispute is whether the experience gained by these petitioners as Scientific Assistant is to be counted as an experience on the post of Senior Scientific Assistant. The issue would stand concluded by a simple reference to the amending notification at Annexure-1, the stand of the Director, Forensic Science Laboratory in the counter affidavit and the advisory issued by the Home (Police) Department at Annexure-7.

Annexure-1 is the amending notification bearing memo No.1661 dated 28.2.2014 which was brought in force with immediate effect. By the said notification several posts including the post of Scientific Assistant and Senior Scientific Assistant were redesignated as Senior Scientific Assistant. The notification does not redesignate the posts by way of upgradation rather it simply proceeds to redesignate the posts of Technical Officer, the Senior Scientific Assistant, the Technician, the Scientific Assistant and the Laboratory Assistant as a Senior Scientific Assistant.

Although an argument was also advanced by Mr. Lalit Kishore learned Senior counsel for the Commission that the post of Senior Scientific Assistant is a promotional post of Scientific Assistant and that there was a distinction between the two posts of Scientific Assistant and the Senior Scientific Assistant but paragraph 9 of the



counter affidavit filed on behalf of the Director, Forensic Science Laboratory would negate such argument as it confirms that the pay scale and the work of Scientific Assistant and the Senior Scientific Assistant is the same and which in my opinion is the reason that the post of Scientific Assistant and Senior Scientific Assistant was re-designated as a Senior Scientific Assistant.

The other relevant document in the proceeding is Annexure-7 which is the advisory issued by the Home (Police) Department to the Secretary, Bihar Public Service Commission and which at paragraph 2 very clearly mentions that the experience gathered by an incumbent on the post of Technical Officer, Senior Scientific Assistant, Technician, Scientific Assistant and a Laboratory Assistant would be counted as an experience gained by the incumbent against the post of Senior Scientific Assistant in view of the stipulations present in the departmental Notification No.1661 dated 28.2.2014. In my opinion, the advisory issued by the Home (Police) Department to the Commission is conclusive on the issue that the experience gained by an incumbent holding the post of Technical Officer, Senior Scientific Assistant, Technician, Scientific Assistant and Laboratory Assistant would be counted as an experience gained on the post of Senior Scientific Assistant. In fact in view of the advisory so issued by the



Home(Police Department) on 27.10.2016 there was no room for any confusion and the notice issued by the respondent- Commission under the signature of the Special Secretary-cum-Examination Controller to reject the objection filed by the applicants including the petitioners against their disqualification/ineligibility on grounds of not satisfying the required work experience, is wholly incorrect and contrary to the advise so tendered by the Government.

For the reasons so discussed, the decision of the Commission to hold the petitioners ineligible for consideration for appointment against the post of Senior Scientific Officers on grounds of lack of work experience as impugned at Annexures-5 and 11 to 16 together with the notice dated 19.4.2017 of the Commission issued under the signature of the Special Secretary-cum-Examination Controller in so far as it proceeds to reject the objection of the petitioners impugned at Annexure-9, cannot be upheld and are accordingly quashed and set aside.

Since in view of the position so settled, the petitioners do qualify on the work experience, the respondent-Commission would be well advised to allow the petitioners to participate in the interview along with other eligible candidates unless they fail on work experience even after counting their service as Scientific Assistant or



equivalent post(s).

It goes without saying that since the issue raised, contested and settled under this judgment may be covering the cases of similarly placed other applicants as well, the Commission shall permit their participation as well in the interview without requiring them to undergo the formality of a judicial process.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J.)

Bibhash/-

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	29.05.2017
Transmission Date	NA

