

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.354 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 13891 of 2015

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1. Dr. Ram Pravesh Singh, son of Late Muni Lal Singh, resident of C/o Late Braj Ballabh Kumar, Nandgaon, P.S.- Shashtri Nagar, Town & District- Patna.
 2. Dr. Anil Kumar Sinha, Son of Sri Sheo Prasad Singh, Resident of Ramnagar, P.O & P.S.- Silao, District Nalanda.
 3. Dr. Sarangdhar Singh, son of Late Dip Narain Singh, resident of At & P.O. Kumarkhand, P.S.- Kumarkhand, District- Madhepura.
 4. Dr. Pramod Kumar, son of Sri Paramhans Roy, Resident of Village- Bajidpur, P.O.- Bajidpur Saidat, P.S.- Bidupur, District- Vaishali.
 5. Dr. Kumar Amitabh, son of Sri Arvind Kumar Singh, Resident of Mohalla- Bharat Raut, Katra, Hajipur, District Vaishali.
 6. Dr. Anupama, Daughter of Sri Nawal Kishore Prasad Singh, Resident of Anand Suman Niwas, Bhaisasur, Kumhar Toli, Ranchi Road, Biharsharif, District Nalanda.
 7. Dr. Ashok Kumar, son of Dudheshwar Singh, Village- Tarari, P.O. Tarari, P.S.- Daudnagar, District- Aurangabad.
 8. Dr. Manoj Kumar Singh, son of Late Shiv Nandan Singh, resident of Shaligram Sadan, Upper Tola, J.P. Pande Lane, Jogsar, P.O. Naya Bazar, P.S.- Adampur, District- Bhagalpur.
 9. Dr. Saryug Mandal, son of Late Jamuna Mandal, resident of Sri Mohan Thakur Lane ,P.O. & P.S. Barari, District Bhagalpur.
 10. Dr. Ena Bahan, son of Dr. Ramadhar Prasad, Resident of 7 M, F-4/2 Bahadurpur Housing Colony, Kankarbagh, Town & District Patna
 11. Dr. Bidyanand Mahto, son of Sri Janak Mahto, resident of Village & P.o Mohammadpur Koari, P.S. Waini, Via- Waini, District- Samastipur.
 12. Dr. Mukesh Kumar Sinha, son of Late Ram Chandra Prasad, resident of Ram Raji Road, Maripur, P.O. Muzaffarpur, P.S- Kazi, Mohammadpur, Town &



District- Muzaffarpur.

13. Dr. Rajeev Kumar Jha, son of late Prabodh Kumar Jha, Resident of Co-operative Colony, 52, Bigha, Laxmi Sagar, P.S. Vishwaridyalaya Thana, District- Darbhanga.
14. Dr. Jay Prakash Yadav, son of Sri Kokay Yadav, Resident of At- Ramdularpur, P.O.- Champanagar, P.S Nathnagar, District Bhagalpur.
15. Dr. Dhananjai Singh, Son of Sri S.N. Sinha, Resident of Village- Kumhra, P.O. Karkain, P.S.- Ghoswari, District Patna.
16. Dr. Rajnish Kumar Singh, son of Sri Devendra Singh, Resident of At & P.O. Kauria Tole Raman Rai, P.S.- Bhagwanpur Hat, District Siwan.
17. Dr. Rajeshwar Rai, Son of Sri Mukhtar Rai, Resident of Village- Tawakli, P.O. Dayalpur P.S.- Ekma, District Chapra (Saran)
18. Dr. Manoj Kumar Singh, Son of Sri Raj Narayan Singh, Resident of Shiv Shakti Colony Road No. 24 K, P.S.- Rajiv Nagar, Rajiv Nagar, District Patna.
19. Dr. Ali Akbar, son of Sri Shamsuddin Ansari, Resident of At- Daulatpur, P.O. Rajpur P.S. Raghunathpur, District- Siwan.
20. Dr. Sima Kumari, Daughter of Sri Sudhir Prasad Jaiswal, resident of 203 G.B. Colony Tilka Manjhi, P.S.- Tilka Manjhi, Town & District- Bhagalpur.
21. Dr. Sagar Kumar, son of Sri Chamak Lal Sharma, Resident of At- Aliganj, P.O.- .Mirjanhat, District Bhagalpur.
22. Dr. Arun Kumar, son of Sri Suba Yadav, Resident of village- Paharpur, P.O. & P.S.- Kaler, District- Arwal.
23. Dr. Suraj Singh Sisodia, Son of Chandrika Singh, Resident of Gahlot Niwas Kazi Mohalla, District Nalanda.
24. Dr. Minal Vijay, Daughter of Dr. H.B. Singh, Resident of 21, Nirala Nagar Digha, Town & District- Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Science & Technology Department, Government of Bihar, Technology Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Science & Technology Department, Government of Bihar, Technology Bhawan, Bailey Road, Patna.
3. The Deputy Secretary, Science & Technology Department, Government of Bihar, Technology Bhawan, Bailey Road, Patna.



4. The Director, Science & Technology Department, Government of Bihar, Technology Bhawan, Bailey Road, Patna.
5. The Bihar Public Service Commission, through its Secretary, Bailey Road, Patna
6. The Chairman, Bihar Public Service Commission, Bailey Road, Patna
7. The Secretary, Bihar Public Service Commission, Bailey Road, Patna
8. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, Bailey Road, Patna
9. Dr. Swetambara, Daughter of Prof. Lalan Jha, Resident of Ward No. 18, Lane of Mohan Singh Office, Gangjala, Nagarpalika Road, P.S.- Saharsa, District-Saharsa.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhruva Mukherjee, Sr. Advocate
Mr. Ganesh Singh, Advocate

For the State : Mr. Dhurjali Kumar Prasad, G.P.-7

For the B.P.S.C. : Mr. P.N. Sahi, Sr. Advocate
Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 16-01-2017

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 16th of December, 2015 in C.W.J.C. No. 13891 of 2015 whereby, the writ application filed by the appellants challenging rejection of their



candidature for appointment to the post of Assistant Professor in Engineering Colleges was dismissed on the ground that they are not exempted from passing NET/SLET/SET which exemption is only available to a candidate who has obtained Ph.D. degree in accordance with the University Grants Commission (Minimum Standard and Procedure for Award of Ph.D. Degree) Regulations, 2009 (hereinafter referred to as the “2009 Regulations”).

3. The learned Single Bench relied upon the Supreme Court judgment reported as P. Suseela & Ors. Vs. University Grants Commission & Ors., (2015) 8 SCC 129 wherein the legality and validity of the 2009 Regulations was upheld and also another Division Bench judgment of this Court reported as Dr. (Mrs.) Renuka Sharma Vs. Bihar Public Service Commission & Ors., 2007 (4) PLJR 762 wherein, it was held that a person who is not qualified as prescribed in the Rules is not competent to be appointed as Teacher in the University.

4. The 2009 Regulations dated 1st of June, 2009 were published in the official Gazette on 11th of July 2009. After the publication of the said Regulations, the Government of Bihar framed Rules under proviso to Article 309 of the Constitution of India titled as ‘Bihar Engineering Education Service Rules, 2014’ (for short “the Rules”). The relevant educational qualification required for



appointment to the post of Assistant Professor as per the Rules reads as under:-

Sl. No.	Post	Qualification	Experience
1	Assistant Professor	<u>Engineering & Technology</u> B.E./B.Tech. and M.E./M. Tech. in relevant branch with First Class or Equivalent either in B.E./B.Tech. or M.E./M.Tech. <u>Humanities and Sciences</u> 1) Good academic record as defined by the concerned university with at least 55% marks (or and equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university. 2) Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/Set. 3) Notwithstanding anything contained in sub-clauses (1) and (2) candidates, who are PhD, or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET.	

5. In pursuance of such statutory Rule, an advertisement was published by the Bihar Public Service Commission inviting applications for various posts including that of Assistant Professor. The eligibility conditions are in the same terms as the Statutory Rules. The appellants are the candidates who have obtained Ph.D. degree prior to the notification of 2009 Regulations. They have been declared ineligible to be considered for appointment for the reason that they are not holding the Ph.D. degree in terms of the 2009 Regulations. The learned Single Bench relied upon P. Suseela's case



(supra) to hold that the appellants are not eligible for the post of Assistant Professor as they are not possessed of Ph.D. degree in terms of the 2009 Regulations.

6. Learned counsel for the appellants argues that exemption is applicable to two categories of candidates as per Clause 3 of the qualification referred above, one who are Ph.D. and secondly the candidates who have been awarded Ph.D. degree in accordance with the 2009 Regulations. It is, thus, contended that the appellants who have obtained Ph.D. degree prior to publication of the 2009 Regulations are eligible to be exempted from qualifying NET/SLET/SET test as per the first condition. It is argued that in P. Suseela's case (supra), the legality and validity of 2009 Regulations was in question which was found to be valid whereas, in the present case, the appellants are claiming right on the basis of statutory Rules which grants exemption not only to Ph.D. degree holders in terms of 2009 Regulations but also the other Ph.D. degree holders. Therefore, the candidates who have obtained degree prior to publication of 2009 Regulations cannot be declared ineligible and the finding recorded by the learned Single Bench to that effect is not sustainable in law.

7. Learned counsel for the appellants further refers that All India Council of Technical Education in the notification published on 4th of January, 2016, though after the advertisement was issued to



contend that even AICTE has revised the qualifications required for appointment as Assistant Professor in the Engineering Colleges. The relevant condition reads as under:-

“A. ASSISTANT PROFESSOR:

- i. Master’s degree in relevant subject of Humanities & Sciences with first class or equivalent, at Bachelor’s or Master’s Level from any recognised Indian University.
- ii. Besides fulfilling the above qualification, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.
- iii. Notwithstanding anything contained in sub-clauses (i) and (ii) to this clause; a candidate, who has a Ph.D. Degree awarded before 2009, or has been awarded a Ph.D. Degree after 2009 in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment as Assistant Professor in Technical Institutions.”

8. Learned counsel for the appellants further refers to the amended U.G.C. Regulations as notified on 4th of May, 2016 which also specifies that the Ph.D. degree holders prior to July 11, 2009, shall also be exempted from qualifying the NET/SLET/SET examination. The relevant clause reads as under:-

“Further, the award of degrees to candidates registered for the M.Phil/Ph.D. programme prior to July 11, 2009, shall be governed by the provisions of the then existing Ordinances/By



laws/Regulations of the Institution awarding the degrees and the Ph.D. candidates shall be exempted from the requirement of the minimum eligibility condition of “NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/ Institutions subject to the fulfillment of the following conditions:-

- (a) Ph.D. degree of the candidate awarded in regular mode only;
- (b) Evaluation of the Ph.D. thesis by at least two external examiners;
- (c) Candidate had published two research papers out of which at least one in a refereed journal from out of his/her Ph.D. work;
- (d) The candidate had presented two papers in seminars/conferences from out of his/her Ph.D. work;
- (e) Open Ph.D. viva-voce of the candidate had been conducted.”

9. On the other hand, learned counsel for the State relied upon a Division Bench judgment of this Court reported as Dr. Rakesh Kumar Singh & Ors. Vs. The Union of India & Ors., 2015 (4) PLJR 477 wherein, relying upon P. Suseela’s case (supra) the candidates who have not obtained Ph.D. degree in accordance with the 2009 Regulations were found to be ineligible for appointment.

10. We have heard Learned Counsel for the parties and find that the order of the Learned Single Judge is not sustainable in law. The Dr. Rakesh Kumar Singh’s case (Supra) pertains to appointment to the post of Assistant Professors in different subjects in



the Universities of Bihar and various constituent colleges of such Universities. The application for such posts were advertised on 14th of September, 2014. The University has framed statute for appointment of Teachers for the Universities of Bihar and its constituent colleges called 'The Statutes for Appointment of Teachers (Assistant Professor Grade) for the Universities of Bihar, 2014. The relevant condition in the said statute reads as under:-

“3.3.2 A candidate must have passed NET/SET or equivalent test accredited by U.G.C.

3.3.3 The Candidates who have obtained Ph.D. Degree on the basis of Minimum Standard and Procedure Regulation, 2009 framed by the University Grants Commission for M.Phil./Ph.D. Degree, shall be exempted from passing the National Eligibility Test.”

11. It was the said condition which was being examined by the Division Bench of this Court in Dr. Rakesh Kumar Singh's case (supra) wherein, it has been held that the candidates who have obtained Ph.D. Degree prior to notification of 2009 Regulations are not eligible for appointment as Assistant Professor. The said finding is based upon the language of the Rules under consideration in the said case, where the exemption was granted only to the Candidates who have obtained Ph.D. Degree on the basis of Minimum Standard and Procedure Regulation, 2009 framed by the University Grants Commission for M.Phil./Ph.D. Degree. But in the present case, the



statutory rules framed contemplate exemption to two categories i.e. holders of Ph.D. degree or have been awarded Ph.D. degree in accordance with the 2009 Regulations. The two expressions are separated by the word “or” which is disjunctive and leads to two separate and distinct categories. The candidates who are exempt from qualifying the minimum eligibility condition of NET/SLET/SET are those Ph.D. candidates who have obtained such Ph.D. degree prior to notification of 2009 Regulations otherwise, the words 'Ph.D. or' loses its meaning. The wording of the Rule makes one class of the Ph.D. Degree holders who have obtained degree in terms of 2009 Regulations. The other class is of candidates who have obtained Ph.D. Degree prior to publication of 2009 Regulations. It is well settled that all words of the statute, includes the statutory Rules, have to be given meaning. None of the words can be excluded from consideration or are otiose. Therefore, the expression 'Ph.D. or' has to mean Ph.D. degree holders who have been granted degree prior to publication of 2009 Regulations.

12. In view of the above, we are of the opinion that the finding recorded by the learned Single Bench cannot be sustained. Therefore, the order passed by the learned Single Bench is set aside. The Letters Patent Appeal and the writ application are allowed. The respondents are directed to consider the appellants as eligible



candidates and to act in accordance with law thereafter.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

P.K.P.

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

