

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.655 of 2016
Arising out of
C.W.J.C. No. 14521 of 2015**

=====

Dr. Aseem Kumar Thakur, Son of late Kameshwar Thakur, Resident of Flat No. 17,
Subha Vila, Kurzi Mor, P.S Patliputra, District- Patna, Bihar

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Department of Finance, Government of Bihar, Patna.
2. The Principal Secretary, Department of Science & Technology, Government of Bihar, Patna.
3. The Additional Secretary, Department of Science & Technology, Government of Bihar Patna.
4. The Deputy Secretary, Department of Science & Technology, Government of Bihar, Patna.
5. The Chairman, Bihar Public Service Commission, Jawahar Lal Nehru Marg, Patna.
6. Dr. Barun Kumar Rai, Rajkiya Mahila Polytechnic College, Muzaffarpur, Patna.
7. Dr. Anil Kumar Singh, New Government Polytechnic College, Patna-13.
8. Dr. Kumari Arnima, Principal, Rajkiya Mahila College, Phulwari, Patna.
9. Dr. Chandrashekhar Singh, Government Polytechnic College, Muzaffarpur.
10. Dr. Fazle Sarwar, Government Polytechnic, Motihari.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Prabhat Ranjan, Advocate
Mr. P.K. Jaipuriyar, Advocate
Mr. Chandan Kumar, Advocate
Mr. Ansuman Jaipuriyar, Advocate

For the Respondent/s :

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 19-07-2017

Seeking exception to an order dated 30.03.2016 passed
by the learned Writ Court in C.W.J.C. No. 14521 of 2015, this appeal
has been filed by the appellant.



2. In pursuance to an advertisement issued by the Bihar Public Service Commission inviting application from eligible candidates up to 10th of March, 2015 for appointment to the post of Principal, Polytechnic College, the appellant applied. The criteria laid down was that the candidate should be a holder of Bachelor's or Master's Degree in the appropriate branch of engineering and should have minimum 10 years of relevant experience in teaching or research work and out of the experience gained, three years should be at the level of Head of the Department. The appellant in pursuance to the said advertisement applied, participated in the process of selection. However, after the selection process was completed, appellant's candidature was not approved by holding that the appellant was not working against a post having an AGP of Rs. 9,000/- and, therefore, he cannot be treated as a Head of the Department. When challenge was made to this action, the Writ Court examined the same and found that as appellant was not getting the AGP of Rs. 9,000/-, which is the prescribed scale for a Head of the Department, it was held that the appellant does not fulfil the requisite criteria and the writ petition was dismissed.

3. Now, in this appeal it was stated that in the recruitment rule and in the advertisement issued, there is no condition that a candidate should have an AGP of Rs. 9,000/- and as this



amounts to changing the rules of the game during the process of selection, this Court on 15.05.2017 directed for production of the relevant rules and the document prescribing the requirement of AGP at Rs. 9,000/-.

4. The respondents in support of the same have filed a counter affidavit and have brought on record the rules framed under Article 309 of the Constitution, namely, the Bihar Polytechnic Education Service Rules, 2014 and we find that the qualification prescribed in the said statutory rule is the one notified in the advertisement. Further, Rule 5 therein contemplates that a person seeking direct appointment to the post should have an experience of 10 years and three years of this should be as a Head of the Department. Appendix-I to the said rule details the procedure and the qualification and experience clause for appointment to the post in question. That apart, available on record is a notification Annexure-B/1 dated 29.07.2011, whereby the revision of pay-scale on the post of Head of the Department has been notified and the pay-scale prescribed for the Head of the Department is Rs. 37400-67000/- with AGP of Rs. 9,000/-. That being the factual position, contention of the appellant that the procedure and the rules for recruitment were changed after the advertisement is not correct. A combined reading of the rule framed under Article 309 of the Constitution and the pay



fixation rule dated 29.07.2011 clarifies the position as detailed hereinabove.

5. Accordingly, on the first count, we find no error in the action of the respondents. However, the question would be as to whether the appellant was holding the post as Head of the Department in the pay-scale of Rs. 37400-67000/- with AGP of Rs. 9,000/-. We also find from the records that by an order passed on 29.09.2015 vide Annexure-F the appellant has been granted the scale with AGP of Rs. 9,000/- retrospectively with effect from 17.10.2011 and, therefore, if that be the position, then the appellant would be deemed to be holding the post of Head of the Department with AGP of Rs. 9,000/- with effect from 17.10.2011 and in rejecting his claim by holding that the appellant did not fulfil the requisite criteria, we are of the considered view that the respondents have committed an error. While taking action in the matter and while considering the claim of the eligible candidates, appellant's case has been left out after he was permitted to participate in the selection on account of improper consideration. That being so, respondents are required to reconsider the claim of the appellant and in case it is found that he has fared well in the process of recruitment and has fulfilled the merit criteria and persons less meritorious or junior in the merit list have been appointed, action be taken for appointment of the appellant also and if posts are not



available, supernumerary post be created and the appellant granted accommodation. However, in case, after such consideration, the appellant is not entitled for appointment on account of not fulfilling the merit criteria, respondents are free to communicate the same to the appellant, else, the respondents shall appoint the appellant and pass appropriate orders granting to him the similar benefit, as has been granted to his immediate junior who has been appointed as per merit in the merit-list. The action in pursuance to this order be undertaken within a period of two months from the date of receipt of certified copy of this order.

6. With the aforesaid direction, the Letters Patent Appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	03.08.2017
Transmission Date	

