

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.892 of 2011

=====

Rashmi Shikha W/o Sri Abhinav Kumar Verma, Resident of Laxmi Sagar,
Mukheeyaji Pokhar-North, 52 Bigha, P.O. - Laxmi Sagar, District- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Higher Education Department of Human Resources and Development, Government of Bihar, Patna.
2. Gramin Pratisthan (Higher Education), Birauli, District- Samastipur through its Director-cum-Secretary.
3. The Hon'ble Minister, Department of Human Resources, Government of Bihar-cum-the President Gramin Pratisthan (Higher Education), Birauli, District- Samastipur.
4. The Director, Higher Education, Department of Human Resources and Development, Government of Bihar, Patna-cum-Secretary, Gramin Pratisthan (Higher Education), Birauli, District- Samastipur.
5. Dr. Laxmi Mahto Father's name not known, C/o Sri Shiv Kumar Singh, Village and Post- Singhaul, Badnachak, Via- Ulao, District- Begusarai, at Present Lecturer, Geography, Gramin Pratisthan (Higher Education), Birauli, District- Samastipur.
6. Sri Kailash Mahto S/o not known retired Professor and Head of Department of Geography, Patna University Patna.
7. Sri Ramashankar Arya S/o not known, Professor Philosophy, PG Department, Patna University, Patna.
8. Sri Balgangadhar Prasad, S/o not known, Head of Department of Maths, B.N. College, Patna University, Patna.
9. Sri B.P. Singh S/o not known Professor and Head of Department of Economics, Patna University, Patna.
10. Sri U.K. Sinha S/o not known, Professor and Head of the Department of Botany, Patna University, Patna.
11. Sri Ashok Kumar S/o Not known, Chairman, Selection Committee held on 17.07.2010 at Jagjivan Ram Institute of Parliamentary Studies and Political Research for Selection of Geography for Gramin Pratisthan (Higher Education), Birauli, Samastipur.

.... Respondents

=====

Appearance :

For the Petitioner	:	Mr. Suraj Narain Yadav Miss Annu Shree, Advocates
For the State	:	Mr. AC to GA 10
For Respondent No. 2	:	Mr. Shashi Bhusan Singh, Advocate
For Respondent No. 5	:	Mr. Abhinav Srivastava, Advocate
For Respondent No. 6	:	Mr. Bal Bhushan Choudhary, Advocate
For Respondent No. 9	:	Mr. Alok Kumar, Mr. Binodanand Mishra, Advocates

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 02-08-2017



Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for quashing the appointment letter no. 77 dated 03.08.2010 issued by respondent no. 4 by which the respondent no. 5 has been appointed as Lecturer, Geography, in Gramin Pratisthan (Higher Education), Birauli, District Samastipur (hereinafter referred to as "the Institution"), and further for issuance of a writ in the nature of mandamus and/or any other appropriate writ, order or direction commanding the respondents to consider the case of the petitioner for her appointment as Lecturer, Geography of the said Institution.

3. The short facts of the case according to the petitioner are that an advertisement dated 03.06.2010 was issued, pursuant to which the petitioner and others applied for contractual appointment as Lecturer, Geography in Gramin Pratisthan (Higher Education), Birauli, District Samastipur. The advertisement stipulated 15.06.2010 as the last date for submission of the application forms which were required to be accompanied by attested copies of the documents of educational qualification and requisite bank draft. It is asserted that respondent no. 5 did not possess the requisite qualification of Ph. D. and did not have a certificate of Ph. D. Degree before the last date for submission of the application forms. Despite the mandatory requirement of furnishing the documents of educational qualification along with the application



forms by the last date as stipulated in the advertisement not having been fulfilled, the Selecting Authority nevertheless allowed respondent no. 5 to appear in the interview and recommended his name for appointment to the post of Lecturer by placing him at serial no. 1 of the merit list whereas the petitioner was placed at serial no. 2.

4. Mr. Suraj Narain Yadav, learned counsel appearing on behalf of the petitioner, submits that the recommendation of the respondent no. 5 for appointment by the Selection Committee is wholly illegal, arbitrary and unsustainable in law as his case could not have been considered in absence of the documents of educational qualification which were not filed by 15.06.2010 being the last date for submission of the application forms. It is submitted that the order of the Examination Board of Patna University declaring the respondent no. 5 to have passed Ph. D. examination was issued on 25.06.2010 and the provisional certificate thereafter on 15.07.2010 as evident from Annexures -R 5/1 and R 5/2 enclosed with the counter affidavit of the respondent no. 5 itself.

5. Learned counsel for the Respondent-State refers to its counter affidavit and submits that pursuant to the advertisement, four candidates had applied for the post including the petitioner and the respondent no. 5. In his application, respondent no. 5 had shown his academic qualification as Ph. D. in Geography in 2010 from Patna University. Though the relevant certificates/documents were not



enclosed with the application form, the same were later submitted to the Institution on 30.06.2010. Thereafter the Selection Committee consisting of experts conducted the interview in which, out of four candidates, only the petitioner and the respondent no. 5 appeared. Pursuant to the interview, the Selection Committee recommended the name of respondent no. 5 at serial no. 1 and the name of the petitioner at serial no. 2. Based on recommendation of the Selecting Authority as approved by the Governing Body of the Institution, respondent no. 5 was accordingly appointed as Lecturer, Geography.

6. Learned counsel for the respondent no. 5 appears and vehemently opposes the writ petition, submitting that the publication in relation to the award of Ph.D. in his favour had already been made on 05.06.2010, which was well before the last date for submission of the application forms. It is therefore submitted that the respondent no. 5 was duly qualified having passed his Ph.D. examination within the stipulated time even though the relevant certificates/degrees were issued by the University later on and which were submitted to the Institution subsequently.

7. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds considerable merit in the writ petition. It is an admitted fact on record that the advertisement dated 03.06.2010 stipulated 15.06.2010 as the last date for submission of the application forms together with



certificates relating to educational qualification. Such condition was clearly mandatory and there was no provision for furnishing the certificates beyond the stipulated date nor for extension of time for the purpose. It is not in dispute that the certificate of Ph. D. examination was issued to the respondent no. 5 beyond the last date for submission of the application forms and the certificate was admittedly furnished as late as on 30.06.2010 which was beyond time.

8. At this point, it is apposite to refer to the Full Bench decision of this Court in *Braj Kishore Prasad Vs. The State of Bihar & others*, 1998 (3) PLJR 34 (FB) which has clearly held as follows —

“(a)Where the advertisement specifies the last date for filing of supporting or other documents, that date must be given effect to, and any document received after such date shall be rejected by the selecting authority.

(b)In appropriate cases where the selecting authority is of the view that the time for furnishing of documents should be extended, it may grant such extension by issuing a public notice to this effect so that all candidates may get the benefit of such extension. In the absence of any such extension granted by the selecting authority, the date/dates mentioned in the advertisement should be treated to be the last date for filing of documents, and no document shall be accepted thereafter.

(c)No application/document shall be entertained by the Commission if the same is filed after the last date specified in the advertisement, or the extended date notified by the Commission, even if the same is filed before the finalization of the select list.



(d) In appropriate cases where this Court is satisfied that a case of extreme hardship or injustice has resulted on account of factors beyond the control of the concerned candidate, this Court in exercise of its writ jurisdiction may grant relief in deserving cases. But in doing so, the Court must be satisfied that the candidate concerned has acted diligently, and is not guilty of delay or laches in taking necessary steps for procuring the requisite certificates etc. However, no relief shall be granted where the requisite certificate is produced for the first time after the process of selection is complete and the selecting authority has made its recommendation."

9. In view of the clear principles laid down as above, this Court is of the view that there is no discretion with the Selecting Authority to accept the supporting documents beyond the last date stipulated in the advertisement. If the Selecting Authority had decided to consider the documents of the respondent no. 5 furnished beyond the last date, a public notice ought to have been issued which has clearly not been done. It must therefore be held that recommendation of the name of respondent no. 5 by the Selecting Authority was vitiated as it had accepted and considered the documents of respondent no. 5 furnished well beyond the last date stipulated in the advertisement.

10. Learned counsel for the petitioner has raised other contentions to question the validity of the appointment of respondent no. 5. It is pointed that the proceedings of the Selection Committee



were invalidated also because Prof. (Dr) Kailash Mahto (respondent no. 6) participated in the interview as an Expert, as he had been the Supervisor under whom the respondent no. 5 had done his Ph.D. Moreover, no criterion had been fixed for award of marks in the interview and as such there was no objective basis for deciding the respective merit of the candidates.

11. Since the writ petition is being allowed on the preliminary ground itself that the respondent no. 5 was ineligible to be considered for want of the prerequisite documents accompanying his application form, this Court does not deem it necessary to enter into the merits of the remaining contentions raised by the petitioner. The writ petition stands allowed.

(Vikash Jain, J)

B.T/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	05.08.2017
Transmission Date	N.A.

