

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14647 of 2015

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1. Rajan Kumar, S/o Sri Rajendra Chaudhary, Resident of Raj Kutir, Mahajan Toli, P.O. Hajipur, District – Vaishali.
 2. Braj Kishor Choudhary, S/o Late Ganesh Chaudhary, Resident of Surondha Colony, P.O. Koilwar, District – Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Law, Government of Bihar, Patna.
2. The Bihar Public Service Commission, through its Secretary, 15 Jawahar Lal Nehru Marg (Bailey Road) Patna.
3. Joint Secretary cum Examination Controller, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg (Bailey Road) Patna- 1.
4. Registrar General, Patna High Court, Patna.

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Rakesh Chandra, Advocate
For the Respondents-State : Mr. Sandeep Kumar, G.A.8
For the Respondent No.4 : Mr. Satyabir Bharti, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

C. A. V. JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 08-02-2017

The petitioners have invoked the writ jurisdiction of this Court for a direction to the respondents to consider their case for appointment as Civil Judge (Junior Division) on the basis of total marks obtained by them in different stages of examination conducted



by the Bihar Public Service Commission (hereinafter referred to as 'the Commission') pursuant to 28th Bihar Judicial Services Competitive Examination-2012 and for declaration that subsequent insertion of clause of obtaining minimum 35% marks in interview is arbitrary and thus illegal.

2. The facts, in brief, are that that the Commission invited applications for the post of Bihar Judicial Service (Junior Division) on 14.02.2012 numbered as 28th Judicial Service Examination. The petitioners qualified the main examination, the result of which was uploaded on the website of the Commission on 29th August 2014.

3. The petitioners have been declared ineligible for appointment for the reason that they did not secure the minimum 35% marks in the interview as they were given only 30 marks in the interview though petitioner no.1 obtained 472 marks and petitioner no.2 obtained 495 marks in the mains examination. It is also pointed out that the petitioner No.1 belongs to Scheduled Tribe category for which the cut-off marks was 455 and, thus, on account of condition of obtaining minimum marks in the interview, he has not been finally selected. Similarly, petitioner no.2 obtained 495 marks, which are more than the cut-off marks of the general category. It is, thus, alleged that there is arbitrariness in the selection process when the candidates obtaining less marks in the written examination have been selected, but only on account of condition of minimum qualifying marks in the



interview, the petitioners have been excluded from the process of selection.

4. In an counter affidavit filed on behalf of the Commission, it is pointed out that the Commission vide its letter dated 25th August, 2014 informed the Registrar General of the High Court that the result of the examination has been published on 22nd August, 2014 and that 286 candidates have been called for the viva-voce test. Such number was subsequently increased to 369 in view of the administrative decision of the High Court that the candidates are to be declared successful up to minimum qualifying marks fixed for different reserved categories. The High Court in response to the said letter nominated the two Hon'ble Judges for interview and informed the Commission that the Standing Committee has resolved that in the forthcoming interview for appointment to Civil Judge (Junior Division) cadre, minimum 35% marks be prescribed as qualifying marks. The letter dated 27.8.2014 from the Registrar General of the High Court reads as under:-

“In response to letter no.127/PSE/CONF. Dt. 25/08/2014 issued under the signature of Secretary, BPSC, I am directed to say that Hon'ble Mr. Justice I. A. Ansari and Hon'ble Mr. Justice R. K. Datta are nominated for interview Board.

I am further directed to say that matter was discussed in Standing Committee and it was resolved that in the forthcoming interview for appointment to Civil Judge (Junior Division) cadre, a minimum 35% marks be prescribed as qualifying marks.”



5. It appears that thereafter, the Bihar Judicial Service (Recruitment) Rules, 1955 were amended on 3rd December, 2014 on the basis of decision taken by the Full Court on 13th September, 2014 to amend Rule 15(c) of the Rules, which condition reads as under:-

“Rule 15(c) There shall be a qualifying marks of 35% for the viva-voce test.”

6. Learned counsel for the petitioners vehemently argued that the condition of fixation of minimum marks in the interview is arbitrary, unreasonable and is based upon purely subjective opinion of the Interview Board that cannot be sustained. Reliance was placed upon judgment of the Hon’ble Supreme Court reported as (1985) 4 SCC 417 (Ashok Kumar Yadav v. State of Haryana). It was also contended that the Rules of game cannot be changed after the game has started, i.e. selection process by relying upon Supreme Court Judgment reported as (2008) 3 SCC 512 (K. Manjusree versus State of Andhra Pradesh and another). It is also argued that as per the Shetty Commission’s report there cannot be any minimum marks in the *viva voce*, which report has been accepted by three Judge Bench in a judgment reported as (2002) 4 SCC 247 (All India Judges’ Association Vs. Union of India) subject to certain modifications in respect of allowances etc. It is argued that though there is specific bar that there shall not be any cut-off marks in the viva-voce test for the appointment to the post of District Judge(Entry Level), but condition in respect of



appointment to the post of Civil Judge (Junior Division) appears to be either inadvertent mistake or omission as if the cut-off marks are not prescribed for the higher post, prescribing such cut-off marks for entry level post in the judicial hierarchy appears to be unjustified. Therefore, the condition of cut-off marks fixed for entry in the base post for Civil Judge (Junior Division) in the judicial hierarchy cannot be sustained.

7. Mr. Bharti referred to a Division Bench Judgment in Civil Writ Jurisdiction Case No.8863 of 2015 (Rakesh Ranjan Versus The State of Bihar & others) which was dismissed by a Bench of this Court on 12th May, 2016. The Court held to the following effect:-

“10. There is no change of rules of the game, which have been altered. The only change is fixing minimum qualifying marks for the *viva voce* test. Such condition has been incorporated to ensure that only suitable candidates make it to judicial service. Such a condition is in the interest of better administration of justice and cannot be faulted with. The Statutory rules, though were amended subsequently, yet the fact remains that the petitioner never objected to the qualifying marks having been fixed for the *viva voce* test before appearing in the interview. He is, therefore, estopped from challenging the condition in the advertisement after appearing in the interview and taking a chance.”

8. We have heard learned counsel for the parties and find no merit in the present writ application. The selection process in which the writ applicants were the candidates, was also subject matter of consideration in Rakesh Ranjan's case (supra) wherein, this Court has dismissed the writ application for the reason that the candidates are



estopped from challenging the condition in the advertisement after appearing in the interview and taking a chance. We do not find that the said decision requires to be reconsidered.

Consequently, in view of the aforesaid judgment in Rakesh Ranjan’s case, we dismiss the present writ application.

(Hemant Gupta, ACJ)

Dinesh Kumar Singh, J. I agree.

(Dinesh Kumar Singh, J)

Sunil

AFR/NAFR	A. F. R.
CAV DATE	22.12.2016
Uploading Date	08.02.2017
Transmission Date	

