

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9500 of 2015

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1. Deoraj Vats, son of Ravindra Prasad Singh, resident of Village- and P.O. Siswan, P.S. Nawada, District- Nawada.
 2. Vikash Vaibhav, son of Lakshmi Singh, resident of Village and P.o Nandnama, P.s Ramgarh chowk, District Lakhisarai.
 3. Ramesh Kumar, son of Ramakant Singh, resident of Village Sondhi, P.o Sharma, Ps. Ramgarh, Chowk, District Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Agriculture department, Government of Bihar, Patna.
3. Director, Directorate of Agriculture, Government of Bihar, Patna.
4. Bihar Staff Selection commission, through its Chairman.
5. Prashant Kumar Singh, son of late Rajeshwar Rai, resident of village- Kamla Gopalpur, P.S. Maner, District-Patna.
6. Arun Kumar, son of late Bhagwat Sharma, resident of Yamuna Path, Behind PNB, P.S. Gardnibagh, District-Patna.
7. Manjeet Kumar, son of Devendra Kumar, resident of New Harnichak, New Bypass, P.s. Beur, District Patna.

.... Respondent/s

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Appearance :

For the Petitioners	:	Mr. Abhay Kumar Singh, Senior Advocate Mr. Raghwanand, Advocate Mr. Sanjay Kr. Tiwari, Advocate
For the Respondents-State	:	Mr. Sunil Kumar Mandal, SC-3 Ms. Neelam Kumar, AC to SC-3 Mr. Bipin Kumar, AC to SC-3
For the Commission	:	Mr. Kamla Kant Upadhyay, Advocate Mr. Chandra Bhushan Das, Advocate
For the Intervenors	:	Mr. Y. V. Giri, Senior Advocate Mr. Binoy Kumar, Advocate Mr. Niranjana Kumar, Advocate



Mr. Umesh Kumar, Advocate
Mr. Mayank Rajput, Advocate
Mr. Mrigank Mauli, Advocate
Mr. Sanket, Advocate
Mr. Prince Kr. Mishra, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 30-01-2017

The challenge in the present writ application is to Rule 8 of Agriculture Co-ordinator Cadre (Recruitment and Service Conditions) Rules, 2014 (for short, 'the Rules') framed in terms of power conferred by proviso to Article 309 of the Constitution of India. The offending clause reads as under:-

“8. **Eligibility-** Graduate in Agriculture Science/ Animal Husbandry/ Fisheries/ Agriculture Engineering/ Horticulture/Forestry/ Dairy Technology from the recognized University/College or institute.”

The assertion of the petitioners is that an advertisement was published by Bihar Staff Selection Commission (for short, 'the Commission') on 29th April, 2015 for direct appointment on the post of Agriculture Co-ordinator of 4391 vacancies. The challenge to the eligibility qualification is on the ground that purpose of appointment of Agriculture Co-ordinator is to give technical and administrative



cooperation in implementation of various schemes of the Agriculture Department, below block level, but the eligibility criteria as stipulated in Rule 8 does not seem to be appropriate to achieve the purpose of appointment of Agriculture Co-ordinator for the reason that the candidates having Graduate in Animal Husbandry/ Fisheries/ Agriculture Engineering/ Horticulture/Forestry/Dairy Technology would not be competent to give technical and administrative cooperation in implementation of various schemes of the Agriculture Department. The Department of Animal Husbandry, Fisheries, Forestry and Dairy Technology are quite distinct and different and that the Directorate of Agriculture in the Department of Agriculture does not work in terms of Animal Husbandry, Fisheries, Forestry and Dairy Technology. It is thus, submitted that the eligibility criteria has no nexus with the objective to be achieved, i.e. implementation of schemes of the Agriculture Department.

In a counter affidavit filed on behalf of respondent nos. 2 and 3 on 10.11.2015, it is, *inter alia*, averred that the Department of Agriculture of the State Government issued an agriculture Road Map whereby and whereunder all the schemes of the agriculture (Central and State) has to be implemented in the State. Therefore, to render technical assistance to the farmers, the State Government has created a post of Agriculture Co-ordinator vide Notification dated 25th July,



2012. In the scheme framed, one Agriculture Co-ordinator at every two *Panchayats* and five Agriculture Co-ordinators as leave reserve at the district level were sought to be appointed. Initially, in the year 2013, 2745 out of 4319 Agriculture Co-ordinators were appointed on contract basis. At that time, the educational qualification was Agriculture Graduate (Science). After the framing of the Rules, requisition for remaining posts was sent to the Commission and thereafter, the process of selection was initiated which is at the fag end of completion. It is pointed out that 1646 posts remained unfilled when the post of Agriculture Co-ordinator was intended to be filled up on the basis of contract due to paucity of Agriculture Graduate (Science) Degree holders. Therefore, after due deliberation, the Department included the candidates, who possessed the Bachelor degree in Animal Husbandry/Fisheries/Agriculture Engineering/ Horticulture/ Forestry/ Dairy Technology. It is pointed out that these degree holders would render their services in the integrated policy making and implementation at the grassroots level. It is also pointed out that though the Department of Animal Husbandry, Fisheries, Forestry and Dairy Technology are distinct and different, but these departments are also related to allied activities of agriculture.

In another counter affidavit filed on behalf of the respondent nos. 5 to 7 on 23rd August, 2016, it is stated to the



following effect:-

“That it would not be out of place to bring to the notice of this Hon’ble Court that the State Govt. with a view to enhance the Agriculture Produce, has prepared its 1st comprehensive agriculture ROAD MAP for a period from 2008-2012 and thereafter from 2012-2017. It is further stated that the State Govt. has also constituted an Agriculture Cabinet which is comprised of total 18 departments. Not only that, a committee of 14 members which includes Agriculture Scientists, expert of different subjects and senior most officers of the State Government has been constituted. The Agriculture ROAD MAP, 2012-2017 shall be produced for perusal of the Hon’ble Court during the hearing of the matter, if required.”

The said Road Map has been produced during the course of hearing before the Court for reference.

Learned counsel for the petitioners has vehemently argued that the post of Agriculture Co-ordinator has been created for implementation of the schemes of the Agriculture Department for which a Graduate in Agriculture Science is the appropriate qualification, but to consider the Graduate in Veterinary, Fisheries, Forestry, Horticulture and Dairy Technology, which are distinct subjects, has no nexus with the objective to be achieved as these are not the subjects of Agriculture Department.

On the other hand, learned counsel for the State vehemently submitted that fixation of qualifications to fill up a post is the prerogative of the employer. It is for the employer to see as to what



qualification is necessary for discharge of its function. A Graduate in Veterinary, Fisheries, Forestry, Horticulture and Dairy Technology are related to agriculture and once Agriculture Co-ordinator is appointed, he would be expected to oversee the implementation of various schemes, which are meant for farming community, which included department of Animal Husbandry, Fisheries, Forestry and Dairy Technology. Therefore, not only that the qualifications fixed are within the exclusive domain of the employer, but such qualifications have direct relation to the works expected to be performed by the Agriculture Co-ordinator.

Mr. Y. V. Giri, learned Senior Counsel appearing for some of the private respondents, on the other hand, submitted that the petitioners are estopped to challenge the selection process, including the eligibility condition, once they have participated in the selection process and having remained unsuccessful, the petitioners cannot be permitted to dispute the eligibility criteria.

We have heard learned counsel for the parties and find no merit in the writ application. In respect of argument that the petitioners are estopped to challenge the eligibility condition having participated in the selection process, suffice it to say that the jurisdiction of this Court was invoked soon after the Rules were notified and before the declaration of the result. Therefore, it cannot be



said that the petitioners are estopped to challenge the eligibility conditions.

The sole ground of challenge to Rule 8 of the Rules is that it has no nexus with the objective to be achieved. We do not find any merit in the said argument. The farming community is not only engaged in agriculture, i.e. sowing and harvesting of crops, but also allied activities which includes dairy farming, fisheries, forestry etc. These all activities are undertaken by the farming community and therefore, they are not alien to the farming community. In fact, an Agriculture Co-ordinator, who has also knowledge of dairy farming, forestry, fisheries etc. would be more helpful in implementing the welfare schemes of the Central and State Government rather than a Graduate in Agriculture Science. The qualifications have been fixed keeping in view the overall betterment of the farming society and are in tune with the future development activities of the farming community.

The power of judicial review in respect of qualification fixed has been examined by the Hon'ble Supreme Court from time to time. In Sanjay Kumar Manjul v. UPSC, (2006) 8 SCC 42, it was laid down that the statutory authority is entitled to frame the statutory rules laying down the qualifications essential for holding a particular post. The Court held to the following effect:-



“25. The statutory authority is entitled to frame the statutory rules laying down the terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned which can take ultimate decision therefor.

26. The jurisdiction of the superior courts, it is a trite law, would be to interpret the rule and not to supplant or supplement the same.

27. It is well settled that the superior courts while exercising their jurisdiction under Article 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post.”

In P.U. Joshi v. Accountant General, (2003) 2 SCC 632,

the Hon'ble Supreme Court held that the questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service is within the exclusive discretion and jurisdiction of the State, subject to the limitations or restrictions envisaged in the Constitution of India. The Court held to the following effect:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of



recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

In Chandigarh Admn v. Usha Kheterpal Waie, (2011) 9 SCC 645, the Hon’ble Supreme Court held that it is for the rule-making authority to prescribe the mode of selection and minimum qualification for any recruitment. It was held to the following effect:-

“22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant



and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of the Constitution, statute and rules. (See *J. Ranga Swamy v. Govt. of A.P.*, (1990) 1 SCC 288 : 1990 SCC (L&S) 76 and *P.U. Joshi v. Accountant General*, (2003) 2 SCC 632: 2003 SCC (L&S) 191. In the absence of any rules, under Article 309 or statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of PhD is unreasonable.”

In another judgment, reported as (2012) 9 SCC 545, State of Gujarat v. Arvindkumar T. Tiwari, the Hon’ble Supreme Court held that fixing eligibility criteria for a particular post falls within the exclusive domain of the legislature/executive and cannot be subject matter of judicial review unless it is found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service or that it has no relationship with the objective to be achieved. The Court held to the following effect:-

“12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments,



the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility, etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of “fair play”, “good conscience” and “equity”. (Vide *State of J&K v. Shiv Ram Sharma*, (1999) 3 SCC 653: 1999 SCC (L&S) 801: AIR 1999 SC 2012, and *Praveen Singh v. State of Punjab*, (2000) 8 SCC 633 : 2001 SCC (L&S) 62.)”

In view of the above, thus, we find that framing of the Rules in terms of proviso to Article 309 of the Constitution of India prescribing eligibility qualifications lies within the exclusive domain of the executive. The decision of the State - rule-making authority to include Graduate in Animal Husbandry/ Fisheries/ Agriculture Engineering/ Horticulture/Forestry/ Dairy Technology from the recognized University/College or institute as also eligible for appointment as Agriculture Co-ordinator to over see the implementation of the schemes of the Central and State Governments is in consonance with the purpose of creation of the post of Agriculture Co-ordinator. Such activities are directly related to farming community and, thus, an Agriculture Co-ordinator well versed in Veterinary, Fisheries, Forestry and Dairy Technology would be in a better position to oversee the implementation of the various schemes of the Central and State Governments.



In view thereof, we do not find any merit in the present writ application. The same is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

Sunil/-

AFR/NAFR	A. F. R.
CAV DATE	N. A.
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