

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14815 of 2018

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1. Binod Kumar Gupta, Son of Late Rameshwar Prasad Gupta, Resident of Village - Satghara, Rajnagar Gandhi Chowk, P.S. - Rajnagar, District - Madhubani.
 2. Mukesh Kumar, Son of Suresh Sharma, Resident of Village - Paroo (Chaudharytola), P.S. - Paroo, District - Muzaffarpur.
 3. Md. Rashid, Son of Md. Alauddin Ahmad, Resident of Village - Bishunpur Baghnagri, P.S. Sakra, District - Muzaffarpur.
 4. Birbal Pandit, Son of Gauri Shankar Pandit, Resident of Village - Jagdishpur, P.S. - Maharajganj, District - Siwan.
 5. Parwej Alam, Son of Md. Jafir Alam, Resident of Village - Amwa Sheikh Toli, P.S. - Piprahi, District - Sheohar.
 6. Akhilesh Shah, Son of Ramadhar Shah, Resident of Village - Paterha, P.S. Maharajganj, District - Siwan.
 7. Md. Aehteshan Uddin, Son of Md. Zabir Uddin Ansari, Resident of Village - Mohiuddinpur, Chamar Toli Lane, P.S. Nathnagar, District - Bhagalpur.
 8. Amrita Kumari, D/o Shivshankar Prasad Singh, Resident of Village - Sheikhpur, Akharaghat, P.S. - Kali Mahmadpur, District Muzaffarpur.
- Petitioners

Versus

1. The Bihar Public Service Commission through its Secretary, Jawaharlal Nehru Marg, Bailey Road, Patna - 800001.
2. The Chairman, Bihar Public Service Commission, Jawaharlal Nehru Marg, Bailey Road, Patna - 800001.
3. The Secretary, Bihar Public Service Commission, Jawaharlal Nehru Marg, Bailey Road, Patna - 800001.

.... Respondents

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Appearance :

For the Petitioners : Mr. Satyam Shivam Sundaram, Advocate.
For the Respondents : Mr. Sanjay Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 21-08-2018 Heard learned counsel for the petitioners and learned
counsel for the respondents.

This writ application has been filed by the petitioners,
seeking direction upon the respondents as to allow them to
participate in selection process for appointment of Lecturer in
Government Training College being conducted by the B.P.S.C. in



terms of Advertisement Nos. 02/2016 and 06/2016 and further direction upon the B.P.S.C. to accept the confidential result of M.Ed. of the petitioners sent by the concerned university.

Facts in brief, giving rise to this writ petition is as under; The Bihar Public Service Commission, published Advertisement No. 02/2016 on 03.05.2016 for appointment of 478 Lecturers in Government Training Colleges through 'Open Competitive Examination', and Advertisement No. 06/2016 was published on 13.05.2016 for appointment of 478 Lecturers also in government training colleges through 'Limited Competitive Examination'. As per the advertisement, 06.06.2016 was the last date for submission of application form along with necessary documents for 'Open Competitive Examination' under Advertisement No. 02/2016, and 15.06.2016 was the last date for submission of application form along with the necessary documents for 'Limited Competitive Examination' under Advertisement No. 06/2016. Later on last date for submission of application form was extended till 22.06.2016 for 'Open Competitive Examination' as well as 'Limited Competitive Examination'.

The requisite educational qualification for appointment on the post of lecturers was Post Graduation and M.Ed. with



minimum of 55% marks, in each course.

The contention of the petitioners is that they having been acquired post graduation degree from different educational Institutions but they all have done their M. Ed course from the same Institution i.e. University School of Open Learning, Punjab University, Chandigarh. It is also contended that the petitioners having the requisite qualification have submitted their applications in terms of both the advertisements as referred above before the last date for submission of application form i.e. 22.06.2016. As there being no cut-off date prescribed in the advertisement for acquiring requisite qualification, therefore, it was considered that the last date for submission of application form would be the last date for requisite educational qualification also. The specific case of the petitioners is that they acquired the requisite qualification within the cut-off date i.e. 22.06.2016, accordingly, submitted their respective application form.

The petitioners were admitted in M. Ed course under distance education mode. The final examination of M. Ed course was held in somewhere in May 2016, in which the petitioners appeared and have been passed out. By the time of submission of application form against both the advertisements, the result of the petitioners was not published by the concerned university, but



confidential result of concerned candidates were already prepared and kept in the University. As per the University Regulation confidential result are not made available to candidates rather the same are issued to the concerned Institution/Organization under sealed cover, if so required, upon the request of the candidates. The petitioners made request to the concerned University under prescribed format as to make their confidential result available to the Bihar Public Service Commission, accordingly, the same were issued by the University to the B.P.S.C. under a registered speed post. After scrutiny of the applications, a list of eligible/ineligible candidates were published by the B.P.S.C., inviting objections from the candidates. As the name of the petitioners were put in the list of ineligible candidates, they submitted their objection to the B.P.S.C. On 12.07.2018, the B.P.S.C. again published afresh list of eligible & ineligible candidates on the official website, in which, the name of the petitioners were put again in the list of the ineligible candidates with the remarks “ineligible due to not fulfilling the eligibility criteria”.

The further case of the petitioners is that despite sending the confidential result of M. Ed by the concerned University to the B.P.S.C. and the same being received before the last of submission of application form, the candidature of the



petitioners have been rejected by not accepting their confidential result. The petitioners have also contended that one similarly situated person namely, Surendra Kumar, Roll No. 2001137, have been allowed by the B.P.S.C. issuing admit card for appearing in written examination scheduled to be held on 25.08.2018, whose confidential result was also sent by the concerned University to the B.P.S.C. likewise the petitioners herein.

Therefore, the petitioners are entitled for similar kind of treatment as that of Surendra Kumar, referred above about their participation in the said written examination. No counter affidavit has been filed on behalf of the Bihar Public Service Commission. The learned senior counsel Mr. Lalit Kishore appearing on behalf of the Bihar Public Service Commission categorically submitted that the candidature of above referred Surendra Kumar has already been rejected on the ground of having no requisite qualification of M.Ed., and his Admit Card issued earlier for appearing in written examination scheduled to be held on 25.08.2018 has already been cancelled, therefore, the grievance of the petitioners regarding hostile discrimination is unfounded and their claim as to participate in the written examination is not worth consideration.

It is well settled that Equality before law is a positive concept and cannot be enforced in a negative way. If the benefit is



wrongly given in favour of one or two, it does not clothe with a right to perpetuate the wrong and the court cannot give countenance to such action. In the case of **State of Bihar –Vs- Kameshwar Prasad (2000) 9 SCC 94** the Hon'ble Supreme Court held: Equality clause cannot be enforced to perpetuate an illegality or irregularity. Thus if an illegality or irregularity has been done in favour of a certain individual, others cannot invoke the jurisdiction of court to urge that the State or the authority do commit the illegality or irregularity.

However, this Court would firstly take note of the Advertisement No. 02/2016 and Advertisement No. 06/2016, which have been placed on record vide Annexure-1 and Annexure-2 to the writ petition. Clause 3 (xii) "Necessary instruction for filling up application form" clearly indicates without any sort of ambiguity that the applicant shall ensure that self attested copies of all the certificates be attached with the application form. It also stipulates that any such certificate not being attached with the application form shall not be considered later on.

There is no dispute regarding the fact that the petitioners while submitting their application form had not submitted self-attested copy of the marks-sheet and certificate of



M.Ed. The admitted case of the petitioners is that the result of M.A. was not published by the time of submission of application form, therefore, they submitted their application form without the requisite document i.e. self-attested copy of the marks-sheet and certificate of M.Ed., and upon payment of requisite fee they had requested Punjab University, Chandigarh, as to sent their respective confidential result to the B.P.S.C., whereupon it was sent and being received to the B.P.S.C. In view of the Clause of advertisement as referred above, which stipulates that the requisite document/certificate, if not have been attached with the application form, shall not be considered later on. I am of the considered opinion that while holding the petitioners as ineligible and rejecting their candidature, the B.P.S.C. has committed no such error/wrong, which may require any interference of this Court.

The writ petition is therefore, accordingly, dismissed.

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(Sudhir Singh, J)

