

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.486 of 2018
IN
Civil Writ Jurisdiction Case No. 14164 of 2017**

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1. Sanjay Kumar, Son of Janardan Prasad Singh, Resident of Mohalla-Devatralay Apartment, Bhikhana Pahari, P.S.-Pirbahotre, District-Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Secretary, Department of Education, Government of Bihar, Patna.
3. The Additional Secretary, Department of Education, Government of Bihar, Patna.
4. The Bihar Public Service Commission, through its Secretary, 15 Jawaharlal Nehru Marg, Bailey Road, Patna-1.
5. The Secretary, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna-1.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhinav Srivastava, Adv.

For the Respondent/s : Mr. Ashutosh Ranjan Pandey- AAG15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 20-07-2018

Challenge in the present Letters Patent Appeals is to the order dated 05.03.2018 passed in Civil Writ Jurisdiction Case No.14164 of 2017. By the impugned order the learned writ Court has rejected the submission of the petitioner that he ought to have been given 5 marks for his Ph.D. qualification, though it was not as per University Grants Commission (Minimum Standard and Procedure and Award of Ph.D.) Regulations, 2009.



Before, the learned writ Court it was contended that in terms of Schedule V of the advertisement issued for appointment to the post of Assistant Professor in the subject of Philosophy, the candidates who have done their Ph.D. not as per the University Grants Commission Regulations 2009 but have qualified in the National Eligibility Test (NET), are entitled for five marks but the petitioner who has also qualified Bihar Eligibility Test (BET) which is a State Eligibility Test (SET) is not being provided that five marks, therefore, it is contended that the petitioner being eligible to participate in the process of selection for the post of Assistant Professor by virtue of his having qualified in 'BET' would also be eligible to get five marks.

The learned writ Court has rejected the writ application holding that the process of selection is to be completed strictly in terms of advertisement and if the advertisement does not contemplate the award of marks for Ph.D. (not as per UGC Regulations, 2009) without NET qualification, the writ Court would not direct the respondents to provide such marks to those who have qualified through BET/SET.

Learned counsel representing the appellant submits that he having valid qualification for being considered for appointment against the post of Assistant Professor pursuant to the advertisement in question would be eligible for award of five marks. Referring to the



judgment dated 21.09.2016 in L.P.A No227 of 2016, learned counsel submits that in the said case the Hon'ble Division Bench of this Court has held that the qualification of 'BET' was to be treated to be valid for the purpose of considering the cases of the candidates for appointment against the post of Assistant Professor, therefore, submission is that the appellant is also entitled for award of marks for the Ph.D. qualification possessed by him while treating the qualification in BET/SET to be at par to the qualification of NET.

To us, it appears that the contention of the appellant is wholly misconceived. The judgment of the Hon'ble Division Bench in LPA No.227 of 2016 does not talk of equivalence of qualification. The Division Bench has only said that those who have qualified in BET/SET should also be treated to have the requisite qualification for the purpose of selection to the post of Assistant Professor. The Hon'ble Division Bench has never said that those who have qualified BET shall be provided five marks like those who have qualified in NET.

In our considered opinion, treating a qualification as eligibility qualification for the purpose of participation in the selection process is one thing, whereas, award of marks for certain qualifications is a matter of policy decision and fall within the domain of the employer. There is a fine distinction in approaching the issue



in hand which the petitioner-appellant is unable to appreciate. The learned writ Court has rightly held that the advertisement did not contemplate award of marks for Ph.D. not as per the UGC Regulations, 2009 without NET qualification. NET is a test held by the University Grants Commission and, therefore, the marks which are provided to the candidates who have qualified ‘NET’ has not been prescribed for the candidates who have qualified the State Eligibility Test. It is for the employer to lay down the weightage to be provided to a particular qualification. We find no reason to interfere with the judgment of the learned writ Court.

This Letters Patent Appeal has no merit. It is, accordingly, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

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CAV DATE	
Uploading Date	24.07.2018
Transmission Date	

