

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1206 of 2016

- =====
1. Jyant Ajat Shatru son of late Ajat Shatru resident of G/2, P.C. Colony, P.S. - Kankarbagh, Patna - 20.
 2. Rupam daughter of R.P. Singh resident of village - Chatruchak, P.S. - Sultanganj, District - Bhagalpur.
 3. Arvind Kumar son of Shyam Kumar Jha resident of Quarter no. A/10, M.I.T., P.S. - Brahampur, District - Muzaffarpur.
 4. Abhishek Kumar son of Arjun Prasad Yadav resident of Panchsil Nagar, P.S. - Pandra, District - Ranchi, Jharkhand.
 5. Deo Kumar Mahesh son of Devendra Prasad Mishra resident of Bijubigha Meskabour, P.S. - Narhat, District - Nawada.
 6. Ravindra Prakash Kiran son of late L.B. Rajak resident of mohalla - Dhirachak, P.S. - Gardanibagh, District - Patna.
 7. Shashwat son of Kamal Kumar Mukherjee resident of Gurunanakpura, P.S. - Industrial Area, District - Bhagalpur.
 8. Alok Kumar son of Ashok Kumar Sharma resident of Bishwashpur, P.S. - Amarpur, District - Banka.
 9. Vivek Kumar son of Rabindra Kumar Shukla resident of Q.No. C/9, M.I.T. Campus, P.S. - Brahampura, District - Muzaffarpur.
 10. Amit Bhushan Srivastava son of Krishna Bhushan Srivastava resident of Juran Chapra, Road No. 2, P.S. - Brahampura, District - Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Science and Technology Department, Government of Bihar, Patna.
2. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
3. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
4. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, Bailey Road, Patna.
5. The Vice-Chancellor, Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur.
6. The Registrar, Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur.

.... Respondent/s

With

=====

Letters Patent Appeal No. 1204 of 2016

=====

1. Dr. Vimlesh Vivuti Ranjan Son of Late Jagdish Narayan Sinha Resident of Village/Mohalla - Sikandarpur Kundal, P.S. Town Muzaffarpur, District - Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Bihar Public Service Commission through its Secretary, Bailey Road, Patna.
3. Chairman, Bihar Public Service Commission, Bailey Road, Patna.



4. Secretary, Bihar Public Service Commission, Bailey Road, Patna.
5. Principal Secretary, Science and Technology Department, Govt. of Bihar, Patna.
6. Director, Science and Technology Department, Govt. of Bihar, Patna.

.... Respondent/s

Appearance :

(In LPA No.1206 of 2016)

For the Appellant/s : Mr. Ramakant Sharma, Sr.Adv.
Mr. Rajesh Kumar, Adv.
For the BPSC : Mr. P.N.Shahi, Sr.Adv.
For the State : Mr. Manoj Kumar Sinha, AC to GA-9
For the Intervenor : Mr. Harsh Singh, Adv.
Mr. Ranjit Kumar, Adv.
Mr. Sanjeet Kumar, Adv.

(In LPA No.1204 of 2016)

For the Appellant/s : Mr. Rajendra Prasad, Sr. Adv
Mr. Pramod Kumar, Adv.
Mr. Ritesh Kumar, Adv.
For the Respondent/s : Mr. Manoj Kumar Sinha, AC to GA-9

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

II Date: 20-06-2018

Challenge in the present batch of Letters Patent Appeal is to the judgment dated 12.05.2016 passed by the learned writ Court in CWJC No.1822 of 2015 and other analogous matters. It appears that altogether seven writ applications have been disposed of by the impugned judgment.

2. The writ petitioners invoked the extraordinary writ jurisdiction of this Court for quashing of Annexure-5 insofar as, it relates to the writ petitioners showing them ineligible for the purpose of appointment on the post of Assistant Professor in the Government Engineering Colleges. The petitioners claimed that they have



completed Bachelor of Engineering/Bachelor of Technology (B.E, B.Tech) Degree. Some of the petitioners had completed their M.Sc. Engineering (Civil Engineering) whereas, some of them had completed their M.Sc. Engineering in (Mechanical Engineering), Electrical Engineering or Production Engineering. The petitioners case is that their respective degree in M.Sc. (Engineering) in different streams is equivalent to the Mechanical Engineering in the year 2009 to 2014 and that they have obtained their degree from Baba Saheb Bhimrao Ambedkar Bihar University, Muzaffarpur, which is a recognized University by the University Grants Commission (in short U.G.C.) and has been established under the Bihar University Act, 1952 by the State Government.

3. The petitioners got aggrieved by Annexure-5 to the writ application because pursuant to the advertisement bearing no.16 to 28/2014 issued by the Bihar Public Service Commission (in short B.P.S.C.) when the petitioners applied for their appointment as Assistant Professor in the Government Engineering Colleges, at initial stage, their eligibility was not questioned, they were admitted provisionally and were placed in the list of the eligible candidates with their respective roll numbers but later when the petitioners were preparing for the examination to be held on 28.11.2015 and 29.11.2015 in two sittings, all of a sudden B.P.S.C. published the list



of ineligible candidates on 09.11.2015 in connection with Advertisement No.18-23/2014 and the name of petitioners were removed from the eligible candidates on the solitary ground that their M.Sc. Engineering Degree from Baba Saheb Bhimrao Ambedkar Bihar University, Muzaffarpur, are not valid and recognized degree from All India Council for Technical Education (in short A.I.C.T.E).

4. The petitioners contested and challenged Annexure-5 on the ground that in the case of **Bharthidasan University & another Vs. All India Council for Technical Education** reported in **(2001)8 SCC 676**, the Hon'ble Apex Court clearly held that the power to grant approval for starting new technical institutions and for introduction of a new course or programme, a university established by the State Legislature is not required to obtain recognition/approval from A.I.C.T.E. According to the said judgment Section 10 (k) of the A.I.C.T.E Act could not cover a 'University' within its hold. The petitioners also contended that the M.Sc. Engineering course completed by them is a valid degree granted by Baba Saheb Bhimrao Ambedkar Bihar University, Muzaffarpur, which is duly recognized by the U.G.C. and established by the State Legislature and, therefore, the degree of the petitioners are well recognized all over India.

5. The case of the writ petitioners were contested by B.P.S.C. According to the B.P.S.C, it is a recommending body and in



the matter of appointment the B.P.S.C. abides by the Rules and Regulations framed by the State Government. The advertisement for appointment are published by B.P.S.C. as per the requisitions sent by the concerned department. It is the case of the B.P.S.C. that Department of Science and Technology, Government of Bihar, has sent requisitions, mentioning therein necessary qualifications and experience required in the appointment on the post of Assistant Professor in Government Engineering Colleges in the State. Annexure-A series to the counter affidavit of the B.P.S.C. are the letters issued from time to time in this regard. As per the advertisement in the present case the educational qualification required for Advertisement No.16/2014 to 23/2014 and for Advertisement No.24/14 to 28/2014 are as follows:-

“A. Educational Qualifications:- (for Advt.No.16/2014 to 23/2017)

(i) (B.E./B.Tech and M.E/M.Tech in relevant branch with First Class or Equivalent either in B.E/B.Tech or M.E./M.Tech)

(ii) Degree obtained from Distance mode/AMIE mode would not be acceptable.

For Advt. No.24/2014 to 28/2014

(i) Good academic record as defined by the concerned university with at least 55% marks (or and equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.



(ii) Besides fulfilling the above qualifications, the candidate must have cleared the Nationality Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

(iii) Notwithstanding anything contained in sub-clauses (1) and (2) candidates, who are Ph.D or have been awarded a Ph.D degree in accordance with the University Grants Commission (Minimum Standard and Procedure for award of Ph.D Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET.

B. Age Limit:- As on 01.08.2014, minimum age limit should be 22 years and maximum age would be age of superannuation.

C.Weightage for work experience:- As per Resolution No.1412 dated 27.05.2013 issued by the Science & Technology Department, Govt. of Bihar two categories of Teaching Staffs in Govt. Polytechnic/Govt. Women Polytechnic, i.e., (1) those teaching & non-teaching staffs who have been appointed on contract basis under the scheme of strengthening of Polytechnic Education under World Bank Project during the year 1996-97 and whose services have been extended even after expiry of the contract and whose services were terminated with effect from 01.03.2001 and (2) those appointed on contract would be given weightage of 01 (one) marks for every year and maximum 05 (five) marks.”

6. The stand of B.P.S.C. is that the candidature of the petitioners were cancelled keeping in view the decision taken by a committee of Science and Technology in its meeting dated 10.09.2012, held for the purpose of deciding the validity of degree of M.Sc. Engineering from B.R.A. Bihar University, Muzaffarpur, for



employment of teachers on contract in Government Engineering Colleges & Government Polytechnic Institutions. It was found that the degree of M.Sc. Engineering is a research based course carried out by the B.R.A. Bihar University, Muzaffarpur. The University does not hold any regular class/or examination for the award of these degrees. According to the regulations framed by the B.R.A. Bihar, University, Muzaffarpur, the degree of M.Sc. Engineering has been mentioned as a degree obtained through research process. The regulation does not mention holding classes and semester-wise examinations. It is further pointed out that about this degree of M.Sc. Engineering, it has been mentioned in Chapter VIII Para 11 of the above mentioned Regulation of the B.R.A. Bihar University, Muzaffarpur, that “a diploma under the seal of the University and signed by the Vice-Chancellor in Form-30 shall be delivered to such successful candidates at the next convocation held for conferring of the degree.” Thus, the B.P.S.C has taken a stand that even the University considers this degree of M.Sc. Engineering as equal to diploma only.

7. Considering all such aspects of the matter, the Department of Science and Technology had informed the Commission through its Letter No.3019 dated 23.12.2015 that the M.Sc. Engineering from BRA Bihar University, Muzaffarpur, cannot be said to be a valid degree.



8. The State of Bihar (respondent no.1) has also filed a counter affidavit through the Registrar-cum-Administrative Officer in the Department of Science and Technology. It is his stand that for the appointment against the post of Assistant Professor in Engineering Colleges of the Government of Bihar the candidate should possess B.E/B.Tech and M.E/M.Tech in relevant branch with 1st class and the degree must be recognized by the A.I.C.T.E. It has also been pointed out that earlier one of the petitioners namely Jayant Ajat Shatru had filed a writ application bearing number CWJC No.16034 of 2014 wherein he had prayed for a writ of mandamus directing the respondents to declare the result of the petitioner's for the post of Assistant Professor in the Engineering Colleges as against Advertisement No.1 of 2012. The same was contested by filing a counter affidavit. The stand is that degree of M.Sc Engineering obtained from BRA Bihar University, Muzaffarpur, is not recognized as confirming to the degree required for the purpose of appointment in the Government Engineering Colleges. It has also been submitted that these degrees are not recognized by the A.I.C.T.E.

9. The stand of the Registrar of BRA Bihar University, Muzaffarpur, is that the University has been granting M.Sc. Engineering Degree by research as per the approved regulations prior to 1955 i.e., much before coming into force of the A.I.C.T.E Act in



the year 1987.

10. In the aforementioned background of facts and submissions advanced at the bar, the learned writ Court noticed that prior to the year 2014 whatever was the position in the matters relating to appointment on the post of Assistant Professor in the Government Engineering Colleges, after coming into force of the Rules framed by the State in the year 2014, now the requirement with regard to the eligibility, qualification and experience for different stages have been fortified. The learned writ Court also noticed that the Rule and the Advertisement are unambiguous as to what should be the qualification and the experience for the purpose of appointment. According to the learned writ Court the efforts on the part of these petitioners are to obtain a declaration from this Court that their M.Sc. Engineering in different stream is a degree equivalent to M.E/M.Tech as required in terms of the Rule and Advertisement. The writ Court noticed the judgment of the Hon'ble Supreme Court in the case of **State of Rajasthan v. Lata Arun**, reported in (2002) 6 SCC 252 and taking note of Paragraph-13 of the said decision the Court held that the M.Sc. Engineering Degree or a Diploma being awarded by BRA Bihar University, Muzaffarpur, is a unique kind of education, may be with an object of facilitating some research work in the area but the same may not be adequate for the Court to declare award of the said



diploma or degree to be equivalent to Master of Engineering (M.E) or Master of Technology (M.Tech).

11. While assailing the impugned Judgment, Mr. Rama Kant Sharma, learned Senior Counsel representing the appellants would submit that a bare perusal of Annexure-5 would show that the reason provided for declaring the petitioners-appellants ineligible is that the degree obtained by them is not a recognized degree. Learned Senior Counsel submits that the petitioners have obtained their M.Sc. Engineering Degree in different stream in accordance with the regulations framed by the BRA Bihar University, Muzaffarpur, and, therefore, the B.P.S.C is not correct in saying that M.Sc. Engineering from BRA Bihar University, Muzaffarpur, is not a valid and recognized degree from A.I.C.T.E. Reliance once again has been placed on the judgment of the Hon'ble Supreme court rendered in the case of **Bharthidasan University and another vs. All India Council for Technical Education and ors. reported in (2001) 8 SCC 676** wherein the Hon'ble Supreme Court has held that approval of the A.I.C.T.E is not mandatory if the degree is being granted by an University.

12. Mr. P.N.Sahi, learned Senior Advocate representing the B.P.S.C has, at the outset, submitted before this Court that the grounds shown in Annexure-5 may not be happily worded ground but



the pleadings available on the record unambiguously suggest that the petitioners-appellants are possessing M.Sc. Engineering Degree which is not a degree of M.Tech and it does not confirm to the requirements in terms of Annexure-A to the counter affidavit filed on behalf of the State in the present appeal which is a copy of the Rule known as Bihar Engineering Education Service Rules, 2014, (hereinafter referred to as the “Rules, 2014”) . Mr. Sahi, has pointed out from Appendix-1 (Chapter-1) attached to the Rules, 2014 that the qualification provided under the Rule for appointment on the post of Assistant Professor is B.E/B.Tech and M.E./M.Tech in relevant branch i.e., first class or equivalent either in B.E/B.Tech and M.E/M.Tech. It is submitted that admittedly the petitioners are not possessing degree of M.E/M.Tech or a equivalent degree and this fact is proved from the letter dated 11.03.2017 contained in Annexure-B to the counter affidavit of the State. The letter dated 11.03.2017 has been issued by the Registrar of Baba Saheb Bhimrao Ambedkar Bihar University, Muzaffarpur, informing the decision of the Examination Board of the University in the meeting held on 11.03.2017 in which the Board resolved that “degree of M.Sc. in Engineering is different from that of the degree of M.Tech because the course of M.Tech consist of ten papers (theory + practical) in three semesters along with thesis in fourth semester (a copy of mark-sheet attached for ready



reference) while the degree of M.Sc. Engineering is awarded only on the basis of thesis submitted by the candidate in accordance with the Regulation assented to by the Hon'ble Chancellor (copy enclosed).” Learned Senior Counsel, therefore, submits that even though Annexure-5 does not provide happily worded reason but the thrust of the entire controversy centers around the equivalence aspect of the degree and in the garb of the writ application the petitioners are virtually seeking a declaration by this Court to the effect that the M.Sc. Engineering Degree obtained by these petitioners be treated as equivalent to M.E/M.Tech. In his submissions Mr. Sahi would submit that the learned writ Court has rightly taken note of the facts and the issues involved in the case. In this connection, he has once again relied upon the principles of the natural justice in the case of **Mohd. Shujat Ali v. Union of India, reported in (1975)3 SCC 76** and in the case of **State of Rajasthan v. Lata Arun, reported in (2002)6 SCC 252.**

13. There is an intervention application filed on behalf of some of the candidates vide I.A. No.6504 of 2017 in the present appeal. The intervener applicants are seeking their addition as party respondents in the present L.P.A in opposition to the prayer made in C.W.J.C No.18265/2015 wherefrom the instant appeal has arisen.

14. I.A is allowed.



15. We have heard Mr. Harsh Singh, learned Advocate representing the interveners applicants, they are the eligible candidates, their concern is that on account of the pendency of the present appeal the respondent B.P.S.C has put the result on hold. It is submitted that the writ petitioners have approached this Court by suppressing material facts relating to the earlier round of the proceedings in **C.W.J.C No.18654 of 2012 (Abhishek Kumar and ors. Vs. The State of Bihar and ors)**. It is submitted that the writ application was filed by the writ petitioners-appellants no.1, 3, 4 and 6 in L.P.A No.1206 of 2016. They had moved this Court challenging Clause-1 of the decision dated 10.09.2012 of the committee constituted under the Chairmanship of Principal Secretary, Science and Technology Department, Government of Bihar, Patna, for preparing a merit list pursuant to Advertisement No.ST-01/2012 dated 26.05.2012 issued for contract appointment of teaching cadre posts in Engineering Colleges and Government Polytechnic in the State of Bihar. The said committee had decided that the syllabus of M.Sc Engineering obtained from B.R.A, Bihar University shall not be considered for appointment and the syllabus approved from the A.I.C.T.E shall be considered and a further direction be issued to the Science and Technology Department, Bihar, Patna, to consider the candidature of the petitioners and appoint them on the post of



Assistant Professor etc. It is pointed out that in the said writ application the specific question was framed vide order dated 10.10.2012 in the following terms:-

“ The only question for consideration is the validity of the course in M.Sc Engineering/M.Tech conducted by the respondent University in the Muzaffarpur Institute of Technology and whether the necessary sanction required in the law from the appropriate authorities is available.”

16. Learned counsel submits that ultimately the said writ application was dismissed as withdrawn vide order dated 10.07.2013. A copy of the decision dated 10.9.2012 has been brought on record as Annexure-1/10 to the Interlocutory Application.

17. Having heard learned counsel for the parties and upon perusal of the pleadings available on the record, we would record that the contention of Mr.P.N.Shahi, learned Senior Counsel representing B.P.S.C that the reasons shown to declare the writ petitioners ineligible in Annexure-5 to the writ application may not be happily worded but the thrust of the whole pleading and submission on behalf of the petitioners-appellants is to get a declaration from this Court that the M.Sc. Engineering Degree awarded to them by BRA Bihar University, Muzaffarpur, be treated as equivalent to M.E/M.Tech Degree as envisaged under the 2014 Rules and the Advertisement in question are acceptable to this Court. In fact the



entire pleadings of the parties cluster around the validity of the M.Sc Engineering Degree awarded by Baba Saheb Bhimrao Ambedkar Bihar University, Muzaffarpur, vis-à-vis the M.E/M.Tech Degree required as eligibility condition prescribed under the 2014 Rules and the Advertisement in terms thereof.

18. Annexure-B to the counter affidavit filed on behalf of the State in the present appeal is a clinching document issued by non-else than the Registrar of the BRA Bihar University, Muzaffarpur, which unambiguously shows that the M.Sc Engineering Degree obtained by the writ petitioners-appellants is awarded only on the basis of thesis submitted by the candidates whereas, M.Tech Degree which is the requirement under the Rules of 2014 is awarded to a candidate who goes through the course of M.Tech consisting of ten papers (Theory + Practical) in three semesters along with thesis in fourth semester. The Examination Board of the BRA Bihar University, Muzaffarpur, has examined this aspect of the matter and on the basis of the opinion of the Examination Board, the Registrar of the University has issued Annexure-B which has been placed before us with the counter affidavit of the State. The reasons in Annexure-5 whereunder the petitioners have been shown ineligible may not be happily worded, but a perusal of the same would show that the reasons stating that the M.Sc Engineering from Baba Saheb Bhimrao



Ambedkar Bihar University, Muzaffarpur, has not been held valid and recognized degree from A.I.C.T.E is to be read in the context of the present case keeping in mind the Rules 2014 (Annexure A) to the counter affidavit of the State in Letters Patent Appeal. The M.Sc Engineering Degree obtained by the petitioners-appellants, according to the Registrar of the BRA Bihar University, Muzaffarpur, is a degree based on submission of thesis without holding regular classes or examination in terms of the regulations of the University which has the approval of the Hon'ble Chancellor but the same has not been found acceptable for the purpose of appointment on the post of Assistant Professor in the Engineering Colleges of the Government of Bihar because it is not one of the degrees provided under Appendix-1 (Table-1) to the Rules 2014. What crystallizes ultimately on analyzing the pleadings of the parties is that the M.Sc Degree obtained by the writ petitioners by submitting thesis only in terms of the regulations of the University may be a valid degree in terms of the regulation approved by the Hon'ble Chancellor but this Court sitting in its writ jurisdiction cannot declare such degree of the writ petitioners equivalent to M.E/M.Tech Degree as required under the Rules 2014 for the purpose of appointment on the post of Assistant Professor. It is always in the domain of the employer to provide the eligibility and qualifying conditions and in the present case the Rule 2014 framed



under Proviso to Article 309 of the Constitution of India by the State clearly lays down the eligibility conditions and qualifications for appointment on the post of Assistant Professor. At this stage, we take note of the relevant Paragraph No.13 from the judgment of the Hon'ble Apex court in the case of **Mohd. Shujat Ali v. Union of India, reported in (1975)3 SCC 76** as under:-

“It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government.”

19. We would also take note of Paragraph 13 of the judgment of the Hon'ble Apex Court in the case **State of Rajasthan v. Lata Arun, reported in (2002)6 SCC 252** which reads as under:-

“From the ratio of the decisions noted above, it is clear that the prescribed eligibility qualification for admission to a



course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.”

20. In view of the discussions made hereinabove, we do not find any reason to interfere with the impugned judgment. Both the Letters Patent Appeals have no merit and are, accordingly, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha.

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29.06.2018
Transmission Date	N/A

