

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.748 of 2017

Rupesh Kumar, son of Jaynath Baitha, resident of Village- Parshawani
Mailwar, P.O.+P.S.- Parshawani, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat, Patna.
2. The Principal Secretary, Education Department, Bihar, Patna.
3. The Director, Administration-cum-Principal Secretary, Education Department, Bihar, Patna.
4. State Project Director, Bihar Education Project Council, Shastri Bhawan, Rastrabhasha Parishad, Campus, Saidpur, Rajendra Nagar, Patna.
5. The District Magistrate, Sitamarhi.
6. The District Education Officer (D.E.O.) Sitamarhi.
7. District Programme Officer, Primary Education and Serve Shiksha Avian, Bihar Shiksha Pariyojna, Sitamarhi, Distt- Sitamarhi.
8. Rahul Kumar Son of Sarvesh thakur Resident of Village + Post- Kamtaul, P.S. Kamtaul, District- Darbhanga.
9. Md. Tabrez Son of Md. Israfil Resident of Village- Parsauni Mailwar, P.O. and P.S. - Parsauni, District- Sitamarhi.
10. Ravindra Kumar Son of Shambhu Paswan Resident of Village- Gopalpur, P.O. Mohani Mandal, P.S. Mejorganj, District- Sitamarhi.
11. Abhishek Kumar Son of Kamaldeo Ram Karun Resident of Village- Marhiya Mohan, Post- Pachpakari, P.S. Dhaka, District- East Champaran,.
12. Sunil Kumar Son of Rameshwar Rai Resident of Village- Bhatuha, Post- Meghpur, P.S. Pupari, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. Ajay Thakur, Advocate Ms. Nitu Kumari, Advocate
For the State	:	Mr. Smt.Binita Singh-Sc28 Mr. Vivek Anand Amritesh, AC to SC 28
For BEPC	:	Mr. Girijish Kumar, Advocate
For Respondents 9 to 12 :		Mr.Santosh Kumar, Advocate Mr. Alok Kumar Alok, Advocate
For Respondent No. 8	:	Mr. Arun Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

7 04-12-2018 Heard learned Counsel for the petitioner and the
learned Counsel for the respondents.

Mr. Thakur, learned Counsel appearing for the
petitioner, has submitted that the advertisement contemplates



that the selection has to be done on the basis of marks obtained in the written examination which is to be objective in nature. Relying upon the result which has been issued by the respondents, he submits that the petitioner is having 62 marks whereas the private respondents who are at serial nos. 99, 137, 144, 149 and 150 have been awarded 61, 46, 45, 40 and 35 marks respectively. It is his submission that though they have got lesser marks than the petitioner, they have been selected for appointment to the post of Accountant -cum- Clerk in Kasturba Gandhi Balika Vidyalaya, Sitamarhi under Bihar Shiksha Pariyojana on contract basis. He submits that such selection is discriminatory inasmuch as the petitioner who has obtained higher marks, has been ignored whereas others having lesser marks have been selected.

The other submission made by the Counsel for the petitioner is that the discrimination seems to be sustained by the respondents by showing the reasons that since the private respondents are having B.Com. Degree at the time of filling up their application and have submitted their candidature as B.Com candidate, whereas the petitioner is I.Com pass candidate for selection process in question. It is his submission that since the selection process does not contemplated any weightage to be



given to the B.Com. Candidates in the matter of award of marks in the written objective examination there can be no justification for ignoring the petitioner's claim when he has better marks than that possessed by the private respondents.

Counsel for the State and the private respondents 9 to 12 as well as the Bihar Education Project have taken the Court through the advertisement and the guidelines issued by respondent No. 4 which governs the process of selection. Relying upon the educational qualification prescribed in the advertisement it is pointed out that there was a clear stipulation that for the purpose of appointment to the post of Accountant -cum Assistant preference was to be given to the candidates having B.Com pass qualification. It is a clear stipulation in the advertisement that if any B.Com. pass candidate is not available then only the candidature of I.Com. pass candidate would be considered.

The admitted case of the petitioner is that he was a I.Com. Pass candidate at the time when he made application, though it is submitted that one year subsequent thereto he has acquired qualification of B.Com. Such acquisition of B.Com. qualification one year after the advertisement is of no avail to the petitioner. The admitted position is that at the time of



selection he was having I.Com pass degree and he had submitted his candidature also as a I.Com. pass candidate. The stipulations made in the advertisement are clear that only in the event B.Com. Pass candidates are unavailable candidature of I.Com. Pass candidates, such as the petitioner, was to be considered.

If the submission of the Counsel for the petitioner is to be accepted that persons having higher marks in the objective test examination should be selected irrespective of the fact whether he/she is having I.Com. or B.Com. pass degree, the stipulations contained in the eligibility regarding educational qualification prescribed in the advertisement would be rendered nugatory. The advertisement clearly contemplates that only if B.Com. candidates are not available only then the candidature of I.Com. Candidates should be considered for selection. Admittedly the petitioner is I.Com. pass candidate whereas the private respondents are B.Com. pass candidates. Therefore, there can be no grudge against the selection of the private respondents.

This Court would find that the selection is in accordance with the advertisement and does not suffer from any infirmity or illegality.



Counsel for respondent No. 4 has also drawn attention of the Court towards the guidelines issued by them for the purpose of selection. Clause (ga)(iii) thereof clearly specifies that even if a candidate having higher marks is I.Com pass candidate he would not be considered for selection in question and that he would only have a claim if no B.Com pass candidate was available for selection. The reason shown by the respondent authorities, therefore, does not create any doubt that the process of selection has been conducted as per the stipulations/requirement/eligibility prescribed in the advertisement.

The petitioner having participated in the process of selection in terms of advertisement cannot be permitted to turn around and challenge the requirement prescribed therein merely for the fact that he has been declared unsuccessful in the process of selection.

Other than that, this Court would observe that these are two distinct class of B.Com pass and I.Com. pass candidate. Classification does not suffer from any discrimination as it is common knowledge and admitted position that a B.Com. pass candidate is better qualified than an I. Com. pass candidate and, therefore, when the B.Com. candidate possesses a higher basic



qualification preference being granted under the advertisement as well as the guidelines cannot be objected to by the petitioner.

The writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

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