

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11571 of 2018

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Kaushal Kumar, S/o Lalan Prasad, R/o Flat No. A-16, Mahila Thana
Campus, P.S. Kotwali, District- Ranchi (Jharkhand). Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Science & Technology, Govt. of Bihar, Patna.
 2. Principal Secretary, Department of Science & Technology, Govt. of Bihar Patna.
 3. The Bihar Public Service Commission through its Chairman, Patna.
 4. The Secretary, Bihar Public Service Commission, Patna.
 5. Joint Secretary cum Controller of Examination, Bihar Public Service Commission, Patna.
 6. Avenash Kumar, S/o Diwakar Singh, R/o Village- Singhi Khap, P.O. Tillaiya, Pin Code 824217, P.S. Banke Bazar, District- Gaya.... Respondent/s
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Appearance :

For the Petitioner/s	:	Mr. Harsh Singh, Advocate
For the Respondent/s	:	Mr. Rakesh Kumar Ranjan, A.C to G.A -5
For the BPSC	:	Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 27-06-2018

Heard Mr. Harsh Singh, learned counsel for the petitioner, Mr. Sanjay Pandey, learned counsel for the BPSC and learned counsel appearing on behalf of the State.

2. Petitioner is aggrieved by the decision of the BPSC contained in Annexure-7 dated 23.1.2018. He has filed petition before the Controller of Examination against the decision of rejection of his candidature vide Annexure-7 and 8 dated 23.1.2018 and Annexure dated 19.9.2014.

3. Yet another application was addressed to the Secretary, BPSC on 16.2.2018. The grievance of the petitioner is that respondents have not addressed the grievance raised by the petitioner in the representation contained in Annexure-8 and 9 enclosed with the present writ application. Instead of deciding the



representation filed by the petitioner against the decision rejecting his candidature, the respondents have issued letters recommending the name of successful candidates vide notification dated 10.4.2018 (Annexure-12). It appears that on 28.3.2018, respondent Commission recommended the selected candidates for appointment against the post of Assistant Professor in Computer Science.

4. Mr. Harsh Singh submitted that once the respondents with open eye after scrutiny declared the petitioner eligible as it would be evident from Annexure-3, the respondents are precluded from reviewing the decision and declaring the petitioner as ineligible. He further submitted that pursuant to Annexure-3 petitioner has appeared in the written test and also appeared at the interview and at the time of preparation of final select list, the respondents have declared the petitioner as ineligible to extend undue favour to some favoured candidates. He next submitted that the respondents have acted discriminatory. He has drawn attention of this court to Annexure-10 to indicate that similarly circumstanced Maruti Nandan Mishra and Nimish Kumar appeared alongwith this petitioner from the same institution and passed M.Tech on the same day their candidature was considered and they have been recommended for



appointment by the Commission and as such the action of the Commission is hostile, discriminatory and in violation of Article 14.

5. He further submitted that in terms of advertisement, petitioner has cleared M. Tech before the cut off date on 23.9.2011 and has submitted requisite documents for consideration of his case before the Commission and only after scrutiny of those documents the Commission has issued call letters to participate in the written test and interview. He submits that in terms of advertisement the petitioner who has M. Tech before the cut off date and who has submitted the document for consideration was eligible in terms of advertisement and as such the respondent Commission was not justified in rejecting the candidature of the petitioner.

6. Mr. Sanjay Pandey learned counsel appearing on behalf of the Commission has submitted that reference of the case of Maruti Nandan Mishra and Nimish Kumar is not available to this petitioner for the reason that they were applicants in the stream of electrical and electronics engineering and not in the subject in which petitioner was applicant. However, he has not been able to make out a case that cut off date for all streams was one and same i.e. 23.9.2016 and the petitioner and other



candidates recommended were M.Tech from the same institution and they have passed the M. Tech on same academic session and their result was published on the same day. The second submission on behalf of Sanjay Pandey appearing on behalf of the Commission is that the Commission has now become functus officio after recommendation and as such the Commission cannot do anything in the matter of this petitioner.

7. Learned counsel appearing on behalf of the State prays for adjournment as he has no instruction at this stage to assist the court.

8. Considering the totality of the facts situation the Court is of the view that Commission is a State and cannot adopt different yardstick in the matter of scrutiny and declaring similarly circumstanced candidates eligible and rejecting the candidature of the petitioner. If the application was invited vide one composite advertisement the same rule is apply in the scrutiny of candidature of all candidates and no discrimination is permissible, only because the streams are different although advertisement admits same cut off date.

9. From the materials available on the record it appears to this court is that the petitioners have passed M. Tech examination before the cut off date and necessary information was



furnished alongwith the application submitted by the petitioner and that is why the Court has reason to believe that petitioner's candidature was accepted by the Commission. It is true as contended by Mr. Sanjay Pandey that the candidature was accepted provisionally and it was not a final candidature, but where the respondent Commission has accepted the candidature and allowed the petitioner to participate in the written test and interview it was require to follow principle of natural justice and fair play respondents before passing any order adverse to the interest of petitioner, rejecting his candidature. The Commission was required to give notice and after providing hearing, the Commission was required to reject the candidature once candidature of petitioner was accepted even provisionally by the Commission.

10. The other contention of the Mr. Pandey is that the Commission has become functus officio, the court is not in a position to accept the submission that Commission cannot undue the mistake if the Commission has committed mistake in the matter of rejecting the candidature of the petitioner. Discrimination goes to the root of the decision and if the Commission has adopted two yardsticks and discriminated the petitioner such action of the Commission cannot sustain. However, in view of the peculiar facts and circumstances of the case when Commission has already



recommended selected candidates, the Court hereby directed the Commission as well as State to adopt corrective measure and if it is found that candidature of petitioner was wrongly rejected, the Commission may revise the select list in the event the State Government has not already appointed the candidates pursuant to the recommendation one post be kept reserved by the concerned department so that the case of the petitioner may be considered after adopting corrective measure by the Commission in terms of advertisement.

11.The Commission is expected to take necessary decision within a period of one month from today. In the event appointment has been made, liberty shall be available to the petitioner to challenge the appointment of the candidates who have been wrongly appointed ignoring the candidature and merit of the petitioner, in case, such situation warrants.

12.With the aforesaid, the writ petition stands disposed of.

Ravi/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.07.2018
Transmission Date	

