

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 17072 of 2015

1. Manoj Kumar, Son of Anand Lal, Resident of Mohalla - New Damariya, west of Kabristan, P.O. Anisabad, P.S.-Anisabad, District - Patna
2. Ram Murat Singh Son of Sri Parma Singh Resident of Village + Post - Ashok Nagar, P.S. Jalalpur, Dist.-Chapra Saran
3. Md. Shahanshah Azam, Son of Md. Azim Uddin, Resident of Village -Bichali Aran, P.O. - Sohsarai, P.s. - Sahsarai Town, District – Nalanda

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, General Administration Department, Govt. of Bihar
3. The Registrar General, High Court of Judicature at Patna
4. The Registrar (Administration) High Court of Judicature at Patna
5. the Chairman, Convener Co-ordination Committee-cum-District and Sessions Judge, Patna
6. The District and Sessions Judge, Rahtas, Sasaram
7. the District and Sessions Judge, Saran at Chapra
8. The In-charge, Administration, Rohtas, Sasaram
9. The In charge Administration, Saran at Chapra

... .. Respondent/s

WITH

Civil Writ Jurisdiction Case No 17588 of 2015

1. Vijay Kumar, S/o Sri Baikunth Singh, R/o Village- Shahri, P.S.- Ben, Dist- Nalanda, Bihar Sharif.
2. Bipin Bihari Singh, S/o Yogendra Prasad Singh, Resident of Village- Molnabigha, P.O.- Onda, P.S.- Sare, District- Nalanda, Bihar Sharif.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, General Administration Department, Govt. of Bihar Patna.
3. The Registrar General, High Court of Judicature at Patna.
4. The Registrar (Administration) High Court of Judicature at Patna.
5. The Chairman, Convener Co-ordination Committee-cum-District and Sessions Judge, Patna.
6. The District and Sessions Judge, Bihar Sharif, Nalanda.



7. The In-Charge, Administration, Bihar Sharif, Nalanda.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 17072 of 2015)

For the Petitioner/s : Mr Birendra Kumar, Advocate

For the S t a t e : Mr Manoj Kumar, AC to GP IV

For the High Court : M/s Satyabir Bharti, Alok Chandra, Advocates

(In Civil Writ Jurisdiction Case No 17588 of 2015)

For the Petitioner/s : M/s Dinu Kumar, Lala S N Rais,

Ms Ritika Rani, Advocates

For the S t a t e : Mr Rohitabh Das, AC to AAG X

For the High Court : Mr Satyabir Bharti, Advocate

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 18-07-2019

Heard Mr Dinu Kumar, learned counsel for the petitioners as well as Mr Satyabir Bharti for respondents No 3 and 4 and M/s Rohitabh Das, Manoj Kumar, learned counsel for the respondent-State.

2 Petitioners had earlier participated in the recruitment process initiated in the year, 2003 for recruitment to Class III Post in Subordinate Courts.

3 Authorities in the year 2011 undertook a fresh selection process. The advertisement was issued on 06.02.2011, for selection process in the year 2011. Candidates, including petitioners who had been left over in the earlier process of 2003, were allowed age relaxation subject to producing photostat copy of admit card issued in the earlier process of 2003. It is petitioners' case that relying upon admit card in earlier process,



they had been allowed age relaxation and opportunity to participate in the selection process initiated in the year, 2011. To this extent, there is no dispute between the parties.

4 Petitioners had emerged successfully in the process of selection and had been offered appointment against the posts of Clerks/Stenographers in Civil Courts of Bihar.

5 The convener of the Coordination Committee -cum- District and Sessions Judge, Patna (hereinafter referred to as the Convener), on 13.08.2015, wrote to the various Courts not to accept joining of candidates, like the petitioners who were claiming appointment on the basis of qualification of Sahitya Alankar awarded by Hindi Vidyapeeth, Deoghar, by treating it as equivalent to Graduation. Such communication was in light of decision of the High Court dated 02.07.2013 that certificate of Sahitya Alankar awarded by Hindi Vidyapeeth, Deoghar was not a recognized qualification for appointment to Class III post in Civil Courts.

6 In the meantime, two petitioners of CWJC No 17588 of 2015 had joined in the Judgeship of Nalanda on 14.08.2015 and 17.08.2015 respectively.

7 In view of Communication dated 16.09.2015 from the Convener, taken note of herein above, the District and Sessions Judge, Nalanda revoked the appointment of two petitioners of



CWJC No 17588 of 2015, namely, Shri Bipin Bihari Singh and Shri Vijay Kumar.

8 In view of the Communication dated 13.08.2015, the three petitioners in CWJC No 17072 of 2015, namely, Manoj Kumar, Ram Murat Singh and Md Shahanshah Azam were not allowed to join the Class III post for which they had been issued appointment letters dated 10.08.2015 (Annexure 4 series). Since the two petitioners of CWJC No 17588 of 2015 had already submitted their joining prior to communication of the Convener, their joining had been revoked within a month placing reliance on decision dated 02.07.2013 of the High Court holding that certificate from Hindi Vidyapeeth, Deoghar was not valid for the appointment in question.

9 Mr Dinu Kumar appearing for the petitioners has submitted that order revoking joining of Bipin Bihari Singh and Vijay Kumar has been issued without notice or without affording any opportunity of hearing. Having been appointed, they could not have been removed from service unceremoniously.

10 He has also placed reliance on the decision of High Court dated 16.04.1994 which had recognized the qualification of Sahitya Alankar to be equivalent to BA degree for appointment on Class III Posts. In terms of the said letter,



petitioners were eligible as they fulfilled the condition laid down in Column C of Government Order dated 11.01.1991 as petitioners' qualification of Sahitya Alankar was with English as a subject. Referring to the two Gazette Notifications, he would submit that degree of Sahitya Alankar possessed by the petitioners have to be considered as a valid degree up to 08.04.2016 as per State Government's Gazette Notification dated 08.04.2016 issued by the General Administration Department. He further submits that there is no Gazette Notification thereafter to the contrary. In absence of any Gazette Notification/Public Notice derecognizing the degree from an earlier date, petitioners could not have been made to suffer on account of the fact that degree possessed by them was not a valid degree.

11 Mr Dinu Kumar places reliance on decision of Awadh Kishore & Others -Versus- State of Bihar & Others in support of his submissions. Unless there is Notification by way of Gazette Publication, earlier policy of the State Government adopted by the High Court under its letter dated 16.04.1994 could not have been altered to the disadvantage of the petitioners. He submits that the Rule under which the process of selection has been conducted is also framed by the State Government. Thus, Gazette Notifications issued by the State



Government on 14.02.2016 and 24.08.2017 recognizing the certificate/qualification of Sahitya Alankar up to 08.04.2016, has to be applied for the selection in question. There is no scope for any petitioner to consider otherwise that they would be disqualified in the process of selection. He also submits that rules/requisites or recognized qualifications for the process of selection cannot be altered in between and during the process of selection so as to prejudice any person. Since Advertisement for the process of selection was issued in the year 2011, authorities cannot be permitted to rely upon the High Court's Communication dated 02.07.2013 for rejecting petitioners' qualification issued by Hindi Vidyapeeth, Deoghar, which till 02.07.2013, was a valid qualification for appointment on Class III Posts in the Civil Courts.

12 Mr Dinu Kumar relies upon decisions reported in the case of Bedanga Talukdar -Versus- Saifudaullah Khan & Others, (2011) 12 Supreme Court Cases 85 and in the case of State of Bihar & Others -Versus- Mithilesh Kumar, (2010) 13 Supreme Court Cases 467. He also relies upon some unreported judgments in the case of Prem Lata Kumari -Versus- State of Bihar & Others bearing CWJC No 19534 of 2016 as well as decision in the case of Sheonandan Prasad -Versus- State of Bihar & Others bearing CWJC No 9621 of 2017 in support of



his submissions that degree possessed by the petitioner has consistently been recognized in terms of policy of the State Government referred to herein above.

13 He also submits that the Gazette Notification dated 08.04.2016 in the General Administration Department has been issued relying upon earlier decisions passed by this Court. Accordingly, the qualification obtained from Hindi Vidyapeeth, Deoghar prior to 07.05.2012 were saved. The specific decision of the State Government, as per said notification, was that appointments made on the basis of qualification issued by the Hindi Vidyapeeth, Deoghar prior to 07.05.2012 could not be interfered with on the basis of derecognition of the qualification. All the petitioners have obtained qualification of Sahitya Alankar from Hindi Vidyapeeth, Deoghar prior to the said cut off date of 07.05.2012. Pursuant to Advertisement dated 06.02.2011, all have been selected for appointment on 10.08.2015. Hence, the petitioners' appointment cannot be interfered with on the basis of the High Court's decision in the meantime, i e, dated 02.07.2013.

14 Mr Satyabir Bharti, on the other hand, submits that High Court under Rule 9 (6) of The Bihar Civil Courts Staff (Class III and IV) Rules, 2009 was competent to issue direction from time to time. He submits that in view of provision



contained in Rule 9 (6), direction of the High Court dated 02.07.2013 which has been relied upon to revoke joining of the petitioners or to deny joining on basis of qualification issued by Hindi Vidyapeeth, Deoghar is in accordance with law. High Court was competent to issue such direction on 02.07.2013 under the provisions of Rule 9 (6) of the 2009 Rules and same applies uniformly to all candidates participating in the selection process and seeking appointment on basis of said degree.

15 He submits that it is not a case of either dismissal or termination. Petitioners of CWJC No 17588 of 2015 had been taken in service as probationer and, as such, order revoking appointment/joining on basis of an unrecognized qualification, simplicitor and without casting any stigma, is in accordance with law, for which prior opportunity or compliance with natural justice is not required to be given.

16 He further submits that the Gazette Notifications and decisions of the State Government issued by the General Administration Department relied upon by the petitioners cannot be made the basis of claiming recognition of the qualification issued by Hindi Vidyapeeth, Deoghar for appointment to Class III posts in the Civil Courts. The Gazette Notifications and decisions of the State Government may at best apply in process of employment under the State Government.



17 The appointment in question in Civil Courts is governed by the 2009 Rules. The 2009 Rules is duly notified and petitioners are well aware of the said Rules. Rule 9 (6) empowers the High Court to issue such directions, as has been issued on 02.07.2013. Such directions need not be notified since the same are issued in exercise of powers under a duly notified Rules. The decision of the High Court dated 02.07.2013 is not bringing about a change in the 2009 Rules in midst of the process of selection but only issuing directions under Rule 9 (6) of the 2009 Rules. He also referred to the provisions contained in Section 28 of the General Clauses Act to submit that there was no requirement under the 2009 Rules to publish such a decision, the petitioners, thus, cannot claim that in absence of any Notification of the decision dated 02.07.2013 in the Gazette/Public Notice, the same could not be applied to the selection process in question. The 2009 Rules does not contemplate that directions issued by the High Court under Rule 9 (6) are required to be notified by way of Gazette Notification.

18 This Court has gone through the Gazette Notifications being relied upon by the petitioners' counsel. Prima facie, the Gazette Notifications has considered the qualification of Sahitya Alankar awarded by Hindi Vidyapeeth, Deoghar as a recognized qualification for certain periods. It is



also evident that the State Government has fixed a cut off date up to which the Sahitya Alankar would be considered as a valid qualification. The validity, however, as per decisions of State Government relied upon by the petitioners' counsel, is limited to appointment in specified Department/Establishments of the State Government. The petitioners have participated in the process of appointment for Class III Post in Civil Courts. It is not in dispute that the appointments in Civil Courts was governed by the provisions contained in the 2009 Rules. Thus, all, including the petitioners, were aware that under Rule 9 (6) of the 2009 Rules, High Court was competent to issue directions from time to time and that selection would be subject to such directions issued by the High Court under Rule 9 (6) of the 2009 Rules. This Court would consider it useful to reproduce Rule 9 (6) of the 2009 Rules, which reads as follows:

“9. GENERAL RULES FOR APPOINTMENTS

... ..

(6) All appointment would be subject to such directions as may be issued by the High Court from time to time.”

19 The decision of the High Court dated 02.07.2013 on the basis of which the qualification of Sahitya Alankar from Hindi Vidyapeeth, Deoghar has been declared not to be equivalent to Graduation degree for the purposes of appointment



in the Civil Court on a Class III post is, therefore, sustainable and applicable. As per Rule 9 (6) of the 2009 Rules, petitioners' appointment pursuant to the selection process of the year, 2011 was subject to direction, as contained in High Court's Communication dated 02.07.2013. In view of the decision/direction of the High Court dated 02.07.2013, the petitioner cannot be permitted to derive sustenance from the earlier decision of the High Court dated 16.04.1994, which stood superseded by the subsequent decision/direction under Rule 9 (6) of the 2009 Rules dated 02.07.2013.

20 In so far as appointment in Civil Courts is concerned, decision of the High Court dated 16.04.1994 in respect of Sahitya Alankar qualification was applicable earlier. Now, the decision/direction of the High Court dated 02.07.2013 has become applicable. Petitioners' appointment was subject to such decision/direction of the High Court. The State Government's decisions/Gazette Notifications referred to in the facts of the instant case are, therefore, of no avail to the petitioners.

21 This Court would also observe that the decision/direction dated 02.07.2013 was in exercise of powers under Rule 9 (6) of the 2009 Rules. The 2009 Rules is duly notified Rules and, admittedly, the petitioners are aware of the



said Rules. The petitioners, therefore, were conscious at the time of making their application in the year, 2011 that appointment would be subject to directions of the High Court. The Rule did not contemplate that decision of the High Court was required to be published by Gazette Notification. Therefore, this Court would hold that no prejudice has been caused to any of the petitioners by reason that the High Court's decision dated 02.07.2013 was not notified in the Gazette. Since Rule 9 (6) permitted issuing such directions, it cannot be said that the High Court's decision/direction dated 02.07.2013 amounts to any change in the Rules or terms and conditions of selection under the 2009 Rules itself, which contemplates issuance of such directions.

22 This Court would also consider submission of the petitioner's counsel that once the petitioners of CWJC No 17588 of 2015 had been taken in service, they could not have been removed by revoking their joining as has been done in the instant case, without following the procedure prescribed for terminating an employee and without complying with the principles of natural justice. As noticed above, the appointment of the two petitioners of CWJC No 17588 of 2015 was subject to the direction issued by the High Court on 02.07.2013 under Rule 9 (6) of the 2009 Rules. The two petitioners had been



allowed to join prior to the Communication dated 16.09.2015 being received from the Convener clarifying/reiterating the fact regarding qualification of the petitioners being not a valid qualification for appointment. The joining, however, was initially on probation and terminable without assigning any reason or notice as per the terms and conditions contained in the Appointment Letter dated 10.08.2015. The appointment letter also required the petitioners to come for joining along with certificates and declarations in original. The appointment letter, therefore, was clearly conferring the status of a Probationer on the petitioner. Since certificates and declarations in original have been called for at the time of joining, it is obvious that Appointing Authority would be verifying the same. The joining of the two petitioners, therefore, does not give them the status of a confirmed Government servant. In the circumstances, the petitioners cannot claim that within a month of their joining on probation, when the certificates and declarations in original had been submitted, and would obviously be subject to verification, that they cannot be removed without resorting to the prescribed procedure or complying with the principles of natural justice.

23 For the reasons indicated herein above, this Court is not inclined to interfere with the orders impugned in this instant proceeding revoking joining of the two petitioners



of CWJC No 17588 of 2015 and the orders rejecting the joining
of the three petitioners of CWJC No 17072 of 2015.

24 Writ petitions are dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2019
Transmission Date	NA

