

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8171 of 2019

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Madan Manohar Prasad Son of late Sita Ram Prasad, R/o Club Road, Near
Bharti Brothers, P.O. Musahari, Town and District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna.
2. The Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
3. The Bihar Public Service Commission, through its Chairman, 15 Bailey Road, Patna.
4. The Secretary Bihar Public Service Commission, 15 Bailey Road, Patna.
5. The Joint Secretary-Cum-Examination Controller, Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ram Kumar Singh

For the Respondent/s : Mr.Jitendra Kumar Roy 1 (Sc13)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 30-05-2019

The present writ petition has been filed for directing the respondent -Bihar Public Service Commission to issue interview letter to the petitioner herein and in the meantime, stay the letter dated 19.3.2019 issued by the Respondent No. 5 whereby and whereunder the list of eligible candidates for interview in Electronics Subject for the post of Assistant Professor has been published by the Bihar Public Service Commission, Patna, however, the petitioner has been left out despite he having secured 73.05% marks i.e. more than the cut off marks of 72.70%.

2. The brief facts of the case are that the Respondent-Bihar



Public Service Commission (hereinafter referred to as the BPSC) invited vacancies for the post of Assistant Professors in different subjects vide advertisement dated 16.9.2014 bearing advertisement no. 72 of 2014, including four posts of Assistant Professor in Electronics Science under the BRA Bihar University, Muzaffarpur. The petitioner is said to have applied for the post of Assistant Professor in Electronics Science since he was possessing the necessary qualifications and after scrutiny, a list of eligible candidates was published by the BPSC on 30.12.2018 wherein the name of the petitioner has been mentioned at serial no. 30. Thereafter, an office order dated 19.3.2019 was published on the website of the BPSC, fixing the date of interview as 15.1.2019, which was later on corrected to 15.4.2019. Subsequently, an office order was published on the website of the BPSC on 19.3.2019 wherein the cut off marks for the post of Assistant Professor in Electronics was fixed as 72.70% for the general candidates and 53.35% for the EBC candidates. On the same date i.e. 19.3.2019, the roll numbers of the eligible candidates, who had been called for interview for the post of Assistant Professors in Electronics was published, however, the roll number of the petitioner was missing although he had 73.05% marks i.e. more than the cut off marks fixed by



the Respondent-BPSC.

3. The learned counsel for the petitioner has submitted that despite the fact that the petitioner has got more marks than the cut off marks fixed for the purposes of calling the candidates for interview for the post of Assistant Professor in Electronics Science, the petitioner has been left out for no fault of his.

4. Per contra, the learned counsel for the BPSC has first referred to the requisite essential qualification, as per the requisition of the concerned department, as published in the advertisement, which is as follows:-

“Education Qualification:

- (i) A candidate should have throughout good academic record with minimum 55% marks at Masters’ Degree or equivalent (or equivalent grade). Relaxation of 5% marks for SC/ST candidate of the State, while physically challenged persons from any part of the country will be given relaxation of 5% marks at Master’s Degree. But both benefits shall not be admissible to any such candidate.
- (ii) A candidate must have passed NET / SET or equivalent test accredited by U.G.C.
- (iii) The candidates who have obtained Ph.D.



Degree on the basis of Minimum Standard and Procedure Regulation 2009, framed by the U.G.C. for M. Phil./Ph.D. Degree shall be exempted from passing the NET.

(iv) NET / SET shall also not be required for such Master's Programs in disciplines for which NET / SET is not conducted.

Age Limit:-

The minimum age for appointment to the post of Assistant Professor shall be 22 years and the maximum age shall not be more than 55 years, as on 01.01.2014.

Selection Process:

Educational Qualification shall carry 85 marks and Interview 15 marks. The distribution of marks for Academic and Interview has been given below:

Examination	Maximum Weightage	Schedule
Matriculation	10	I
Intermediate	10	II
Graduation	25	III
Post Graduation	30	IV
Ph.D. or M. Phil.	10	V
Sub-Total	85	



Interview	15	
Total	100	

However, candidates will be given the benefits of Ph.D. / M.Phil. Degree. But the candidates will be entitled to claim the benefit of either M. Phil. or Ph.D. never or both.

Conversion of Grade Points to Percentage Equivalent will be carried out as per the Conversion Formula laid down by the University concerned. However, where the Universities have not laid down the Conversion Formula the determination of marks for the academic merit and weightage shall be established on the basis of Schedule I to V.

The merit list will be prepared in order of preference furnished by the candidate and on the basis of vacancies and reservation roster.

In the event of total marks obtained from educational qualifications an interview being the same: candidates having higher marks in educational qualification will be placed higher in final merit list. In the event of candidate having same educational qualification marks, candidates



who are elder in age according to the date of birth will be placed higher in the final merit list and in the event of candidates having same date of birth, candidates whose name appear alphabetically first in Devnagiri Script will be placed higher in the final merit list.”

5. The learned counsel for the Respondent-BPSC has further submitted that the petitioner has passed P.G. in Electronics and the Bihar Eligibility Test (BET) in Electronics, which was conducted by the Bihar State University (Constituent Colleges) Service Commission, Patna and possesses Ph.D., not as per UGC Regulation 2009. Since the petitioner has passed P.G. in Electronics and BET in Electronics Science, he was kept in eligible list published by the BPSC. The petitioner was kept in the general category although he belongs to the backward class, since there was no vacancy for the Backward class. It is further submitted that the petitioner has in fact got 68.05 marks in academic, which is less than the cut off marks of general category i.e. 72.70. In fact, the petitioner has wrongly stated in the writ petition that he has got 73.05% marks. The learned counsel for the Respondent-BPSC has further stated that the petitioner had submitted his representation, which was rejected



by the respondent BPSC and notice with regard to the same was uploaded on the website on 9.4.2019 wherein the reason mentioned for rejection of the case of the petitioner was that he had got less marks than the cut off marks.

6. The learned counsel for the BPSC has further contended that the claim of the petitioner was rejected on the ground that 05 or 10 weightage marks would be admissible to those candidates who have passed Ph.D without UGC Regulation 2009 or Ph.D with UGC Regulation 2009 along with NET Exam. The Commission has published the marking criteria in this regard at Schedule-V of the advertisement, as per the requisition received from the Department concerned. The weightage of marks of Ph.D. with UGC Regulation 2009 or without UGC Regulation 2009 with BET/ SET has not been mentioned in the requisition and in the advertisement. The learned counsel for the BPSC has referred to a judgment rendered by the Hon'ble Division Bench in LPA No. 227 / 2016 and LPA No. 511 / 2016 wherein it has only been said that those who have qualified in BET / SET should be treated to be having the requisite qualification for the post of Assistant Professor and it never said that those who have qualified BET shall be provided 05 marks like those who have qualified in NET.



Therefore, the weightage of marks will not be given to those candidates who have passed Ph.D. with or without UGC Regulation 2009 alongwith BET / SET exam. Hence, the petitioner is not entitled to get weightage marks for his Ph.D. Degree without UGC Regulation 2009 alongwith BET.

7. The learned counsel for the petitioner has further brought to the notice of this Court a judgment dated 18.7.2018 passed by the learned Division Bench of this Court in LPA No. 673 of 2018 (*Awadhesh Kumar vs. The State of Bihar & Ors.*), paragraph nos. 2 to 6 whereof are reproduced hereinbelow:-

2. It appears that the petitioner-appellant challenged the advertisement bearing no. 44-84/2014 as contained in Annexure-1 to the writ application on the ground that the advertisement contains that only the candidates having passed National Eligibility Test (NET) has to be given weightage. Relying upon a Division Bench judgment of this Court passed in L.P.A. No. 227 of 2016 (Annexure-6 to the writ application), the petitioner-appellant contended that in the said case Hon'ble Division Bench has categorically held that those who have cleared the BET which is the State Eligibility Test of Bihar, prior to 01.12.2002, would be eligible to apply as equivalent to NET for the post of Assistant Professor in the State of Bihar.

3. It is contended that despite their being judgment of the Hon'ble Division Bench on the said weightage, marks are not being provided to the candidates who have passed BET. In this regard communication dated 06.06.2017 under the signature of the Section Officer cum-Public Information Officer, Bihar Public Service



Commission, Patna has been brought on record as Annexure-7 to the writ application. A perusal thereof shows that according to the respondents, the judgment of the Hon'ble Division Bench is with respect to giving equivalence to the BET/SET passed candidates to make them eligible to participate in the selection process along with the candidates who have cleared NET. The respondents have communicated to the petitioner that the weightage of marks is to be provided only to the candidates who have passed NET in the concerned subject and has also passed Ph.D in the same subject without undergoing 2009 Regulations framed by the University Grants Commission.

4. The learned Writ Court held that there is a consistent view of this Court in various other writ application sand in the light of the decisions rendered in C.W.J.C. No. 14164of 2017 and C.W.J.C. No. 1134 of 2017, the relief prayed by the petitioner-appellant cannot be allowed.

5. Learned counsel representing the appellant while assailing the impugned judgment submitted that once the candidates who have passed BET/SET examination and have Ph.D. degree, they are to be treated equal to those who have been awarded Ph.D degree and are qualified in NET.

6. We are unable to agree with the submissions of learned counsel representing the appellant as we find that the appellant are not able to appreciate the distinction in treating the qualification equivalent to other qualifications for the purpose of participating in the selection process and that of the weightage provided by an employer to a particular degree for the purpose of considering their candidature in the selection process. We are of the considered opinion that these are the matters within the domain of the employer and this Court sitting in its writ jurisdiction or writ appeal would not exercise its discretion to issue an extra ordinary writ to the employer directing them to give a



weightage to a particular class of degree holders or persons having certain qualifications.”

8. Lastly, it has been contended that the petitioner has secured total academic marks of only 68.05%, as follows:-

Matric-	8.80
Inter-	10
Graduation-	23
Post Graduate Decree	<u>26.25</u>
Total	<u>68.05</u>

9. It is submitted that since the marks obtained by the petitioner is less than the cut off marks for the general category i.e. 72.70 marks, the petitioner has not been called for interview.

10. I have heard the learned counsel for the parties and gone through the materials on record.

11. At this juncture, it would be relevant to reproduce Schedule V of the advertisement in question hereinbelow:-

Schedule-V
Marks for Ph.D or M. Phil

Sl No.	Grade Points	Marks
1.	Ph.D. as per UGC Regulations 2009 and with Net	10.00
	Ph.D. as per UGC Regulation 2009 and without NET	7.00
2.	Ph.D. not as per UGC Regulations 2009 and with NET	5.00
3.	M.Phil. as per UGC Regulations 2009 and with Net	4.00



4.	M.Phil. not as per UGC Regulations 2009 and with Net	2.00
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12. It is apparent from the aforesaid schedule that the petitioner is not entitled to additional 10 or 7 or 5 marks for the Ph.D Degree, possessed by him since firstly, the Ph.D. Degree of the petitioner is without UGC Regulations, 2009, not denied by the petitioner herein and secondly, he is not NET qualified. In this connection, it would be relevant to refer to a judgment rendered by a learned Division Bench of this Court passed in L.P.A. No. 486 of 2018 dated 20.7.2018 (*Sanjay Kumar vs. The State of Bihar & Ors.*) wherein exactly similar question fell for consideration, the relevant paragraphs whereof are being reproduced hereinebelow:-

“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 Patna High Court LPA No.486 of 2018 dt.20-07-2018 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."

13. Having considered the facts and circumstances of the present case and for the reasons discussed hereinabove in the preceding paragraphs, it is apparent that since the petitioner is not entitled to additional five marks for the Ph.D. Degree, not as per UGC Regulation, 2009, and also since he has not qualified NET, the total marks obtained by the petitioner stands at 68.05 marks, which is less than the cut off marks of general category i.e. 72.70 marks, hence, this Court finds that there is no infirmity in the decision of the respondent-BPSC in not issuing the interview letter to the petitioner herein, thus the present writ petition, being devoid of any merit, is dismissed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	14.5.2019
Uploading Date	30.05.2019
Transmission Date	NA

