

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8760 of 2019

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1. Ram Manohar Pandey, aged about 39 years, Male, S/o Sri Brajendra Kumar Pandey Resident of Mohalla-Kalyan Vihar, Ambedkar Path, P.S. Rupaspur, P.O. B.V. College, Patna-800014, Dist.-Patna
 2. Dharmendra Kumar, aged about 33 years, Male, S/o Sri Subhash Chandra Yadav Resident of New Bigrahpur, P.S. Jakkanpur, P.O. G.P.O. Patna-800001, Dist.-Patna
 3. Rajiv Kumar Singh, aged about 41 years, Male, S/o Late Dip Narayan Prasad Singh Resident of Pokhar Road, Badi Sardho, Sardho, P.S. Sabour, P.O. Jichho, Bhagalpur-813210, Dist.-Bhagalpur
 4. Ankur Utsav, aged about 27 years, Male, S/o Sri Arunesh Kumar Srivastava Resident of B-104, Arvind Lok Residency, Near Bhabha School, Hanuman Nagar, Kankarbagh, P.S. Patrakar Nagar, Town-Patna, Dist. Patna

... .. Petitioners

Versus

1. The State of Bihar, through the Principal Secretary, Science and Technology Department, Govt. of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Patna-800001
2. The Joint Secretary, Science and Technology Department, Govt. of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Patna-800001
3. All India Council for Technical Education through its Secretary, Nelson Mandela Marg, Vasant Kunj, New Delhi-110070
4. The Chairman, All India for Technical Education, Nelson Mandela Marg, Vasant Kunj, New Delhi-110070
5. The Secretary, All India Council for Technical Education, Nelson Mandela Marg, Vasant Kunj, New Delhi-110070

... .. Respondents

with

Civil Writ Jurisdiction Case No. 9152 of 2019

1. Ram Manohar Pandey, aged about 39 years, Male, S/o Sri Brajendra Kumar Pandey Resident of Mohalla- Kalyan Vihar, Ambedkar Path, P.S.- Rupaspur, P.O.- B.V. College, Patna- 800014, District- Patna.
2. Dharmendra Kumar, aged about 33 years, Male, S/o Sri Subhash Chandra Yadav Resident of New Bigrahpur, P.S.- Jakkanpur, P.O.- G.P.O. Patna-800001, District- Patna.
3. Rajiv Kumar Singh, aged about 41 years, Male, S/o Late Dip Narayan Prasad Singh Resident of Pokhar Road, Badi Sardho, Sardho, P.S.- Sabour, P.O.- Jichho, Bhagalpur- 813210, District- Bhagalpur.
4. Ankur Utsav, aged about 27 years, Male, S/o Sri Arunesh Kumar Srivastava Resident of B- 104, Arvind Lok Residency, Near Bhabha School, Hanuman Nagar, Kankarbagh, P.S.- Patrakar Nagar, Town- Patna, District- Patna.

... .. Petitioners

Versus



1. The State of Bihar, through the Principal Secretary, Science and Technology Department, Government of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Patna- 800001.
2. The Joint Secretary Science and Technology Department, Government of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Patna- 800001.
3. All India Council for Technical Education through its Secretary, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070.
4. The Chairman All India Council for Technical Education, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070.
5. The Secretary All India Council for Technical Education, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070.

... ... Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 8760 of 2019)

For the Petitioner/s	:	Mr. Navin Prasad Singh, Adv.
For the Respondent/s	:	Mr. Lalit Kishore, AG
		Mr. Anshuman Singh, AC to AG
For the AICTE	:	Mr. Kumar Brijnandan, Adv.
		Mr. Tarees Hameed, Adv.

(In Civil Writ Jurisdiction Case No. 9152 of 2019)

For the Petitioner/s	:	Mr. Navin Prasad Singh, Adv.
For the Respondent/s	:	Mr. Lalit Kishore, AG
		Mr. Anshuman Singh, AC to AG
For the AICTE	:	Mr. Kumar Brijnandan, Adv.
		Mr. Tarees Hameed, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 05-08-2019

In each of the two writ petitions the prayer is common and a challenge is made to the amendment in the Bihar Polytechnic Education Service Rules, 2014 (hereinafter referred to as 'the Rules') notified through notification No. 06/2014 vide Memo No. 889 dated 10.4.2017, whereby Table-2 of Appendix-I of 'the Rules' has been substituted to waive of the requirement of a written test for the purpose of evaluation of work knowledge and



teaching skill and which has given way to evaluation on the basis of percentile obtained by a candidate in the Graduate Aptitude Test in Engineering Examination (hereinafter referred to as 'the GATE'). Consequentially the petitioners have also questioned the advertisement dated 7.3.2019 and 8.3.2019, copies of which are placed on record at Annexures 5 series, together with Corrigendum at Annexure 9 dated 11.3.2019.

For the sake of ready reference and to demonstrate the commonness in the relief prayed that we reproduce the prayer so made in paragraph 1 of the respective writ petitions which runs under:

“ C.W.J.C.No. 8760 of 2019

(i) For setting aside the Amendment in Bihar Polytechnic Education Service Rules, 2014 through the notification of Department of Science and Technology, Government of Bihar, contained in Memo No. Vi Pra (I) Astha- 06/2014, 889 through which the Table-1 and Table-2 of Appendix- I of the Bihar Polytechnic Education Service Rules, 2014 has been substituted by the newly amended Table-1 and Table-2 of Appendix- I whereby, the eligibility and educational qualification has been changed by adding 30% of percentile obtained in Graduate Aptitude Test Score (GATE Score), contrary to the qualification for direct appointment to the post of Lecturer in Polytechnic



Institutions determined by the All India Council for Technical Education.

(ii) For quashing the advertisements published through press communique dated 7.3.2019 and 8.3.2019 of Science and Technology Department, Government of Bihar, for appointment to the post of Lecturer in faculty of Electronics and Mechanical respectively in Government Polytechnics/ Government Women's Polytechnic Institutes on contract basis, whereby a provision has been made that apart from other qualifications, candidates should be required to have qualified Graduate Aptitude Test in Engineering (GATE) and the selection should be made on the basis of GATE score in the year 2016, 2017 or 2018.

(iii) For quashing the advertisements published through press communique dated 7.3.2019 of Department of Science and Technology, Government of Bihar for appointment to the post of Lecturer in Electronics and through press communique dated 8.3.2019 of Department of Science and Technology, Government of Bihar for appointment to the post of Lecturer in Mechanical in various Government Polytechnics/ Government Women's Polytechnic Institutes on contract basis.

(iv) For quashing the corrigendum published by the Department of Science and Technology, Government of Bihar through press communique dated 11.3.2019 of the advertisement dated 7.3.2019 and 8.3.2019 whereby the criteria of selection process has been changed by removing the interview from the selection



process and further the weightage scheme of selection process has been reduced from total weightage 100 to total weightage 70 contrary to Bihar Polytechnic Education Service Rules, 2014.

(v) For direction to the respondents particularly the Department of Science and Technology, Government of Bihar, to accept/ receive and consider the applications from all the petitioners for appointment to the post of Lecturer in Mechanical and Electronics on contract basis.

(vi) For direction to the respondents to allow the petitioners to participate in the selection process treating them eligible for appointment to the post of Lecturer in Mechanical and Electronics in Government Polytechnics/ Government Women's Polytechnic Institutes in the State of Bihar on contract basis.”

C.W.J.C.No. 9152 of 2019

(i) For setting aside the Amendment in Bihar Engineering Education Service Rules, 2014 through the notification of Department of Science and Technology, Government of Bihar, contained in Memo No. Vi Pra (I) Astha- 04/2014, 890 dated 10.4.2017 through which the Table-1 and Table-2 of Appendix- I of the Bihar Engineering Education Service Rules, 2014 has been substituted by the newly amended Table-1 and Table-2 of Appendix- I whereby, the eligibility and educational qualification has been changed by adding 30% of percentile obtained in Graduate Aptitude Test Score (GATE Score), contrary to the qualification for direct appointment to the post



of Assistant Professor in Engineering Colleges determined by the All India Council for Technical Education.

(ii) For quashing the advertisements published through press communique dated 8.3.2019 of Science and Technology Department, Government of Bihar, for appointment on the post of Assistant Professor in Engineering Colleges on contract basis, whereby a provision has been made that apart from other qualifications, candidates should be required to have qualified Graduate Aptitude Test in Engineering (GATE) and the selection should be made on the basis of GATE score in the year 2016, 2017 or 2018.

(iii) For quashing the advertisements published through press communique dated 8.3.2019 of Department of Science and Technology, Government of Bihar for appointment to the post of Assistant Professor in Electronics and Communication Engineering in various Engineering Colleges on contract basis.

(iv) For quashing the corrigendum published by the Department of Science and Technology, Government of Bihar through press communique dated 11.3.2019 of the advertisement dated 8.3.2019 whereby the criteria of selection process has been changed by removing the interview from the selection process and further the weightage scheme of selection process has been reduced from total weightage 100 to total weightage 70 contrary to Bihar Engineering Education Service Rules, 2014.



(v) For direction to the respondents particularly the Department of Science and Technology, Government of Bihar, to accept/ receive and consider the applications from all the petitioners for appointment to the post of Assistant Professor in Mechanical Engineering and Electronics and Communication Engineering on contract basis.

(vi) For direction to the respondents to allow the petitioners to participate in the selection process treating them eligible for appointment to the post of Assistant Professor in Mechanical Engineering and Electronics and Communication Engineering in Engineering Colleges in the State of Bihar on contract basis.”

It is because of the identical nature of the reliefs prayed as well as commonness of the issue raised that these two writ petitions have been heard analogous and with consent of the parties are being disposed of by this common judgment at the stage of admission.

While C.W.J.C.No. 8760/2019 espouses the cause of the candidates seeking appointment on the post of Lecturer in Government Polytechnic, a similar prayer is espoused on behalf of the candidates seeking appointment on the post of Assistant Professor in Engineering Colleges in C.W.J.C.No. 9152 of 2019.

For the sake of convenience and bearing note of commonness of the issue, we would be referring to the pleadings



made in C.W.J.C.No. 8760/2019 unless clarified with a specific reference to other writ petition.

Mr. Navin Prasad Singh, learned counsel appearing on behalf of the petitioners raising grievance in so far as the appointment on the post of Lecturers and Professors respectively are concerned submits that not only the amendment Rules but even the advertisement runs contrary to the parent Rule in so far as the evaluation of the candidates on their work experience and teaching skill is concerned.

Mr. Singh, learned counsel appearing for the petitioners, has referred to the Bihar Polytechnic Education Service Rules, 2014, a copy of which is enclosed at Annexure 7 to the writ petition, to submit that these Rules were framed under Article 309 of the Constitution of India and provides for appointment to different posts of Teachers in Government Polytechnics/ Government Women's Polytechnics Institutes as well as for career advancement and to regulate their service conditions. In reference to Rule 3 he submits that the cadre structure is provided therein and sub-rule (3) thereof provides that the pay scales and service conditions of the members of this service would be determined by the State Government. He next refers to the scheme present at Rule 5 to submit that it is to be done on the basis of recommendation



made by the Bihar Public Service Commission and the scheme of appointment is provided at Appendix-I which can be amended by the Government but would have to be in tune with the parent provision.

Learned counsel has next taken us through Appendix- I to the Rules, referred to in Rule 5, to submit that while Table-1 of Appendix-I prescribes qualification and experience to be possessed by an applicant against such appointment, Table-2 under Appendix-I provides for a weightage scheme. Concentrating on the issue canvassed in the writ petition which is in respect of appointment of Lecturers and Assistant Professors in the Government Polytechnics/ Government Women Polytechnics from the Engineering Branch he submits, that the basic qualification for such appointment as per Table-1 is a degree in Engineering/ Technology in the relevant branch. Adverting to the weightage scheme at Table-2 he submits that the distribution of 100 marks can be found in Table-2 and while 30 marks is ear-marked on academics, 50 marks is on evaluation of work knowledge/ teaching skill on the basis of a written test, the remaining 20 marks is ear-marked for interview. It is submitted that while the pre-amended scheme of evaluation though resting on the syllabus prescribed for GATE, laid no mandatory condition for passing such examination



to obtain such weightage, there is a clear deviation in the amendment introduced to Table-2 of Appendix-I vide the impugned notification bearing No. 889 dated 10.4.2017, whereby the evaluation on the basis of a written test has given way to evaluation on the basis of marks obtained in the GATE examination subject to award of a maximum of 30 marks on work knowledge and teaching skill. This deviation according to Mr. Singh is contrary to the Rules as also the eligibility criteria fixed by the All India Council for Technical Education (hereinafter referred to as 'the AICTE'), a copy of which is enclosed at Annexure 6 to the writ petition.

Learned counsel has referred to Entry 66 of List I to submit that the field of coordination and determination of standard in Institutions for higher education or research in Scientific and Technical Institutions is reserved for the Parliament and though Entry 25 of List III of Schedule 7 to the Constitution empowers both Union as well as the State to legislate in the field of education including technical education but such reservation is subject to the provisions of Entry 64, 65 and 66 of List I. He thus submits that while the AICTE has laid down the eligibility conditions for appointment of Lecturers which has a parliamentary sanction under Entry 66 of List I, the Rules framed by the State Legislature



in exercise of jurisdiction under Entry 25 of List III has to be in tune and subject to the Rules framed by the AICTE and cannot be in conflict thereof. It is argued that although the Rules as originally framed had no such conflict, there is a clear deviation by the amendment which makes passing of GATE an essential condition for inviting evaluation on work experience/ teaching skill because the non-passing of the said examination would deprive a candidate from being evaluated on his work knowledge as well as teaching skill, even if he possesses such experience and has the basic eligibility for such consideration.

Learned counsel to support his submissions has relied upon the following judgments:

- (i) (1987) 4 SCC 671 (**Osmania University Teachers' Association v. State of Andhra Pradesh & anr.**)- paragraphs 14 to 17
- (ii) (1995) 4 SCC 104 (**State of T.N. & anr. v. Adhiyaman Educational & Research Institute & ors.**)- paragraph 41
- (iii) (1990) 7 SCC 120 (**Dr. Preeti Srivastava & anr. v. State of M.P. & ors.**)
- (iv) (2005) 5 SCC 420 (**Prof. Yashpal & anr. v. State of Chhattisgarh & ors.**)- paragraphs 31 to 33



It is the submission of Mr. Singh that although the distribution of the marks has also undergone a change to reserve 50% on academics, 30% on evaluation on work knowledge and teaching skill and 20% for interview, yet the amendment would deprive the candidates of 30 marks on work knowledge and teaching skill simply because he has not passed the GATE examination. It is argued that in case, passing of a GATE was made an essential qualification then perhaps such scheme of weightage would have an explanation because each candidate would be equally placed for such evaluation but such is not the case and Table-1 which prescribes the eligibility qualification does not mandate passing of such examination. He submits that the Rules as it was originally framed, gave equal opportunity to all candidates for evaluation on work knowledge and teaching skill by holding of a written test but it is waiving such transparent evaluation and with a view to oust candidates who have not passed GATE that the scheme of evaluation on the basis of marks secured in GATE has been introduced which clearly creates a class within a class of candidates.

Learned counsel has next turned to the advertisement at Annexure 5 series of the respective writ petitions to submit that the respondent State in its Science and Technology Department have



committed a serious illegality in not appreciating the distinction in between an eligibility to apply and an evaluation of a successful candidate. To canvass his point learned counsel has referred to the stipulation present at paragraph 5 of the respective advertisements to submit that whereas the eligibility stipulations for such appointment present at Table-1 of Appendix I does not mandate passing of a GATE examination, but the stipulations at paragraph 5 of the respective advertisements, disqualifies a candidate from applying if he has not passed such examination. He submits that the illegality on behalf of the State does not stop here rather is perpetuated when by issuing a Corrigendum to the advertisement at Annexure 9, they have even interfered with the weightage scheme to waive of the requirement of an interview and to evaluate the candidates on the basis of academics by grant of weightage of 40 marks and 30 marks for evaluation on domain knowledge and teaching skill, on the basis of score obtained in the GATE. According to Mr. Singh, the Corrigendum is in the teeth of weightage scheme present at Table-2 of Appendix-I which requires the employer to evaluate a candidate as against 100 marks.

It is the submission of Mr. Singh that a passing of GATE is condition for admission to Post Graduate courses but since these petitioners are already Post Graduates they are not required to pass



such examination. It is thus the submission of Mr. Singh that it is by virtue of such illegality committed by the State in its Science and Technology Department that though the petitioners are eligible for appointment as per the eligibility at Table-1 of Appendix-I to the rules at Annexure 8 but they are deprived of the appointment so notified through the advertisement in question because they have not passed the GATE.

Mr. Advocate General resisting the writ petitions has submitted that there is no issue of a validity arising in the present case because issue of validity usually is tested in context with the Parent Act, whereas in the present case the Rules in question has been framed by the State Government in exercise of powers vested under Article 309 of the Constitution of India and not in exercise of jurisdiction vested under the Rule making power under any act. It is thus the submission of Mr. Advocate General that no issue of the rule being ultra vires would arise in such circumstances.

Adverting to the merits of the challenge he submits that Annexure 7 is the Rules framed by the State of Bihar and Rule 3 thereof provides for the cadre structure of the Bihar Polytechnic Education Service. He submits that sub-rule (3) of Rule 3 enables the State to lay down the pay scales and the service conditions for the members of the service and it is in course of such exercise that



the qualifications have been laid down in Table-1 of Appendix-I while a weightage scheme is provided at Table-2 of Appendix-I which is accompanying the Rules. Mr. Advocate General while not disputing the power vested in the AICTE to frame rules to lay down eligibility conditions for appointment on technical posts of the present kind and not questioning overriding import of such rules, a copy of which is enclosed at Annexure 6, submits that the issue of conflict would arise only if the Bihar Rules would lower the qualification as prescribed by the AICTE and which is not the case here. According to Mr. Advocate General, the eligibility conditions which has been laid down in the Rules framed by the AICTE at Annexure 6 prescribes the minimum qualification for appointment of teachers and academic staff in technical education but it does not restrict the State Government in prescribing a qualification which is in betterment of such basic eligibility criteria because it is the exclusive right of the employer to appoint the right person. In reference to the advertisement, Mr. Advocate General, while not contesting that the exclusion of the candidates who have not passed the GATE travels beyond eligibility criteria at Table-1, continues to defend the action by submitting that since it is only by way of stopgap arrangement and since the appointment is to be made on contract pending regular



appointment, the exercise may not be interfered with. According to Mr. Advocate General, it is the prerogative of the employer to prescribe for a mode of selection as well as of designing the weightage system for selecting best amongst applicants for the post in question.

Responding to the judgment relied upon by Mr. Singh it is submitted that the case of **Osmania University Teachers' Association** (supra) was a case where the State framed rules which lowered the qualification and which was commented upon by the Supreme Court to strike down the process. According to the learned Advocate General, there is no conflict in between the Rules framed by the AICTE and the Rules framed by the State of Bihar placed on record at Annexures 6 and 7 respectively to the writ petition save and except that for the purpose of grant of weightage on teaching skill and work knowledge, a qualification has been introduced in betterment of the qualification earlier prescribed and which does not in any manner effect the validity of the Rules either on its scheme or on the issue of conflict.

We have heard learned counsel for the parties and have perused the records and having considered the issue in dispute, we do not find the necessity to make any comment on the issue of conflict in between the Rules framed by the AICTE at Annexure 6



and the Rules framed by the State of Bihar under Article 309 of the Constitution of India at Annexure 7 because there is no conflict. To that extent we are in agreement with the submission of Mr. Advocate General that the qualifications laid down in the Rules framed by the AICTE for direct recruitment to the teaching post in technical education are the minimum prescribed qualification and which in no manner restrains the State Government to have a preferential category in betterment of such basic eligibility qualification.

In the nature of the dispute thus which transpires from the arguments advanced by Mr. Singh, learned counsel appearing on behalf of the petitioner as responded to by Mr. Advocate General we do not find it necessary to delve into the issue of separation of powers because in our opinion such conflict does not arise in the present case. It is now to be seen whether the amendment to Table-2 of Appendix-I to the Rules framed by the State of Bihar vide Memo No. 889 dated 10.4.2017 at Annexure 8, in so far as evaluation on work knowledge and teaching skill is concerned, would sustain the test of Articles 14 and 16 of the Constitution of India and/or whether it strikes at the very root of the equality clause i.e. equal opportunity and equal treatment to all, in the matters of public employment.



For the purpose we are persuaded to take note of some of the relevant provisions of Service Rules, 2014, which was framed for appointment to the post of teachers in Government Polytechnics/ Government Women’s Polytechnics institutes. While Rule 3 provides for the cadre structure and empowers the State Government to frame service condition, the regulatory provision for direct appointment is present in Rule 5 and which is provided in Appendix-I accompanying the said rule. Since the present case relates to the appointment of Lecturers and Assistant Professors in Government Polytechnics/ Government Women’s Polytechnics from the field of Engineering, we would be making reference to the prescribed qualification and experience for such direct appointment as present in Table-1 of Appendix-I which runs under:

Post	Qualifications	Experience
Lecturer	<u>Engineering/ Technology</u> Bachelor’s degree in Engineering/ Technology in the relevant branch with First Class or equivalent. If the candidate has a Master’s Degree in Engineering/ Technology, First Class or equivalent is required at Bachelor’s or Master’s level.	-----

The weightage scheme as it originally existed in Table-2 of Appendix-I in so far as field of Engineering/ Technology is concerned provided as follows:

Cadre Post	Total Weightage- 100		
	Academic Record and Research Work	Evaluation of Work-Knowledge and Teaching Skill Through	Interview (Weightage- 20)



	(Weightage- 30)	Written Test (Weightage- 50)	
Engineering/ Technology	(a) 15% of Percentage Marks obtained in B.Tech. In relevant branch/subject (b) 10% of Percentage Marks obtained in M. Tech in relevant branch (c) Ph.D.- 05	(b) For Engineering/ Technology stream, the syllabus of Graduate Aptitude Test Engineering (GATE)	

A plain look at the qualifications prescribed for such appointment at Table-1 would confirm that the basic qualification for such appointment is a Bachelor Degree in Engineering/ Technology. In so far as the weightage scheme is concerned, as against total weightage of 100 marks, 30 marks is ear-marked for academic record/ Research work, 50 marks is reserved for evaluation on work knowledge/ teaching skill to be done through written test and 20 marks is reserved for interview. Now whereas weightage of 30 marks on academic record allows 15% of the marks obtained in B.Tech., 10% marks obtained in M.Tech. and 5% marks obtained in Ph.D., the evaluation on work knowledge and teaching skill was to be done through a written test for which the Syllabus of GATE was prescribed. In other words, while the academic record gave preferential marks to those having M.Tech. and Ph.D. qualification, in so far as the evaluation on work knowledge and teaching skill is concerned, each of the candidate had to go through a written test thus providing equal opportunity to all candidates. The scheme reflected transparency and fairness



in selection procedure. This weightage scheme at Table-2 has been interfered with by the impugned amendment at Annexure 8 whereby now 50 marks is reserved for academic record/ research work, 30 marks is reserved for evaluation on work knowledge and teaching skill on the basis of marks obtained in GATE and 20 marks for interview. There is absolutely no issues on rearrangement of weightage marks amongst the different categories, the problem which arises by virtue of this amendment is, that in the process of amending the scheme of evaluation on work knowledge and teaching skill, the State has done away with the scheme of written test and in so far as the candidates seeking appointment in the Engineering/ Technology Branch is concerned, they are now to be assessed on the basis of percentile obtained by them in the GATE examination subject to a maximum of 30 marks.

It is the contention of the petitioners that qualifying in GATE is a mandatory requirement for seeking admission in Masters/ Doctoral programme in Engineering/ Technology/ Architecture and since the petitioners are already having Post Graduate qualification they are not required to appear at such examination. According to Mr. Singh, while the petitioners are not required to pass GATE examination because they are already Post



Graduates, this situation deprives them of the valuable 30 marks for being evaluated on their work knowledge/ teaching skill.

We do agree with the issue canvassed and are completely at loss to appreciate this change in the procedure of evaluation of candidates on their work knowledge/ teaching skill because while the weightage scheme as it was originally framed, allowed equal opportunity to all the candidates for being tested on their work knowledge/ teaching skill through a written test to be held on the pattern of GATE, the State by waiving of such requirement has deprived the candidates who are not even required to pass GATE examination for being evaluated on their work knowledge and teaching skill even if they do possess such experience. Even if the State under Article 309 has a right to frame rules in matters of public employment, every such rule has to withstand the test of arbitrariness and rationality besides being transparent on the procedure but the amendment substituting Table-2 of Appendix-I through Memo No. 889 dated 10.4.2017 whereby it is decided to waive of the transparent evaluation of candidates on their work knowledge/ teaching skill by way of a written test and to simply mark candidates on the basis of marks obtained in the GATE examination, not only hits transparency but also discriminates against such of the candidates who are already



Post Graduates and are not required to pass such GATE examination.

Much has been canvassed by Mr. Advocate General in reference to the rules as it was originally framed that the written test so prescribed for such evaluation had a Syllabus of GATE and thus, if the State has now allowed the candidates to be marked on the basis of passing of such examination, not much change has happened on the procedure but in our opinion such stand is only taken for rejection because an evaluation of a personal attainment of a candidate either on academics or work knowledge or teaching skill, has to possess a degree of equality for placing the candidates at equal level and even if a better qualification within such requirement would be justifiable as one can see in the case of academic record/ research work where while 25% marks is reserved for basic qualification of B. Tech. the candidates possessing Post Graduates and Ph.D. qualification are given additional marks, the process of evaluation of teaching skill/ work knowledge on the basis of marks obtained in the GATE examination ousts such of the candidates from such consideration who have either not passed the GATE examination or are not required to pass such examination. Resultantly they are deprived



of a valuable consideration of 30 marks earmarked for such purpose.

As we have observed there can be a preferential category within a particular category but a weightage scheme which deprives a candidate from consideration against a particular attribute in its entirety suffers from vice of arbitrariness besides being discriminatory and lacking on reasonableness. In fact this change in weightage scheme has created a class within a class of candidates in so far as evaluation on work knowledge/ teaching skill is concerned and the object is entirely missing. The basic eligibility as present in Table-1, Appendix-I for an applicant to apply against such post, does not prescribe passing of a GATE examination as a condition of eligibility. In our opinion, until passing of a GATE examination is made a condition of eligibility, the State cannot make it a basis for evaluation of a candidate on the issue of work knowledge and teaching skill. Such is the arbitrary consequences of such form of evaluation that despite candidates possessing work experience and teaching skill, they are yet deprived of such consideration simply because they have not passed the GATE examination. The case of the petitioners is even worse because being Post Graduate they are not even required to



pass such examination and yet the substituted rule deprives them of such consideration.

Mr. Advocate General has tried to equate the passing of the GATE examination at par with the acquisition of Post Graduate/ Ph.D. qualification which parity is a misnomer because while a Post Graduate qualification or Ph.D., is in betterment of academic qualification, passing of GATE examination is no academic qualification rather it simply provides a passage for admission to Post Graduate courses. The amendment, in our opinion, in so far as it deprives the candidates like the petitioners to a consideration for evaluation on their work knowledge and teaching skill simply because they have not passed the GATE examination, is arbitrary and discriminatory besides lacking in object.

In such view of the matter and for the discussions above, the amendment to Table-2 of Appendix-I vide Memo No. 889 dated 10.4.2017 in so far as it ousts the candidates who have not passed the GATE examination for being evaluated on their work knowledge/ teaching skill is held discriminatory and is accordingly set aside in its entirety.

This brings us to the issue of advertisement. The advertisement issued by the Science and Technology Department



at Annexures 5 series together with its Corrigendum at Annexure 9, is even worse for it perpetuates illegality when it makes passing of GATE a condition of eligibility for even applying against the post so advertised. Such is the prescription present at paragraph 5 of the advertisement at Annexure 5 series to the respective writ petitions. This prescription introduced in the advertisements impugned in the two writ petitions is held contrary to the eligibility condition so prescribed at Table-1 of Appendix-I of 'the Rules' and consequently the prescriptions at para 5 of the advertisement(s) to the extent it mandates passing a GATE, a condition of eligibility for applying against the post, is held illegal and is accordingly quashed and set aside.

We now move to Annexure 9 which is a Corrigendum dated 11.3.2019 issued by the Science and Technology Department to the advertisement at Annexure 5 series and which in fact substitutes the weightage scheme at Table-2 Appendix-I to provide for a total weightage of 70 marks as against the weightage prescribed in Table-2 Appendix-I of 'the rules' at 100 marks. The Corrigendum dated 11.3.2019 in so far as it interferes with the weightage scheme at Table-2 to restrict the consideration at 70 marks, is held in conflict with the same and is accordingly quashed and set aside.

In consequence of the order that we have passed and since the period for receiving online applications has come to a close, we



direct the Principal Secretary, Science and Technology Department, Bihar, Patna to either open the portal for inviting online applications in the light of the position that we have settled above allowing all the candidates who hold the eligibility conditions as prescribed in Table-1 Appendix-I of 'the rules', to apply against the posts advertised and/or to issue appropriate orders inviting application from every candidate who possesses the basic eligibility to apply against the posts advertised, to be submitted before the designated authority. Let such exercise be completed by the Principal Secretary, Science and Technology Department, Govt. of Bihar within three weeks from today.

Since we have struck down the amendment to Table-2 Appendix-I of 'the rules' in its entirety, the evaluation obviously is to be carried out as per the scheme originally framed as present in Table-2 of Appendix-I which, accompanies the Service Rules, 2014.

The writ petitions are allowed with the directions above.

(Jyoti Saran, J)

(Partha Sarthy, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.08.2019
Transmission Date	NA

