

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16420 of 2017

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Girijesh Kumar Verma son of Sri Ramashankar Verma, resident of Village and P.O.- Chainpur, P.S.- Siswan, District- Siwan, presently residing at C/o Dhrub Kumar Verma, Saket Nagar, P.S. Town and District- Deoria Uttar Pradesh.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Bihar Public Service Commission through its Chairman.
4. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prashant Sinha, Advocate
For the BPSC	:	Mr. P.N.Shahi, Sr. Advocate
		Mr. Sanjay Panday, Advocate
For the State	:	Smt. Shipla Singh, GA-12

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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 authorities to appoint the petitioner on the post of Assistant Professor, Department of Chemistry pursuant to advertisement no. 66 of 2014 in the backward caste category on the ground that the petitioner has obtained 63.40 marks whereas the cut off marks for the B.C. Category is 62.70.

2. The brief facts of the case according to the petitioner are that the petitioner possesses qualification of MSc. and Ph.D in chemistry. It has been submitted that an Advertisement no. 66 of 2014 was published for making appointment on 239 posts of Assistant Professor (Chemistry). The last date for submitting the



application was 20.11.2014. The petitioner had submitted his application, however, erroneously, he filled the category code as 04, which is prescribed for the Extremely Backward Caste category instead of 05 i.e. the B.C. Category, to which the petitioner belongs. The petitioner is stated to have been called for interview on 26.07.2016, whereafter the Bihar Public Service Commission published a list of successful candidates on 17.05.2017 in which one Sumit Kumar was recommended for being appointed in the B. N. Mandal University, Madhepura and his name figured at serial no. 11 in the list of selected candidates for B. N. Mandal University. It is submitted that the said Sumit Kumar is much below the petitioner in the merit list, however, he has been shown in the list of successful candidates and the petitioner has been left out.

3. The learned counsel for the petitioner has referred to the result published by the Bihar Public Service Commission, which is at Annexure-4 to the writ petition and it has been stated that the said Sumit Kumar is at merit serial no. 432 whereas the petitioner is at merit serial no. 424, still he has not been appointed. Lastly, it is submitted that the petitioner has obtained 63.40 marks whereas the cut off marks for the post of Assistant Professor (Chemistry) under the B.C. Category is 62.70, hence,



the petitioner has been illegally denied appointment on the post of Assistant Professor (Chemistry).

4. Per contra, the learned Senior Counsel appearing for the B.P.S.C., referring to the counter affidavit filed on behalf of the Respondent Nos. 3 and 4 (Bihar Public Service Commission), has submitted that the case of the petitioner bearing roll no. 66012805 was examined by the commission in its meeting held on 15.05.2017, however, the commission has not considered him fit for allotment to any university on account of the petitioner having not submitted his option / choice / preference for any university in as much as according to Clause 5 of the “necessary instructions for filling the application form”, mentioned in the advertisement in question, it has been clearly prescribed that the candidate should give his choice / preference for the universities and in case, no choice is given by the candidates, his candidature shall not be considered for any university despite vacancies remaining in the said universities. This aspect of the matter has been substantiated by bringing on record the application form of the petitioner, which is at annexure- B to the counter affidavit filed by the B.P.S.C. wherein admittedly, the petitioner has not given any option / preference/ choice for universities in column no. 14. The learned



Senior Counsel for the B.P.S.C. has further submitted, by referring to the supplementary counter affidavit filed on behalf of the Bihar Public Service Commission, that the commission has already sent the recommendations of successful candidates for appointment as Assistant Professor, Chemistry, pertaining to advertisement no. 66 / 2014, to the Education Department, Government of Bihar vide letter no. 01.09.2017. It is also submitted that in the other advertisements i.e. advertisement no. 52 / 2014 (Economics), advertisement no. 45 / 2014 (English), Advertisement No. 51 / 2014 (Philosophy), Advertisement No. 54 / 2014 (Home Science), Advertisement No. 56 / 2014 (Psychology) and Advertisement No. 65 / 2014 (Physics), also several candidates, who had not given their option / choice / preference for the university, have not been considered for any university despite vacancies being available.

5. The learned Senior Counsel has referred to a judgment rendered by the Hon'ble Apex Court, reported in 2008(9) SCC 403 (*T. Jayakumar vs. A. Gopu & Anr.*), paragraph no. 12 whereof is reproduced hereinbelow:-

“12. We are not aware of any principle of law under which once a candidate is allowed participation in the selection process, the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application



form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part in the selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light.”

6. The learned Senior Counsel has also referred to a judgment of this Court, reported in 2016(2) PLJR 293, paragraph nos. 3 to 6 whereof are reproduced hereinbelow:-

“3. Naturally with a blanket ban imposed by the General Administration Department on all and sundry, even in the cases where the Departmental Promotion Committee had made recommendation for grant of promotion to government servants, it was not being implemented or acted upon. Obviously, a substantive right granted in favour of a government servant was put on hold, if not frustrated. Many of these persons so recommended were either on the verge of superannuation or have even superannuated. It was in this background that a series of writ applications stated being filed looking for a direction or a mandamus upon the respondents to act upon the recommendation of the DPC, if not consider their right for promotion as such.

4. This Court has been burdened enough. It has been giving indulgence to the State to obtain some kind of stay order or direction from the Hon`ble Apex Court. Since August, 2015, no substantive order or order of stay has been passed by the Hon`ble Apex Court in SLP filed by the State of Bihar, except issuance of notice. Legally as of today, Resolution No. 11635 dated 21.08.2012, issued by the State of Bihar, is non existent. Whatever the administrative problems which have been explained to the Court by the learned Principal AAG, are matters of



administration and governance, if not for some other consideration the State would not like to act, despite judicial declaration as of today.

5. The Court is neither impressed by the stand of the Principal Secretary, Department of General Administration, or the stand taken by the Principal AAG as to why the order dated 12/08/2014 should be allowed to continue.

6. Since things have come to a stand still since August, 2014 in matters of grant of promotion and further since the Court does not find any judicial reason to allow the General Administration Department to continue with the order dated 12/08/2014 to occupy the field, the Court is left with no option but to quash the order No. 11218 dated 12/08/2014.”

7. The learned counsel for the petitioner has also filed a judgment rendered by this Court dated 16.05.2014 in C.W.J.C. No. 8774 of 2014 (***Vishal kumar Lal vs. The Union of India & Anr.***) wherein it has been held that mistake in filling up the date of birth by the petitioner in the online application as 24.11.1988 instead of 24.12.1988 appears to be inadvertent, hence, the petitioner was granted liberty to file a representation before the authorities annexing the judgment of the Hon’ble Delhi High Court dated 24.07.2012, rendered in the case of Rohit Yadav vs. Central Board of Secondary Education and Others and it was observed by the learned Single Judge that any adverse order can be passed only if the respondents authorities come to a conclusion that the wrong entry made by the petitioner as



regards his date of birth in the online application was intentional and he could have derived any benefit in any manner by such wrong entry.

8. The learned counsel for the petitioner has also furnished a copy of the judgment rendered by the Hon'ble Delhi High Court in the case of ***Rohit Yadav vs. Central Board of Secondary Education and Others*** i.e. the one dated 24.07.2012 passed in W.P.(C) No. 4189 of 2012, paragraph nos. 13, 14, 15 and 16 whereof are reproduced herein below:-

“13. A careful reading of Clause 3.1.6.3 of Information Brochure clearly spells out that if the personal data submitted or entered by the candidate is found to be wrong at the time of verification of certificates either during reporting or at later stage, the allotment of seat / provisional admission is liable to be cancelled. The aim and objective for introducing this clause is to deal with a situation where a candidate may either submit a forged or a fabricated mark-sheet or any other certificate which would entitle a candidate for admission.

14. The facts at hand are slightly different. The petitioner herein has not filed a fabricated birth certificate or a false document or any other document, which is either tempered or manufactured. At the time of filling up the online application form for the entrance examination the operator of the cyber cafe has entered a wrong date of birth of the petitioner in the application form as 4.4.1994 whereas the correct date of birth is 8.4.1994. There is no dispute with regard to genuineness of the date of birth certificate issued by CBSE evidencing the date of birth of the petitioner as 8.4.1994. On account of this mistake to debar the petitioner would



amount to travesty of justice. The Court cannot lose track of the fact that Delhi is not India; there are lakhs of students in rural areas, like the petitioner herein, who have the potential; and the students from rural background are not less intelligent than the students from affluent background. Admittedly, the petitioner comes from a humble background, resides in a village and does not have access either to the computer or the internet. While in towns people are familiar with computer, laptop, I pad and other tablet form of computers, which provide them access to vast information at their finger tips. On the contrary, students from remote villages, who are away from towns, who do not get continuous electricity, cannot be deprived of their right to education, more so when the petitioner has secured a seat.

15. A careful reading of Clause 3.1.6.3 would also show that in case there is any discrepancy the admission is liable to be cancelled. Another word for liable would be likely. In case the intention was that the admission would ipso facto be cancelled such language would have been used by the persons who had drafted the booklet. In my view Clause 3.6.6.3 is not applicable to the facts of the present case as the date of birth of the petitioner as per CBSE is 8.4.1994 and not 4.4.1994. The petitioner had no intention to mislead the respondent or gain any unfair advantage. The certificate from CBSE is a genuine document. Thus the petitioner cannot be debarred.

16. Accordingly, having regard to the facts of this case, I am of the view that on account of the bonafide mistake of the petitioner, the petitioner cannot be penalized to the extent that the admission granted to him should be cancelled. In case it is not possible to grant the petitioner admission to NIT Kurukshetra, let admission be granted by respondent no.2 to the petitioner in Electronic and Communication Engineering in any other college of respondent no.2.”



9. I have heard the learned counsel for the parties and I have gone through the materials on record and I find that the necessary directions for filling up the application form has been mentioned in the aforesaid advertisement and Clause 5 thereof is very clear which postulates that the candidates have to give their option / choice with regard to the university and it has also been clearly provided therein that in case no option / preference is given for universities, such candidates would not be considered for any university despite availability of vacancies. This Court further finds that admittedly, the petitioner has not given any option /choice / preference of any University, hence, in view of the terms and conditions provided for in the advertisement, his candidature was / is not required to be considered despite availability of vacancies. First of all, coming to the judgment relied upon by the learned counsel for the petitioner in the case of Vishal kumar Lal (supra), it would suffice to state that the said judgment postulates a situations wherein on account of inadvertence, the month of the date of birth of the petitioner was wrongly filled, however, the same is distinguishable in the facts and circumstances of the present case inasmuch as in the present case, there is a clear instruction / direction to the candidates to definitely fill up the choice /



option / preference for universities and in default thereof, the candidature of such candidates not mentioning their choice / option/preference would not in any case be considered for appointment despite availability of vacancies.

10. Now, coming to the next judgment relied upon by the learned counsel for the petitioner, rendered by the Hon'ble Delhi High Court in the case of Rohit Yadav (supra), the same is also distinguishable in the facts and circumstances of the present case inasmuch as in the said case, the appointment of a candidate was liable to be cancelled upon the personal data submitted by the candidate having been found to be wrong at the time of verification of the certificates. Moreover, in the said case, the Hon'ble Delhi High Court held that the aforesaid provision was not applicable since the petitioner had produced the C.B.S.E certificate and according to the same, the date of birth of the petitioner was apparent and the petitioner of the said case had not tried to derive any unfair advantage.

11. On the other hand, the learned Senior Counsel for the B.P.S.C. has referred to a judgment rendered by the Hon'ble Apex Court in the case of *T. Jayakumar* (supra) wherein the Hon'ble Apex Court has held that a candidate can be held ineligible for selection at any stage of the selection process once



the defect in the application comes to light.

12. Having regard to the aforesaid facts and circumstances of the case and for the reasons discussed herein above, this Court is of the view that since the petitioner had defaulted in complying with the mandatory requirements of filling the application form i.e. giving option / choice / preference of universities, his candidature was / is liable to be rejected, especially, in view of the terms / conditions mentioned in the advertisement, which clearly stipulates that in case, a candidate fails to fill up the option / choice / preference for any universities, the candidature of such candidates would not be considered even if vacancies are available. Therefore, though the petitioner was called for interview, may be on account of oversight by the authorities scrutinizing the application form, nonetheless, before the Bihar Public Service Commission had made recommendations of the selected candidates to the Government of Bihar, the aforesaid lacuna was detected in the application form of the petitioner, hence, his candidature was not considered, therefore, this Court does not find any illegality in the action of the respondents in not considering the candidature of the petitioner herein. This aspect of the matter has been fully considered by the Hon'ble Apex Court in the case of *T. Jayakumar* (supra). Accordingly,



since the petitioner did not submit any option / choice / preference for universities, the Bihar Public Service Commission was not in a position to allot him any universities, hence, he was rightly not selected and not declared successful. In such view of the matter, I do not find any merit in the present writ petition, hence the writ petition is dismissed.

(Mohit Kumar Shah, J)

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