

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1006 of 2018

In

Civil Writ Jurisdiction Case No.8021 of 2017

-
1. Jitendra Kumar, son of Sri Mahendra Prasad Sah, resident of Mohalla-Isakchak, P.O.+P.S. Isakchak, District- Bhagalpur, Bihar.
 2. Pankaj Kumar, son of Rajendra Prasad Thakur, resident of Village-Dhusor, P.O.- Tika Patti, District- Purnea, Pin 854101.
 3. Prabhakar Singh, son of Late Rashbihari Singh, resident of village-Mushiyan, Post- Bagari, District Kaimur (Bhabhua), Bihar, Pin- 802131.
 4. Dharmendra Kumar, son of Jayram Mahto, resident of Patel Nagar Nawada, Near Ice- Cream Factory, Pin- 815110.
 5. Shashi Bhushan, son of Lakhan Chaudhary, Resident of Shalbhakas Villa Behind Bank Colony Abhimanya Nagar, Pin- 801503.
 6. Ajit Kumar Akela son of Shri Ram Bihari Yadav, Resident of Village-Jurauna, P.O.+ P.S.- Subhrai, Via- Bithan, District Darbhanga, Bihar, Pin- 848207.
 7. Suydhanshu Sekhar, son of Sambhu Prasad Gupta, resident of Village Lilatari (Subhra), Post- Kathoon, P.S.-Rajoon, District Banka, Bihar, Pin- 813107.
 8. Mrityunjay Kumar Singh, son of Prirendra Singh, resident of House No. 15475, Village + Post- Kamala Kant Karona, District Gopalganj (Bihar), Pin- 841435.
 9. Nitish Kumar Verma, son of Uma Shankar Singh, resident of Village-Mangura, P.O.- Siyaraun, P.S. Jadishpur, District Bhojpur (Patna), Pin- 802158.

... .. Appellants-Writ Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Additional Secretary, Education Department, Government of Bihar, Patna.
4. The Director, Higher Education, Government of Bihar, Patna.
5. The Bihar Public Service Commission through its Secretary, 15 Jawaharlal Nehra Marg, Bailey Road, Patna.
6. The Chairman, Bihar Public Service Commission, 15 Jawaharlal Marg, Bailey Road, Patna.

... .. Respondents/Respondents

7. Gaurav Kumar, son of Sri Krishna Kumar Upadhyay, Resident of Village-+ Post- Dudhaura, Near- Kaili Hospital, District Basti (U.P.), 272001.

..... Respondents/Writ Petitioner

Appearance :

For the Appellant/s	:	Mr. Kumar Kaushik, Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey -AAG 15
For the BPSC	:	Mr. Sanjay Pandey, Advocate
For the Intervenors	:	Mr. Purushottam Kumar Jha, Advocate
		Mr. Avanindra Kumar Jha, Advocate
		Ms. Kiran Kumari, Advocate



=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-02-2019

The appeal raises a challenge to the impugned judgement dated 4th July, 2018 whereby the appellants had come up contending that they were in possession of a Post Graduate Qualification that was required for the purpose of being considered for selection and appointment as Assistant Professor in Botany and Zoology.

Their contention was that they have a degree in Life Science which includes the aforesaid subjects and, therefore, the definition is inclusive. The rejection of their candidatures by the Commission is contrary to law.

The learned Single Judge came to the conclusion that since the appellants have not challenged the advertisement, the issue becomes academic, but at the same time, the learned Single Judge proceeded to evolve a method suggesting to strike a balance between competing interests for instructions in the subjects of Botany and Zoology. The learned Single Judge then went on to classify 10% of the posts of Botany and Zoology that were subject matter of advertisement to be kept aside for which a final decision



was to rest with the State Government as indicated therein. The Chairman of the Commission was directed to examine the claim of the candidates of the stream of Bio-Technology accordingly.

The learned Single Judge further went on to give liberty to the writ petitioners to file a petition for revival of the same petition if the posts for Bio-Technology and other allied subjects is not sanctioned by the State Government within a period of six months.

We have considered the submissions raised at length and what we find is that this Court in the exercise of jurisdiction under Article 226 of the Constitution of India could not have assumed an equivalence of curriculum for the purpose of equating the qualifications possessed by the appellants with that as required under the advertisement. It is for the expert body, i.e., either the employer or the Commission to take a decision in the matter for deciding such an equivalence. We have come across the judgement of a learned Single Judge of the High Court of Chhatisgarh in Writ Petition (S) No.3169 of 2015 (Reshamlal Pradhan Vs. State of Chattisgarh and Chattisgarh Public Service Commission) where the learned Single Judge traversed the entire law laid down by the Apex Court on this issue. The same is extracted hereinunder which we adopt to support our conclusion hereinabove:-



15. Meaning of “relevant subject” for appointment on a post with reference to eligibility condition for recruitment came to be considered by Their Lordships of the Supreme Court in the matter of **Ganapath Singh Gangaram Singh Rajput v. Gulbarga University represented by its Registrar and others (2014) 3 SCC 767**, in which Their Lordships have answered the question holding that post-graduate degree in “relevant subject” in the context would mean post-graduate degree in which the candidate has applied for recruitment to teach a particular subject and observed in paragraphs 21 and 22 as under: -

“21. As is evident from the advertisement, applications were invited for filling up various posts in different subjects including the post of Lecturer in MCA. The advertisement requires post-graduate degree in the ‘relevant subject’. The relevant subject would, therefore, in the context of appointment to the post of Lecturer, mean postgraduate degree in MCA. In our opinion, for appointment to the post of Lecturer, Masters degree in the Mathematics is not the relevant subject. The advertisement requires Masters degree in the ‘relevant subject’ and not ‘appropriate subject’. In the present case, the Board of appointment has not stated that post-graduate degree in Mathematics is the relevant subject for MCA but in sum and substance it is equivalent to a post-graduate degree in MCA for the reason that Mathematics is one of the subjects taught in MCA. This, in our opinion, was beyond the power of the Board of appointment.

22. It shall not make any difference even if Mathematics is taught in the Masters of Computer Application course. The learned Single Judge, in our opinion, gravely erred in upholding the contention of Ganpat and the University that ‘relevant subject’ would mean ‘such of those subjects as are offered in the MCA course’. If Mathematics is taught in a post-graduate course in Commerce, a Masters degree in Commerce would not be relevant for appointment in Mathematics or for that matter in MCA. There may be a situation in which Masters degree in MCA is differently christened and such a degree may be considered relevant but it would be too much to say that a candidate having postgraduate degree in any of the subjects taught in MCA would make the holders of a Masters degree in those



subjects as holder of Masters degree in Computer Application and, therefore, eligible for appointment.”

16. In a very recent decision in the matter of **Prakash Chand Meena and others v. State of Rajasthan and others (2015) 8 SCC 484**, a question of equivalence of two qualifications which may be treated as equivalent came up before the Supreme Court in which Their Lordships of the Supreme Court have held that in the matter of eligibility qualification, equivalent qualification must be recognized as such in existing recruitment rules or government order existing on or before the initiation of recruitment process and observed as under: -

“... In the matter of eligibility qualification, the equivalent qualification must be recognised as such in the recruitment rules or government order existing on or before the initiation of recruitment process...”

17. Similarly, in the matter of **Guru Nanak Dev University v. Sanjay Kumar Katwal and another (2009) 1 SCC 610**, Their Lordships of the Supreme Court have held in no uncertain terms that equivalence is a technical academic matter and decision on question of equivalence must be by specific order or resolution duly published, by holding as under:-

“15. ...Equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. The first respondent has not been able to produce any document to show that the appellant University has recognised MA (English) (OUS) of Annamalai University through distance education as equivalent to MA of appellant University. Thus, it has to be held that the first respondent does not fulfill the eligibility criterion of the appellant University for admission to the three year law course.”

18. Further, it is well settled law that the question of equivalence of educational qualification is not the domain and



jurisdiction of the Court under Article 226 or 227 of the Constitution of India, it has to be done by a body of academicians or an expert body qualified for that job, as such, this Court cannot consider and hold one educational qualification to be equivalent to other qualifications. In this respect, in umpteen number of cases the Supreme Court has observed that it is not within the scope of judicial review to draw equivalence of qualification. Drawing of equivalence of qualification is essentially the job of experts of the field and it is not for the Court to enter into the arena of comparing two qualifications on certain parameters and then to declare equivalence.

19. Way back in the year 1965, in the matter of **University of Mysore v. C.D. Govinda Rao and another** **A.I.R. 1965 SC 491**, in Constitution Bench judgment Their Lordships of the Supreme Court have held that in the academic matters regarding equivalence of university degree the Courts will not express a definite opinion. Paragraph 12 of the report states as under:-

“12. Where one of the qualifications for the appointment to the post of a Reader in the University was that the applicant should possess a First or High Second Class Master’s Degree of an Indian University or an equivalent qualification of a foreign University, the candidate should possess a First Class Master’s Degree of an Indian University or High Second Class Master’s degree of an Indian University or qualification of a foreign university which is equivalent to a First Class or a High Second Class Master’s degree of an Indian University. Whether the foreign degree is equivalent to a High Second Class Master’s degree of an Indian University is a question relating purely to an academic matter and courts would naturally hesitate to express a definite opinion, specially when the selection Board of experts considers a particular foreign university degree as so equivalent. ”

20. Similar is the proposition of law rendered by the Constitution Bench of the Supreme Court in the matter of **Mohammad Shujat Ali and others v. Union of India and**



others (1975) 3 SCC 76 in which Their Lordships of the Supreme Court have held that question in regard to equivalence of educational qualification is a technical question based on proper assessment by holding as under:-

“13. ... It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government. ...”

21. Similarly in the matter of **State of Rajasthan and others v. Lata Arun (2002) 6 SCC 252**, Their Lordships of the Supreme Court have held that question of equivalence of qualification are the matters which falls within the realm of the policy decision to be taken by the state by holding as under:-

“13. From the ratio of the decisions noted above, it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.”

22. Very recently, a Division Bench of this Court in W.P.(S) No.2992/2015 (Sudhir Dewangan v. State of Chhattisgarh and others) decided on 14-9-2015, while examining the issue as to whether the degree in Electrical Engineering would be equivalent to the degree in Electrical & Electronics Engineering, has held as under: -



“... We are in agreement with the submission on behalf of the State Counsel that the nomenclature of the two courses being different there has to be difference in the nature of study and knowledge imparted in the two disciplines, course content, qualifications acquired etc. It is not open for the Court in academic matters to declare equivalence of courses as may have been advertised by the employer.”

23. Concludingly, equivalence of educational qualification is purely a technical academic matter and it has to be done by appropriate authority / expert that too by specific order duly published prior to initiation of recruitment process. Thus, after having examined the legal position with regard to equivalence of two qualifications in exercise of jurisdiction under Article 226 of the Constitution of India, before proceeding further, it would be appropriate to notice the query raised by the Commissioner-cum-Director, Technical Education to the Chairman, AICTE, in this regard which is as under: -

“(A) Whether a person possessing B.E./ B.Tech. (Information Technology) and M.E./ M.Tech. (Computer Science) is eligible for the post of Assistant Professor/Lecturer (Information Technology) in Engineering College/Polytechnic.

(B) Whether a person possessing B.E./B.Tech. (Computer Science) and M.E./M.Tech. (Information Technology) is eligible for the post of Assistant Professor/Lecturer (Computer Science) in Engineering College/Polytechnic.”

Learned counsel then urged that the University Grants Commission has issued guidelines which would reflect that the qualification as possessed by the appellants would be an eligibility qualification keeping in view the status of their degree and further such equivalence has been applied by other Universities. It is also



alleged that certain candidates have been selected and consequently to exclude the appellants amounts to an act of discrimination.

We are unable to agree with the aforesaid proposition, inasmuch as, firstly, the Court in exercise of its power under Article 226 of the Constitution would not sit as an expert for granting equivalence which is within the domain of either the employer or the body granting equivalence. Unless there are specific Rules or any decisions to that effect either by the employer or by the examining body holding the selection process it will not be appropriate for this Court to assume such jurisdiction for grant of equivalence that too even in the background of the nature of the post presently involved in the Science stream.

Apart from this, we find that the learned Single Judge did exceed in carving out 10% posts for such consideration. We do not find any such legal or other basis for exercise of such jurisdiction.

Thirdly, the learned Single Judge has also observed that liberty is given for revival of the said writ petition if the posts are not sanctioned. We may put on record that once the writ petition is finally disposed of that any modification would not be available in view of the law laid down by the Hon'ble Apex Court in the case



of **State of Uttar Pradesh vs. Brahm Datt Sharma and Another** reported in **(1987) 2 SCC 179**. The said judgment has been followed by a Division Bench of this Court in **LPA No.1052 of 2013 (Pamila Singh & Anr. Versus The State of Bihar & Ors.)** decided on 29.08.2013.

This proposition of law, even though applied on the criminal side by the Apex Court, has referred to the exercise under Article 226 and 227 of the Constitution of India in the case of **Nazma Vs. Javed @ Anjum**, reported in **(2013) 1 SCC 376**.

The issue of reopening a case after the matter has been finally decided is only permissible when there are grounds for error apparent on the face of record and not by a writ to review the judgement or reopen the entire case itself. It is a different matter that if any fresh cause arises, a party can approach the appropriate forum. If the posts are not sanctioned in future by the State Government it will be a fresh cause of action. The Court cannot by itself proceed on the basis of a future anticipated relief. Thus, on all grounds, the directions issued by the learned Single Judge are not sustainable.

We, therefore, set aside the impugned judgement dated 4th July, 2018 and dismiss the writ petition being Civil Writ Jurisdiction Case No.8021 of 2017 without any impediment to the



concerned authority to grant equivalence and without any prejudice to the appellants to approach the appropriate forum that can grant equivalence.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	28.02.2019
Transmission Date	

