

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14921 of 2019

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Manoj Kumar Tiwari Village and Post- Barthara Khurd, P.S. Chaubepur,
Distt. Varanasi, State- Uttra Pradesh, Pin- 221104, currently Posted as District
Prosecution Officer, Kaimur , Bhabua, Pin - 821101

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna, Bihar.
2. Department of General Administration through Principal Secretary, Government of Bihar, Patna.
3. The High Court of Judicature of Patna in its Administrative Side through the Registrar General Patna High Court, Patna.
4. Shri Nalin Kumar Pandey, Currently posted as Additional District and Sessions Judge (ADJ), Saran Chapra, Correspondence Address- C/o S.B. Tiwari, House No. 138/10A Rampriya Road, Near Prayag, Allahabad-211002 (U.P.), Permanent Address Son of Ram Gopal Pandey, Village-Udhura, P.O. Dallupur, P.S. Brahmpur, Distt. Buxar- 804419, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Brijnandan, Advocate
For the PHC	:	Mr. Piyush Lal
For the State	:	Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-09-2019

Heard Shri Kumar Brijnandan, learned counsel
for the petitioner, Shri Piyush Lal, learned counsel for
the Patna High Court and Shri Saroj Kumar Sharma,
learned AC to AAG-3.



2. This petition was entertained by a Division Bench on 26th of July, 2019 and the following order was passed:-

“The contention raised on behalf of the petitioner is that the minimum benchmark is already fixed in the Rules itself as contained in Annexure C and as notified in the advertisement, which is Annexure A. Rule 6(e) of the advertisement is in terms of Appendix C of the Bihar Superior Judicial Service Rules, 1951 as amended till date. Clause 12 of Appendix C reads as follows:

“A candidate will qualify for appointment if the candidate secures at least 45% marks in each papers and 50% in aggregate in written test (theory papers) and viva-voce taken together.”

Learned counsel contends that the benchmark for qualifying to be appointed is 50% in the aggregate and 45% marks in each paper. It is the contention of the learned counsel for the petitioner that he fulfils this twin criteria, inasmuch as, admittedly, he has 45% marks in each paper and has 125.20 marks, which is above the 50% benchmark. In this background, it is urged that when the case of the respondent No.4 was being considered by the Committee and the deliberations which



are contained in the resolution dated 14th February, 2019 clearly demonstrate that since the last candidate selected had 125.40 marks, therefore, two candidates Nalin Kumar Pandey and the petitioner Manoj Kumar Tiwary can be accommodated.

However, when the said recommendation went before the Full Court, the Full Court decided to accommodate Shri Nalin Kumar Pandey, but declined the request of the petitioner on the ground that his marks were lower than the marks obtained by the last candidate in the selections i.e. 125.40 marks. On the same reasoning, the Full Court has also accepted the claim of Nalin Kumar Pandey as he had obtained 125.40 marks.

The records have been perused by us and we have also perused the Full Court resolution dated 10th of March, 2019.

The aforesaid contention raised on behalf of the petitioner, therefore, requires a consideration keeping in view the Rule referred to hereinabove as contained in Annexure C and as notified in the advertisement under Clause 6(e).

The contention has to be examined in the light of the fact that there were 4 vacancies available as on the date when the case of the respondent was considered.



Shri Piyush Lall, learned counsel for the High Court, and the learned counsel for the State may file their counter affidavits. Learned counsel for the High Court shall bring on record the extract of the resolution of the Selection and Appointment Committee that had made a recommendation with the observation that the Rules are silent on this point. The Full Court resolution shall also be brought on record on this count. The affidavit be filed within two weeks, one week for rejoinder. List thereafter on 23rd August, 2019.”

3. A counter affidavit has been filed on behalf of the Patna High Court and the stand taken is that Nalin Kumar Pandey had been offered appointment as he had obtained 125.4 marks which was equivalent to the last candidate selected. Since the marks of the petitioner were 125.2, therefore, the High Court decided not to reduce the merit as against the last candidate who had been selected.

4. The aforesaid stand of the High Court has been questioned by the petitioner on the ground that as



per the recruitment rules, particularly the rule as reproduced in the advertisement is "a candidate will qualify for appointment if the candidate secures at least 45% marks in each theory paper and 50% in aggregate, in written test (theory paper) and *viva-voce*, taken together."

5. There is no dispute between the parties that this is the prescription of the rule and, therefore, a candidate qualifies for appointment, if he has 50% in aggregate, both in the written test and *viva-voce*, taken together. It is also not in dispute that the maximum marks combined aforesaid is 250 and the 50% thereof is 125.

6. In the light of the above position, it is clear that the petitioner had obtained 125.2 marks which was above the qualifying marks as prescribed under the aforesaid rule.

7. In our considered opinion, there was, therefore, no rationale for eliminating the petitioner



keeping in view the fact that the vacancy against the said advertisement exists and no further process has been undertaken so as to make the vacancy non-available.

8. In the above background, we find that there was no justification for eliminating the petitioner as he had already obtained the qualifying marks and the vacancy was available against which he could have been selected.

9. Consequently, we allow the writ petition and issue a mandamus to the High Court to consider the claim of the petitioner, if he is otherwise eligible in the light of what has been stated above for his selection in the District Judge (Entry Level), Direct from Bar Quota viz-a-viz the advertisement and the examination of 2016 in question within a period of one month from today for which necessary administrative instructions may be issued as directed hereinabove.

10. It is further clear that the petitioner shall



be declared to have been selected if he otherwise fulfills
the other terms and conditions of the advertisement.

11. The petition stands allowed.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

Shageer/Praveen

AFR/NAFR	NAFR
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