

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11054 of 2014

Indu Bala Sinha daughter of Late Sachchidanand Sinha, resident of 103,
Nilgiri Bhawan, West Boring Canal Road, P.S.- S.K. Puri, District- Patna

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Education Department, Bihar, Patna
2. A.N. Sinha Institute of Social Studies, Patna through its Registrar
3. Board of Control, A.N. Sinha Institute of Social Studies, Patna through its Chairman
4. Chairman, A.N. Sinha Institute of Social Studies, Patna
5. Director, A.N. Sinha Institute of Social Studies, Patna
6. Selection Committee through the Chairman, A.N. Sinha Institute of Social Studies, Patna
7. Dr. D.M. Diwakar, Director, A.N. Sinha Institute of Social Studies, Near Gandhi Maidan, Patna
8. Prof. Kamta Prasad, Chairman, Board of Management, Institute of Resource Management and Economic Development, 2-B, Industrial Area, Karkardooma, Delhi- 110092
9. Prof. Kamal Narayan Kabra, Institute of Social Sciences, 8, Nelson Mandela Road, New Delhi- 110070

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava Mr. Ujjawal Bhushan
For the State	:	Mr. Hatesh Suman, AC to SC 13
For Respondent No. 7	:	Mr. Chakrapani
	:	Mr. Madhuresh Sinha
For A.N.Sinha Institute	:	Mr. Piyush Lall

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 03.05.2019

The writ petition has been filed praying for issuance of a writ in the nature of *quo warranto* calling upon respondent No. 7 to show the authority with respect to his appointment as Professor



in Economics at A.N.Sinha Institute of Social Studies, Patna (hereinafter referred to as “ANSISS Patna”). The petitioner has also sought quashing of the office order dated 10.5.2013 issued by the Institute in so far as the appointment of Respondent No. 7 is concerned. A declaration has also been sought for holding entire exercise of appointment of Respondent No. 7 to be illegal and in violation of the provisions contained in Clause 4 of Section II of the A.N.Sinha Institute of Social Studies Rules of Service Conditions.

2. At the very outset a preliminary objection is raised by Counsel for respondents regarding maintainability of the instant proceedings. Counsel appearing for the respondent Institute as well as private respondent No. 7 have submitted that the petitioner herself was not a candidate desirous for appointment as Professor in Economics. She has no interest in the selection process and for the said reason she has no locus to challenge appointment of respondent No. 7. They have also laid emphasis on the fact that the petitioner has not challenged candidature of respondent No. 7 as suffering from any disqualification for the appointment in question. In view of the admitted position that respondent No. 7 is duly qualified to hold the post of Professor Economics in the



Institute, resort to the remedy for *quo warranto* was not available to the petitioner.

3. The short facts giving rise to the present dispute is that in February 2013 an advertisement was published inviting applications for appointment on various posts in the A.N.Sinha Institute of Social Studies, Patna (hereinafter referred to as ANSISS) including the post of Professor in Economics. The advertisement laid down the requisite qualification and the selection procedure.

4. It is submitted by Counsel for the petitioner that the entire procedure was unfair and tailor made to ensure the appointment of respondent No. 7, who at the relevant time had already been serving as Director ANSISS. The selection and appointment of the petitioner has been made on the basis of two recommendations made to the Chairman by respondent Nos. 8 and 9.

5. The records reveal that Respondent No. 8 was Chairman in the Board of Management at the Institute of Resource Management & Economic Development at Delhi. Respondent No. 9 was serving in the Institute of Social Sciences, New Delhi. Both respondent Nos. 8 and 9 were Professors of Eminence in the field of Economic Development and Social Sciences. A very significant fact is that respondent No. 7 was not an applicant in response to



the advertisement but had been recommended for appointment as Professor, Economics.

6. Counsel for the petitioner has submitted that the said two recommendations were made to the Chairman ANSISS and not to the selection committee as required in the advertisement. On the basis of such recommendations the Chairman had issued an offer to respondent No. 7, who in turn had expressed his willingness to accept the offer of professorship in Economics in ANSISS. In the aforesaid manner the selection/appointment of the petitioner was completed at the level of Chairman ANSISS. It is therefore submitted that post facto recommendation of the Selection Committee dated 27.4.2013 was a mere formality. In fact the selection and appointment has been done at the level of Chairman ignoring the Selection Committee, which was competent authority under the advertisement pursuant to which the selection/appointment of respondent No. 7 was done. Petitioner's Counsel has also submitted that the haste with which the process of approval of the appointment of respondent No. 7, offer of appointment, his joining and minutes of the meeting of the Board of Control was done on the same day i.e. 10.5.2013 is proof of the fact that the respondent No. 7 was being granted undue benefit by the respondent authorities in the Institute. Entire selection process



is in violation of Articles 14 and 16 of the Constitution of India. The appointment, which is product of such an unfair procedure cannot be sustained in the eyes of law.

7. The other submissions advanced by Counsel for the petitioner are that other than the two recommendations sent by respondent Nos. 8 and 9 there was no basis/details before the Selection Committee to consider, let alone appoint the petitioner as professor, Economics. Selection Committee, therefore, could not and did not examine whether the petitioner fulfilled the requisites as per Clause H(d) and (e) of the advertisement. It is his submission that as per Clause (d) and (e) of the advertisement applications were to be accompanied by copies of at least three & two publications respectively in peer reviewed journals best considered by the candidate. Publishable research paper for seminar presentation and work plan for next two years were also required to be submitted, along with the application, for consideration of the Selection Committee. None of this has been done in the instant case. The appointment of the respondent No. 7 without even examining his suitability in light of the requirement noted herein above is unsustainable in law.

8. Counsel for the petitioner has also submitted that entire sequence of events suggest that from very beginning process



was aimed at providing appointment as Professor, Economics to respondent No. 7, who was already working in ANSISS but as Director and whose tenure as Director was to end on 24.9.2015.

9. Referring to Clause 16 of Section II of the General Service Conditions of ANSISS, it is submitted that the procedure prescribed therein in respect of confirmation of the petitioner's services as Professor Economics has also been violated. Such submission is made since there is nothing on record to show that after completion of the tenure of respondent No. 7 as Director of ANSISS on 24.9.2015 he has ever completed the probationary period of service. In absence of such probation having been fulfilled by respondent No. 7, he cannot be extended lien for his services on his substantive post of Professor Economics. The respondent No. 7 therefore cannot be considered a confirmed employee of the Institute in question.

10. This submission of the petitioner's Counsel appears to be a collateral attack upon his status as a confirmed employee, which is not an issue raised in the pleadings in the writ petition. The relief in the writ petition is by questioning the authority/validity of his very appointment. In the circumstance, this Court would not go into the said issue as no foundation has been laid in the writ for such submissions. Since this issue has not



been raised, respondents would be prejudiced if this Court would proceed to consider such submissions.

11. On a pointed query of the Court, Counsel for the petitioner has submitted that the petitioner does not allege that respondent No. 7 was in any manner disqualified for selection for appointment to the post of Professor Economics.

12. The submissions are limited to the procedure with reference to the terms of the advertisement and other extant service conditions discussed hereinabove. Relying on the decision in the case of *Suman Gupta & ors vs. State of J & K & ors* reported in *AIR 1983 SC 1235*, it is submitted that the twin test of relevance and reason is not satisfied by the manner in which the selection/appointment of respondent No. 7 has been done. In the absence of relevance and reason in the process of selection/appointment adopted by the authorities the selection of respondent No. 7 is illegal and in clear violation of Articles 14 and 16 of the Constitution of India.

13. Counsel for the respondent Institute on the other hand has drawn attention of the Court towards the provisions in Section 17 of the ANSISS Act 1964 as well as Clause 10 of the ANSISS Regulation 1966. The said two provisions clearly provide that recruitment to various posts of the Institute are to be made



through a method, terms and conditions as may be decided by the Board of Control (hereinafter referred to as “BOC”). Since BOC was the competent authority in terms of the statutes, it had decided the qualifications/eligibility interalia as well as the procedure for making the appointment in question and had notified the same in the advertisement in February 2013.

14. The Advertisement in unequivocal terms provides for consideration of candidates in absentia. Under the advertisement, selection committee was also competent to relax the requisite qualifications in case of exceptionally deserving candidates. For the sake of convenience Section 17 of the ANSISS Act and Regulation (10) of the ANSISS Regulation which are relevant to the issue are being reproduced:-

17. Power to make regulations:

The Board may make regulations consistent with this Act and the Rules made thereunder for-

(a) regulating the meeting of the Board and the procedure for conducting business thereat;

(b) determining the qualifications of officers and employees of the Board and prescribing method of their recruitment;

(c) specifying the terms and conditions of service of the employees appointed by the Board; and

(d) regulating the manner in which the advice of the consultants be obtained by the Board.”



.....

“RECRUITMENT TO POSTS

10. Recruitments to various posts of the Institute shall be made through such methods and on such terms and conditions as may be decided by the Board.”

15. Referring to the Advertisement (Annexure 6) it is submitted that the same clearly stipulated in Clause (c) for considering candidates in absentia on the basis of recommendation. The fact that the petitioner had not applied can in no way be considered to be illegal since the advertisement specifically provided for consideration and appointment of candidates in absentia by the BOC at its initiative. Referring to Clause (G) of the advertisement it is also submitted that the Selection Committee was duly competent to relax qualification in exceptionally deserving cases and also to consider suitable candidates from outside the list of applicants. The procedure has been laid down by the authority competent under the ANSISS Act and ANSISS Regulation. The selection therefore has been done by the competent authority as per procedure prescribed in the advertisement. Therefore, petitioner’s allegation of any procedural infirmity is based on non-est ground and devoid of any substance.



16. Counsel for the respondent Institute has also drawn attention of the Court towards Annexure III of the Rules of ANSISS Patna to submit that requisite qualification for appointment as Director and Professor was one and same. Respondent No. 7 had been occupying the office of the Director since before the advertisement, which has never been challenged by anyone including the petitioner. The qualifications of the petitioner to be appointed as professor are not in doubt. It is submitted that appointment of Professor Economics, which is a senior faculty member on recommendation of the eminent academicians of the field in absentia, i.e. without any application and by obtaining their willingness/consent, in the instant case, is not an isolated incident. In the field of academics, at such higher level, appointments are being made in a similar manner in various other Institutes. It is submitted that advertisement had been issued in Economic and Political Weekly dated 9.2.2013. The same has national and international circulation and is one of the best journals in Social Sciences in India and abroad. Other Institutes of academic excellence such as National Council for Social Research also advertise in this weekly. Other such institutes have been mentioned in para 8 of the counter affidavit filed by respondent Institute. It is also pointed out that the advertisement was



uploaded on the website of the Institute. In spite of such wide circulation, no application had been received in response to the same. None, had applied in response to the advertisement. In the absence of any personal interest in the selection and appointment of Professor Economics of ANSISS, the petitioner cannot be permitted to challenge the validity of appointment on the said post. The respondent Institute under the scheme of the Act and Regulation as also in terms of the advertisement had sufficient latitude to select eminent person for the post of Professor Economics without application and on the basis of recommendation of two eminent academicians as is the practice in various such institute of higher learning.

17. Counsel for respondent No. 7 has also appeared. He has adopted the submissions made by Counsel for the Institute and submitted that challenge to his candidature could be maintained only if the petitioner as well as respondent No. 7 had both applied in response to the advertisement.

18. In the instant case admitted position is that neither the petitioner nor respondent No. 7 had made their application for the appointment in question. Respondent No. 7, on the other hand, in view of recommendation of academicians of eminence, was offered the post of Professor Economics in terms of the scheme of



the Act, Regulation as well as Clause C of the advertisement. The respondent No. 7, in fact has consented to his appointment as such. It would thus be useful to reproduce Clause C of the Advertisement which reads:-

“C) Even the name of those potential candidates who do not apply for the appointment of senior faculty positions can be considered by the BOC at its initiative and the Institute may also entertain applications/ recommendations of suitable candidates in absentia for consideration of the Selection Committee even if one has not applied for.”

19. Counsel for respondent No. 7 has relied upon a decision in the case of ***Bharati Reddy vs. The State of Karnataka & ors***, reported in ***2018(2) PLJR 357 (SC)***. He has placed reliance on para 30 and 31 of the said judgment to submit that writ petition seeking relief in the nature of Quo warranto at the instance of the petitioner, who was not an applicant and who does not allege that respondent No. 7 was not qualified for appointment as Professor Economics in ANSISS, was not maintainable.

20. Counsel for the petitioner has relied upon decision of Division Bench of this Court in the case of ***Dr. Manoj Kumar Choudhary vs. State of Bihar and others*** in ***LPA No. 397 of 2015***. It is submitted that the Division Bench in the case of Dr. Manoj



Kumar Choudhary has examined the selection of Dr. Neetu Choudhary as Assistant Professor in Economics pursuant to the same advertisement. Finding the procedure of selection to be unfair the selection of Dr. Neetu Choudhary by the same office order which is in issue in the instant proceedings dated 10.5.2013 has been set aside. It is submitted that Dr. Neetu Choudhary was also not an applicant for the post of Assistant Professor and in the circumstances her selection in absentia, i.e. without application, as Assistant professor was set aside. It is submitted that selection and appointment of respondent No. 7 is also liable to be set aside for the same reason as by the same office order dated 10.5.2013 respondent No. 7 was selected and appointed as Professor in Economics though he was not an applicant.

21. In this connection Counsel for respondent No. 7 has submitted that decision of the Division bench in the case of Dr. Manoj Kumar Choudhary would not apply in the instant case as essentially the facts and circumstances in the case of Dr. Manoj Kumar Choudhary was different than the instant case.

22. The said submission of respondent No. 7 appears correct from the records. The distinguishing features of the case of Dr. Manoj Kumar Choudhary was that he himself was an applicant for the post of Associate professor as well as Assistant Professor in



Economics in the same Institute. Dr. Neetu Choudhary on the other hand was an applicant only for the post of Associate professor. Though she was not an applicant for the post of Assistant professor she had been appointed as Assistant professor in absentia i.e. without application. From bare perusal of Clause C of the advertisement taken note of herein above it is clear that potential candidates who had not applied for appointment could have been considered by the BOC upon recommendation of suitable candidates in absentia even if one had not applied provided the appointment was of a “senior faculty position”. The post of Assistant Professor is not a “senior faculty position”. Whereas respondent No. 7 in the instant case has been appointed as a Professor of Economics by the BOC under Clause C of the advertisement taken note of herein above and the post of Professor Economics is a “senior faculty position” in the Institute.

23. Clause C of the advertisement could not have been invoked for other faculty position such as Assistant Professor on which Dr. Neetu Choudhary was appointed. In the circumstances the case of Dr. Manoj Kumar Choudhary wherein appointment of Dr. Neetu Choudhary was set aside, was based on totally different facts and consideration, which do not arise in the instant proceeding. It is in this background that the Division Bench has in



the case of Dr. Manoj Kumar Choudhary (supra) observed as follows:-

”We also find that the provisions as contained in Clause ‘C’ under the head ‘Qualification’ as appearing in the advertisement may be invoked only by the ‘BOC’ for senior faculty positions. In the present case, post of Assistant Professor in Economics was neither senior faculty positions nor the BOC had on its own initiative recommended the name of the respondent no. 5. The submission on behalf of the respondent nos. 3, 4 and 5 that the Selection Committee had power to recommend the name of respondent no. 5 for the post of Assistant Professor in Economics is misconceived and the same is liable to be rejected.”

24. Dr. Neetu Choudhary was an applicant for the post of Associate professor. She was appointed on the post of Assistant Professor even though she had not applied for the same. Entire process of screening, which was required for ascertaining the qualification of Dr. Neetu Choudhary, was not done by the selection committee. In view of this procedural infirmity the Division Bench in the case of Dr. Manoj Kumar Choudhary had observed that selection and appointment of Dr. Neetu Choudhary could not be sustained on the twin test of relevance and reason. It is in these circumstances that the Division Bench in the case of Dr.



Neetu Choudhary held the appointment to be contrary to law laid down by the Apex Court in the case of *Suman Gupta vs. State of Jammu & Kashmir* reported in *AIR 1983 SC 1231*. The petitioner therefore cannot be permitted to place reliance on the judgment in the case of Dr. Manoj Kumar Choudhary in the instant case.

25. In the instant case, the competent authority i.e. the Board has laid down the requisite qualification, method, terms and condition for appointment in question. It is the admitted position that respondent No. 7 possessed the requisite qualification for being appointed as Professor Economics in the Institute. Clause C of the advertisement pursuant to which the petitioner was selected and appointed clearly provides for consideration of persons for appointment to the senior faculty position of professor in absentia i.e. in absence of any application. The requirement is that the suitable candidate has to be recommended for consideration of the selection committee. Application by such a candidate is not required. Two eminent persons of repute in the concerned field have made recommendation in favour of the petitioner. From the pleadings and submission of parties it is clear that Chairman ANSISS had made an offer to respondent no. 7 to take on the senior faculty position of Professor Economics. Same was accepted by respondent no. 7 on 15.4.2013 (Annexure 7). Upon



acceptance/consent by respondent no. 7, same was considered by the Selection Committee, being the Competent Authority. The appointment of respondent No. 7 was made on recommendation of the Selection Committee dated 27.4.2013. On consideration of submission of the parties this Court would find that the selection of respondent no. 7 was by a competent authority and in the manner prescribed under Section 17 of the ANSISS Act 1964, Clause 10 of ANSISS Regulation 1955 as also in accordance with Clause C of the advertisement, pursuant to which the selection has been made. The selection/appointment is not contrary to the statutory rules and qualification of respondent No. 7 for appointment as Professor Economics is not disputed. This Court would thus observe that no case has been made out for interfering with the appointment of respondent No. 7 by issuing a writ in the nature of writ of Quo Warranto.

26. In this connection reliance placed by respondent No. 7 upon the decision in the case of Bharti Reddy vs. State of Karnataka and others (supra) is correct. The appointment in question does not leave any room for doubt regarding bonafide of the process of selection and appointment. The same is as per the statutory provisions and no case is made out for interference with the selection of respondent No. 7.



27. In the circumstances, reliance placed by the petitioner on the decision in the case of ***Rajesh Awasthi vs. Nand Lal Jaiswal and others*** reported in ***AIR 2013 SC 78*** is misplaced. There is no infirmity in the selection of respondent No. 7. The same is as per the statutory provisions as well as the advertisement. Therefore, reliance on the case of Rajesh Awasthi vs. Nand Lal Jaiswal (supra) is misplaced.

28. This Court would further observe that the petitioner herself was not an applicant and had no competing interest with respondent No. 7. Other wise also, she is not aggrieved personally by selection of respondent No. 7.

29. Having regard to the facts and circumstances and legal position discussed above, this Court does not find any reason to interfere with the selection of respondent No. 7.

30. The writ petition is, therefore, dismissed.

(Madhuresh Prasad, J.)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.06.2019
Transmission Date	N/A

