

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19686 of 2013

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Birendra Kumar S/O Dhaneshwar Paswan Resident Of Village- Sobh,P.O-
Bhadeya, P.S- Barachati, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Bihar Agriculture University Saboar, Bhagalpur Through Vice-Chancellor.
3. Registrar, Bihar Agriculture University, Sabour, Bhaglapur.
4. The Officer In- Charge, Recruitment, Bihar Agriculture University, Sabour, Bhaglapur.
5. Vinod Kumar S/O Shri Vishwanath Baitha, posted at Professor, Department of Bio-Technology, College of Hosticulture, Noorsarai, District Nalanda, Bihar, permanent address: r/o village- Gopalpur, P.O. Gopalpur, District Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sadanand Paswan
For the Respondent/s : Mr.Kumari Amrita

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 05-03-2019

The present writ petition has been filed for quashing the order of appointment of the respondent no.5, namely, Vinod Kumar and to direct the respondents to appoint the petitioner on the post of Assistant Professor cum Junior Scientist and for grant of all consequential benefits.

2. The brief facts of the case, according to the petitioner, is that the petitioner belongs to schedule caste category and he is possessing the qualification of B.Sc. (Hon's), M.Sc. and Ph.D., which he is stated to have completed in the year 2012 from C.C.S. University, Meerut, U.P. An advertisement bearing No. 07/



Rectt./BSU, Sabour dated 9.6.2011 was issued by the Bihar Agriculture University, Sabour for the purposes of appointment on the post of Assistant Professor-cum- Junior Scientist in various subjects mentioned therein. The petitioner is said to have applied for the post of Assistant Professor-cum- Junior Scientist in the subject of Bio- Technology. Thereafter, various candidates including the petitioner herein were called for interview and the petitioner is said to have done well in the said interview, however, when the result was published on 14.09.2012, the names of five selected candidates were shown including the name of respondent no.5 therein without indicating the caste category as also without indicating as to who was selected against the backlog vacancy. The petitioner is then said to have enquired into the matter and he came to know that the private respondent no.5 had been selected without applying for the said post and without facing the interview.

3. The learned counsel for the petitioner has submitted that the petitioner was the most suitable person for appointment on the post of Assistant Professor-cum- Junior Scientist in as much as not even a single candidate was available who possessed Ph.D. degree whereas a bare perusal of the advertisement itself shows that the candidates having Ph.D. degree were to be preferred. It has been further submitted that as per the advertisement, the



applications along with all the relevant documents should have reached the Officer-in-charge (Recruitment), Bihar Agricultural University, Sabour, Bhagalpur till 05:00 P.M. on 15.07.2011. However, the respondents have manipulated the same and in the counter affidavit they have annexed an advertisement though bearing the same number as 7/2011, but the same is dated 9.6.2011 and the same mentions the last date for submitting the applications as 25.07.2011 and not 15.07.2011. It has been further submitted that the date of interview was fixed for 7.9.2012 and the name of the petitioner finds place at serial no. 27 of the list of the candidates, who have been called for interview for the discipline Bio-technology, which the petitioner has obtained from the University, however, the name of the private respondent no.5 does not find place in the said list, hence, it is clear that the case of the private respondent no.5 is a case of backdoor entry.

4. The learned counsel for the petitioner, referring to the application form of the private respondent no.5, annexed to the second supplementary affidavit filed by the petitioner herein, has submitted that the application form submitted by the respondent no.5 does not bear any date and moreover, at the first page of the application form date has been mentioned as 20.07.2011, meaning thereby that the application of the respondent no.5 was received in



the office of the University only on 20.7.2011 i.e. after the last date of submission of the application form i.e. 15.7.2011, hence, it is clear that the private respondent no.5 has been subsequently made to enter through backdoor. It is the case of the petitioner that it is clear from the aforesaid facts that the private respondent no.5 neither submitted his application form within the prescribed time nor his name finds place in the list of candidates, who had been called for interview, however, by manipulating the selection process, the private respondent no.5 had been illegally called for interview and given 10 marks out of 10. Lastly, it has been submitted that the private respondent no.5 has been wrongly given more marks than the petitioner who is more qualified and meritorious; hence the selection of the private respondent no.5 is fit to be set aside.

5. Per contra, the learned Senior counsel appearing for the University, referring to the counter affidavit filed by the University, has submitted that advertisement no. 7/2011, dated 9.6.2011 was issued under the signature of the Officer-in-charge (Recruitment), Bihar Agricultural University, Sabour (Bhagalpur), inviting applications for the post of Assistant Professor-cum-Junior Scientist in various subjects and the last date for submitting the application forms was 25.07.2011 upto 5:00 PM. In fact, in the



said advertisement the vacancy was not only for the current but also for backlog vacancy. The petitioner had applied for both types of vacancies and had appeared for interview but was not recommended for appointment under any type of vacancy by the Selection Committee. It has been further submitted that the private respondent no.5 was a candidate under the backlog vacancy and there were total 7 vacancies including one vacancy of Schedule Caste under the backlog quota and out of them the respondent no.5 was selected for the post because of his better performance as is apparent the merit list, annexed as Annexure-D to the counter affidavit wherein though the petitioner has obtained only 43.90 marks, the respondent no.5 had scored 57.99 marks. The learned Senior counsel for the respondents University has further submitted that it has been falsely averred by the petitioner that neither the private respondent no.5 has submitted his application in time, nor his name finds place in the interview letter in as much as Annexure-H to the counter affidavit would bear it out that the application of the private respondent no.5 was received on 20.7.2011 i.e. well before the last date of submission of the application form i.e. 25.7.2011 and Annexure-K to the counter affidavit, which is the attendance sheet of the candidates who had appeared for interview, would show that the same has been signed



by the petitioner as also by the private respondent no.5. Thus, it is pointed out by the learned Senior counsel appearing for the respondent University that even as per the own showing of the petitioner, application form of the private respondent no.5 has been received on 20.07.2011 by the University authorities, hence, since the last date for submission of application form was 25.07.2011, the application of the private respondent no.5 was entertained, because the same was received within the prescribed time. It is submitted that the selection committee had prepared a comparative merit list of the candidates, as is apparent from the merit list annexed as Annexure – O to the supplementary counter affidavit filed by the university, wherein marks have been given to the candidates under various categories and in totality, the respondent no.5 was found to be having the maximum marks, hence, the Selection Committee had recommended the name of the private respondent no.5 for selection to the post of Assistant Professor-cum- Junior Scientist.

6. In view of the controversy raised by the petitioner to the effect that the advertisement postulates the submission of the application forms by 15.7.2011 upto 5:00 PM and that the name of the private respondent no.5 did not find place in the merit list of the candidates selected for interview, this Court deemed it fit and



proper to summon the records of the connected advertisement and selection process in question from the respondent University by an order dated 05.02.2019 whereafter, the records have been produced before this Court on 21.02.2019 and have been kept on record for the purposes of examining the same.

7. This Court has examined the records submitted by the University and it finds that the advertisement no. 07/2011 is dated 09.06.2011, which was issued, inviting application for the post of Assistant Professor-cum- Junior Scientist in various subjects under the Agriculture faculty, as mentioned therein and the last date for submission of application form along with the relevant documents had been fixed as 25.07.2011 upto 5:00 P.M., which is also apparent from the note sheet. The original application of the private respondent no.5 has also been perused and the same bears the endorsement of the officials of the University regarding receiving the same and the date of receipt mentioned thereupon is 20.07.2011. Further, the said records also contain a list containing description of the forms received against advertisement no.7/2011 and the name of the petitioner is at serial no.3 whereas the name of the respondent no.5 finds place at serial no. 21. The said records also contain a list of candidates called for interview for the post of Assistant Professor cum Junior Scientist under the subject



Agricultural Bio-technology and the name of the petitioner is at serial no.2, whereas the name of the respondent no.5 is at serial no. 7. The attendance sheet of the candidates, who had turned up interview, is also part of the said records and the same bears the signature of the petitioner as also that of the private respondent no.5. The merit list prepared by the selection committee is also on record and shows that the private respondent no.5 has got the maximum marks. Lastly, the said records contain the recommendation of the Committee/ Interview Board for appointment on the basis of the academic qualification, experience, publications and performance in the interview and the private respondent no. 5 has been recommended under the backlog category.

8. I have heard the learned counsel for the petitioner, the learned Senior counsel appearing for the respondent University and have perused the materials available on record produced by the University and I find that advertisement no. 07/2011 is dated 09.06.2011 and the last date for submission of the application forms along with all the relevant documents is 25.07.2011 upto 5:00 P.M., hence the application of the private respondent no. 5, having been admittedly received by the University authorities on



20.7.2011 is held to be within time and, therefore, the contention made by the petitioner, in this regard, is held to be not correct.

9. Now, coming to the issue that the name of the respondent no.5 did not appear in the list of the candidates called for interview and that the candidature of the petitioner, possessing Ph.D. degree, was more meritorious than the respondent no.5, hence the petitioner was fit to be selected, this Court finds that the name of the petitioner and respondent No. 5 were part of the list detailing the description of forms received against advertisement no. 7/2011, and the name of the respondent No. 5 also appears in the list of candidates called for interview for the post of Assistant Professor cum Junior Scientist under the discipline agriculture Bio technology, hence, the records of the University bear it out that the issue of the respondent no.5 being not a part of the list of the candidates called for interview, is also not correct. As far as the comparative merit of the candidates is concerned, it is clear from the merit list prepared by the selection committee, after interview of the candidates, that while the petitioner had scored only 43.90 marks and in the remarks column it was mentioned “poor performance”, the private respondent no.5 had scored 57.99 marks and in the remarks column it was mentioned as “selected”.



10. Having regard to the facts and circumstances of the case, and for the reasons mentioned herein above, none of the issues raised by the petitioner merit any consideration, hence, the writ petition is dismissed, however, without any order as to costs.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	21.02.2019
Uploading Date	05-03-2019
Transmission Date	

