

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5788 of 2018

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1. Gaurav Son of Shri Devendra Prasad Singh, Resident of At P.O.-Khajurar, P.S.-Bhadaur, District-Patna.
 2. Ashutosh Kumar, Son of Shri Raj Kumar Singh, Resident of Village-Mainapatti, P.O.-Maheshwara, P.S.-Babubarhi, District-Madhubani.
 3. Prem Kumar, Son of Shri Hare Krishna Choudhary, Resident of Village-Khutauna, P.O. and P.S.-Khutauna, District-Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Secretary, State Board of Technical Education, Science and Technology Department, Bihar, Patna.
3. Bihar Public Service Commission, Patna through its Secretary
4. Chairman, Bihar Public Service Commission, Patna
5. Secretary, Bihar Public Service Commission, Patna
6. All India Council for Technical Education, New Delhi through its Secretary

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava
For the Respondent/s : Mr. Pushkar Narain Shahi-Aag6

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

7 14-10-2019 Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State.

Learned counsel appearing on behalf of the department of Science and Technology. On 14.05.2018, this Court has passed specific order noticing the injustice done to these petitioners, the Court asked the department to either provide job to the petitioners on the basis of the recommendation of the BPSC or to compassionate the petitioner by granting compensation. This Court granted further



indulgence to the respondents on 26.08.2019 and on 06.09.2019 for ready reference the order dated 26.08.2019 and 06.09.2019 is quoted below.

“Put up this case on 06.09.2019 under the heading ‘For Orders’ to enable the department of Science and Technology to inform the Court how the department proposes to do justice with the petitioner in the background of the fact that the B.P.S.C. has recommended the case of the petitioner after clearance by the Department of Science and Technology as to eligibility of the petitioner. The department has to either provide job to the petitioner on the basis of the recommendation of the BPSC or compensate the petitioner by awarding compensation which according to this Court cannot be less than five crores in the given facts of the case.”

“ As a matter of last indulgence, on the request of the respondents, the case is adjourned to 30th September, 2019 to enable the Department to either take final decision on the appointment of the petitioners or to compensate them by paying compensation of Rs.5/- crores.”

After the order of this court on 06.09.2019, the department of Science and Technology filed a supplementary counter affidavit on 09.09.2019. In the supplementary counter affidavit department has taken the stand that neither the



department is inclined to consider the case of the petitioners for appointment nor the department is ready to compassionate the petitioners, which reflects the close mind set of the respondent Science and Technology department. The relevant part of the supplementary counter affidavit paragraphs 6 to 23 is quoted below:

“6. That the present answering respondent had categorically replied each and every points raised by the writ petitioner in the present writ petition through a counter affidavit filed vide oath no. 31759 dated 19.06.2019.

7. That in response to order and direction passed by this Hon'ble court dated 26.08.2019, it is necessary to explain some relevant material facts before this Hon'ble court for complete adjudication of this case.

8. That the present writ petitioner has been filed for seeking direction for quashing order bearing Memo No. 955 dated 11.04.2018 whereby and whereunder it was held that educational qualification of the petitioners were not in accordance with Departmental requisitions and therefore they were declared ineligible for appointment and further for



direction to the respondent to consider the petitioners eligible for appointment against the post of Assistant Profession in Mechanical Engineering.

9. That the petitioner no. 1 is B.Tech, in Manufacturing Engineering, petitioner no. 2 is B. Tech, in Automatable Engineering and petitioner no. 3 is M. Tech. in Alternate Hydro Energy System.

10. That the all Indian Council for Technical Education is regulatory authority for institution imparting Technical Education under provisions of AICTE Act, 1987. As such AICTE prescribes qualifications for the Teaching post of Engineering Colleges.

11. That on the basis of qualification prescribed by AICTE vide regulation, 2010 and accepted by the State Government requisition was sent to Bihar Public Service Commission to appoint Assistant Professor in Mechanical Engineering vide letter No. 1156 dated 07.05.2014. That the required qualification for the post in question was mentioned in para 18(a) of the requisition, which is being reproduced here below:-



“B.E./B. Tech. And M.E./ M. Tech. In Mechanical Engineering/Technology with 1st class or equivalent either in B.E/ B. Tech. Or M.E./ M. Tech. (copy of requisition is already annexed with earlier counter affidavit).

12. That in para-18 (d) of the requisition it has been mentioned that the requirement mentioned in the requisition will be strictly adhered to.

13. That the AICTE has notified regulation on 28.04.2017 which was published in the Gazette of India namely, “All India Council for Technical Education (Major/core Branch of Engineering/Technology and their relevant/appropriate courses leading to degree in Engineering/Technology)” (the copy of the AICTE notification dated 28.04.2017 is already annexed with earlier counter affidavit).

14. That the aforesaid regulation was notified by AICTE for specific purpose of recruitment in teaching positions of Technical Institution. It is important to mention that as per the AICTE notification dated 28.04.2017 also these petitioners are not found eligible.

15. The the letter no. 1584 dated



16.07.2015 was sent to BPSC with regard to the relevance of branch on their request vide letter no. 952 dated 02.07.2015 and letter no. 1000 dated 08.07.2015 after advertisement, AICTE regulation regarding nomenclature of relevant branches was not available at that time. Therefore, there was no clear cut guidelines of AICTE at that time. (The copy of the letter is already annexed with earlier counter affidavit).

16. That in spite of publishing results on the basis of advice given by aforesaid letter no. 1584 dated 16.07.2015 the commission again raised several queries about relevance of branches with regard to M.Tech. and B.Tech. degrees vide letter no. 921 dated 20.07.2017 and some other letter so that final result may be published.

17. That again the matter was referred to a committee of experts. That the committee examined the relevancy of degree in light of requisition and AICTE regulation. That views of the experts were communicated to the BPSC vide letter no. 1880 dated 07.08.2017 and 2212 dated 22.09.2017.

18. That the recommendation for appointment on the post of Assistant Professor



in Mechanical Engineering was received vide letter no. 182 dated 08.11.2017. As it has been mentioned in Para-2 of the recommendation, 34 candidates were disqualified after interview on the basis of aforesaid Departmental letters because their B.Tech/M.Tech. Degrees were not found appropriate. That the 34 candidates who were disqualified having degree in production Engineering, Metallurgical Engineering etc. but the petitioners having degree in Manufacturing Engineering, Automobile Engineering and Alternate Hydro Energy System were selected.

19. That is important to clarify here that the BPSC, did not make query about the branches of these petitioners in aforesaid letters, before publication of result. That it is pertinent to mention here that the names of these writ petitioners were recommended only due to the reason that no query was made by the BPSC about these petitioners.

20. That in light of instruction contained in para-7 of the recommendation issued by BPSC vide letter no. 182 dated 08.11.2017 a committee was constituted to examine the academic certificate and other credentials of the selected candidates vide order bearing memo no. 2802 dated 28.11.2017. That



during the verification of degree it was found that petitioner do not have qualification in appropriate branch.

21. That the committee found that the degree of these petitioners are not appropriate in light of requisition of the department as also AICTE Regulation. Hence, in view of the aforesaid fact order bearing memo no. 955 dated 11.04.2018 has been issued, which is under challenge in the present writ petition.

22. That from the aforesaid facts, it is manifest that proper procedure in accordance with law has been followed by the Science and Technology Department. That the letter under challenge has been issued only on the basis of opinion given by the experts and in accordance with provisions of law. Hence, the order under challenge is legal, valid and fit to be sustainable in eye of law.

23. That in view of the above stated facts, it is crystal clear that the degrees of these petitioners are not appropriate in light of requisition and AICTE Regulation and only due to aforesaid reason these petitioners have not been given appointment despite of recommendation made by BPSC. Hence, in view



of the fact state above these petitioners have no right to demand any appointment or compensation from the respondents.”

From the supplementary counter affidavit it appears that the department in order to find fault in the recommendation of the BPSC, constituted a committee at post recommendation stage to find infirmity in the eligibility of these petitioners, ignoring the fact that earlier the issue of eligibility was considered by the expert committee, at the time of scrutiny of eligibility at the instance of BPSC. After thorough application of mind the respondent department has accepted the eligibility of the these petitioners and BPSC proceeded ahead and finalize the select list for the purpose of appointment. It appears that after final selection the department of science and Technology became wiser and an attempt was made to invent fault in the eligibility of these petitioners.

The supplementary counter affidavit as quoted here in above is acknowledgment of the fact that during the process of selection the department has not raised any objection to the eligibility of these petitioners, once the petitioners were allowed to participate in the selection process and they have been declared successful in the selection and recommendation was



also made in their favour by the BPSC their action to deny appointment on the pretext of lacking eligibility is an afterthought. The petitioners were allowed to participate in the written test and interview. They appeared in written exam and their suitability was tested in the interview and after their performance, they have been recommended by the BPSC. The precious time of the petitioners were spoiled by the respondents in this process. Holding exam for selection is not public relation exercise, those involved in the selection are supposed to conduct its business with sum amount of seriousness and accountability. Para 19 of the supplementary counter affidavit as quoted here in above, reflects the fantastic plea taken by the department of science and Technology that the issue of eligibility of these petitioners were not noted due to the fact no query was made by the BPSC about these petitioners. This statement is a false statement and runs contrary to letter enclosed as Annexure -B to the counter affidavit of BPSC, the department has taken the stand that the recommendation of the BPSC is contrary to the eligibility conditions which in the fact an attempt to pass buck and fix responsibility on the BPSC instead of owing its blunder if any in the selection process. If the department is not ready to appoint these petitioners or compassionate the petitioners then



the Court is left with no option but to allow the writ application with a direction to respondents to either provide job to the petitioner on the basis of the recommendation of the BPSC or compensate the petitioner by awarding compensation of Rs. 5/- crore each.

With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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