

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7307 of 2020

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1. Anil Kumar S/o Rajendra Prasad Resident of Village-Chaudhua, P.S.-Kurmahi, District-Muzaffarpur.
 2. Md. Qutubuddin, S/o Md. Alauddin, Resident of Village-Gadha, P.S.-Ladania, District-Madhubani.
 3. Monika, Daughter of Rajeev Kumar Resident of Village- Safapur, P.S.-Nayagaon, District-Begusarai
 4. Wakil Ahmad Ansari S/o Shamshul Afrin Ansari, Resident of C/o Manpasand Kirana Atore, Kara Bazar, Village-Kara, P.S.-Obra, District-Aurangabad.
 5. Manoj Kumar Das, S/o Marchu Ravidas, Resident of Village- Dariyapur, P.S.-Maubampur, District- Patna.
 6. Bashishth Muni Singh S/o Rishi Muni Singh, Resident of Village-Jamuaon, P.S.-Sandesh, District-Bhojpur
 7. Divesh KUMAR S/o Ramashray Kumar, Resident of Village-Farda, P.S.-Jamalpur/Naya Ramnagar, District-Munger.
 8. Jitendra Kumar S/o Deo Kumar Ram Resident of Village- Bharigawn. P.S.-Kudra, District-Kaimur.

... .. Petitioners

Versus

1. The Bihar Technical Service Commission, Patna through its Chairman.
2. The Secretary, Bihar Technical Service Commission, Patna.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. P.K.Sahi, Senior Advocate
		Mr. Ranjeet Kumar Singh, Advocate
For the Respondents	:	Mr. Nikesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5. 09-09-2020 A mistake is a slip, made not by design, but by mischance and it is not a mere forgetfulness, as observed by Esher M.R. in **Burrow Vs. Issac, 1891 QB 417**, and Russel C.J. in **Stanford v. Beal, (1895) 65 LJQB 74** [see : 1907 (ILR) 29 Allahabad 749 **Akbar Hussain vs. Hari Ram.**]

2. The meaning of the expression ‘mistake’ has



been given in the 3rd Edition of the P. Ramanatha Aiyar's the Law Lexicon :-

“Mistake. An unconscious ignorance or forgetfulness of a fact, past or present, material to the contract, or a belief in the present existence of a thing material to the contract, which does not exist; some intentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence; in a legal sense, the doing of an act under an erroneous conviction, which act, but for such conviction would not have been done.”

3. The Supreme Court of Victoria in case of *Boyle vs. Wright*, (1969) VR 699, has defined mistake as, including an error in a conduct consisting of an unintended failure to perform correctly and effectively a task intended to be duly performed [see : the 3rd Edition of the P. Ramanatha Aiyar's the Law Lexicon.]

4. The question, which the present application involves is as to whether failure on the part of the petitioners while attempting to modify, *on-line*, their applications, which were earlier submitted *on-line*, in relation to selection process undertaken by the Bihar Technical Service Commission (hereinafter referred to as 'the Commission') for the post of Junior Engineers in various departments was just a mischance, which, if not allowed to be rectified, will cause injustice and



immense irreparable loss to them.

5. It would be pertinent to take note of few facts before referring to the relief, which the petitioners have sought in the present writ application filed under Article 226 of the Constitution of India. The Commission came out with an advertisement No. 1 of 2019, inviting applications from the desirous candidates possessing diploma or equivalent qualification in engineering from recognized and accredited institutions. The selection process is governed by Bihar Technical Service Commission Selection Procedure Rules, 2018 (hereinafter referred to as 'the Rules') framed under Section 14 of the Bihar Technical Service Commission Act, 2014 (hereinafter referred to as 'the Act'). The Commission is a creation under the said Act and is thus 'State' within the meaning of Article 12 of the Constitution of India.

6. Rule 6 of the Rules prescribes that selection of candidates shall be made on the basis of (i) marks obtained in minimum academic qualification as prescribed in the concerned service cadre rules and (ii) marks prescribed for work experience (if provided in the concerned service cadre rules), against the requisitioned vacancies.

7. This is not in dispute that in the said selection



process, merit of a candidate is to be assessed on the basis of his academic qualification against 75 marks. Further, for each year of work experience performed on contract basis under the Government, an aspirant is entitled for five marks to his credit subject to the maximum of 25 marks. The aggregate of marks awarded to candidates against their academic qualification and work experience is the basis for determination of merit list, in the process of selection in question.

8. Rule 3(2) of the Rules mandates that the applications for the post under the Rules shall be invited *on-line*. The petitioners had submitted their applications *on-line*. Nearly one year after submission of their applications, the respondent Commission came out with a notice permitting the candidates to make modifications/corrections in their application forms submitted *on-line*. Apparently, in order to include their experience, which they had gained in the meanwhile, for the ostensible purpose of enhancing their score against work experience and thereby improving their chance of selection, the petitioners attempted to modify their applications *on-line*.

9. It transpires that in that process, even the experience, which they had claimed in their original *on-line*



applications got erased from the system and, consequently, no experience was being shown in their applications. They approached the Commission raising their grievance by filing *on-line* complaints. As they were not getting any response from the Commission, to their complaints made in this regard, they approached this Court by filing a writ application, which gave rise to C.W.J.C. No. 5652 of 2020. This Court after hearing learned counsel for the petitioner and the respondent Commission, disposed of the writ application by an order dated 12.05.2020 with following directions :

“In view of the said submission, since the issue is yet to be examined by the respondent Commission, there is no occasion for this Court to issue any direction as the stand of the Counsel for the Commission is that the complaints would be disposed of before publication of the result.

The writ application is disposed of by recording that all the complaints filed by the petitioners would be disposed of in terms of the stand of the learned Counsel for the Commission at least two weeks prior to publication of the result.

This court would only observe that the Commission would be under an obligation to maintain uniformity in the process of selection, including in the matter of allowing modifications (corrections) claimed by the candidates participating in the selection process, while taking a decision on the claim of the petitioners.”

10. In pursuance of this Court’s order, the



Commission has taken a decision, rejecting the requests of the petitioners, which has been communicated to them by letter No. BTSC-67-2019-652 dated 02.07.2020. The petitioners have assailed the order dated 02.07.2020, in the present application and have sought for a direction to the respondents to allow them to make necessary corrections in their applications so that their work experience may be included for the purpose of determination of their merit.

11. The nature of mistake committed by the petitioners, leading to complete deletion of their work experience from their *on-line* applications after they attempted to modify the applications for entering more work experience, emerges from the averments made in paragraph 12 of the counter affidavit filed on behalf of the Commission, which reads as under : -

“12. That at is pertinent to mention here that in view of the provisions and clause of Rule, 2018 and specific clause 14 of advertisement as discussed above, the applicants are duty bound to follow the instructions in the advertisement while filing online form with utmost care. But here these petitioners have not followed the instructions, as while attempting modification in their earlier filed application, they would have to put yes click in the column of “whether you are/were working in the State Govt. on contract basis”. These petitioners have not clicked yes click and



as such it has by default taken no and their even earlier work experience which has been given have vanished. Moreover there was provision for cross check in the software, as the candidates have to go through the preview page and confirm themselves before finally submitting their respective modification. But these petitioners may have ignored the relevant entries in the experience column which has resulted in their difficulties and now as discussed above, the Commission is also helpless to come in rescue of these petitioners.”

12. It is evident from what has been stated in paragraph 12 that while attempting modification in their originally filed applications, the aspirants were again required to click ‘yes’ button in the column “whether you are/were working in the State Government on contract basis”. These petitioners missed to click the said ‘yes’ button and the system, by default, took it as ‘no’ and thus their work experience, which was earlier entered, also got vanished. Further, the candidates missed to go through the preview page and confirm themselves before finally submitting their respective modifications. The Commission says, in the counter affidavit that it is now helpless to rectify the lacunae in *on-line* applications filed by the petitioners.

13. Mr. P.K.Sahi, learned Senior Counsel appearing on behalf of the petitioners, while not disputing the fact that the petitioners might have missed to click ‘yes’ button, possibly for



the reason that in their original applications, they had already clicked the said button, but has argued that such minor mistake on their part may not be allowed to have the serious consequence of wiping out completely their work experience, which is crucial, from the process of selection. He has submitted that the petitioners had/have been working on contractual basis since long and they had applied pursuant to the advertisement under great hope and expectation that they would have better chance of getting into Government employment against permanent posts on substantive basis considering their work experience. He has submitted that their chance of selection shall be completely jeopardized and diminished, if their work experience is not taken into account, while preparing the merit list.

14. Mr. Nikesh Kumar, learned counsel representing the respondent Commission, while justifying the impugned action of the Commission, has submitted, with reference to the averments made in the counter affidavit that 91219 forms have been submitted *on-line* pursuant to the said advertisement for filling up of 6300 and odd vacancies. Pursuant to the subsequent notice for modification, 4587 candidates had opted for modification. All candidates, except 11, got issues while



modifying their *on-line* applications and they alleged fault with the software of the *on-line* process. The Commission had consulted National Informatics Centre, Lucknow, for giving the petitioners chance, to rectify. The National Informatics Centre, Lucknow, has, however, informed that it would not be possible to give chance to these petitioners only for modification. It has further been stated that if further chance is allowed for modification, even candidates passed out in 2020 may also raise their claims to participate in the process of selection. It has been averred that the present advertisement was issued on the vacancies of the year 2018, but due to aforesaid modification allowed in March, 2020, 2019 passed out candidates have also been given a chance to participate in the recruitment process.

15. On careful perusal of the pleadings on record, particularly the averments made in paragraph 12 of the counter affidavit, which has been quoted above, I have no hesitation to record my definite conclusion that it was just a slip, surely not by design but by mischance that the petitioners missed to click 'yes' button, leading to deletion of the information, which they had earlier entered in their *on-line* applications in respect of their work experience. Unless it verges on impossibility, an unintentional mistake by slip or mischance, having serious



consequences, must be permitted to be rectified, to prevent injustice.

16. Mr. Sahi, learned Senior Counsel, has submitted that the petitioners shall be satisfied if the status of their *on-line* applications, originally filed by them, stands restored.

17. In the Court's opinion, it would harsh to disallow the petitioners the benefit of work experience, because of mistakes, trivial in nature, as indicated hereinabove. An error of the nature, which was apparently unintended failure on the part of the petitioners to press 'yes' button, is not of such nature as not to permit them to correct their mistakes. The situation and the circumstance, as discussed above, warrants this Court's interference exercising equitable writ jurisdiction under Article 226 of the Constitution of India. For a minor mistake, apparently unintentional, denial of consideration of work experience of the petitioners shall not serve rather defeat the ends of justice and would be violative of Articles 14 and 16 of the Constitution of India.

18. This application is accordingly allowed.

19. The respondents are directed to permit the petitioners to make corrections in their *on-line* applications for the sole purpose of entering their work experience, which they



had gained as on the date of submission of original *on-line* applications. For the said limited purpose, the respondents shall be obliged to open the *on-line* application portal, which shall be confined to these petitioners only. The plea of prejudice to other candidates, if the petitioners are allowed to correct their mistake is unsustainable for the reason that the Court is permitting the petitioners to claim work experience, which they had claimed in original application.

20. Since the Court is directing the respondents to undertake the aforesaid exercise for these petitioners only, for the mistakes on their part, which shall surely put an additional burden on the Commission, it is directed that the petitioners shall be required to pay to the Commission a sum of Rs.2000/- each within one week from today, whereafter the Commission shall take steps for compliance of this Court's order. The mode of payment shall be communicated by the Commission to the petitioners forthwith.

(Chakradhari Sharan Singh, J)

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