

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7947 of 2020

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1. Md. Adil Husain Son of Kausar Ansari Resident of Village and Post Barharwa Fate Mohammad via Kundwa Chainpur, P.S.- Kundwa Chainpur, District- East Champaran. Pin- 545304.
 2. Amrendra Prasad S/o Late Badri Das Resident of Village- Shankarpur, Post Office- Belhari, P.S.- Belaganj, District- Gaya, Pin 804403.
 3. Vinod Kumar S/o Shyam Babu Sao Resident of Kurji More gate no. 66, Post Sadaquat Ashram, P.S.- Digha, District- Patna, Pin 800010.
 4. Deepak Kumar S/o Rajeshwar Prasad Resident of Mandir Bagicha, Raghurampur, Noorpur Chandmari Road, Post Chandmari, P.S.- Shahpur, District- Patna, Pin 801503.
 5. Pankaj Kumar Choudhary S/o Suresh Choudhary Resident of Village- Alampur, Post Barh, P.S.- Barh, District- Patna, Pin 803213.

... .. Petitioner/s

Versus

1. The Bihar Technical Service Commission Through its Chairman, having his office at 19 Harding Road, P.S.- Airport, District- Patna.
2. The Deputy Secretary Bihar Technical Service Commission, having his office at 19 Harding Road, P.S.- Airport, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Mukeshwar Dayal
For the Respondent/s : Mr.Nikesh Kumar

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 06-10-2020

Upon hearing learned counsel for the petitioners and learned counsel representing the Bihar Technical Service Commission, there appears to be no dispute that case of the petitioners is identical to the case of petitioners of **CWJC No. 7307 of 2020 (Anil Kumar and others Vs. Bihar Technical Service Commission, Patna)** disposed of on 09.09.2020.



2. The matter arises out of Advertisement No. 01 of 2020 inviting applications from desirous candidates possessing diploma or equivalent qualification of engineering from recognized and accredited institutions. It has been noted in the order of this Court dated 09.09.2020, in case of **Anil Kumar and others** (supra) that 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'). 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. Paragraph 7 of the said order in case of **Anil Kumar and others** (supra) reads thus:-

“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.”

3. Rule 3(2) of the Rules has also been taken note of, which mandates that an application for the post shall be invited *online*. It is identical case of these petitioners, as in the case of **Anil Kumar and others** (supra) that they had submitted their applications *online*. Nearly one year after submission of their applications, the respondents- Commission came out with a notice permitting the candidates to make modifications/corrections in their application forms submitted *online*. Apparently, in order to make their experience, which they had gained, in the meanwhile, for the ostensible purpose of enhancing their score in the work experience and thereby improving their chance of selection, these petitioners, as was in case of **Anil Kumar and others** (supra), attempted to modify their applications *online*. In that process, even the experience, which they had claimed in their original *online* applications got erased from the system and, consequently, no experience was being shown in their applications. Their request to rectify their



mistakes has been rejected by the Commission. This Court while discussing the pleadings in case of Anil Kumar and others (supra) observed in paragraph 12 as under:-

“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 *online* applications filed by the petitioners.

4. Considering the pleadings on record and the submissions advanced on behalf of the petitioners and the Commissioner, the Court in case of Anil Kumar and others



(supra) passed the following orders in paragraphs 17 to 20:-

“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 direct that the petitioner 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."



5. Mr. Mukeshwar Dayal, learned counsel for the petitioners has submitted that the petitioners may be allowed the same relief, which has been allowed by this Court in case of **Anil Kumar and others** (supra) as according to him, the present case is squarely covered by the said decision. He has submitted that the writ application was filed much before disposal of the said case on 09.09.2020 and it is not a case where the petitioners can be termed as fence-sitters and approached this Court after having become wiser by the decision of this Court in case of **Anil Kumar and others** (supra).

6. Mr. Nikesh Kumar, learned counsel for the Commission has not disputed the factual aspect that the case of these petitioners is identical with the petitioners in case of **Anil Kumar and others** (supra). He has, however, submitted that it is a tedious exercise for the Commission to open the portal and allow the candidates to make corrections and if such indulgence is granted, this may become an unending process.

7. Considering the submission on behalf of the Commission and the fact that the case of the petitioners is identically situated with the case of the petitioners of **Anil Kumar and others** (supra), it is directed that the said decision



will govern in the cases of these petitioners also and it is disposed of in terms of the orders in case of **Anil Kumar and others** (supra) with the directions as contained in paragraphs 19 and 20 therein.

8. It is clarified that the directions issued in the present case shall not be treated as precedence which have been passed in the peculiar facts and circumstances of the case. So far as the selection process is concerned, it is direct that the Commission shall not be obliged to entertain similar thing of other aspirants who approached the Commission after passing of the order dated 09.09.2020 in case of **Anil Kumar and others** (supra).

9. This application is allowed with the aforesaid observations and directions.

(Chakradhari Sharan Singh, J)

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