

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9038 of 2017

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Ishan Singh Bhadoria, son of Ramesh Kumar Singh, resident of 28/60,
Officers Flat, Bailey Road, P.S.- Kotwali, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Higher Education, Education Department, Government of Bihar, Patna.
3. The Chairman, Bihar Public Service Commission, Bailey Road, Patna, Bihar.
4. The Secretary, Bihar Public Service Commission, Bailey Road, Patna, Bihar.
5. The Secretary, Bihar Public Service Commission, Bailey Road, Patna, Bihar.
6. The Examination Controller, Bihar Public Service Commission, Bailey Road, Patna, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Y.V. Giri, Senior Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey, AAG 15
For the BPSC	:	Mr. P.N. Shahi, Senior Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 21-10-2020

Heard Mr. Y.V. Giri, learned Senior Counsel for the petitioner, Mr. Ashutosh Ranjan Pandey, learned AAG-15 for the State and Mr. P.N. Shahi, learned Senior Counsel for the Bihar Public Service Commission through video conferencing.

2. The petitioner in this writ petition seeks following reliefs:

(a) To direct the respondents no.3 to 5 to include the name of the petitioner in the merit list prepared by them for making recommendation to the Education Department and thereafter recommend the name of the petitioner for appointment against the post of Assistant professor, Physics as he has secured more marks than the cut off marks for the general candidates.



(b) To direct the respondents no.1 and 2 to appoint the petitioner against the post of Assistant Professor, Physics soon after receiving the recommendation from the Bihar Public Service Commission (hereinafter for the sake of brevity referred to as 'the Commission') as per option exercised by the petitioner at the time of submitting application form and as per seniority of the petitioner in the merit list of the Commission.

(c) To direct the respondents no.1 and 2 not to appoint the candidates whose names have been recommended by the Commission till disposal of this case.

3. Brief facts bereft of unnecessary details but relevant and material for disposal of this case is as follows:

The petitioner in pursuance of Advertisement No.65 of 2014, published by the Commission inviting application from the eligible candidates for appointment on the post of Assistant Professor in the subject of Physics, made application. The petitioner secured A1 in all the five subjects in Secondary School Examination, 2004 (10th). The petitioner also did his Senior School Certificate Examination, 2006 (12th) conducted by Central Board of Secondary Education. Thereafter the petitioner took admission in five years integrated programme of Master of Science in Physics (Batch 2007-12) at National Institute of Science Education and Research (hereinafter referred to as 'NISER'), Bhubaneswar, Odisha. The NISER is a research and science centre of excellence and the same runs under the Department of Atomic Energy, Government of India. The institute is affiliated with Homi Bhabha National Institute, Mumbai and the same is a deemed university. The petitioner obtained 7.56 CGPA out of 10 CGPA in M.Sc. Integrated course of five years and accordingly certificate was awarded to the petitioner by Homi



Bhabha National Institute, Mumbai. The petitioner also did his Junior Research Fellowship/National Eligibility Test and obtained 208 marks out of 317 marks and Council of Scientific & Industrial Research, New Delhi awarded certificate to the petitioner on 29.10.2012. After obtaining certificate of Junior Research Fellowship, the petitioner got registered in Ph.D. course and he is associated with Tata Institute of Fundamental Research, Mumbai as Research Scholar. The Commission after having received the application form of the petitioner and after due scrutiny of relevant documents, published list of 655 eligible candidates for the post of Assistant Professor, Physics. The name of the petitioner figured at serial no.44 in the list of eligible candidates for the post of Assistant Professor, Physics. The programme and date of interview of eligible candidates was fixed according to their roll numbers. The interview date of the petitioner was fixed on 25.04.2016. On the date of interview, the petitioner was asked to submit certificate of concerned institute showing the conversion of CGPA into marks of percentage. The petitioner was also directed to submit certificate regarding M.Sc. Integrated Degree Course. The petitioner in pursuance of the directions of the Commission submitted certificate according to which 7.56 CGPA of 10 point scale is equivalent to 75.60% marks and the institute awarded degree of Master of Science in one of four subjects, Biology, Chemistry, Mathematics and Physics after completion of five years course. The institute does not award separate marks of the degree for the Bachelors programme. The Commission published the result of 170 successful candidates on 27.01.2017 for the post of Assistant Professor, Physics but the petitioner did not find his name in the successful candidates. The father of the petitioner got information about the cut off marks through RTI and the petitioner came to know that the cut off



marks for general category candidate in Physics was 74.60 and the petitioner obtained 72.65 marks in aggregate (65.65 in academics and 7 in interview). The total marks for academics was 85 and interview was of 15 marks. The Commission has distributed the award of marks in the following manner:

Examinaion	Maximum Weightage
Matriculation	10
Intermediate	10
Graduation	25
Post Graduation	30
Ph. D or M. Phil	10
Sub-Total	85
Interview	15
Total	100

4. Mr. Y.V. Giri, the learned Senior Counsel for the petitioner submits that the Commission issued Advertisement No.65 of 2014 as contained in Annexure-5. The Commission has also described the entire procedure and manner of awarding marks on the basis of percentage of marks obtained in the educational qualification in Schedule-I to Schedule-V. The petitioner got appropriate number on the basis of the marks obtained in 10th and 12th examination but the petitioner did not get appropriate marks on the educational qualification of the petitioner in five years integrated M.Sc. Course. The petitioner obtained 75.6 after sixth semester, which is equivalent to Graduation and 75.6 marks in last four semester after sixth semester, therefore, the petitioner should have been granted 25 marks in Graduation qualification and 30 marks in Post Graduate qualification. The petitioner got 7 marks in interview, therefore, the total marks obtained by the petitioner should have been 81.4 but instead of 74.4 marks in academics, the Commission awarded only 65.65 marks in academics. It is submitted that the



Commission has considered the other terms and conditions for awarding marks on the basis of the academics qualification than the prescribed procedure and manner of awarding the numbers as contained in the advertisement. Recruitment to public services should be made strictly in accordance with the terms of advertisement and recruitment rules, thus, exclusion of the name of the petitioner from the selected candidates on the basis of less marks awarded to the petitioner in academic qualification is illegal. The learned Senior Counsel for the petitioner in support of his contention placed reliance on the judgment of the Hon'ble Supreme Court in the case of Yogesh Kumar & Ors. Vs. Govt. of NCT, Delhi & Ors., reported in (2003) 3 SCC 548 and in the case of Mohd. Sohrab Khan Vs. Aligarh Muslim University & Ors., reported in (2009) 4 SCC 555. Mr. Giri, the learned Senior Counsel for the petitioner submits on the basis of the aforesaid facts that the direction be issued to award the appropriate marks to the petitioner on the basis of the percentage of marks obtained by the petitioner in the Graduation and Post Graduation degree obtained by the petitioner and the name of the petitioner be recommended for appointment on the post of Assistant Professor. It is further submitted that the Commission has come forward that since the petitioner did his five years integrated Post Graduate course in Physics and, therefore, a committee consisting of Professors of IIT, Patna has been constituted and the committee awarded the marks on the basis of percentage of marks obtained by the petitioner in his academic qualification. The marks obtained by the petitioner in 10 CGPA was converted to 5.5 CGPA according to the rules of All India Council of Technical Education but the advertisement does not prescribe any such rule of conversion of the percentage of marks on 10 CGPA into 5.5 CGPA, therefore, the petitioner



should have been awarded 25 marks on the basis of marks obtained in Graduation course and 30 marks on the basis of marks obtained in Post Graduate course after bifurcating the five years integrated course of post Graduate.

5. Per contra, Mr. P.N. Shahi, the learned Senior Counsel appearing on behalf of the Commission has submitted that admittedly the petitioner did five years integrated Post Graduate course. At the time of interview, the petitioner submitted certificate issued by the institute that no separate marks or certificate with regard to Graduation is issued. In order to sort out this issue as to what marks should be awarded to the petitioner in Graduation and Post Graduation on the basis of the marks obtained by the petitioner in five years integrated Post Graduate course, the Commission constituted an expert committee consisting of Dr. Rajeev Mishra, Associate Professor, Department of Computer Science and Engineering, IIT, Patna, Dr. Prolay Das, Associate Professor, Department of Chemistry, IIT, Patna and Dr. Navin Kumar Nischal, Associate Professor, Department of Physics, IIT, Patna. The committee after considering the marks obtained by the petitioner and 56 other applicants and their marks obtained on the basis of CGPA, FGPA, OCPA, FGPA, DGPA awarded 68.10% marks in Graduation and Post Graduation according to the rules of AICTE and, therefore, the petitioner was awarded in aggregate 65.65 marks in academics and 7 marks in interview. In aggregate the petitioner obtained 72.65 marks. The cut off marks for general candidate is 74.6, as such, the petitioner has not been selected, therefore, there is no irregularity in awarding percentage of marks on the basis of the marks obtained by the petitioner in his five years integrated Post Graduate course on 10 CGPA. The expert committee after perusing all his relevant documents and



certificates awarded him 68.10% marks for his academic marks for B.Sc. and M.Sc. And this 68.10% of marks was again converted into marks as per Schedule-IV of the advertisement. His converted marks as per Schedule-IV is 21.5 and 24.75 respectively for Graduation and Post Graduation qualification and in aggregate the petitioner got 65.65 academic marks (Matric 10 + Inter 9.4 + B.Sc. 21.5 + M.Sc. 24.75) and 7 marks in interview. The petitioner in aggregate secured total 72.65 marks, which is less than the cut off marks 74.60 of general 01 category and thus, the name of the petitioner does not come in the selection zone.

6. Having considered the facts and submissions of both sides, it is apparent and admitted that the petitioner only disputed the award of marks awarded by the Commission on the basis of percentile of marks obtained by the petitioner on 10 CGPA in five years integrated Post Graduate course in Physics from NISER. According to the petitioner, the petitioner obtained 7.56 CGPA out of 10 CGPA in five years integrated M.Sc. Course. The petitioner at the time of interview bifurcated his percentage of marks obtained by him in five years integrated course and disclosed that for the purpose of awarding marks in Graduation and Post Graduation, the marks obtained in first six semesters should be treated as marks obtained by the petitioner in Graduation and the last four semesters marks be treated as marks obtained by the petitioner in Post Graduation. The petitioner submitted application showing that he obtained 7.46 percentile marks on 10 CGPA in Post Graduation. The Commission has not disputed this fact. The dispute is whether the Commission has awarded appropriate marks to the petitioner on his percentile of marks on 10 CGPA obtained in Graduation and Post Graduation after its bifurcation for six and four semesters for five years integrated course. From



perusal of the advertisement, it appears that the procedure for selection process was described. The educational qualification shall carry 85 marks and interview 15 marks. The distribution of marks for academic and interview has been given and the same has to be awarded according to the guidelines given in Schedule-I to V. The advertisement further prescribes the procedure for conversion of grade points to percentage equivalent and the same will be carried out as per the conversion formula laid down by the University concerned. However, whether the University has not laid down the conversion formula, the determination of marks for the academic merit and weightage shall be established on the basis of Schedule-I to IV. In view of the directions, procedures and manners for conversion of grade points to percentage equivalent on the basis of the conversion formula as contained in Schedule-I to IV, the Commission constituted an expert committee consisting of Associate Professors of the Department of Computer, Chemistry and Physics of IIT, Patna. The expert committee perused the educational qualification of the petitioner and 56 other candidates and converted the marks obtained by the petitioner in five years integrated Post Graduation course on 10 CGPA to 68.10 percentile on the basis of the formula as contained in Schedule-IV and according to the rules of All India Council of Technical Education. Although Mr. Y.V. Giri, the learned Senior Counsel for the petitioner has submitted that the rules of AICTE is not applicable in case of the petitioner but at the same time he could not be able to show any other regulation, rule of UGC or AICTE in order to refute the correctness of the method and process of conversion of the marks obtained by the petitioner on 10 CGPA to 5.5 CGA as per the directions contained in Schedule-IV of the advertisement, therefore, I find that the expert committee as per the rules, regulations of AICTE and the



directions as contained in the advertisement has rightly awarded the points for academic qualifications of the petitioner in five years integrated Post Graduate course. The Commission has not assessed the qualification of the petitioner or awarded any marks on the academics qualification of the petitioner on any other consideration than what is prescribed or enumerated in the advertisement, therefore, the submissions of the learned Senior Counsel for the petitioner that the Commission has changed the criteria for conversion and award of marks to the petitioner is of no substance and cannot be accepted. This Court finds that on the basis of the report of the expert committee, the Commission has rightly awarded appropriate marks on the academic qualification of the petitioner in five years integrated Post Graduate course in Physics and, therefore, I do not find any merit in this writ petition.

7. Having considered the facts aforesaid, I find no merit in this writ petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J.)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.11.2020
Transmission Date	

