

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8203 of 2020

1. Birendra Kumar Singh Son of Ram Bilash Singh Resident of Village- Chandpura, P.S.- Koilwar, P.O.- Purana Haripur, District- Bhojpur.
2. Ashwani Sharma Son of Ashok Singh Resident of Village- Gorakhari, P.S.- Bikram, District- Patna.
3. Akhilesh Kumar Son of Badri Narayan Pal Resident of Village- Pirhi, P.O.- Dihuli, P.S.- Dulhin Bazar, District- Patna.
4. Manauwar Ali Son of Mustafa Resident of Rural Development Department, Old Secretariat, District- Patna.
5. Rajeshwar Prasad Son of Jawahar Lal Prasad Resident of Village- Sirsa Khekaran, P.O.- Saraibox, District- Saran.
6. Manmohan Singh Rajput Son of Late Prakash Singh Rajput Resident of Bailey Road, P.O. and P.S.- Rupashpur, Near Devi Asthan, District- Patna.
7. Mukesh Kumar Son of Rghubnsh Mani Singh Resident of Village- Pipra, P.S.- Garhani, District- Bhojpur.
8. Shailesh Kumar Son of Kulbhushan Singh Resident of Village- Chaithiya, P.O. and P.S.- Bikram, District- Patna.
9. Niraj Kumar Son of Sri Shyam Narayan Singh Resident of Village- Berar, P.O.- Barh, P.S.- Rani Talab Khapura, District- Patna.

... .. Petitioners

Versus

1. The State of Bihar Through Chief Secretary, Government of Bihar, Patna.
2. The Bihar Staff Selection Commission Through its Secretary, Veterinary College, Patna, Bihar.
3. The Chairman Bihar Staff Selection Commission, Veterinary College, Patna, Bihar.
4. The Secretary Bihar Staff Selection Commission, Veterinary College, Patna, Bihar.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Naresh Chandra Verma
	:	Mr.Natraj Verma
	:	Mr.Arun Kumar Lal
For the Respondent/s	:	Mr.Dr.Ratan Kumar
	:	Mr.Pawan Kumar
	:	Mr.Satyabir Bharti

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 17-08-2021

This matter has been taken up for hearing online because
of COVID-19 pandemic restrictions.



The nine petitioners in the present writ application were applicants for appointment on the post of driver in the State Government pursuant to an advertisement issued by the Bihar Staff Selection Commission (hereinafter referred to as 'the Commission'). The selection process is governed by Bihar Driver's (Recruitment and Service Conditions) Rules, 2005, as amended by Bihar Driver's (Recruitment and Service Conditions) (Amendment) Rule, 2014 (hereinafter referred to as 'the Rules'). In consonance with Sub-Rule 5 and 6 of Rule 4 of the Rules, the advertisement *inter alia* contemplated that a written test of 75 marks shall be held. The advertisement further required that the candidates must score minimum qualifying marks in the written test, as prescribed in resolution no. 2374 dated 16.07.2007 issued by the Personnel and Administrative Reforms Department (General Administration Department), Government of Bihar. The said resolution dated 16.07.2007 prescribed 40% for General, 36.5% for Backward Class, 34% for Extremely Backward Class, 32% for Scheduled Caste/Schedule Tribes and 32% for females as minimum qualifying marks in written test. Apparently those who qualified in the written test could be considered for subsequent stages of scrutiny for selection. The advertisement specifically laid down the process of selection clearly in tune with the statutory



provision under Sub-Rule 5 and 6 of Rule 4 of the Rules. Sub-Rule 5 and 6 of Rule 4 of the Rules reads thus:-

“(5) In the light of requisition, the Commission shall invite the application by advertisement against the vacancies and on the basis of written examination and work experience of driver appointed on the contract basis, the Commission shall invite the candidates 2.5 times of vacancies for Test of Driving and General Knowledge of Vehicles. Marks for written examination and work experience of drivers appointed on the basis of contract shall be determined as follows:

- a) For percentage of Marks obtained in written exam-75 marks*
- b) For work experience of Motor Driving of drivers legally appointed on the basis of contract in any office of the State Government-25 marks*

{5 (five) marks for work experience of motor driving of each year, maximum 25 (Twenty-Five) marks}

Note:- Marks obtained in written test by a candidate shall be determined as the percentage of total marks obtained in that examination, multiplied by 0.75 e.g. A



candidate who has obtained total 50 percentage of marks shall be given $50 \times 0.75 = 37.5$ marks. Marks for work experience shall be only admissible on the basis of application forwarded by the head of office where candidate is working or had worked on contractual basis.

(6) 2.5 times candidates selected under above sub-rule (5) has to appear in the test of driving and general knowledge of vehicles according to sub-rule (2) of Rule 4 for which total marks shall be 100. This test shall be conducted through a committee constituted by the Commission in which one member shall be motor Vehicle Inspector. The merit list shall be prepared on the basis of marks obtained in the test and the Commission shall recommend the name of selected candidate from this merit list to the concerned Department/Office. No weightage shall be given for higher educational qualification.”

Evidently, those who scored minimum qualifying marks in the written test were eligible for consideration in terms of Sub-Rule 5 of Rule 4 of the Rules, which required that on the basis of



written test and work experience of drivers appointed on contract basis, the Commission shall invite 2.5 times of vacancy for test of driving and general knowledge of vehicles.

The Rule further prescribes a method for determination of score for written test and work experience of drivers appointed on the basis of contract. Sub-Rule 6 of Rule 4 of the Rules prescribes that 2.5 times candidates selected under Sub-Rule 5 of Rule 4 of the Rules shall be permitted to appear in the test of driving and general knowledge of vehicles.

Petitioners in the present application assert that only 654 candidates were declared successful on the basis of written test, in respect of which a notice was issued by the Commission vide Memo No. 1856 dated 26.07.2019. In the said notice, roll numbers of these petitioners figured. According to the petitioners, the Commission had come out with a notice dated 27.09.2019 inviting 1075 candidates to participate in the proficiency test. It is the grievance of the petitioners that in the said notice, roll numbers of these petitioners have not been displayed. It is their case, as pleaded in the writ application that since they were declared successful in the written test, they ought to have been invited for proficiency test and ignoring their claims, candidates who were not declared successful in the written test have been invited for



proficiency test vide notice dated 27.09.2019 issued by the Commission. Accordingly, the petitioners have challenged the said notice dated 27.09.2019 issued by the Commission. This is to be noted that when the matter was taken up on 16.07.2021 by this Court, noticing absence of pleading in the counter affidavit filed on behalf of the Commission that only those candidates were invited for the proficiency test, who had scored minimum qualifying marks in the written test, this Court had directed by interim measure, that no further appointment shall be made on the basis of selection process in question, till further orders.

A supplementary counter affidavit has been filed on behalf of respondents no. 2 to 4 wherein it has been categorically stated that altogether 3030 candidates had appeared in the written test held on 23.09.2018 out of which 2377 candidates had qualified by scoring qualifying marks in terms of the State Government resolution dated 16.07.2007.

In the next stage, the candidates who had qualified in the written test and claimed benefit of experience were invited to submit experience certificate of motor driving after having been legally appointed on contractual basis in any office of the State Government. Such experience certificate was to be submitted in prescribed format so that they could be awarded marks on the



basis of their experience. Maximum marks of 25, with 5 marks for each year of experience could be awarded in favour of a candidate on the basis of experience. At this stage of the process of selection, 654 candidates who had claimed experience and qualified in the written test were directed to submit their experience certificate. In the next stage, based on marks of experience of candidates who had qualified in the written test, together with their score in the written test, 1745 candidates were found to have qualified. In terms of the advertisement, candidates equivalent to 2.5 times of the total vacancy were to be selected for the next stage of selection i.e. proficiency test i.e. test of driving and general knowledge of vehicles. Accordingly, based on their respective merit, 1075 candidates were shortlisted category wise, out of 1745 candidates. Finally, a total of 426 candidates have been declared successful in the test of driving/general knowledge of vehicles and counselling of candidates. Further, the candidates so selected were subjected to medical test and finally 336 candidates have been selected and recommended.

In respect of the petitioners, it has been stated that roll numbers of petitioners no. 5, 6 and 9 did not figure in the list of 1745 candidates, as they were found to have scored 32, 31.25 and 31.25 marks respectively, which was below the qualifying marks



of 34 and 40 in their respective category. Even otherwise they could not have made it to be shortlisted among candidates equal to 2.5 times, the cut-off in their category being 55 (Unreserved) and 35 (MBC). It has further been stated that upon undertaking the exercise of shortlisting 2.5 times of total number of vacancies for the driving test and general knowledge of vehicles, the remaining petitioners stood excluded, as they had secured marks less than the last candidates in their respective category included in the list. The Commission has given in tabular form the marks scored by these petitioners and the cut-off marks in their respective categories.

In the third supplementary counter affidavit filed on behalf of the Commission, while reiterating the aforesaid facts, it has been stated that applying the principle of inviting 2.5 times of total number of vacancy for driving test etc., a total of 1166 candidates were to be called for, for proficiency test. The candidates had to be shortlisted category wise and cut-off for each category had to be determined. However, required number of candidates could not qualify category wise, for the test of driving/general knowledge of vehicles. Therefore, altogether 1075 candidates were shortlisted category wise, out of 1745 candidates.

A rejoinder has been filed on behalf of the petitioners wherein the facts asserted in the counter affidavit have not been



denied. It has, however, been stated in respect of petitioner no. 6 that admittedly he had qualified in the written test but no marks for experience has been credited to his score, though he was working since 01.04.2012. It has been asserted that the petitioner no. 6 is entitled to 25 marks against his experience and if added to the marks scored in the written test, his total score would be 56.25, which is more than the cut of marks.

After having carefully gone through the consolidated counter affidavit and the third supplementary counter affidavit filed on behalf of the Commission, it clearly emerges that the petitioners' claim that only 654 candidates had scored the minimum qualifying marks in the written test is misconceived. The test, which the petitioner referred to, was in fact a notice issued by the Commission inviting those candidates who had claimed experience and had scored minimum qualifying marks in the written test, to submit their respective experience certificates. Since the petitioners scored less than the cut-off arrived at by the Commission in process of selection, they are not entitled to any relief, as claimed in the writ petition.

The claim of petitioner no. 6 that his experience was not counted for the purpose of determination of merit, can be gone into by the Commission, if the petitioner no. 6 makes a representation



in this regard within two weeks from today. If such representation is made, the Court expects the Commission to take a decision within four weeks thereafter.

This application stands dismissed but with the aforesaid observation.

The interim order stands vacated.

There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.08.2021.
Transmission Date	N/A

