

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7785 of 2020

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Akhilesh Kumar S/o Late Ram Nandan Singh R/o Mathiapur, P.O.- Jamsaut,
Via- Danapur Cantt, Dist.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Deptt. of Health, Govt. of Bihar, Patna.
2. The Director-in- Chief Health Services, Govt. of Bihar, Patna.
3. The Staff Selection Commission Through its Secretary, Post- Veterinary College, Patna-14.
4. The Chairman Bihar Staff Selection Commission, Post- Veterinary College, Patna-14.
5. The Secretary Bihar Staff Selection Commission, Post- Veterinary College, Patna-14.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Narayan Singh (Sr. Advocate) with
	:	Mr.Surya Narayan Poddar
For the Respondent/s	:	Mr.S.D. Yadav (AAG 9) with
	:	Ms.Shama Sinha
For the B.S.S.C.	:	Mr.Dr.Ratan Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 09-03-2021

The facts in the present case are not at all in dispute.

2. The Bihar Staff Selection Commission (hereinafter referred to as ‘the Commission’) came out with an Advertisement No. 05010115 dated 21.06.2015 inviting applications for the post of Lab Technicians (Annexure 1). It prescribed that the aspirants must possess the minimum educational qualification and technical



qualification as prescribed thereunder. The advertisement further prescribed the procedure for the preparation of merit list. Respective merits of the candidates, in terms of the advertisement, was to be determined on the basis of 85 marks for 'educational qualification, higher education, technical qualification and work experience'. The rest of the 15 marks were allotted for the interview. Merit of a candidate was to be thus determined on the basis of 100 full marks. The distribution of marks against educational qualification, higher qualification, technical qualification and work experience has been clearly mentioned in the advertisement. It prescribes *inter alia* that a candidate shall be awarded 10 marks on the basis of their score in higher qualification (B.Sc./M.Sc.).

3. The petitioner possessed requisite minimum educational qualification, which makes him eligible to apply. He holds B.Sc. Hons. degree in Chemistry with first class. He applied for the post pursuant to the advertisement as Backward Class Category candidate. The cut-off marks for calling for the interview in the said category have been fixed at 31.025. The petitioner has been awarded by the Commission 28.44 marks. Accordingly, he was not called for the interview. Upon enquiry, the petitioner learnt that his score against higher qualification of B.Sc. Hons.



(Chemistry) has not been considered by the Commission while determining his merit position. In the said background, the present writ application has been filed, seeking a direction to the respondents Commission to award 10 marks against his higher qualification of B.Sc. Hons. (Chemistry) in terms of the advertisement.

4. A counter affidavit has been filed on behalf of the Bihar Staff Selection Commission, stating therein that the petitioner's qualification of B.Sc. Hons. in Chemistry cannot be treated to be higher qualification, as the same is not in the same stream or in the same subject in relation to which the posts have been advertised. It has been stated that the requisitioning Health Department, Government of Bihar vide letter no. 1454 (4) dated 07.12.2017 had mentioned that those candidates of Lab Technician, who have higher degree (B.Sc./M.Sc.) in the concerned related subjects, in place of Diploma will be treated eligible for appointment but if the candidates, who have higher degree (B.Sc./M.Sc.) in other subjects (not related subjects), they will not be treated as eligible. In the said letter dated 07.12.2017, it has been clearly mentioned that 25 marks is to be given to the candidates who have B.Sc. degree instead of Diploma course in the concerned subject treating B.Sc. degree as meeting the



qualifying requirement and in case of such candidates only 10 marks is to be awarded for their M.Sc. degree. Accordingly, it is the case of the Commission that no weightage can be given to this petitioner for his qualification of B.Sc. Hons. degree in Chemistry.

5. Mr. Narayan Singh, learned Senior counsel appearing on behalf of the petitioner has submitted that the terms of advertisement only shall govern the selection procedure and there being no stipulation in the advertisement that one should have higher degree/qualification in stream related to subject of Diploma in Lab Technician, the respondents cannot now change the rule of the game by giving an interpretation to the terms of advertisement. He has placed reliance on a decision rendered by a coordinate Bench of this Court dated 25.09.2018 passed in C.W.J.C. No. 4504 of 2018 (***Priya Ranjan Kumar and Another v. The State of Bihar and Others***) which arose out of a selection process advertised by the Commission with the same advertisement, which is in question in the present case.

6. Dr. Ratan Kumar, learned counsel appearing on behalf of the Commission has on the other hand submitted that in view of clear stipulation in the letter dated 07.12.2017, as noted above, the Commission has rightly refused to consider the qualification of the



petitioner of B.Sc. Hons. (Chemistry) as higher qualification for the purpose of determining his merit position.

7. I have carefully gone through the pleadings on record and have given anxious consideration to rival submissions made on behalf of the petitioner.

8. The recruitment, in question is admittedly governed by the Bihar Lab Technician Cadre Rules, 2014 (hereinafter referred to as 'the Rules') made under Article 309 of the Constitution of India. Rule 7 of which read as under:-

"Rule-7. Procedure of recruitment.—

(a) For marks obtained in Intermediate/10+2	25 marks
(b) For marks obtained in higher degree(B.Sc./M.Sc.)	10 marks
(c) For marks obtained in Lab Technician Diploma Course examination	25 marks
(d) For work experience in Government hospitals of Bihar State (5 marks per year, maximum 25 marks)	25 marks
(e) For Interview	15 marks
Total= 100 marks	

- (1) The appointing authority, after calculating vacancy on the basis of position as on 1st April of the year and getting roster cleared, shall send reservation category wise requisition to the Commission latest by 30th April.
- (2) In light of requisition, the Commission shall invite applications by advertising vacancies and prepare merit list on following basis:--
Explanation.—
The marks to be given to a candidate for Inter/10+2 and Lab Technician Diploma course Examination shall be determined by multiplying the percentage of total marks obtained in the examination of the said course by multiple of 0.25. For example, if a candidate has obtained 50% marks, he will be given 50% x 0.25 = 12½ marks.
- (3) Procedure for interview shall be determined by the Commission.
- (4) After preparation of merit list, on the basis of Sub-rule (2) preliminary scrutiny of certificates and medical tests will be caused to be conducted by the Commission with the co-operation of Appointing Authority and thereafter final recommendation will be sent to the Appointing Authority. At the level of Appointing Authority also, verification of antecedents of recommended candidates will be caused to be done after scrutiny of certificates.
- (5) Compliance of instructions issued by the Government, from time to time, with respect to procedure of appointment, after recommendation of the Commission, shall be necessary.



9. The language in the advertisement laying down the procedures of recruitment is in consonance with the language of Rule 7 of the Rules. Rule 6 lays down the qualification, which reads as under:-

Rule - 6. Qualification.-

- (i) For appointment by direct recruitment to the basic grade posts, minimum educational qualification shall be B.Sc./10+2 (Biology) pass. In addition to this, it shall be necessary to have passed the Diploma course of Lab Technician from a Government recognised institution.
- (ii) For direct recruitment in the Lab Technician Cadre, minimum age limit shall be 21 years and maximum age limit shall be the same as may be determined reservation category wise, from time to time, by the Government. 1st August of the concerned year shall be deemed to be the cut off date for determination of age.

10. On careful reading of the statutory provisions noted above, it can be easily seen that I.Sc/10+2 (Biology) pass is the minimum educational qualification prescribed for the post. In addition to the said qualification, a candidate must have passed Diploma course of Lab Technician from a government recognized institution. The said qualification of Diploma course of Lab Technician is a technical qualification, which a candidate must possess to become eligible to participate in the process of selection for the post in question. Accordingly, technical qualification has been prescribed in the advertisement, as has been noticed above. The selection procedure prescribed under the statutory Rules clearly prescribes the marks to be awarded against different



qualifications. It is impermissible for the respondents to tinker with the clear language of the Rules by issuing letters/guidelines. It is trite that any administrative government decision/circular/guideline cannot supersede statutory provisions, which have force of law.

11. Mr. Singh, learned Senior counsel has rightly placed reliance on a coordinate Bench decision of this Court in case of ***Priya Ranjan Kumar*** (supra) wherein it has been held that the Rules do not mention that the benefit against higher qualification shall be given for the purpose of determination of merit only to those, who have B.Sc. and M.Sc. qualification in the same stream.

12. In view of the discussion, as noted above, the writ application deserves to be allowed.

13. Accordingly, the respondent Commission is directed to consider the petitioner's score in B.Sc. Hons. (Chemistry) qualification for the purpose of award of appropriate marks against higher education qualification, as mentioned in the advertisement for determining his merit for the purpose of calling him for interview. The Commission is directed to ensure rectification in the petitioner's score for the purpose of selection in question within three weeks from the date of receipt/production of a copy of this order.



14. Interlocutory application, if any, stands disposed of.
15. There shall be no orders as to costs.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10/03/2021
Transmission Date	N/A

