

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16043 of 2021

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Saurabh Bhushan Sahay Son of Shashi Bhushan Sahay R/O Chandmari Road,
Kankarbagh, P.S. - Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Principal Secretary, Science and Technology Department Government of Bihar, Patna.
3. The Joint Secretary Science and Technology Department Government of Bihar, Patna.
4. The Director, Science and Technology Department Government of Bihar, Patna.
5. The Secretary Bihar Public Service, Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Sinha, Adv
For the Respondent/s : Mr.P.N. Shahi (AAG6)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)
Date : 04-10-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“(i) For quashing and als for declaration of ultra virus to appendix-1, Table-2 Column-5th, (Weightage) of the Notification No. 565 dated 13.02.2020 issued from the office and by the signature of Joint Secretary, Science and Technology Department, Bihar, Patna, by which irregular contractual appointment of Assistant Professor, Associate Professor, Professor and Principal in Government Engineering Colleges of Bihar are going to be taken in regular establishment by giving them weightage 25 marks on the basis of their experience as on contractual appointment as 5 marks per year maximum 25 marks which is contrary to the provision of Article 14 and 16 of the Constitution of India, contrary to the AICTE, regulation-2019 as well as against the law laid down by

this Hon'ble Court and also against the earlier notification order issued by the respondent State also.

(ii) Further for a direction to the respondent to issue fresh notification for direct regular appointment so that all eligible citizen may get equal opportunity for getting public employment."

The issue raised in this writ petition is no more *res integra* and stands decided by Division Bench of this Court by order dated 10.04.2015 passed in CWJC No. 855 of 2015 titled as **Dr. Dharamveer Kumar Vs. State of Bihar,** relevant portion of which is reproduced hereinbelow":-

"The grievance of the petitioners is vis-à-vis Clause 7(2)(A)(iii). The relevant provision reads as under:- "7. (1) The Department after calculating vacancy on the basis of position as on 1st April of the year and getting roster cleared, shall send reservation categorywise requisition to the Commission latest by 30th April.

(2) In light of requisition received for appointment the Commission shall invite applications by advertising vacancies and shall prepare merit list on following basis:-

(i) For mark obtained in B.D.S.	–50 marks
(ii) For Postgraduate or higher degrees	– 10 marks
(iii) For experience in Government Hospitals- (5 marks per year, maximum 25 marks)	-- 25 marks
(iv) For interview	– 15 marks
<u>Total</u>	<u>--100 marks</u>

Clause B is in relation to Specialized Sub-cadre and is almost similar in content. The objection raised by the petitioners is about Clause-7(2)(A)(iii), which provides for award of 5 marks per year of experience in the Government Hospitals subject to a maximum of 25 marks. Even according to the petitioners, several candidates were engaged in Government Hospitals on contractual basis and such candidates are being awarded five marks for each year of experience.

Basically, it is for the recruiting agency to stipulate the procedure for selecting the candidates. It is only when the procedure is found to be patently illegal,

that the Court would interfere. For selecting candidates, written test can certainly be treated as a good method, but there is nothing in law which mandates that written test is the only method to select the candidates.”

Similarly, another Division Bench of this Court by order dated 24.08.2020 passed in CWJC No. 8225 of 2015 titled as Shailesh Chandra Gupta and Anr Vs. State of Bihar and Ors, and its analogous case, has also approved the Recruitment Rules framed under Article 309 of the Constitution of India by the State Government in which weightage for experience was granted to contract employees while considering regular appointment on the said post. However, in said judgment, it has also been clarified that the benefit of experience as contractual employee can only be granted, if the contract appointment has been made, meeting the requirement of Article-14 and 16 of the Constitution of India. Relevant paragraph is reproduced hereinbelow:-

“Division Bench of this Court in C.W.J.C. NO. 15231 of 2015 by order dated 21.06.2016 referred the matter to be considered by Larger Bench and same was placed before Full Bench to answer the reference and Full Court answered the reference as following:-

“The order passed by the Division Bench on 10.04.2015 in C.W.J.C. No. 855 of 2015 will not have universal application in all cases. While considering the question of granting benefit of marks towards experience gained by an employee for working on contract basis, the matter of induction of the employee into service, i.e. the contract employee will have to be considered and only if the appointment even on contract basis is made after

following procedure known to law meeting the requirement of Article 14 can a benefit be granted and not otherwise.

The reference is, accordingly, disposed of.”

Accordingly, the writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA