

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9817 of 2020

1. Md. Shahanshah Alam, Son of Md. Sabir Alam, Resident of Village - Taiyabpur, P.S. - Kadwa, District Katihar.
2. Md. Waquar Alam Ansari, Son of Md. Mansoor Alam Ansari, Resident of Village and P.S.- Parihar, District - Sitamarhi.
3. Md. Jane Alam Son of Md. Shahjad Ansari, Resident of Village - Jhakhaura, P.S. Haspura, District - Aurangabad.
4. Lokeshwar Anand, Son of Kameshwar Singh, Resident of Lala Colony, P.S. Dehri On-Sone, District - Rohtas.
5. Wakil Ahmad, Son of Abdul Manan Ansari, Resident of Village - Nagra, P.S. - Khairah, District - Saran.
6. Md. Adnan Shami, Son of Md. Faiyaz Shami, Resident of Village - Purnea, P.S. K. Ghat, District - Purnea.
7. Md. Danish Salim Son of Md. Salim, Resident of Village - Sabar, P.S. Karamchat, District - Kaimur, Bhabhua.
8. Md. Manzar Hussain, Son of Md. Alam, Resident of Village - Taiyabpur, P.S. - Kadwa, District - Katihar.
9. Md. Imran Alam, Son of Md. Khurshid Ansari, Resident of Village - Naviganj, P.S. Ekangarsarai, District - Nalanda.
10. Abdul Rahman, Son of Rahmat Ali Ansari, Resident of Village - Mustafabad, P.S. Goriya Kothi, District - Siwan.
11. Md. Danish Raza, Son of Md. Mumtaz Alam Resident of Village - Haiderganj, Karah, P.S. - Silao, District - Nalanda.
12. Md. Nemat Karim, Son of S.M. Zafar Imam, Resident of Village - Sheikhpura, Dangarwara, P.S.- Keoti, District - Darbhanga.
13. Md. Nazim, Son of Md. Quamrul Hodda, Resident of Village - Chakmaka, P.S. Simri Bakhtiyarpur, District - Saharsa.
14. Md. Athar Imam Ansari, Son of Abdul Wahab Ansari, Resident of Village - Minapur, P.S. Hajipur Nagar, District - Vaishali.
15. Raju Alam, Son of Zafar Alam, Resident of Village - Amjhar Sharif, P.S. Haspura, District - Aurangabad.
16. Md. Irfan Ahmad, Son of Md. Jamal Ahmad, Resident of Ward No. 28, Faiz Colony, P.S. Katri, District - Gaya.
17. Suraj Kumar Chaurasia, Son of Raj Kishore Chaurasia, Resident of Village - Nautan, P.S. Ekama, District - Saran.
18. Meraz Alam, Son of Samsul Ansari, Resident of Village- Sawar, P.S.- Karamchat, District - Kaimur, Bhabhua.
19. Md. Saquib Nadeem, Son of Md. Ijtaba Hassan, Resident of Village - Parsa, P.S. Bela, District - Sitamarhi.
20. Avinash Kumar Chaudhary, Son of Ramesh Chaudhary, Resident of Village - Lakhanibigha, Near Cold Store, P.S. Danapur, District - Patna.



21. Md. Aquib Khateeb, Son of Khateebul Hasan, Resident of Village - Bara, P.S. Chakand, District Gaya.
22. Aditya Kumar, Son of Late Manmohan Dikshit, Resident of Village - Kilpur, P.S. Nautan, District - Siwan.
23. Md. Sajid Khan, Son of Md. Shahid Khan, Resident of Village - Mansa Tola, P.S. Bettiah, District - West Champaran.
24. Faiz Ahmed Faiz, Son of Md. Israil, Resident of Village - Bambaiya Harlat, P.S. Dalsinghsarai, District - Samastipur.
25. Md. Adil Husain, Son of Kausar Ansari, Resident of Village - Barharwa Fate Mohammad, P.S. Kundwa Chainpur, District - East Champaran.
26. Sarwar Alam, Son of Md. Naiyar Alam, Resident of Village - Bachgaon, P.S. Jalalgarh, District - Purnea.
27. Subham Kumar, Son of Sri Bhim Prasad, Resident of Village - Jehta, P.S. Makhdumpur, District Jehanbad.
28. Mannu Alam Son of Mustquim Ansari, Resident of Village - Nabiganj, P.S. Barhariya, District - Siwan.
29. Ram Gopal Singh, Son of Ram Dulare Singh, Resident of Village - Kalyan Chhapar (Bada), P.S. Duber Asthan, District - Kushinagar (U.P).

... .. Petitioners

Versus

1. The Bihar Technical Service Commission through its Chairman, Patna.
2. The Secretary, Bihar Technical Service Commission, Patna.

... .. Respondents

Appearance :

For the Petitioners	:	Mr.P.K. Shahi (Sr. Advocate) with
	:	Mr.Mukesh Kumar
For the Respondents	:	Mr.Nikesh Kumar

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 07-09-2021

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

2. The Bihar Technical Service Commission (in short Commission) issued an advertisement bearing no. 01/2019 inviting applications from the desirous candidates possessing diploma or



equivalent qualification in engineering from recognized and accredited institutions, for the post of Junior Engineers in different fields including Civil and Mechanical. The petitioners are applicants in response to the said advertisement. It is their case that petitioners, except petitioner no. 21, had been appointed as Junior Engineer (Civil) on contract basis whereas petitioner no. 29 was working as Junior Engineer (Mechanical) under different departments of the State Government.

3. Clause 4 of the advertisement prescribes that the selection of the candidates shall be made on the basis of :-

(i)	Percentage of marks scored in diploma or equivalent qualification	75 marks
(ii)	Marks for work experience of having worked on contractual basis against the post of Assistant Engineer; 5 marks for each year of experience with the sealing of 25 marks	25 marks
Total		100 marks

4. Clause 4 (3) of the advertisement prescribed the cut-off date for determination of work experience as 28.02.2019. The said clause provided that the candidates should submit certificate of payment of salary issued by the Controlling Authority for the period during the work on contractual basis, online. The said stipulation is there in the advertisement evidently for the purpose of determination of marks of the individual candidates against work experience.



5. The last date of submission of online application was 15.04.2019. Apparently, the period of work experience for determination of marks scored by a candidate against the said attribute was to be computed with reference to the cut-off date prescribed for the same i.e. 28.02.2019.

6. Clause 3 of advertisement prescribed the age criteria as on 01.08.2018. However, in the light of certain orders passed by this Court, taking into account the fact that the recruitment process against the posts in question was undertaken after a considerable gap having the consequence of denial of opportunity to some of the candidates, who became over aged in the meanwhile, age relaxation was granted with the issuance of notice on 03.02.2020. By operation of the said notice, age relaxation of seven years has been allowed to such candidates, who were eligible otherwise as on 01.08.2011 but because no advertisement was issued initiating recruitment process after the said date, they had become over aged. A maximum of seven years of age relaxation was granted for such aspirants. As the last date of submission of application had expired, the same was extended from 06.02.2020 to 17.02.2020. Further, the Commission issued another



information whereby date of modification in application form was extended from 02.03.2020 to 06.03.2020. The cut-off date of work experience, however, remained the same i.e. 28.02.2019. It is noteworthy that for the academic qualification, the cut-off date was 15.04.2019, as stipulated in the advertisement, it being the last date of submission of the application form online, as prescribed in Clause 15 (1) of the advertisement. The Commission subsequently issued a notice dated 24.11.2020 (Annexure-1 to the writ petition) which stipulates *inter alia* that since application forms have been received online up to 17.02.2020, therefore, all certificates of educational qualification and mark sheets issued up to 17.02.2020 shall be acceptable.

7. The petitioners have a grievance that by extending the last date of submission of application forms by notice dated 24.11.2020, the Commission has permitted to participate in the process of selection even such candidates who were not eligible in terms of the original advertisement, which had prescribed 15.04.2019, as the cut-off date, the same being the last date of submission of application forms. Secondly, a substantial number of candidates with more



experience have now been allowed to participate in the process of selection by giving them age relaxation. It is quite natural that majority of the candidates, who became over aged and are now being allowed to participate in the examination would be having more experience of working on contractual basis. It is accordingly the case of the petitioners' that at least the experience gained by them after submission of the application forms should be counted for the purpose of preparation of merit list.

8. A counter affidavit has been filed on behalf of the Commission stating *inter alia* that in view of the orders passed by this Court and subsequent opinion from the learned Advocate General, Bihar, a decision was taken to extend the benefits to all candidates who would be eligible up to the last extended date by notice dated 03.02.2020. As the last date of filing of application form was extended up to 17.02.2020, certificates in support of educational qualification issued up to 17.02.2020 have been accepted as valid for the purpose of selection. However, the Commission in its wisdom decided to maintain the cut-off date of 28.02.2019 for the purpose of determination of score against work experience. It is



accordingly the case of the Commission that since the cut-off for determination of score against work experience has been uniformly applied, the petitioners cannot have any grievance.

9. A rejoinder has been filed on behalf of the petitioners stating that the same Commission while considering the recruitment of General Medical Officers and Specialist Medical Officers pursuant to Advertisement No. 4/2021-17/2021 had extended the date of work experience up to the extended date of submission of application forms. The said statement has, however, been disputed by the Commission stating that the cut-off date for determination of work experience was not extended in the case of Medical Officers rather date of submission of certificates in support of work experience was extended in case of the Medical Officers.

10. Mr. P.K. Shahi, learned Senior counsel appearing on behalf of the petitioners has submitted that when there is no cut-off date prescribed in the advertisement for possessing the minimum qualification, it is settled legal position that the last date for submission of application form should be treated as the cut-off date for educational qualification. He submits that the direction of this Court to grant age relaxation was limited



for the purpose of allowing those candidates, who were otherwise eligible but remained deprived of an opportunity of public employment against these posts because the posts were not advertised since 2011. All such candidates naturally held the educational qualification, as on the last date prescribed by the commission for submission of application i.e. 15.04.2019. He has submitted that the case of these petitioners is seriously prejudiced because of the decision of the Commission to allow even such candidates to participate in the process of selection, who did not possess even the minimum education qualification, as on the last date for submission of application forms. He has submitted that during the period when the process of selection remained pending after submission of application forms by the petitioners, they have acquired experience. It will be highly discriminatory, according to him, if the experience, they acquired in the meanwhile, is not taken into account for determination of their merit, as they are pitted against those who are now being considered after grant of age relaxation, many of them with work experience to the extent of 5 years or more and, thus, entitled to get total of 25 marks against said attribute. According to him, the action of the



Commission is arbitrary and violative of Articles 14 and 16 of the Constitution of India.

11. Mr. Nikesh Kumar, learned counsel representing the Commission has, on the other hand, submitted that it is purely within the domain of the respondent Commission to prescribe the cut-off dates for qualification, work experience, last date of submission of application forms etc. He has relied on Rule 3 of the Bihar Water Resources Department Subordinate Engineering (Civil Cadre) Recruitment Rules to contend that determination of working period on contract basis shall be made on the basis of payment certificate issued by their respective controlling officers with the aid of which the period up to the cut-off date as mentioned in the advertisement published by the commission shall be calculated for the work experience. He has submitted that since the cut-off date fixed in the advertisement has the support of statutory prescription, this Court exercising power of judicial review may not interfere with the decision of the Commission.

12. Before addressing the pleadings on record and rival submissions made on behalf of the parties, it will be



beneficial to take note of the advertisement issued by the Commission, which is the foundation of the controversy. The advertisement was issued on 08.03.2019, disclosing number of vacancies against various posts and different reserved category of candidates. The advertisement does not disclose that the vacancies displayed therein include future vacancies. It rather refers to requisition made by various departments to General Administration Department, Government of Bihar for filling up vacant posts of Junior Engineers on regular basis. The last date for submission of application forms, as prescribed in the advertisement, was 15.04.2019, which was subsequently extended to 17.02.2020 by a notice issued on 1/19. By a subsequent notice dated 26.02.2020, the Commission allowed certain modifications to be made by the candidates in their online applications. There is no notice issued by the Commission to the effect that at any point of time, the cut-off date for qualification was also extended. There cannot be any controversy at all over the legal position that cut-off date for holding minimum qualification if not specifically prescribed in the advertisement is treated to be the cut-off date for submission of application forms. It is shocking for this Court



to notice letter no. 1242 dated 24.11.2020 issued by the Commission, which has been brought on record by way of Annexure-1 to the writ application wherein for the first time following has been mentioned:-

"दिनांक 17.02.2020 तक ऑनलाइन आवेदन प्राप्त किया गया है इसलिये इस तिथि के अंदर सभी शैक्षणिक प्रमाण -पत्र, अंक प्रमाण-पत्र मान्य होगा।"

13. There is no pleading on record nor any material which can demonstrate that prior to issuance of the said letter no. 1242 dated 24.11.2020 any notice was ever issued for general public by the Commission disclosing that such educational qualification certificates and mark sheets issued after the last date of submission of application i.e. 15.04.2019 shall be acceptable because the date of submission of applications itself was extended. This is to be noticed, at the cost of repetition, that the date of submission of application forms was primarily extended to give benefit to those who have become over aged because of non-holding of the process of selection. It is bemusing for this Court to notice that the Bihar Technical Service Commission has decided through its



letter no. 1242 dated 24.11.2020 to entertain candidature of even such candidates, who did not hold even the minimum qualification in terms of the advertisement, as on the last date of submission of application forms. As has been noticed, the advertisement was against posts which were vacant as on the date of the advertisement. Allowing the persons to participate in the process of selection, who did not have even the basic educational qualification as on the last date of advertisement, in the Court's opinion, is arbitrary. The Commission had no reason to mention in its notice dated 03.02.2020 (Annexure-3) to extend the date of application for all candidates, which was being issued in compliance of this Court's order passed in C.W.J.C. No. 9887 of 2019.

14. Be that as it may, as the Commission has permitted even such candidates who acquired educational qualification after last date of submission of application forms, as originally prescribed in the advertisement and under the orders of this Court and the persons who became over aged have been allowed to participate in the process of selection, in the Court's opinion, it will be unjust if the petitioners are not given the credit of work experience acquired after the date



prescribed in the advertisement i.e. 28.02.2019. It is true that Rule 10 (3) of the Rules prescribes that determination of working period on the contract basis shall be made on the basis of payment certificate issued by their respective controlling officers and for this, the period up to the cut-off date mentioned in the advertisement published by the commission shall be calculated for the working experience. It is the Commission which prescribes the cut-off date in the advertisement. If the cut-off date prescribed by the commission is found to be arbitrary, unreasonable and infringing right of equality under Articles 14 and 16 of the Constitution of India, the Court exercising power of judicial review under Article 226 of the Constitution of India may require the commission to determine an appropriate date.

15. Considering the facts and circumstances and the discussions as aforesaid, the Court directs the Commission to consider shifting the cut-off date, as prescribed in advertisement, to appropriate date so as to allow benefit of work experience which the petitioners and other similarly situated persons acquired during the process of selection, for them to suitably come in competition with other candidates



who were not eligible in terms of the original advertisement but have become eligible under the orders of this Court and under the decision of the Commission.

16. This application is accordingly allowed with the aforesaid observation and direction.

(Chakradhari Sharan Singh, J)

Akash/Ankit-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.09.2021.
Transmission Date	N/A

