

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.551 of 2022

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Rakesh Kumar Raushan Son of Rajendra Prasad Resident of Village- Bhareti,
P.O.- Yogipur, P.S.- Hilsa, District- Nalanda, Bihar- 801302.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum-Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-in-Chief (Nursing), Health Department, Government of Bihar, Patna.
4. The Controller of Examination, Health Department, Government of Bihar, Patna.
5. Bihar Staff Selection Commission through its Secretary, Veterinary College, Patna- 8000014.
6. The Chairman, Bihar Staff Selection Commission, Veterinary College, Patna- 800014.
7. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna- 800014.
8. The Controller of Examination, Bihar Staff Selection Commission, Veterinary College, Patna- 800014.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Advocate
For the Respondent/s	:	Mr. Binod Kr. Yadav, SC 18
For the Commission	:	Mr. Jitendra Kumar Rai, for BSSC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 12-04-2022

Heard learned counsel for the parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“i. For issuance of an order, direction or a writ of mandamus for directing the respondent Commission to conduct interview of the petitioner against the Advertisement No. 08010116 dated 06.05.2016 published for appointment of Health and



Sanitary Inspector as the petitioner was eligible as per the advertisement and had cleared the Preliminary written examination and had also participated in the Counseling but had been denied the opportunity to participate in the interview without communicating any reason. The petitioner further prays for directing the respondent authorities to consider the petitioner for appointment to the post of Health and Sanitary Inspector against Advertisement No. 08010116 dated 06.05.2016 especially in view of the fact that only 29 candidates have been declared successful against 276 advertised vacancies.

ii. For issuance of an order, directing or an appropriate writ for directing the respondent Commission to consider the petitioner for appointment to the post of Health and Sanitary Inspector against the Advertisement No. 08010116 dated 06.05.2016 by accepting the degree (diploma in Health and Sanitary Inspection) of the petitioner from Vinayaka Mission University, Salem, Tamil Nadu conferred in the year 2008, which is a valid degree and the petitioner prays for a declaration that the diploma certificate secured by him renders him fully eligible for being considered for appointment against the Advertisement No. 08010116 dated 06.05.2016.

iii. For issuance of a direction order or a writ or certiorari for quashing and setting aside the letter no. 463 (4) dated 27.05.2021 and letter no. 258 dated 16.12.2021 (contained in Annexure- P11 Series) by which the Health Department has communicated a list of sixteen institutions situated in the State of Bihar while directing that Diploma in Sanitary Inspection obtained by candidates from institutions outside the State of Bihar shall not be considered for appointment against Advertisement No. 08010116 dated 06.05.2016 and Diploma obtained from open and distance learning shall also not be recognized for appointment.

iv. For issuance of an order, direction or an appropriate writ for staying the further selection process against the advertisement No. 08010116 published on 06.05.2016 during the pendency of the present writ application.”



3. The post of Health and Sanitary Inspector is governed by the Rules called Bihar Sanitary Inspector Cadre Rules, 2014 (for short 'Rules 2014') issued under Article 309 of the Constitution. It is necessary to extract Definition Clauses:

(i) 'Government' means Bihar State

Government. Rule 6 of the Rules is reads as under:

“Qualification:- (1) For appointment by direct recruitment to the basic grade posts, minimum educational qualification shall be pass in Intermediate/10+2 with physics, chemistry, Biology and English. In addition to this, pass in Diploma-in-Sanitary Inspector course from a government recognized institution and to have a certificate related thereto.

(2) For direct recruitment in the Sanitary Inspector Cadre, minimum age limit shall be 21 years and maximum age limit shall be the same as may be determined by the Government reservation categorywise, from time to time, 1st August of the concerned year shall be deemed to be the cut off date for determination of age.”

4. Petitioner is a candidate for recruitment to the post of Health and Sanitary Inspector pursuant to the advertisement dated 06.05.2016.

5. Short question for consideration is whether petitioner's qualification that is certificate issued by the Vinayaka Mission's Research Foundation (Deemed to be University), declared under Section 3 of the UGC Act, 1956, further it was approved by the Directorate of Distance Education (Approved by the Jt. Committee of UGC/AICTE/DEC, NEW DELHI) on



27.08.2020 is valid for selection to the post of Health and Sanitary Inspector or not? The respondent – Selection Authority have not considered the petitioner’s claim for selection and appointment to the post of Health and Sanitary Inspector only on the score that petitioner do not possess requisite course certificate obtained under the State of Bihar with reference to the word used in the Definition ‘Government’ means Bihar State Government. Further, under Rule 6 passed in Diploma in Health and Sanitary Inspector Course from a Government recognized institution and to have a certificate relating there to. That apart the Vinayaka Mission’s Research Foundation which is stated to be deemed University is not recognized by the State of that place namely State of Tamil Nadu as the institution is in Salem, Tamil Nadu so as to give wider interpretation to the word Government under Rule 6.

6. Learned counsel for the petitioner submitted that Apex Court in the case of ***State of Tamil Nadu and Another vs. Adhiyaman Educational and Research Institute and Others*** reported in **(1995) 4 SCC 104**, Paragraph 41 held as under:

“41. What emerges from the above discussion is as follows:

(i) The expression ‘coordination’ used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of



such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally."

7. Irrespective of obtaining certificate from any other institution, if it is recognized by UGC/AICTE/DEC suffice to



consider such certificate for the purpose of selection. It is further submitted that Punjab and Haryana High Court in its Division Bench judgment in ***Manoj Kumar and others vs. State of Haryana and others*** reported in **2006 SCC Online P&H 1441**, Paragraph Nos. 3, 5 and 6 is on the similar line on the Apex Court decision, therefore rejection of petitioner's claim for selection and appointment to the post of Health and Sanitary Inspector is arbitrary and illegal. Paragraph Nos. 3, 5 and 6 of ***Manoj Kumar and others vs. State of Haryana and others*** reported in **2006 SCC Online P&H 1441** are held as under:

“3. The only question which requires consideration by this Court is whether the diploma certificate obtained by the petitioner from a deemed university would be considered as requisite qualification for appointment to the post of Multipurpose Health Worker or the respondents could be permitted derecognise it declaring the petitioner as ineligible. Admittedly, he has acquired the qualification from a deemed university which is recognised by the University Grants Commission. The notification issued by the University Grants Commission dated 19.8.2003 (Annexure P-12) shows that Rajasthan Vidya Peeth is declared as a deemed university. The afore-mentioned notification which also deals with the changes made in the name of Rajasthan Vidya Peeth reads as under:—

“Rajasthan Vidya Peeth Udaipur was granted Deemed to be University status under the provisions of Section 3 of the University Grants Commission Act, 1956 (3 of 1956) vide his Ministry's notification No. F.9-5/84-U.3 dated January 12, 1987.

The Central Government on the request of the Rajasthan Vidya Peeth and on the advice of the University Grants Commission hereby declare that the name of the Rajasthan Vidya Peeth, Udaipur is changed to Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur Rajasthan Vidya Peeth, Udaipur, Rajasthan with immediate effect.”



5. A similar question arose before the Hon'ble Supreme Court in the case of *State of T.N. v. Adhiyaman Educational & Research Institute* [(1995) 4 S.C.C. 104]. The question before the Hon'ble Supreme Court was whether the State Government has power to grant and withdraw permission to start a technical institution as defined in the Central Act after coming into force of the All India Council for Technical Education Act, 1987. Dismissing the appeal filed by the State of Tamil Nadu, the Hon'ble Supreme Court again placed reliance on Entry No. 66 of Union List (List-I) of the VIIth Schedule of Article 254 of the Constitution to hold that if the State Legislature frames any law, which is repugnant to the Central Law like the All India Council for Technical Education Act, 1987 then the law framed by the State Legislature would be ultra vires to the extent of its repugnancy to the Central Law. In other words, the State laws in respect of subjects on the Union List (List-I) have to give way to the Central Laws and therefore, the de-recognition by the State government or the disaffiliation by the State University on the ground which are inconsistent with those enumerated in the Central Statute were held to be inoperative. In the other judgment in the case of *Prof. Yash Pal v. State of Chhattisgarh* [(2005) 5 S.C.C. 420], the statute framed by the State of Chhattisgarh providing for creation of a University by issuance of notification was held to be beyond the competence of the State Legislature on account of Entry 66 in List-I of the VIIth Schedule dealing with co-ordination and determination of standards in Institution for Higher Education or Research and Scientific and Technical Education being in the Union List for which Parliament alone is competent to frame laws. It has been held that Parliament alone is responsible to ensure that proper standards are maintained in Institution for Higher Education or Research throughout the country and also uniformity in standards is maintained. Emphasizing the importance of right of conferring degree by reference to Section 22 of the University Grant Commission Act, 1956. It has been held that degree can be conferred or granted only by a University or an Institution deemed to be University under Section 3 read with Section 22 of the 1956 Act. It has also been held that mere conferment of degree is not enough but it should be recognized as well. The aforementioned view flows from a reading of para 39 of the judgment which is as under:—

“39. Mere conferment of degree is not enough. What is necessary is that the degree should be



recognized. It is for this purpose that the right to confer degree has been given under Section 22 of the UGC Act only to a university established or incorporated by or under a Central Act. Provincial Act or State Act or an institution deemed to be a university under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this section provides that "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognized by the Government was pointed out by a Constitution Bench in S. Azeez Basha v. Union of India, AIR 1968 SC 662."

6. On the basis of principle as well as precedent mentioned above, it must be concluded that a diploma certificate issued by a deemed university like Rajasthan Vidya Peeth has to be held as valid because the University Grant Commission vide its notification dated 19.8.2003 has conferred upon Rajasthan Vidya Peeth, Udaipur, the status of deemed University under Section 3 of the 1956 Act. Once it is so, then the respondent state or any of its agencies cannot be permitted to de-recognize such degree or diploma, because such an action on their part would be repugnant to the provisions of Article 254 of the Constitution of India. We are further of the view that the argument of the learned State counsel that only those certificate courses are accepted by the respondent-State which are from an institution approved by the Haryana Government cannot be accepted as it would amount to keeping out eligible candidates merely because they have obtained their qualifications from a University or an institution outside the State of Haryana. However, such a course would not be available to the respondent-state because other institutions located in the country have been conferring the similar type of diploma certificate which are in no way inferior to the one approved by the respondent-State. As per their own instructions dated 18.3.1975 all those degrees and diplomas which have been awarded by the recognized universities and by the Boards established by the State Government for high/higher secondary were ipso facto recognized. The instruction further provided that those degree and diplomas which are recognized by the Government of India are deemed to be recognized by the respondent-State. There is nothing contrary in the instructions issued on 2.11.1999 and therefore, the diploma certificate issued by the Rajasthan Vidya Peeth must



be recognized as a requisite qualification fulfilling the requirement of multipurpose health workers training course as postulated by the advertisement dated 7.5.2006.”

8. *Per contra*, learned counsel for the State – respondents resisted the aforesaid contention and submitted that having regard to the fact that the post of Health and Sanitary Inspector is governed by the Rules, 2014. Reading of definition of ‘Government’ suffice that the petitioner has not obtained course certificate from the recognized Government in particularly State of Bihar, therefore, there is no infirmity in rejection of petitioner’s candidature for the Health and Sanitary Inspector. It is also submitted that the aforesaid decisions cited on behalf of the petitioner do not assist in the case for the reasons that Rules, 2014 governs the post of Health and Sanitary Inspector.

9. Heard learned counsel for the respective parties.

10. Short question for consideration in the present petition is whether petitioner’s certificate obtained from Vinayaka Mission’s Research Foundation, Salem, Tamil Nadu is a valid certificate for the purpose of selection and appointment to the post of Health and Sanitary Inspector under the Rules 2014 or not? Rule 6 is relating to qualification which has been quoted *supra*.

11. Perusal of the aforesaid Rule, it is crystal clear that candidate must have education qualification passed in



Intermediate/10+2 with Physics, Chemistry, Biology and English in addition to this he must be holder of Diploma in Sanitary Inspector Course from a recognized institution. Therefore, crux of the matter is whether Vinayaka Mission Research Foundation is one of the recognized institution or not?

12. Perusal of Annexure P 12, it is evident that it is only deemed University and further approved by Jt. Committee of UGC/AICTE/DEC, NEW DELHI. Therefore, it is not one of the institution recognized by Government in State of Bihar and not recognized by State of Tamil Nadu so as to give wider interpretation to qualification under Rule 6 in respect of government recognized institution ignoring the definition of Government under Rule 2 of 2014. The cited decisions on behalf of the petitioner do not assist the petitioner for the reasons that it all depend on each and every factual aspect of the matter. In the present case the post of Health and Sanitary Inspector is governed by Rules 2014 and Rule 6 is crystal clear that additional qualification is Diploma in Sanitary Inspector Course from a Government recognized institution. In the present case Vinayaka Mission Research Foundation is not recognized by State of Tamil Nadu, therefore, the certificate issued by Vinayaka Mission Research Foundation cannot be taken into consideration for the



purpose of Rule 6 of Rules 2014. Apex Court in the case of *Nair Service Society vs. T. Beermasthan* reported in (2009) 5 SCC 545, Paragraphs No. 48 held as under:

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

13. In the light of Apex Court decision cited *supra*, the cited decisions on behalf of the petitioner has no assistance to the case in hand.

14. Accordingly, petition stands dismissed.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	18.04.2022
Transmission Date	

