

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7963 of 2021

1. Manoj Kumar Singh Son of Sri Raj Narayan Singh Resident of Road No. 24K, Shivshakti Colony, Keshri Nagar, Rajeev Nagar, P.s.- Rajeev Nagar, District- Patna, Bihar- 800024
2. Jitendra Kumar Son of Sri Jagdish Singh Resident of Village- Kasiona, P.O. and P.s.- Rajnagar, District- Madhubani, Bihar- 847235
3. Suwesh Kumar Shukla @ Suwesh Shukla Son of Dinesh Shukla Resident of village- Fathpur, Ward no. 34, P.s.-Siwan Sadar, District- Siwan, Bihar- 841226

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Science and Technology Department, Government of Bihar, Patna
3. The Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna-800001
4. The Chairman, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna-800001
5. The Secretary, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna-800001
6. The Controller of Examination of Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna-800001

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Kumar Kaushik, Advocate
For the Respondent State:		Mr. P.N.Shahi, AAG-6
		Mr. Mritunjay Kumar, AC to AAG-6
For the BPSC	:	Mr. Lalit Kishore, Senior Advocate
		Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date : 11-05-2022

The petitioners are applicants against Advertisements No. 51/2020, 52/2020 and 54/2020 issued by the Bihar Public Service Commission ('Commission' for short) for filling up the posts of Assistant Professors in the Government Engineering



Colleges in the subjects of Mechanical Engineering, Computer Science and Engineering and Chemistry, respectively. The said selection process is governed by the Bihar Engineering Education Service Rules, 2020. The petitioners have served as Assistant Professors for some time in different Government Engineering Colleges on contractual basis, as disclosed in paragraph 7 of the writ petition. It is not in dispute that the Rules extend weightage to the candidates working on contract basis on the post of Assistant Professor under Department of Science and Technology and possessing minimum eligibility criteria @ five marks per year (maximum 25 marks). The selection process is divided in four parts, namely: -

- (i) Academic record and research performance - Weightage 20 marks
- (ii) Evaluation of domain knowledge and teaching skill through written examination (objective) - Weightage 40 marks
- (iii) Interview - Weightage 15 marks
- (iv) Assistant Professors working on contractual basis, as noted above. - Weightage maximum 25 marks



2. The petitioners are aggrieved by Note 4 under paragraph 5 of the aforesaid advertisements issued by the Commission, which stipulates that the candidates shall be shortlisted for interview on the basis of the written examination. The said stipulation in Note 4 is under challenge in the present writ application on the ground that the same is in breach of the statutory rules.

3. Heard Mr. Kumar Kaushik, learned counsel appearing on behalf of the petitioners, Mr. Pushkar Narain Shahi, learned AAG-6 assisted by Mr. Mritunjay Kumar, learned AC for the respondent State and Mr. Lalit Kishore, learned Senior Counsel assisted by Mr. Sanjay Pandey, learned Advocate, for the respondent Commission.

4. Counter affidavits and supplementary counter affidavits have been filed on behalf of the respondents.

5. The sole issue for determination in the present writ application is as to whether aforesaid Note 4 mentioned under paragraph 5 of the advertisement is violative of the provisions under the Rules.

6. The prescribed qualification for direct appointment to the post of Assistant Professor in the Bihar Engineering Education



Service as laid down in Table-1 of Appendix-1 of the Rules is as under: -

“B.E./B.Tech./B.S./B.Sc.(Engg.) and M.E./M.Tech/M.S or integrated M.Tech in relevant branch with First Class or Equivalent in any one of the degrees.”

No minimum experience is prescribed for the said post.

7. The weightage scheme for direct appointment to the post of Assistant Professor in Bihar Engineering Education Service has been prescribed in Table-2 of Appendix-1, which is as under: -

Cadre Post	Academic Record and Performance (weightage-20 marks)	Research Domain- knowledge and Teaching Skill through written examination (objective) (weightage 40 marks)	Evaluation of Interview (weightage 15 marks)	For Assistant Professor engaged on Contract Basis (weightage 25 marks)
Assistant Professor	(a) maximum 10% of percentage obtained in M.Tech/M.E/M.S/ M.Sc./M.A. in relevant branch/subject).	10 (a) of Science Humanities:- in The syllabus of core Subject of National Eligibility Text (NET) conducted by University Grants Commission (UGC) will be applicable.	For Science and Humanities:- core of Subject of National Eligibility Text (NET) conducted by University Grants Commission (UGC) will be applicable.	Weightage to candidates working on contract basis on the post of Assistant Professor under Department of Science and Technology and



(b) Maximum 05	possessing
(5 % of	minimum
percentage marks (b) For	eligibility
obtained in Engineering	criteria @
B.Tech/B.E/B.S/B	05 marks
steam-The	per year
.Sc.(Engg.)/B.Sc. syllabus of	(maximum
(Hons)/B.A. Graduate	-25 marks)
(Hons). Aptitude Test	
in	
Engineering	
(GATE) will	
be	
applicable.	

Evidently, the total weightage is 100 marks.

8. It is the petitioners' case that the said Note-4 has the effect of making the Rule providing weightage of 25 marks otiose and redundant inasmuch as no weightage for experience can be provided to the candidates while shortlisting them for interview. The candidates working on contract basis are essentially required to cross the first stage of selection process strictly on the basis of merit. It is their case that it was conscious decision of the State Government, while making provision for giving weightage to the candidates having experience work on contract basis, which stood literally negated by introducing Note-4 under paragraph 5 of the advertisement.

9. In the counter affidavit/supplementary counter affidavit filed on behalf of the Commission, it has been stated that



on the basis of requisition sent by the General Administration Department, Government of Bihar, the advertisements in question were issued after approval of the draft advertisement by the concerned Department. It has been stated that after considering the requisition for selection and examination of recruitment Rules, the Commission had sought certain clarification on the point whether the aspirants should be shortlisted for interview on the basis of their performance in the written examination or such shortlisting should be done on the basis of their academic records, experience and performance in the written examination taken together. The Personnel and Administrative Reforms Department in turn clarified through its letter dated 18.06.2020 that the candidates would be shortlisted for interview only on the basis of their respective performance in the written examination. It has further been stated that the Commission has its own Rules and procedure, viz., Bihar Public Service Commission Rules of Procedure, 1996, which envisages that the number of candidates qualified for interview will be consistent with the number prescribed by the Government in a particular service and with the minimum qualifying marks fixed by the Government for candidates of different reserved categories. Further, in respect of the service



where there is no guideline prescribing the number of candidates to be qualified for interview, the Commission is to take a decision.

10. In the counter affidavit filed on behalf of the State of Bihar, it has been stated that it is evident from Appendix-1, Table-2 of the Rules that the evaluation of the “Domain Knowledge and Teaching Skill” is to be done through written examination. There being a provision for written examination under the Rules, it is not possible to shortlist the candidates for interview without the written examination. It has been asserted that those, who are shortlisted after written examination, will get weightage of experience of working on contract basis in accordance with the Rules for arriving at a final merit list.

11. Mr. Kumar Kaushik, learned counsel for the petitioner has submitted that the statutory provision for weightage of marks for the services rendered on contract basis is based on conscious decision of the State Government with a definite purpose to achieve. He has contended that if impugned Note-4 under paragraph 5 of the advertisement is permitted to operate, the provision for granting weightage to the candidates having working experience on contractual basis will stand obliterated as the experienced candidates, who do not find their place in the merit list based on written test shall not get any benefit of their



experience in the process of selection. He has submitted that shortlisting of candidates for interview should be based on cumulative score of the aspirants against academic record, evaluation of the domain knowledge and teaching skills (written examination) and experience on contractual basis. He has submitted that in the absence of any clear stipulation in the Rules as to on what basis shortlisting of candidates for interview should be done, the respondents ought to have taken a reasonable approach keeping in mind the purpose behind the legislative policy under the Rules to give weightage for experience gained while working on contractual basis in the Government Engineering Colleges. He has placed reliance on Supreme Court's decisions in case of ***B. Ramakichenin v. Union of India***, reported in (2008) 1 SCC 362, ***Government of Andhra Pradesh v. P. Dilip Kumar***, reported in (1993) 2 SCC 310, ***Amlan Jyoti Borooah v. State of Assam***, reported in (2009) 3 SCC 227 and ***Ashish Kumar v. State of U.P.***, reported in (2018) 3 SCC 55. Reliance has also been placed on following unreported decisions of this Court: -

(i) Judgment dated 10.04.2015 rendered by a Division Bench of this Court in C.W.J.C. No. 855 of 2015 (***Dr. Dharmbir Kumar and Others vs. The State of Bihar and Another***) and



(ii) Judgment dated 24.08.2020 rendered by a Division Bench of this Court in C.W.J.C. No. 8225 of 2015 (*Shailesh Chandra Gupta vs. The State of Bihar and Another and another analogous matter*).

12. Mr. Lalit Kishore, learned Senior Counsel representing the respondent Commission has submitted that the decision to invite candidates for interview on the basis of written examination cannot be said to be arbitrary or unreasonable. The said process does not violate any statutory provision inasmuch as it does not deny the candidates having experience of working on contractual basis as they are entitled to get due weightage in accordance with the Rules at the time of preparation of the final merit list. He has submitted that in any view of the matter, under the Rules of Procedure, 1996 of the Commission, the Commission is empowered to take a decision as to the number of candidates to be called for interview in the absence of clear stipulation in the recruitment rules. Reliance has been placed by him on Supreme Court's decision in case of *State of U.P. v. Rafiquddin*, reported in **1987 Supp SCC 401** to submit that the Commission is an independent expert body and it has to act in an independent manner in making selection on the prescribed norms. Relying on the said decision, he has argued that the Commission may consult



the State Government in prescribing the norms for judging the suitability of the candidates. Relying on the Supreme Court's decision in case of *Arunachal Pradesh Public Service Commission v. Tage Habung*, reported in (2013) 7 SCC 737, he has argued that there is no illegality in the impugned procedure of inviting candidates for interview shortlisted on the basis of written examination.

13. Mr. Pushkar Narain Shahi, learned AAG-6 has submitted that Note-4 under paragraph 5 of the advertisement no way violates the statutory provisions under the Rules.

14. As has been noted above, the sole question for consideration in the present writ application is as to whether Note-4 below paragraph 5 of the advertisement can be said to breaching any statutory provision under the Rules.

15. In order to deal with the issue, I need to discuss first, the relevant statutory provisions laying down the prescribed qualification and experience for direct appointment to the post of Assistant Professor in Bihar Engineering Education Service as available in Table- 1 of Appendix-1 of the Rules and the weightage scheme in Table-2 of the said appendix. Both the provisions have been quoted hereinabove. For the post of Assistant Professor, no experience is needed for eligibility, as can be seen from Table-1 of



Appendix-1. Table-2 of Appendix-1 has five columns. It is an admitted fact that the fifth column was added to Table-2 of Appendix-1 by way of amendment vide notification dated 22.01.2020. Before insertion of the fifth column, there were only four columns in Table-2 of Appendix-1.

16. Mr. Kaushik, learned counsel for the petitioner has argued that for the purpose of shortlisting candidates for interview, the weightage allowed against experience of having worked on the post of Assistant Professor on contractual basis should have been included. He has urged, as noted above, that if this procedure is not followed, the chance of selection of the persons having experience shall be diminished because they may be excluded from the process of selection after the written examination itself, despite having the weightage to their credit, up to 25 marks against their work experience.

17. There is no gainsaying that the statutory Rules are silent in this regard. The submission advanced on behalf of the petitioners that the impugned Note-4 violates any statutory provision under the Rule is not acceptable to this Court as there is no such provision in the Rule, which can be said to have been violated by operating Note-4 under paragraph-5 of the advertisement. In such circumstance, whether the process, which



had been adopted with the introduction of impugned Note-4, can be said to be so unreasonable, arbitrary and thereby violating Articles 14 and 16 of the Constitution of India or; it defeats the very purpose of making provision for allowing weightage for work experience, requiring this Court's interference in the process of selection is the moot question, which this case poses to this Court.

18. It is evident from the weightage scheme as available in Table-2 that written examination is held for the purpose of evaluation of domain knowledge and teaching skills. In the absence of any clear stipulation under the Rules, the Commission in consultation with the State Government introduced impugned Note-4 for the purpose of shortlisting candidates for interview. The procedure so adopted, in the Court's opinion, cannot be said to be unreasonable or arbitrary for the reason that it gives fresh candidates without any experience and such other aspirants who are not entitled for weightage under the Rules, though having teaching experience, an equal opportunity to compete with others for the purpose of being called for the interview on the basis of evaluation of their domain knowledge and teaching skill. Those candidates, who compete in the written examination for being shortlisted for the purpose of interview and have experience of



teaching on contractual basis, shall thereafter have the benefit at the stage of preparation of final merit list in accordance with fifth column of Table-2 of Appendix-1 of the Rules. The procedure adopted by the Commission and the State Government by providing impugned Note-4 is apparently focused to ensure and encourage fair competition by giving adequate opportunity of selection to fresh candidates and others having better domain knowledge and teaching skill. If the shortlisting for interview was to be done after including the weightage of work experience (maximum 25 marks), the same would imbalance the merit list for interview as those having experience will steal a march over meritorious candidates having better domain knowledge and teaching skill in the very beginning of the process of selection. For example, if a meritorious fresh candidate scores 39 out of 40 in the written examination will be placed below in the merit list for interview than a candidate scoring 16 out of 40 with maximum weightage against experience. Such procedure shall have the consequence of ousting meritorious candidates from the initial stage of the process of selection itself. On the other hand, the effect of procedure, which has been adopted by the Commission and the State Government would be, that at the stage of evaluation of domain knowledge and teaching skills of the candidates shall be



treated at par for the purpose of their shortlisting for interview. Those candidates, who have experience and perform well in the written examination, shall thereafter have the benefit of addition of weightage against their work experience for the purpose of final merit list. It is evident, in the Court's opinion that requirement of introducing the impugned Note-4 in the advertisement published on 09.09.2020 arose because of insertion of the fifth column in Table-2 of Appendix-1 of the Rules, which envisages grant of weightage to the candidates working on contract basis @ five marks per year (maximum 25 marks).

19. In the facts and circumstances discussed hereinabove, the policy decision taken by the respondents to shortlist candidates for interview on the basis of written test, in the Court's opinion, is neither contrary to the statutory provisions nor violative of any of the fundamental rights.

20. In case of ***B. Ramakichenin*** (supra), which has been pressed into service by learned counsel for the petitioners and the Commission as well does not support the case of the petitioners. The Supreme Court has laid down In case of ***B. Ramakichenin*** (supra) that even though there is no mention of shortlisting in the Rules or the advertisement for interview, a procedure for shortlisting can be resorted to by the selection body. It has been



laid down that for valid shortlisting there have to be two requirements: -

- (i) It has to be on some rationale or objective basis; and
- (ii) If prescribed method of shortlisting has been mentioned in the Rules or the Advertisement than that method alone has to be followed.

21. In the present case, the method of shortlisting has been mentioned in the advertisement though not in the Rules. The said method is based on some rationale and objective basis. It has already been held hereinabove that the procedure adopted by the respondents for shortlisting cannot be said to be unreasonable and arbitrary.

22. The paragraphs 18 and 19 in the case of **B. Ramakichenin** (supra), can be usefully quoted for quick reference which read as under: -

“18. In the present case, no doubt, UPSC had resorted to an objective and rational criteria that only those who have two years' experience after getting MSc degree will be considered, while those who have got such experience but only before getting MSc degree will not be called for the interview. Ordinarily we would not have taken exception to this procedure since it is based on an objective criteria, and ordinarily this Court does not interfere with



administrative decisions vide Tata Cellular v. Union of India [(1994) 6 SCC 651 : AIR 1996 SC 11] . As observed in the said decision, the modern approach is for courts to observe restraint in administrative matters.

19. Hence, if the method of shortlisting had not been prescribed by UPSC or in a statutory rule, it is possible that the argument of learned counsel for the respondents may have been accepted and we may not have interfered with the method of shortlisting adopted by UPSC since it appears to be based on a rational and objective criteria.”

23. After having held so, the Supreme Court ,in the case of **B. Ramakichenin** (supra) noticed paragraph 3.1 of the advertisement of the Union Public Service Commission in question, which prescribed the method of shortlisting. In the said paragraph of the advertisement, it was mentioned that the Commission might restrict the number of candidates on the basis of either qualifications or experience higher than the minimum prescribed for the advertisement or on the basis of experience in the relevant field. It was open, thus, to the UPSC to do shortlisting by stating that it would call only those who have Ph.D. degree, though the essential degree was only M.Sc. Similarly, the UPSC could have said that it would call for interview those candidates,



who had five years experience although the experience requirement was only two years experience the Supreme Court remarked. The Supreme Court, however, noticed that the experience after getting M.Sc. Degree could not be said to be higher than the experience before getting M.Sc. Degree. Further, the advertisement did not mention that two years experience must be after getting M.Sc. Degree. After noticing the aforesaid facts, the Supreme Court concluded in paragraph 23 as under: -

“23. Had Para 3.1 not been in the advertisement of UPSC it is possible that we may have taken a view in favour of the respondents since in that case it was open to UPSC to resort to any rational method of shortlisting of its choosing (provided it was fair and objective). However, in the present case, a particular manner of shortlisting has been prescribed in Para 3.1. Hence, it is not open to UPSC to resort to any other method of shortlisting even if such other method can be said to be fair and objective.”

24. In contrast, in the present case, there is clear stipulation in the advertisement itself that candidates will be shortlisted for interview on the basis of written examination. Following the law, which has been discussed and laid down in the case of **B. Ramakichenin** (supra), in my opinion, the impugned



stipulation in Note-4 under paragraph 5 of the advertisement does not require interference.

25. In my considered opinion, the decision in the case of *Ashish Kumar* (supra) relied on by learned counsel for the petitioner has no application at all in the facts and circumstances of the present case for the reason that the impugned term of advertisement cannot be held to be contrary to the statutory rules. It is well established legal principle that any part of the advertisement, which is contrary to the statutory rules, has to give way to the statutory prescription. In the present case, the statutory rule is silent and in that background, a conscious decision has been taken by the State Government and the selection body how to shortlist candidates for interview, which cannot be said to be unreasonable.

26. The decision in the case of *Amlan Jyoti Borooah* (supra) is easily distinguishable which was rendered by the Supreme Court in a different situation altogether. The said case related to selection to the post of Sub Inspector of Police in Assam. There was a stipulation in the advertisement that those candidates, who qualify in the written test, will be required to appear in a physical test and the interview to be conducted centrally. The Supreme Court held that plain reading of the said clause clearly



showed that the interview was to be conducted only after holding of the said tests. In the said case, the Selection Committee had decided to take interview prior to holding of the physical ability test. Holding the procedure to be erroneous, the Supreme Court held in paragraph 28, relevant portion whereof is reproduced hereinbelow: -

“28.Physical ability test keeping in view the nature of the job required to be performed by the candidates was an extremely important one. Passing in the physical ability test is a sine qua non for selection of the candidates in the post of Sub-Inspector of Police. It was indeed a competitive test. The merit list, thus, should have been prepared not only on the basis of the written test and interview but also the physical ability test. The Selection Committee, in our opinion, committed a serious error in changing the order of holding the tests. The learned Single Judge, therefore, was correct in arriving at a conclusion that physical ability test should have been held prior to holding of the interview.

27. The said decision of the Supreme Court in the case of ***Amlan Jyoti Borooah*** (supra), thus, has no application in the present facts of this case.

28. For the foregoing reasons, I do not find any illegality in the impugned prescription in Note-4 of paragraph 5 of the



advertisement in question. I accordingly do not find any merit in this application. This application is accordingly dismissed.

29. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

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