

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5424 of 2022

1. Krishna Mohan Singh Son of Rajeshwar Prasad Singh, Resident of 2M/102, B.H. Colony, Karkarbagh, P.S.-Agamkuan, District-Patna.
2. Maya Nand Son of Indra Kumar Prasad Resident of Mohalla Ataullahpur, P.S. Lalganj, District Vaishali.
3. Sanjeev Kumar Son of Sunil Kumar Resident of Village Raykaran Bigha, P.S. Aungari, District Nalanda.
4. Paras Nath Yadav Son of Ramanand Yadav Resident of Village-Telkathua, P.S. M.H. Nagar Hussainpura, District-Bihar.
5. Saket Kumar Son of Arvind Singh Resident of Village and Post-Chandpura Nankhar, P.S. Desari, District Vaishali.
6. Sriman Narayan Pathak Son of Deveshwar Pathak Resident of Radhakrishan Colony-3, Naya Chak, P.S. Ramkrishna Nagar, District Patna.
7. Vijay Kumar Son of Umashankar Singh Resident of Saran, P.S. Sasaram Nagar, District-Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Bihar State Universities Service Commission through its Secretary, 8th Floor, BSEB, Academic Building, Marg, Patna.
4. The Secretary, Bihar State Universities Service Commission, 8th Floor, BSEB, Academic Building, Marg, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V Giri, Sr. Adv., Mr.Sumit Kumar Jha, Adv.
For the State	:	Mr. Jitendra Kumar Roy 1 (Sc 13)
For respondent nos. 3 & 4 (BSUSC)	:	Mr. Pawan Kr. Choudhary, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
C.A.V. JUDGMENT

Date : 12 -05-2022

1. Heard the Parties.



2. The petitioner by way of this writ petition has prayed to issue a mandamus to the respondents to adhere to Clause 5.5 of the Advertisement dated 21.09.2020 while filling up the vacancies on the post of Assistant Professors of various subjects and restrain the respondents from implementing subsequent changes in the educational qualification by way of resolution dated 14th July, 2021 and quashed the resolution dated 14th July, 2021 and also set aside the Memorandum dated 22nd July, 2021 issued by the Secretary, Bihar State University Service Commission, Patna and also set aside all the consequential action of the Commission.

3. Learned counsel for the petitioners has submitted that the petitioners are candidates, who have applied for the post of Assistant Professor as Advertised by the Bihar State University Service Commission (hereinafter referred to as the University Commission) dated 21.09.2020. The qualifications prescribed under the Advertisement is that a candidate must possess 55% marks at Post-Graduate



level in the subject concerned and they must have passed NET/BET/P.hd.

4. Learned counsel for the petitioners submits that as per Clause 5.5. only experience of those teachers would be valid, whose services have been confirmed by the University Selection Committee/ College Service Commission/ College Selection Committee and thus any experience gained by teachers on ad-hoc basis or as a guest teachers ought not be counted.

5. Learned counsel has taken this Court to Clause 7 of the Advertisement which provides the selection process and the criteria for selection for candidates for Interview has been provided in the table under Clause 7.2 which provides that 10 marks shall be reserved for teaching experience, 02 marks for each year. Thus, teaching experience is material for the purpose of counting the total marks for eligibility to appear before the Interview Board.

6. Learned counsel submits that after the selection process commenced, a three man Committee resolved under the Chairmanship of



Professor Sri Rash Bihari Prasad Singh, that the experience certificate issued by the head of the Department/Principal/ Institute countersigned by the Registrar of the respective University shall be valid for awarding the marks for teaching experience in accordance with the provisions of the Statutes. The University Commission also accepted the said suggestion and it is the contention of the learned counsel for the petitioners that such decision goes against the very interpretation of Clause 5.5. of the Advertisement.

7. Learned counsel submits that this would result in all the persons, who have taught in on ad-hoc basis in the various Colleges to be allowed the benefit of teaching experience, whereas in terms of Clause 5.5. teaching experience has to be the experience gained after regular appointment alone.

8. Learned counsel has submitted that the Registrar of the Bhupendra Narayan Mandal University has also objected to such inclusion of candidates. He also submitted that the Registrar of



the Patna University has also objected to issuing of certificate to guest faculties.

9. Learned Counsel submits that the Committee of the three member could not have been formed for the said purpose and as per Statutes for the appointment of Assistant Professor in University of Bihar, 2020, the Committee can only be formed for examining the eligibility of candidates with degree in concerned subject.

10. Learned counsel has also taken this Court to the decision of Baba Saheb Bhim Rao Ambedkar University, Lucknow, who has not allowed guest faculties experience to be counted in case of one candidate Mr. Saurav Chandra on the ground that the same is not admissible as per Clause-10 of the University Grant Commission Regulations, 2018.

11. Learned counsel submits that the decision of the three member Committee is amounts to changing the Rules of the game after the game has already started.

12. In support thereof, he has relied on **(2001) 10 SCC page 51 (Maharashtra State**



Road Transport Corporation & Ors. Vs. Rajendra Bhimrao Mandve & Ors.) and (2005) 04 SCC page 154 (Secretary, A.P. Public Service Commission Vrs. B. Swapna & Ors.).

13. I have considered the submissions, this Court finds that as of now, the selection process is not completed, no orders have been passed in favour or against any candidate. No action has been taken which can be said to have taken away the right of the petitioners. In the opinion of this Court, therefore, no cause of action has arisen to file the present petition and the entire writ petition is based on the decision taken by the three member Committee.

14. Clause 5.5. of Advertisement reads as under:-

“Only those teachers experience shall be counted whose services has been duly confirmed by the University Selection Committee/ College Service Commission/ College Selection Committee.”



The decision taken by the three member Committee only clarifies Clause 5.5. that the experience certificate has to be issued by the head of the Department/Principal/ Institute countersigned by the Registrar of the respective University.

Thus, it cannot be said that the clarification issued by the three member Committee is an attempt to change the Rules of the game. Since the Advertisement was silent as to how a certificate has to be issued. The Committee could always issue a clarification regarding the method and manner in which certificate is required to be obtained. The decision smoothens the selection process and leaves no manner of doubt for any candidate as to what nature of certificate would be required. Otherwise, the language and signatories may be different from different University which would create chaos. The submission of the learned counsel, therefore, is found to be without force and is rejected.

In view thereof, the law cited is also found to be not applicable to the facts of the case.



15. The second question with regard to not counting experience gained by the teachers working as guest teacher or on ad hoc basis is no more res integra.

In this regard, this Court notices that there is no differentiation made amongst teachers in the Advertisement.

In **Asim Kumar Bose Vs. Union of India, (1983) 1 SCC page 345**, the question arose that for the purpose of appointment as Assistant Professor, whether the teaching experience gained by a specialist in a teaching hospital in the capacity of an Ex-officio Associate Professor would be counted toward the requisite teaching experience. The Supreme Court held as under:-

“ 29. It is necessary to emphasise that the recruitment rules nowhere provide that the teaching experience gained by a Specialist in a teaching hospital in the capacity of an Associate Professor (ex officio) shall not count toward the requisite teaching experience. There is no provision made in the Rules that the teaching experience must be



gained on a regular appointment. There is hardly any difference so far as teaching experience is concerned whether it is acquired on regular appointment or as Specialist in a teaching hospital with the ex officio designation. As the statutory rules do not provide that the teaching experience gained in an ex officio capacity shall not count toward the requisite teaching experience, the teaching experience gained by the appellant while holding the post of Radiologist-cum-Associate Professor of Radiology (ex officio) in the Irwin Hospital cannot be ignored in determining his eligibility for appointment as Professor or Radiology in Maulana Azad Medical Collge.”

34.

On a literal construction of these Rules, the effect of these amendments appears to be this. Normally, a Professor or an Additional Professor in a medical college or a teaching institution can be appointed by direct recruitment from amongst persons holding the post of Associate Professor or



Assistant Professor in the concerned speciality in a medical college or a teaching institution having at least six years' teaching experience out of 12 years' standing in the Grade through the Union Public Service Commission. As Associate Professor in the medical college or a teaching institution can only be promoted from amongst persons holding the post of Reader or Assistant Professor having at least five years' teaching experience in the concerned speciality by the Departmental Promotion Committee. We are inclined to the view that the word "as" in the collocation of the words used "at least six years' experience as Associate Professor/Assistant Professor/Reader" in paragraph 2 (b) and of the words "at least five years' experience as Reader/Assistant Professor" in paragraph 3 and sub-rule (2-A) of Rule 8 must be interpreted in its ordinary sense as meaning teaching experience gained "in the capacity of". In Black's Law Dictionary, 5th Edn., p. 104, the meaning of the word "as" as given is : "Used as an



adverb, etc., means like, similar to, of the same kind, in the same manner, in the manner in which.” In shorter Oxford Dictionary, 3rd Edn., p. 111, the word “as” is stated to mean: “The same as, in the character, capacity, role of”. In our view, the Ministry of Health is apparently wrong in assuming that the word “as” in paragraphs 2 (b) and 3 of Annexure 1 to the Second Schedule and sub-rule (2-A) of Rule 8 makes holding of post in the cadre a condition precedent to the appointment of a Professor or an Associate Professor.”

16. In the case of Dr. Kumar Bar Das Vrs. The Utkal University, AIR 1999 (SC) page 669 has held as under:-

“In our view, the opinion of the experts in the Selection Committee must be taken to be that the appellant’s teaching and research experience satisfied the above condition of “about 10 years”. In fact, the Chancellor in his final order did not expressly say that the period was not “about 10



years”, though such a view was expressed in the show-cause notice. He merely stated that award of 4 marks towards ‘teaching experience’ was not justified. The appellant did have teaching experience of 7 years 7 months and 14 days and Research experience of 1 year 5 months and 14 days- in all 9 years 26 days and the Selection Committee gave him 4 marks out of 10 on this score. Even otherwise, if the view of the Chancellor was that the experience must be a minimum of 10 years and therefore zero marks ought to have been awarded to the appellant towards ‘teaching experience’ we cannot agree. That would, in our view, amount to ignoring altogether the words in the advertisement ‘teaching and/or research experience’ and to exclude the period of 1 year 5 months and 14 days.”

17. In view of above, the submission of learned counsel that such a teaching experience gained by the faculty members ought not be considered, cannot be accepted. If the authorities



have issued experience certificate to the guest teachers, counting their teaching experience as the actual experience of teaching was fault can be attributed. The very purpose of giving two marks for each year of experience, is to obtain services of those persons, who have actual experience of teaching students. Thus, there is a nexus to the said interpretation and Clause 5.5. does not in any manner denies such experience to be counted. The only aspect is that the factum of service of such a teacher must be duly certified by the concerned University Selection Committee/ College Service Commission/College Selection Committee, which has been clarified by the three member Commission is that the certificate to be issued by the Principal to be counter-signed by the Registrar.

18. The contention of learned counsel is that the guest faculties experience has not been counted in relation to one candidate, who applied for appointment at the Central University namely Baba Saheb Bhim Rao Ambedkar University at Lucknow on



the basis of draft regulations of University Grant Commission, 2018.

Suffice it to say that this Court would not attempt to give a seal of approval or dis-approval to such a course adopted as it is not before this Court. However, it is to be noticed that the University Grant Commission Regulation, 2018 is a Draft regulation and have not come into force as yet. On the basis of draft regulations, the petitioners can not claim that the said teaching experience is not required to be counted. The draft regulations are still required to be confirmed by the University Grant Commission. Such regulations would of course have to be in consonance with the interpretation laid down by the Apex Court from time to time as noticed hereinabove. They are not enforceable as of now.

19. Keeping in view the aforesaid discussion, I do not find any reasons to interfere with the method and manner of selection process being conducted by the University Commission and no interference is warranted.



20. The submission raised by the learned counsel therefore, fails. Accordingly, the writ petition is found to be devoid of merits and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

pravinkumar/-

AFR/NAFR	A.F.R.
CAV DATE	19.04.2022
Uploading Date	
Transmission Date	

