

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13312 of 2021

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Bipin Kumar Mishra Son of Awadhesh Narain Mishra Resident of Village and Post - Bharpurwa, P.S. - Vijayipur, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
3. The Deputy Secretary, Department of Education, Government of Bihar, Patna.
4. The Director, Secondary Education, Department of Education, Bihar, Patna.
5. The Chairman, Bihar State Examination Board, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Adv., Mr.Prince Kumar Mishra, Adv.
For the Respondent/s	:	Mr.Subhash Chandra Mishra (Sc16)

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 18-04-2022

1. The petitioner by way of this writ petition submits that an advertisement was issued by the Bihar State Examination Board, Patna, Bihar, 2019 informing that a Secondary Teacher Eligibility Test (S.T.E.T.), 2019 and Physical Education and Health Instructors Eligibility Test, 2019 would be conducted for



posts which were mentioned against the subjects as mentioned therein.

2. Learned counsel has invited attention to the advertisement to show that a selection process has been laid down and a merit list was required to be prepared on the basis of marks obtained by each candidate for each subject and category.

3. Learned counsel has also invited attention to the effect that the merit list criteria amongst the candidates who obtained equal marks was also laid down. He further submits that a merit list was also prepared after the examinations were conducted which was subject-wise. However, the State Government, Education Department issued an order on 26.06.2021, wherein it was directed that the candidates, who have appeared in the Secondary Teacher Eligibility Test (S.T.E.T.), 2019 shall be treated as qualified, if they have secured minimum qualifying marks and all the candidates, who



have secured qualifying marks shall now be entitled to participation and selection in the next on coming selection process.

4. Learned counsel submits that such a departure could not have been made. The posts which have been advertised under the advertisement issued in 2019, can only be filled by the process which was laid down in the advertisement. The petitioners, who have secured higher merit than others have a preferential right of appointment under the said advertisement and a go by to the said selection process could not have been done in the manner by issuing the order dated 26.06.2021.

5. In a counter affidavit filed by the State, it is stated that the examination was conducted on 09.09.2020 to 21.09.2020 and a result of total 24,599 candidates was declared as qualified on 12.03.2021, out of the total 30332 vacancies. Later on result of three subject were also



declared and total 6077 candidates were declared to be qualified.

6. The test of Secondary Teacher Eligibility Test (S.T.E.T.) is a qualifying Test which is essential for seeking for appointment as a teacher. Those, who qualify the Secondary Teacher Eligibility Test (S.T.E.T.) with academic and training qualifications prescribed in the relevant posts become eligible to participate in the recruitment process being conducted by the employing units falling within the jurisdiction of Panchayat Raj Institutions and Urban Local Bodies. It is submitted that those who have qualified in the Secondary Teacher Eligibility Test (S.T.E.T.) have no right to claim for selection and appointment and the same is treated as qualifying examination. It is also pointed out that in terms of Clause 14 (G) of the advertisement, it was informed that there would be no compulsion for recruitment by merely qualifying the eligibility test and later on the Education Department after



inviting applications from qualifying candidates will undertake selection against vacant posts after following the prescribed procedure.

7. I have considered the submission of Constitution Bench in **Shankarsan Dash Vs. Union of India AIR 1991 SC 1612** which is as follows:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or



any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana V. Subhash Chander Marwaha, (1974) I SCR 165 : (AIR 1973 SC 2216), Miss Neelima Shangla V. State of Haryana, (1986) 4 SCC 268 : (AIR 1987 SC 169), or Jitendra Kumar V. State of Punjab, (1985) I SCR 899: (AIR 1984 SC 1850)."



8. Thus, no vested right can be said to have been created in favour of candidates who qualified the exam. The advertisement although mentions various posts against various subjects, it is apparent from the reply filed by the State Government as well as from the impugned order that the State Government has not intended to fill up post under the advertisement. In fact, the posts are to be filled by the Panchayats and Zila Parishad under the Rules framed thereto. Each Employing Unit is required to fill up the posts for its Panchayat/Zila Parishad.

9. In view thereof, the State Government action of declaring the examination conducted by the Bihar School Examination Board as a qualifying examination treating it as Secondary Teacher Eligibility Test (S.T.E.T.) qualified candidates, cannot be said to be illegal or unjustified. Candidates who have passed the Secondary Teacher Eligibility Test (S.T.E.T.), 2019



examination and secured the minimum qualifying marks will all have been treated as qualified to participate in the selection process. However, the selection process for each unit has to be done individually and those who are found themselves in the merit according to the rules, would get a chance of appointment in their respective units. Thus, in other words, the State Government has de-centralized the appointment procedure for teachers in various Districts, Panchayats and Zila Parishad. The general advertisement thus has not been acted upon.

10. In the opinion of this Court, the aforesaid action of the State Government lies in the exclusive executive domain and such administrative decisions would not be a subject matter of judicial review.

11. The Hon'ble Apex Court in the case of **P. Susheela And Ors. Vrs. University Grant Commission, (2015) 8, SCC 129**, has held as under:-



“16. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum



eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail.”

12. Keeping in view, the settled law as above, this Court finds that it is not a case where the Rules of the game have been changed mid way. The law laid down in the case of **K. Manjushree Vs. State Of Andhra Pradesh And Anr. (2008) (3) SCC page 512** would have therefore no application to the present facts of the case.

13. It is a case where the State Government has given go by to the entire advertisement and has decided not to fill up the posts under the said advertisement. It is also not a case where any discrimination has been done



vis-a-vis the petitioner in the circumstances, no interference is warranted.

14. The writ petition is found to be misconceived and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

