

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1777 of 2020

1. Nitu Kumari, Daughter of Shri Suresh Ram, Resident of Village- Gayatri Nagar, Post- Office-Munger, Police- Station-Kotwali, District- Munger, Bihar.
2. Shivprakash Kumar, Son of Shri Sudama Chaudhary, R/o- Village- Mustafapur, Post- Bhojpur, District- Nalanda, Bihar.
3. Bhavesh Chandra, Son of Shri Ravi Shankar Paswan, R/o-Flat No. 204, Ganpati Apartment, D.P.S. More, Bailey Road, Patna, Bihar.
4. Manoj Kumar, S/o- Ashok Kumar, R/o- At- Poonam Nivas, Shivaji Nagar, Behind Shivam Classes, Makhdumpur, Dinapur-cum-Khagaul, District- Patna, Bihar.
5. Pradeep Kumar Ravi, Son of Babulal Das, Anand Marg Colony, Aliganj, Near D.V.C. Post- Mirjanhat, P.S.- Jagdishpur, Khiriband, Bhagalpur, Bihar.
6. Priya Ranjan Kumar, S/o Dr. Bijay Kumar Mandal, R/o-51, Dhouraiya Road, Panjwara, Banka, Bihar.
7. Amit Kumar, S/o Deep Narayan Yadav, R/o- Village- Gamharia, Post- Gamharia, Police Station- Gamharia, District- Madhepura, Bihar.
8. Abhishek Raj, S/o Mahendra Prasad, R/o- Purandarpur Shiv Mandir, P.S. Jakkanpur, Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar (through the Chief Secretary) Old Secretariat, Bihar, Patna.
2. Bihar Public Service Commission (through its Deputy Secretary) 15, Jawaharlal Nehru Marg, Bailey Road, Patna-800001.
3. The High Court of Judicature at Patna through its Registrar General, Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 25781 of 2019

1. Manjeet Kumar Chaudhary, S/o Late Kunwar Lal Chaudhary, R/o Village- Hasanpur, Post- Hasanpur, Thana- Arwal, Dist- Arwal, Bihar.
2. Neyaz Ahmed, S/o Sh. Samshul Hoda R/o Village- Phulari, Post- Phulari, P.S.- Shandesh, District- Bhojpur, State- Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Bihar, Patna.
2. Bihar Public Service Commission through its Deputy Secretary, 15, Jawaharlal Nehru Marg, Bailey Road, Patna- 800001.
3. The High Court of Judicature at Patna through its Registrar General, Bihar, Patna.



... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 1637 of 2020

1. Sunil Kumar, S/o- Ramjee Choudhary, R/o Village- Katar, P.O. Shankarpuri, P.S. Indrapuri, District- Rohtas, Bihar, Pin Code- 821308
2. Rajeev Kumar Sahani, Son of Uma Kant Sahani, Village- Nehra, P.O. Nahra, District- Darbhanga, Bihar- 847233
3. Rahul Deo, Son of Sh. Ishwar Prasad, At + P.O. Kalisthan, Hisua, Distt. Nawada, Bihar- 805103

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna.
2. Bihar Public Service Commission (through its Deputy Secretary) 15, Jawahar Lal Nehru Marg, Belie Road, Patna- 800001
3. The High Court of Judicature at Patna (through its Registrar General), Bihar, Patna.
4. Kanchan Rani, Roll No. 100188, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
5. Kumari Sulochana, Roll No. 114638, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
6. Chandan Paswan, Roll No. 104359, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
7. Ravi Shankar Paswan, Roll No. 124906, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
8. Kundan Paswan, Roll No. 100648, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
9. Medha Manisha, Roll No. 110298, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
10. Priyanka Kumari, Roll No. 123594, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
11. Sumita Ranjan, Roll No. 108876, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
12. Pinki Kumari, Roll No. 103687, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).



13. Ranjeet Kumar Chaudhary, Roll No. 107005, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
14. Jitendra Kumar, Roll No. 126354, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
15. Shailendra Kumar, Roll No. 126284, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
16. Vishal Sinha, Roll No. 101931, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
17. Kiran Kumari, Roll No. 109707, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
18. Nandani, Roll No. 120914, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
19. Pawan Kumar Chaudhary, Roll No. 107847, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
20. Manjeeta Kumari, Roll No. 110610, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
21. Gyan Prakash, Roll No. 101021, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
22. Navin Kumar, Roll No. 106660, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
23. Pradeep Kumar, Roll No. 115295, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
24. Khushboo Anand, Roll No. 120257, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
25. Ajay Kumar, Roll No. 106311, Category- Scheduled Castes, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
26. Raja Sah, Roll No. 113165, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
27. Vinit Kumar Sah, Roll No. 100277, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
28. Mahzavi Naj, Roll No. 116759, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar,



Patna).

29. Anant Kumar, Roll No. 117492, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
30. Prerna Shilpa, Roll No. 107892, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
31. Gajendra Kumar Chaurasia, Roll No. 103211, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
32. Ashish Anand, Roll No. 114139, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
33. Vicky Kumar, Roll No. 115996, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
34. Manjur Alam, Roll No. 105275, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
35. Vikas Kumar Ranjan, Roll No. 114397, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
36. Santosh Kumar Sah, Roll No. 119505, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
37. Geetanjali, Roll No. 110628, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
38. Aditya Kumar Sharma, Roll No. 103377, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
39. Avichal Gyanesh, Roll No. 113207, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
40. Varsa Kumari, Roll No. 121207, Category- EBC through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
41. Karishma Kumari, Roll No. 112010, Category- Backward Class, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
42. Aman Kumar, Roll No. 124681, Category- Backward Class, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
43. Richa Rani, Roll No. 117465, Category-Backward Class, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).



44. Somya Shekhar, Roll No. 120552, Category- Backward Class, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
45. Priyanka Yadav, Roll No. 120501, Category- Backward Class, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
46. Gautam, Roll No. 101711, Category- Backward Class, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
47. Alok Kumar, Roll No. 122776, Category- Backward Class, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
48. Rakesh Ranjan, Roll No. 106787, Category- Backward Class, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).
49. Anurag Gaurav, Roll No. 125170, Category- Backward Class, through the Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna).

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2055 of 2020

1. Deepmala Kumari D/o Late Rajeshwar Prasad Yadav, R/o Mansarovar Apartment, Flat No. 304, Abhiyanta Nagar, Near Gola Road, P.S.- Rupaspur, District- Patna-801503.
2. Akash Kumar, S/o Late Rajkishor Prasad, R/o Gabarapar, Hilsa, Nalanda 801302.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Patna, Bihar.
2. Bihar Public Service Commission through its Deputy Secretary, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna, Bihar.
3. The High Court of Judicature at Patna through its Registrar General at Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 1777 of 2020)

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate Mr. Rakesh Kumar, Advocate
For the Respondent/s	:	Mr. P.K. Verma, AAG-3 Mr. Suman Kumar Jha, AC to AAG-3
For the High Court	:	Mr. Satyabir Bharti, Advocate

(In Civil Writ Jurisdiction Case No. 25781 of 2019)

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate Mr. Neeraj Kumar, Advocate Mr. Abhishek Singh, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA-7



For the B.P.S.C.	:	Mr. Uday Shankar Pandey, AC to GA-7 Mr. Sanjay Pandey, Advocate Mr. Nishant Kumar Jha, Advocate
For the High Court	:	Mr. Piyush Lall, Advocate
(In Civil Writ Jurisdiction Case No. 1637 of 2020)		
For the Petitioner/s	:	Mr. Apurv Harsh, Advocate Mr. Prashant Bhardwaj, Advocate Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Md. N.H. Khan, SC-1
For the High Court	:	Mr. Piyush Lall, Advocate
(In Civil Writ Jurisdiction Case No. 2055 of 2020)		
For the Petitioner/s	:	Mr. Anil Kumar Sinha, Advocate
For the Respondent/s	:	Mr. P.K. Verma, AAG-3 Mr. Saroj Kumar Sharma, AC to AAG-3
For the B.P.S.C.	:	Mr. Sanjay Pandey, Advocate Mr. Nishant Kumar Jha, Advocate
For the High Court	:	Mr. Piyush Lall, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 21-06-2023

We have heard Mr. Rakesh Kumar, learned Advocate for the petitioners in all the four writ petitions, Mr. Nasrul Hoda Khan, learned Advocate for the State, Mr. Piyush Lall, learned Advocate for the Patna High Court and Mr. Satyabir Bharti, learned Advocate for the Bihar Public Service Commission.

2. Since the issue involved in all these writ petitions is one and the identical, the same are being heard together and disposed of



by this common order/ judgment.

3. The core question for consideration as depicted by the petitioners, who were the aspirants of 30th Bihar Judicial Service Competitive Examination, is as to whether in absence of any provision of disqualifying any candidate in interview under the Bihar Civil Service (Judicial Branch) (Recruitment) Amendment Rules, 2016, the Advertisement No. 06 of 2018 issued thereunder, providing minimum Bench mark of 35 per cent in interview and thereby disqualifying large number of candidates, including the petitioners, could be held to be justified and sustainable in law.

4. The brief history of the case is that the petitioners having found themselves eligible, participated in the selection process for the 30th Bihar Judicial Service Competitive Examination, as had been initiated under the



Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 (hereinafter referred to as the “Rules, 1955”) as amended from time to time by the State Government in terms of the decision of the Patna High Court in exercise of powers conferred under Articles 234 and 235 of the Constitution of India.

5. Rules 15 (a), (b) and (c) of Rules, 1955 were initially substituted vide Notification No. 11639A dated 18.09.1959 and the substituted Rule 15(c) provided that “there shall be no qualifying marks for the viva voce test”. Clause 3 of Appendix C thereto provided that viva-voce test shall be of 200 marks, which subsequently was substituted vide notification bearing Memo No. 13546 dated 18.12.2009 providing that the viva-voce test would be of 100 marks. The aforementioned Rule 15(c) of 1955 Rules had further been substituted vide Bihar Civil Service (Judicial Branch) (Recruitment) Amendment Rules, 2014 (hereinafter referred



to as 'the Amendment Rules 2014') as contained in Notification No. 16645 dated 03.12.2014 with the stipulation that 'there shall be qualifying marks of 35 per cent for the viva-voce test'. Be it noted that the aforesaid substitution was in pursuance of the decision of the Full Court of the Patna High Court.

6. The above 1955 Rules was again amended vide Bihar Civil Service (Judicial Branch) (Recruitment) Amendment Rules, 2016, as contained in Notification No. 17283 dated 28.12.2016 in pursuance of the recommendation and decision of Full Court. While incorporating amendment in the earlier Rules, vide Clause 6 of the notification dated 28.12.2016, Rules (a) and (b) of Rule 2015 were substituted but the earlier Rule 15(c) providing for minimum 35 per cent as qualifying marks in viva-voce test was neither substituted nor deleted which caused confusion, leading the petitioners to complain about serious prejudice



to their rights and entitlements of being selected for appointment to the post of Civil Judge (Junior Division).

7. It is the case of the petitioners that though in the 1955 Rules, there was no provision for any cut off marks and subsequently the cut off marks provided for viva-voce test by the amended Rule 2014, the same was deleted by the newly amended Rule, 2016, but surprisingly Advertisement No. 06 of 2018 issued on 21.08.2018 for conducting 30th Bihar Civil Service Competitive Examination, a provision was incorporated that 35 per cent marks out of total 100 marks shall be a cut off/qualifying marks in interview. The petitioners, knowing fully well and having acquainted themselves with the amended Rule, 2016 were under impression that the cut off marks in the advertisement was mistakenly mentioned, as there is no rule providing any cut off marks in interview. Hence they were



expecting that the Bihar Public Service Commission will issue some sort of a corrigendum for deleting the same or that condition will be ignored and not implemented.

8. However, on 29.11.2019, when final merit list was issued by the Bihar Public Service Commission declaring 303 candidates to have disqualified in interview, the petitioners have now approached this Court.

9. It has been submitted that the petitioners have secured more marks than the final cut-off marks in their respective categories and if they had not been arbitrarily and illegally disqualified in the interview, they would certainly have been selected.

10. A forceful submission has been made that the rejection of the candidature of the petitioners by illegally disqualifying them in interview is ultra vires and in contrary to Rule 19 of the 1955 Rules, which provides that the



merit list shall be prepared in accordance with aggregate marks secured by all the candidates in the written test and interview. Thus had the merit list been prepared on the basis of the aggregate marks of all the candidates, the petitioners would have been returned successful.

11. It has vehemently been submitted by the petitioners that recruitment to the post of Judicial Officers must be done in strict adherence to the concerned recruitment Rules, framed under Article 234 of the Constitution of India and any deviation from the recruitment Rules will render the recruitment process illegal and vitiated. The Advertisement in question, bearing No. 06 of 2018 is contrary to the recruitment Rules must give way to the statutory prescription and when there is variance in the advertisement and in the statutory Rules, it is statutory Rules which takes



precedence.

12. In support of the aforesaid submission, heavy reliance have been placed on the judgments rendered by the Hon'ble Supreme Court in the case of **Malik Mazhar Sultan and Another Vs. U.P. Public Service Commission and Others, (2006) 9 SCC 507** and in the case of **Ashish Kumar Vs. The State of U.P. and others, (2018) 3 SCC 55**. Both the aforesaid judgments have been cited on the point that any part of the advertisement, which is contrary to the Rules, has to give way to the statutory prescription. When there is variance in the advertisement in the statutory Rules, it is the statutory Rules which takes precedence. Recruitment to the service can only be made in accordance with Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate, if otherwise not eligible



according to the Rules.

13. It is also to be noted that one of the writ petitioner, namely, Manjeet Kumar Chaudhary, aggrieved by his disqualification preferred Writ Petition (Civil) No. 1455 of 2019 before the Hon'ble Supreme Court under Article 32 of the Constitution of India, which was disposed of vide order dated 17.12.2019 in the following terms:

“Since the matter pertains to Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955, in our view, better course would be to prefer an appropriate Writ Petition under Article 226 of the Constitution of India rather than approaching this Court under Article 32 of the Constitution of India.

We, therefore, decline to exercise jurisdiction in the present matter but give liberty to the petitioner to approach the High Court by preferring appropriate Writ Petition under Article 226 of the Constitution of India.

In case, any writ petition is



filed in the High Court, the High Court may consider passing appropriate interim orders or expediting the process as early as possible.

This writ petition is disposed of in aforesaid terms.

Pending application(s), if any, shall stand disposed of.”

14. In deference to the aforementioned order, the matter was notified by the order of the Hon’ble the Chief Justice dated 09.01.2020 and this Court having considered the submissions and materials available on record was not persuaded to grant interim relief to the petitioner in C.W.J.C. No. 25781 of 2019 vide order dated 09.01.2020.

15. A further submission has been made by the petitioners that the corrigendum bearing Memo no. 14803 dated 22.12.2017 issued under the signature of Under Secretary, General Administration Department, Government of Bihar has no validity in law, as



the same has not been issued by the Government of Bihar under the signature or direction of the Governor of Bihar under Articles 166(1) and 166(2) of the Constitution of India. It is also submitted that the aforementioned corrigendum dated 22.12.2017 was not issued by the same authority which had issued notification no. 17283 dated 28.12.2016 i.e. the Governor of Bihar nor it recites that it is by the order of Governor of Bihar; hence any order passed by the Under Secretary cannot march over the amended Rules, 2016, issued in exercise of the power under Article 234 of the Constitution of India.

16. The petitioners, while concluding the submission, tried to impress upon this Court that Rule 15(c) of the 1955 Rules since its introduction vide notification no. 17283 dated 28.12.2016 has already been deleted and it has never been brought in existence by further amendment in Rule and



any corrigendum, as stated above, would not suffice to make the amendment in the Rules which governs the services of Civil Judge (Junior Division) under the Bihar Sub-ordinate Judicial Services.

17. Respective counter affidavits/ supplementary counter affidavits have been filed on behalf of the Bihar Public Service Commission as well as the High Court of Judicature at Patna, Bihar.

18. Mr. Piyush Lall, for the High Court has submitted that in fact Rule 15(c) of 1955 Rules has never been deleted and it remains in the statute book till date since its introduction. Pursuant to the decision of the Full Court of Patna High Court, Rule 15(c) was incorporated by bringing an amendment in the Rules 1955 vide Amendment Rules 2014, as contained in Memo No. 16645 dated 03.12.2014 stipulating therein that there shall



be qualifying marks of 35 per cent for viva-voce test. Further in the year 2016, in pursuant to the recommendation and decision of the Full Court, vide resolution dated 19.12.2016 communicated to the State Government vide letter no. 84161 dated 23.12.2016, Amendment Rule, 2016 came into effect vide notification no. 17283 dated 28.12.2016. Vide Clause 6 of the said notification, Rules 15(a) and (b) were substituted. However, Rule 15(c) provided for minimum 35 per cent qualifying marks in viva voce test was neither substituted nor deleted and thus continued to remain in the statute book, as was done by the amended Rules, 2014.

19. Attention of this Court has been drawn to the decision of the learned Full Court of the Patna High Court, in pursuance thereof notification no. 17283 dated 28.12.2016 was issued, which did not contain any decision or recommendation to either substitute or delete



the existing Rule 15(c) provided for minimum 35 per cent qualifying marks in viva voce test.

20. It is also submitted that the Standing Committee vide Resolution dated 06.08.2017, having noticed certain anomalies in notifications issued by the State Government, while carrying out amendments in 1955 Rules as per decision of the Full Court, communicated to the State Government to take necessary action to rectify errors and mistakes. The Rule 15 (c), which was the part of 1955 Rules prior to the 2016 Amendment, was inadvertently omitted in the notification no. 17283 dated 28.12.2016 while carrying out the 2016 Amendment Rules and thus it was required to be added back.

21. Mr. Lall has further submitted that under Rule 5 of Rules of Executive Business Bihar, 1977, the business of the Government of Bihar is distributed and



transacted in the departments specified in the first schedule, which is allocated by issuing one or more department to the charge of a Minister under Rule 6 thereof and each Department is to consist of Principal Secretary/ Secretary to the Government, who is to be official head of the Department and other officers, as the State Government may determine under Rule 8 thereof. The Bihar Civil Services (including Judicial Officers) have been allocated to the Personnel and Administrative Reforms Department (now the General Administration Department). The Government of Bihar in the Department of Appointment vide Notification No. A933 dated 25.01.1952 issued in exercise of Article 166(2) of the Constitution of India clearly speaks that all orders or instruments made or executed by or on behalf of the Government of Bihar is to be expressed to be made or executed by order of the Governor of Bihar and every such order or instrument is to



be signed by the Secretary, Joint Secretary, Under Secretary etc. save and except in cases where an officer has been specifically empowered. The corrigendum dated 22.12.2017 has been issued under the signature of the Under Secretary, General Administration Department, who was authorized to sign it and merely because the said corrigendum does not specifically mention “by the order of Governor of Bihar”, but only mentions “by the order”, the same does not get vitiated it as it has been issued in pursuance of the decision of the Governor of Bihar as per the Rules of Executive Business. It is the settled law that Article 166(1) and (2) are not mandatory; rather directory, and their substantial compliance would be suffice.

22. In support of the aforesaid submissions, heavy reliance has been placed on a judgment rendered by the Hon’ble Supreme Court in the case of **Shamsher Singh**



**& Another Vs. The State of Punjab & Ano.
(1974) 2 SCC 831 and Dattatraya
Moreswar Pangarkar Vs. The State of
Bombay & Ors. 1952 SCC Online SC 32.**

23. Mr. Lall, apart from the aforesaid submissions, made an alternative submissions that even if for the sake of argument, it is assumed that Rule 15(c) of the 1955 Rules was deleted vide amended Rule 2017 and it could not have been added back vide corrigendum dated 22.11.2017, yet there was no illegality in prescribing it in the Advertisement No. 06 of 2018 dated 21.08.2018 stipulating the minimum qualifying marks of 35 per cent in viva voce test for the 30th Bihar Judicial Service Competitive Examination. The effect of these amendments would be that after 2017 amendment, no specific provision under the 1955 Rules, either specifically prohibited any minimum qualifying marks post 2017 amendment and thus 1955



Rules would remain silent with respect to qualifying marks in interview for direct recruitment and would only provide that the total marks for viva voce test would be 100. In the aforementioned circumstances in view of no specific prohibition under the 1955 Rules, it was well within the constitutional powers of the Patna High Court under Article 234 of the Constitution, read with the supervisory control vested in the High Court under Article 235 of the Constitution of India, to prescribe a minimum qualifying marks in interview, which has been consistently held by the Hon'ble Supreme Court to be "exclusive" in nature, "comprehensive" in extent and "effective" in operation.

24. It has lastly been submitted that as per the scheme of direct recruitment under 1955 Rules, especially in view of Rules 18, 20 and 21, an eligible candidate has no guaranteed right to be appointed to the Bihar



Judicial Service unless he/she is found suitable. It would be open to fix a minimum qualifying marks in interview to judge such suitability and select best available candidate to maintain the standards of judiciary, which was so done and put to notice in no uncertain terms to all intending candidates vide Clause 4 (ga) of the Advertisement which is not in violation of any provisions of 1955 Rules.

25. In order to buttress the aforesaid submissions, reliance has been placed on a judgment rendered in the case of **State of Haryana Vs. Subhash Chander Marwaha & Ors., (1974) 3 SCC 220** wherein the Supreme Court, dealing with the issue of recruitment of candidates in the Haryana Civil Service (Judicial Branch) in an identical situation, was pleased to hold that it would be open to the Government on the recommendation/consultation of the High Court and with a view to maintain high-standards of



competence, to fix a score which is much higher than the one required for mere eligibility.

26. Further reliance has been placed in the case of **K.H. Siraj Vs. High Court of Kerala & Ors., (2006) 6 SCC 395** wherein the Supreme Court, on a question posed before it whether the fixing of separate minimum cut off marks in the interview for further elimination of candidates after a comprehensive written test touching the required subjects in detail, is violative of the statute, has been upheld. Even if the Rules did not prescribe any particular minimum, the High Court can supplement the Rules with prescribing relevant standards. The prescription of minimum marks by High Court for interview for further fine-tuning the selection of the candidates after a comprehensive written test was not violative of the statute.

27. This Court is tempted to quote



the relevant paragraphs of the judgment discussed hereinabove:

“49. So far as the first submission is concerned, we have already extracted Rule 7 in paragraph supra. Rule 7 has to be read in this background and the High Court's power conferred under Rule 7 has to be adjudged on this basis. The said rule requires the High Court firstly to hold examinations written and oral. Secondly, the mandate is to prepare a select list of candidates suitable for appointment as Munsif Magistrates. The very use of the word “suitable” gives the nature and extent of the power conferred upon the High Court and the duty that it has to perform in the matter of selection of candidates. The High Court alone knows what are the requirements of the subordinate judiciary, what qualities the judicial officer should possess both on the judicial side and on



the administrative side since the performance of duties as a Munsif or in the higher categories of Subordinate Judge, Chief Judicial Magistrate or District Judge to which the candidates may get promoted require administrative abilities as well. Since the High Court is the best judge of what should be the proper mode of selection, Rule 7 has left it to the High Court to follow such procedure as it deems fit. The High Court has to exercise its powers in the light of the constitutional scheme so that the best available talent, suitable for manning the judiciary may get selected.

52. The place of the High Court in the matter of administration of justice was very elaborately and poignantly delineated by S.B. Majmudar, J., who, speaking for the Constitution Bench in *Bal Mukund Sah* [(2000) 4 SCC 640 : 2000 SCC (L&S) 489], said that the very responsible and onerous duty is cast on the High Court



under the constitutional scheme and it has been given a prime and paramount position in this matter, with the necessity of choosing the best available talent for manning the subordinate judiciary. The repercussions of wrongful choice are also pointed out in the said judgment.

54. In our opinion, the interview is the best mode of assessing the suitability of a candidate for a particular position. While the written examination will testify the candidate's academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership, etc. which are also essential for a judicial officer.

57. The qualities which a judicial officer would possess are delineated by this Court in Delhi Bar Assn. v. Union of India



[(2002) 10 SCC 159 : 2003 SCC (L&S) 85]. A judicial officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations, to control the examination of witnesses and also lengthy irrelevant arguments and the like. Existence of such capacities can be brought out only in an oral interview. It is imperative that only persons with a minimum of such capacities should be selected for the judiciary as otherwise the standards would get diluted and substandard stuff may be getting into the judiciary. Acceptance of the contention of the appellant-petitioners can even lead to a postulate that a candidate who scores high in the written examination but is totally inadequate for the job as evident from the oral interview and gets



zero marks may still find a place in the judiciary. It will spell disaster to the standards to be maintained by the subordinate judiciary. It is, therefore, the High Court has set a benchmark for the oral interview, a benchmark which is actually low as it requires 30% for a pass. The total marks for the interview are only 50 out of a total of 450. The prescription is, therefore, kept to the bare minimum and if a candidate fails to secure even this bare minimum, it cannot be postulated that he is suitable for the job of Munsif Magistrate, as assessed by five experienced Judges of the High Court.”

28. Mr. Gyan Prakash Ojha and Mr. Satyabir Bharti, appearing on behalf of the State and the Bihar Public Service Commission respectively submitted that by inadvertence, the notification of 2016 has been referred to in advertisement issued in 2018, but the Rule which was enforced in prescribing the minimum



qualifying marks of 35 per cent was in pari materia the same as the 2014 notification.

29. The attention of this Court has also been drawn to a judgment passed by this Court in the case of ***Rakesh Ranjan Vs. The State of Bihar & Ors, (C.W.J.C. No. 8863 of 2015)*** wherein the petitioner has sought quashing of Clause 3 of Advertisement no. 1 of 2012 (28th Bihar Judicial Service Competitive Examination) whereby the qualifying marks were fixed for interview in the midst of selection process. A co-ordinate Bench of this Court, taking note of various judgments including the judgment rendered in the case of ***Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, 1986 (Supp) SCC 285, Madan Lal and Others Vs. State of J&K and Others, (1995) 3 SCC 486, Manish Kumar Shahi Vs. State of Bihar and Others, (2010) 12 SCC 576*** and ***Ranjan Kumar and Others Vs. State of Bihar and***



Others, (2014) 16 SCC 187, has held that the conduct of the petitioner, who has invoked jurisdiction of the High Court under Article 226 of the Constitution of India, but only after finding that his name does not figure in the merit list prepared by the Commission, clearly dis-entitles him from questioning the selection process and he was not permitted to dispute the condition of obtaining minimum qualifying marks in the viva-voce test, when the condition was informed to the petitioner before he appeared in the viva voce-test.

30. Finally, the counsel for the respondents, also informed this Court that the entire selection process have come to an end and the appointment letters have already been issued in favour of the successful candidates way back in the year 2020 itself and even the 31st Bihar Judicial Service Competitive Examination has also been finalized and the successful candidates have already been



appointed. Hence, in that view of the matter also, no relief can be granted to the petitioners.

31. Having given anxious consideration to the submissions of the parties and considering the materials available on record, this Court finds it difficult to accept the contention of the petitioners for the reasons, inter alia, that admittedly the Advertisement No. 06 of 2018 was issued much after the incorporation of qualifying marks at the viva voce test vide corrigendum dated 22.11.2017 and even if the advertisement referred to a previous notification of the year 2014, prescribing the minimum qualifying marks of 35 per cent in the interview at the time of issuance of advertisement, the same cannot be said to be contrary to the statutory rules and that too in a situation where the petitioners have appeared for the examination without protest and after taking a calculated chance and appearing at the interview, only because the



result of the interview is not “palatable” to them, they cannot turn round and subsequently contend that the process of interview was unfair prescribing the minimum cut off marks.

32. This Court also finds that there has never been any conscious decision either on the part of the High Court of Judicature at Patna or the State Government to delete the Rule 15 (c) from the statute book and thus there was no question of it being added back by way of amendment to the 1955 Rules. Moreover, the claim of the petitioners that Rule 15(c) which deleted vide Notification No. 17283 dated 28.12.2016 is neither based on any record of the Patna High Court nor any record of the State Government. This Court also finds substance in the submission that in the facts of the present case, the corrigendum bearing Memo No. 14803 dated 22.12.2017 has been issued under the signature of Under Secretary, General Administration Department, Bihar,



which is sufficient compliance of Article 166(2) of the Constitution of India.

33. It is needless to say that every executive decision need not be formally expressed and this is particularly so that when a superior officer directs his subordinate to act or forbear from acting in a particular way, but in the executive decision, which affects an outsider or is required to be officially notified or to be communicated, it should normally be expressed in the form mentioned in Article 166(1) i.e. in the name of the Governor. However, an omission to make and authenticate an executive decision in the form mentioned in Article 166, does not make the decision illegal these conditions are merely directory and not mandatory. Reliance may be taken of the Constitution Bench judgment in the case of **Dattatraya Moreshwar Pangarkar case** (supra).



34. Nonetheless, the 1955 Rules itself conferred power upon the High Court to evolve such procedure as it deemed fit for selecting Judicial Officers. Even if the rules did not prescribe any particular minimum, the High Court could supplement the rules with a view to implement them, prescribing relevant standards. It would be worthwhile to mention that the Apex Court has succinctly held that interview is the best mode of assessing the suitability of a candidate for a particular position as it brings forth all intellectual and personal activities of the candidate. Only persons with the prescribed minimum of said qualities/ capacities should be selected, otherwise the standard of judiciary would be lowered. The High Court is under the constitutional obligation as embodied under Articles 233, 234 and 235 of the Constitution of India, to maintain high traditions/standards of judiciary by selecting suitable persons for the



service.

35. In view of the discussions made hereinabove and the settled legal position, this Court is not inclined to accede to the prayer of the writ petitioners.

36. All these writ petitions, sans any merit, stand dismissed.

(Harish Kumar, J)

Ashutosh Kumar, J:

I agree

(Ashutosh Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	21.02.2023
Uploading Date	22.06.2023
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