

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3359 of 2023

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Yugal Kishor, Son of Shri Vishnudeo Mahto, Ward No- 02, Resident of
Village- Shivpuri Kolhwarwa, P.S.- Nagar Thana Motihari, P.O.- Motihari,
Dist- Motihari East Champaran, Bihar, 845401

... .. 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, Bailey Road, Patna- 800001
3. The High Court of Judicature at Patna, through its Registrar General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kuldeep Kumar, Advocate
For the Respondent/s	:	Mr. Md. Nadim Seraj, GP-5
For the BPSC	:	Mr. Sanjay Pandey, Advocate
	:	Mr. Nishant Kumar Jha, Advocate
For the High Court	:	Mr. Piyush Lall, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 21-06-2023

Heard Mr. Kuldeep Kumar, for the petitioner,
Mr. Nadim Seraj, for the State, Mr. Sanjay Pandey, for the
Bihar Public Service Commission and Mr. Piyush Lall, for
the High Court of Judicature at Patna.

2. The petitioner, who was one of the
aspirants of 30th Bihar Judicial Service Competitive
Examination has invoked the extraordinary jurisdiction of



this Court under Article 226 of the Constitution of India, seeking a declaration that the respondent/Bihar Public Service Commission has acted in a highly negligent manner in inserting a term in Advertisement regarding qualifying marks in interview on the basis of non-existent notification dated 03.12.2014 by substituting Rule 15 (c) of the Bihar Civil Services (Judicial Branch) (Recruitment) Rules, 1955, despite the fact that Rule 15 (c) of the Bihar Civil Services (Judicial Branch) (Recruitment) Rules, 1955 stood deleted vide subsequent notification dated 28.12.2016, thereby rendering the aforesaid term totally unsustainable.

3. The petitioner has further prayed for a declaration that in absence of any provision in the Bihar Civil Services (Judicial Branch) (Recruitment) Rules, 1955, the respondents have arbitrarily and unconstitutionally disqualified 303 candidates, including the petitioner, even though they secured more marks in aggregate than other successful candidates. Hence a consequential prayer has been made for quashing of the final result dated 29.11.2019 of 30th Bihar Judicial Services Competitive Examination and a further direction to restore the candidature of the



petitioner and to prepare fresh merit list after taking into account the aggregate marks in written test and interview of all the candidates and accordingly to publish fresh result.

4. The short facts, which led to the filing of the present writ petition is that the petitioner having found himself 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. It has been submitted that on qualifying in the Preliminary examination, the petitioner appeared in the written examination (mains) and was declared successful. It is the case of the petitioner that based on his performance in the written examination, he was found eligible for viva-voce test and accordingly interview letter was issued and he appeared in the interview. However, on 29.11.2019, when final merit list was published by the Bihar Public Service



Commission declaring 303 candidates excluding him to have disqualified in interview, the petitioner has now approached this Court.

6. It has been submitted that though in the 1955 Rules, there was no provision for any cut off marks but subsequently the cut off marks was 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.

7. It has been submitted that the petitioner, knowing fully well and having acquainted himself with the amended Rule, 2016, was under the 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 he was 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. The rejection of the candidature of the petitioner by illegally disqualifying him in interview is 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 petitioner would have been declared successful.

8. He further submitted that it is well settled that recruitment for 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. Furthermore, the Advertisement cannot be contrary to the recruitment Rules and any part of the advertisement, which is contrary to the recruitment Rules, have to 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.

9. The petitioner, in order to buttress his



submission, further submitted that the Government of Bihar, in consonance with the recommendation of Shetty Commission and also in compliance of the judgment of the Hon'ble Supreme Court in **All India Judges Association and Others Vs. Union of India and Others, (2002) 4 SCC 247** vide amendment dated 28.12.2016 already deleted the Rule 15(c) of 1955 Rules, providing minimum benchmark of 35 per cent in interview and presently there is no provision of disqualifying anyone in interview. Thus serious illegality and unconstitutionality has occurred resulting into disqualification of many candidates in interview without any mandate of law.

10. At the outset, Mr. Piyush Lall, for the High Court has submitted that the issue involved in the present writ application has already been taken up for consideration in C.W.J.C. No. 1777 of 2020 (Nitu Kumari and others Vs. The State of Bihar and others) and other analogous cases wherein the High Court of Judicature at Patna and other respondents have already filed their respective counter affidavits and detailed submissions have been made before this Court.



11. Similar submissions have also been made on behalf of the counsel for the State as well as Bihar Public Service Commission.

12. We have heard the parties at length.

13. Be it noted that the question involved in the present writ petition, as depicted by the petitioner, has already been elaborately dealt with in identical matters [C.W.J.C. No. 1777 of 2020 (Nitu Kumari and others Vs. The State of Bihar and others) and other analogous cases], wherein this Court having considered the submissions of the parties and considering the materials available on record in its penultimate paragraph nos. 30 to 35 came to the following conclusion.

“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.”

14. In view of the aforementioned facts and settled legal proposition, the present writ application also stands disposed of in similar terms, as has been disposed of C.W.J.C. No. 1777 of 2020 and other analogous cases by this Court.

(Harish Kumar, J)

Ashutosh Kumar, J:

I agree

(Ashutosh Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	14.03.2023
Uploading Date	22.06.2023
Transmission Date	

