

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4503 of 2015

Manoranjan Priyadarshi son of Shri Sheo Kumar Singh, C/o Rajeshwar Prasad, B-104, Old Post Office Lane, Chitragupta Nagar, Ram Rekha Path, Kankarbagh, Patna-20, Bihar at present residing at B-29, DMRC Staff Quarter, Yamuna Bank Depot, Khadar, Near Yamuna Bank Metro Station, New Delhi-110092.

... .. Petitioner/s

Versus

1. The Vice-Chancellor, Aryabhat Knowledge University, Chankya National Law University, Near Bus Stand, Mithapur, Patna-1.
2. The Registrar, Aryabhat Knowledge University, Chankya National Law University, Near Bus Stand, Mithapur, Patna-1.
3. The Principle Secretary, Department of Education, Govt. of Bihar, Patna.
4. Sabir Kumar, S/o Shri Uday Bhanu, Village and P.O.-Sikatia, Via-Tikipur, P.S.-Maharajganj, District-Siwan (Bihar), PIN-841244 (M) 9835483848
5. Sanjeev Kumar, S/o Shri Krishna Prasad, I-3A, The Green Garden, Hesa, Hatia, Ranchi (Jharkhand), PIN-834003 (M) 9334801095.
6. Sunil Kumar, S/o Shri Mahendra Prasad Chaudhary, C/o Madan Prasad Chaudhary, Mohalla-Kurji Balupar, Near-NavJyoti School, P.O.-Sadakat Ashram, Patna, PIN-800010 (M) 09889313114.
7. Sunil Kumar, S/o Shri Parmanand Mehata, Near-SBI, Shivaji Colony, Purnia (Bihar), PIN-854301 (M) 9934040737, 9701017403.
8. Pramod Kumar, S/o Shri Purnimashi Singh Yadav, New Delian Near-Rohatas Petrol Pump Dehari on Sone, District-Rohatas (Bihar), Pin-821307 (M) 9431464818, 9939444999j.
9. Md. Eqbal Ahsan, S/o Shri Amin Ahsan Ansari, AlamGanj, Narkat Ghat, Opposite-Urdu Middle School, P.O.-Gulzarbagh, Patna, PIN-800007 (M) 09852078650.
10. Sujit Kumar, S/o Shri Harendra Singh, Pallavi Colony, Shiv/Shakti Nagar, Bazar Samiti, Bazar Samiti, Patna, PIN-800006 (M) 9386637486.
11. Bharati Kumari, S/o Late Muneshwar Prasad, Village-Karauta, P.O.-Dema, P.S.-Bakhtiyarpur, District-Patna, PIN-803202 (M) 8986268885.
12. Vijay Kumar S/o Shri Rupesh Kumar Mandal, Village-Nawagarh, P.S.-Laxmipur, District-Jamuai, Bihar, PIN-811317 (M) 9430456193.
13. Md. Javed Alam, S/o Shri Abdul Baqui, Hira Public School, Sharif Colony, Baripath, Patna, PIN-800006 (M) 9801679114.
14. Rajesh Ranjan S/o Shri Jagdish Prasad, Village-Chai Tola, P.O.-Dhanaurua, Via-Ekehari, District-Bhagalpur, PIN-813204 (M) 9304642041, 9308481283.
15. Razi Ahmad, S/o Late Ali Ahmad, Mohalla-Peerbahore, G Lane, Opposite-Allahabad Bank, P.O.-Mahendru, Patna, PIN-800006 (M) 08987041643.



16. Krishna Chaudhary, S/o Shri Lakshman Chaudhary, Village and P.O.- Ramdhara, District-Rohtas (Bihar) PIN-821312, (M) 09285360535.
17. Bimal Kumar Goswami, S/o Shri Sadanand Goswami, Lakhi Kundi, District-Dumaka Jharkhand, PIN-814101 (M) 9934927491.
18. Pawan Kumar Mandal, S/o Shri Binod Mandal, Village-BhattaPura, P.O.- Sari Sub Pahi, P.S. Manigachhi, District-Darbhangha (Bihar), (M) 9473377557.
19. Sunil Kumar, S/o Shri Ram Prasad Mehata, Village-Makhadumpur, Gate-88, P.O.-Digha Ghat, District-Patna, PIN-800011 (M) 9234203377.
20. Tripti Gupta, S/o Shri Gopal Prasad, C/o Pramod Gupta, Chhoti Khagaul, Mahadev Sathan, Khagaul, District-Patna, PIN-801105 (M) 9334055576.
21. Indu Bhasker, S/o Late Satya Prakash, Bans Kothi, Chhatrian Colony, P.O.- DighaGhat, Patna, PIN-800011 (M) 9905247082.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dilip Kumar, Adv. With Mr. Subhas Prasad Singh, Adv.
For the State	:	Mr. Santosh Chandra Bhaskar, Adv.
For the A.K.U.	:	Mr. Anand Kumar Ojha, Adv. With Mr. A.K. Karna, Adv. With Mr. Abhishek Raj, Adv.
For the Respondent/s	:	Mr. Sanjeet Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 13-02-2023

1. Heard the parties.

2. The petitioner by way of this writ petition prays to set aside the select list of Section Officer and Office Assistant and further to direct the respondents to consider petitioner for appointment on the post of Section Officer or/ Office Assistant in Aryabhat Knowledge University, Patna.



3. An Advertisement was issued on 19.08.2011 for appointing persons on various posts in the Aryabhat Knowledge University, Patna. The petitioner applied for the post of Section Officer and Office Assistant, which required minimum qualifications and experience as under:-

“3. SECTION OFFICER

Minimum Qualifications:

- a. Graduate in any discipline.*
- b. Knowledge of Computer Application.*

Experience:

5 years' Experience as Superintendent/Assistant in a State/Central/Deemed University/Affiliated or Autonomous College/Public Sector Undertaking/ Autonomous Organization/Government.

Age: Not more than 40 years.

4. OFFICE ASSISTANT

Minimum Qualifications:

- a. Graduate in any discipline.*
- b. Knowledge of Computer Application.*

Experience:

3 years' Experience as UDC in a State/Central/ University/Affiliated College/ Public Sector Undertaking/ Autonomous Organization /Multinational Organization /Government.

Age: Not more than 40 years.”

4. Learned counsel for the petitioner submits that the petitioner was called for Interview on 5th August, 2013 for the post of Office Assistant and on 10.08.2013 for the post of Section Officer. However, his name was not included in the merit list.



5. It appears that thereafter the petitioner obtained information under R.T.I. and after perusal of the merit list/select list, he challenged the said list on the ground that un-experienced person had been placed in the merit list on post in a manner resulting in denial of appointment to the petitioner and at the same time the respondent nos. 4, 5, 6, 7, 8 and 10 to 12, 13, 20 and 21 had been appointed based on their experience gained from purely Private Institutions.

6. It was stated that the respondent no. 4 , Sabir Kumar was having only 4 years 01 month 21 days experience, while the minimum experience required for appointment as Section Officer was five years. So far as other respondents are concerned, they have placed on record experience certificate which bearing from 7 years to 5 years, but the experience gained was on a registration which was purely Private and for Example:- Sahara India or other Private Universities or Private Firms.

7. Learned counsel submits that the petitioner had more than the required experience for both the posts as he was employed with the Metro Railway since 31.10.2005. The petitioner was fulfilling all the criteria for both the posts, but the University has placed him at merit no. 79 for the post of Section Officer and at



merit no. 31 for the post of Office Assistant. While other persons were pick and choose arbitrarily.

8. Per contra, learned counsel appearing for the respondents have objected to the writ petition and submitted that the petitioner cannot be allowed to challenge the selections of candidates after he himself participated in the selection process, but failed to achieve the merit for the purpose of appointment on the post of Office Assistant as well as for the post of Section Officer.

9. I have considered the submission, on perusal of the Application Form submitted by the respondents, which were highlighted by the petitioner's counsel, this Court finds that one Sabir Kumar has experience less than five years. Other candidates which included Sanjeev Kumar, Sunil Kumar and respondents 5 to 21, had more than five years of experience to their credit.

10. Learned counsel appearing for the respondents has pointed out that the recruitment was advertised by the Aryabhat Knowledge University on 19.08.2011 and it was provided that the prescribed essential qualification and experience are the minimum as laid down in Section (B). The provision 8 of the said general conditions points out that the University has a right to offer a post at a level lower than that applied for depending upon the



qualification, experience and performance of the candidate. It would have a right to draw a reserve panel waiting list. It would also have a right to consider applications which are received late and also consider candidature of candidates, who may not be present for the Interview. As per Clause 8 (I) of the General Conditions, the University would have right to relax minimum requirements of qualifications and/ or experience on the recommendations of the Screening Committee/ Public Selection Committee.

11. With the aid of the aforesaid Clause 8 (I), it was contended that the said Sabir Kumar, respondent no. 4 shall be deemed to have been granted relaxation on the post. It is stated that the respondent no. 4 was already working with the Aryabhat Knowledge University, and the relaxation in experience could be granted to him.

12. The Advertisement also reflects that the post of Section Officer require a person to possess 5 years experience of working as Superintendent or Assistant in any State or Central or Deemed University or Affiliated or Autonomous College or Public Sector undertaking or Autonomous Organization or Government. The Organizations from where the respondents have mention



about having acquired experience is concerned, reflects that they are Private Organizations.

13. Learned counsel for the petitioner has attempted to convince this Court that Private Organizations is different from Autonomous Organization and, therefore, such experience cannot be taken into consideration for their appointment.

14. In my considered view, the Selecting Body has to follow the conditions laid down in the Advertisement strictly. However, if there is a provision to relax the qualification or experience, this Court will not go back and try to find out any reasons as to why relaxation was granted. A person, who has been selected by the Selecting Body, having lesser experience than the requisite experience, shall be presumed to have been granted the relaxation by the Selecting Body and this Court would not demand an explanation from the said Selecting Body and it is in their exclusive domain, as laid down in the Advertisement itself.

15. Keeping in view thereto, the appointment of Sabir Kumar cannot be said to be illegal or unjustified merely he possessed experience of less than 5 years. The selection of said respondent, therefore, is upheld.

16. As regard the respondent no. 5 to 21 are concerned, this Court notices that the Selecting Body has taken into



consideration their experience gained from the Private Organizations, the Advertisement allowed such experience. Hence, if a person has worked in a Firm having Autonomous Character or from an Organization having an Autonomous Character, said experience cannot be ignored. The word Autonomous is synonym to private. In other words to mean in Organization which does not have any control of the State Government or any other body examined. Thus, the action of the respondents cannot be said to be unjustified.

17. The word Autonomous as defined in the Webster Comprehensive Dictionary means independent; self-governing and comes from the Greek word Autonomos meaning Independent which disarticulates as autos-s self + nomos : law, rule. Thus, any Organization which is independent and self governed is an Autonomous Organization.

18. The respondents experience is from such Organizations which are self-governed and the experience gained by the respondents from such Organizations is admissible in terms of the Advertisement. A Private Enterprise is defined in Webster Dictionary to mean business owned and operated by private individuals as opposed to Government owned operations. Thus, any Organization which is self-controlled, self governed is loosely



addressed as Private Organization, since there is no control of the Government. Hence, the contention of the petitioner that the experience gained by the respondents cannot be counted is wholly misconceived.

19. Looked from another angle, this Court finds that the petitioner could not have maintained this petition itself as he has participated in the selection process knowing fully about the conditions laid down in the Advertisement, which do not restrain any person to submit application based on experience from Autonomous Organizations. He was having full knowledge about the powers of the Selecting Committee to relax the experience. He also did not challenge the said provision in the advertisement or the conditions laid down in the Advertisement. It is only when the petitioner failed to get placement in the merit, that he has turned and challenged their selection. The petitioner has not challenged the conditions and provisions of the Advertisement. Therefore, the doctrine of waiver would apply as held by in case of **2010 (12) SCC 576 (Manish Kumar Shahi Vrs. State of Bihar & Ors.)** wherein the Apex Court held as under:-

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria



or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] , Marripati Nagaraja v. Govt. of A.P. [(2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68] , Dhananjay Malik v. State of Uttaranchal [(2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005] , Amlan Jyoti Borooah v. State of Assam [(2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] and K.A. Nagamani v. Indian Airlines [(2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57] .

20. In case of Vijendra Kumar Verma Vrs. Public Service Commission, Uttarakhand & Ors. (2011 (1) SCC 150 , wherein the Apex Court held as under:-

“16. It was also submitted by the learned counsel that the appellant having participated in the entire selection process and having specific knowledge that he would be



required to have basic knowledge in computer operation and then having taken a chance therein by appearing in the viva voce and facing the questions of the expert on the computer operation, he cannot now turn back and take a stand that the said selection process is vitiated.”

21. The writ petition, therefore, is held to be not maintainable at the behest of the person who participated and remain unsuccessful. In fact he cannot be allowed to approbate and reprobate at the same time. Therefore, the writ petition fails and is accordingly dismissed with costs.

22. It is also protested that the petitioner failed to secure the requisite marks in the Interview. Interview is the process where the Selecting Body makes its own assessment. Such assessment cannot be a subject matter of judicial review.

23. In Vijay Syal & Anr. Vrs. State of Punjab & Ors. (2003 (9) SCC 401), Apex Court has held as under:-

“12. As can be seen from the difference of marks secured by the candidates in the interview, it does not appear abnormal or per se does not smell of any foul play or does not appear patently arbitrary. The lowest of the marks given in the interview are 11.5 and the highest are 22.87. Further, marks secured in the interview and the marks secured in the written test are also not grossly disproportionate. This apart, out of total



marks of 240, only 25 marks were earmarked for interview. So 25 marks for interview out of 240 as against 200 for the written test and 15 marks for qualification and other activities do not admit an element of arbitrariness or give scope for use of discretion by members of the Interview Committee recklessly or designedly in giving more marks to show favour in the interview so as to give an advantage or march to an undeserving candidate over others who had shown extraordinary merit in the written test. From the chart, we find among the candidates, marks secured in the written test were between 119 to 128 except in one case belonging to a Scheduled Caste were 114. This apart, the marks secured in the interview are based on the assessment of the Interview Committee. Normally, it is not for the court to sit in judgment over such assessment and particularly in the absence of any mala fides or extraneous considerations attributed and established. The interview marks of 25 as against total marks of 240, cannot be taken as excessive. It comes to 10.4%. Possibly the selection would have been vitiated, if the marks for interview were 100 as against 150 marks for written test as sought to be made out. Unfortunately, for the appellants, their misrepresentation in this regard, is unfolded very clearly as already stated above. Further, the appellants, knowing the criteria fixed for selection and allocation of marks, did participate in the interview; when they are not successful, it is not open to them to turn around and attack the very



criteria. The High Court in the impugned order has found that the criteria contained in Annexure R-1 filed in the writ petition was published and that such criteria was adopted earlier also in respect of other selections.”

24. It is also not a case where any person lesser in merit to the petitioner was appointed.

25. Therefore, the Judgment cited by the learned counsel for the petitioner in **J. Ashoka Vrs. University of Agriculture Science & Ors. (2017 (2) SCC 609)**, shall not be applicable to the facts of this present case.

26. The writ petition accordingly dismissed. No costs.

(Sanjeev Prakash Sharma, J)

pravinkumar/-

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CAV DATE	
Uploading Date	
Transmission Date	

