

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.347 of 2022
In
Civil Writ Jurisdiction Case No.7963 of 2021

1. Manoj Kumar Singh, Son of Sri Raj Narayan Singh, Resident of Road No. 24 K., Shivshakti Colony, Keshri Nagar, Rajeev Nagar, P.S. - Rajeev Nagar, District - Patna, Bihar - 800024.
2. Jitendra Kumar, Son of Sri Jagdish Singh, Resident of Village- Kasiona, P.O. + P.S., Rajnagar, District - Madhubani, Bihar - 847235.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Science and Technology Department, Government of Bihar, Patna.
3. The Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, Patna - 800001.
4. The Chairman, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001.
5. The Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001.
6. The Controller of Examination of Bihar Public Service Commission, 15 Jahawar Lal Nehru Marg, Bailey Road, Patna - 800001.
7. Suwesh Kumar Shukla @ Suwesh Shukla, Son of Dinesh Shukla, Resident of Village - Fathpur, Ward No. 34, P.S. Siwan Sadar, District - Siwan, Bihar - 841226.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Kumar Kaushik, Advocate
For the Respondent/s	:	Mr. Alok Ranjan, AC to AAG-5
For the BPSC	:	Mr. Sanjay Pandey, Advocate

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



ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 24-02-2023

Heard Mr. Kumar Kaushik, learned Advocate for the appellants and Mr. Sanjay Pandey for the Bihar Public Service Commission. The State has been represented by Mr. Alok Ranjan.

The appellants students, for being appointed as Assistant Professors in the Engineering Colleges, have challenged the judgment dated 11.05.2022 passed by a learned Single Judge of this Court in C.W.J.C. No. 7963 of 2021 whereby the procedure adopted by the Bihar Public Service Commission (hereinafter referred to as 'the Commission') in shortlisting candidates for interview only on the basis of marks obtained in the written examination, testing the domain knowledge of the applicants, has been affirmed and upheld.

The learned counsel for the appellants has submitted that in the scheme of examination as disclosed in the advertisement, 40% weightage is to be given on evaluation of domain knowledge and teaching skill through



written examination in objective form. Weightage of 20 marks is to be given for academic record and research performance. The interview is to have a weightage of 15 marks. For the experience acquired through engagement on contract basis, a weightage of 25 marks has been prescribed.

The appellants never challenged the aforementioned scheme. No questions have been raised also on one of the conditions stipulated in the Advertisement that for the weightage 40% marks while evaluating the domain knowledge and teaching skill through objective written examination, there would be a minimum qualifying marks also.

All that the appellants and others of the same ilk were aggrieved was with respect to a condition/stipulation in Note-4 to the Advertisement, which declared that for interview, a candidate shall be shortlisted only on the basis of marks obtained by him in the domain knowledge and teaching skill through written competitive examination.

Mr. Kaushik, learned advocate for the appellants has submitted that there is a statutory provision for giving



weightage of marks for the services rendered on contract basis. It was the conscious decision of the State Government with a definite purpose to be achieved. This purpose would be rendered meaningless if Note-4 to the Advertisement i.e. shortlisting persons for interview only on the basis of academic/domain knowledge is allowed to be retained in the Advertisement. It heavily discounts the weightage on the past experience which, more often than not, is more important than mere technical domain knowledge.

He further submits that by prescribing a qualifying marks in the written examination, the domain knowledge of a candidate already stands tested. In that case, such a condition as prescribed in Note-4 ought not to have been introduced.

Lastly it has been submitted that the interpretation of the learned Single Judge, applying the principle of giving equal platform to new entrants, without any contractual experience, affirmed the decision of the Commission to call such persons for interview, who would cross the cut-off marks fixed by the Commission, which



would be based on the evaluation of the domain knowledge only may appear to be correct in the first blush but, on deeper analysis, would turn out to be specious.

Lastly it has been submitted that the learned Single Judge did not address himself to the issue that allowing Note No.4 to exist in the Advertisement amounted to a double filtration of the candidates which would adversely impact persons with experience.

Additionally it has been submitted that even though such prescription in the Advertisement may not breach any rule but, the overall objective of the State Government in granting weightage to past experience especially for jobs relating to teaching would be rendered completely otiose and meaningless and would not serve the common-weal.

As opposed to the aforementioned contentions, Mr. Pandey, learned counsel for the Commission, submits that the decision of the Commission to invite candidates for interview only on the basis of written examination is not at all unreasonable and does not violate any statutory provision. It cannot be, in any manner, be contemplated to



be a condition which would exclude experienced candidates or deny them of their experience of having worked on contractual basis, as they would definitely get the due weightage, if they are found to be proficient in the domain field.

Mr. Pandey has further submitted that in the Rules of Procedure of the Commission framed in the year 1996, the Commission has the authority to take a decision with respect to number of candidates to be called for interview, if there is no other dissonant note in the requisition by the State Government or in the Recruitment Rules.

An examination taking body like the Bihar Public Service Commission is an independent expert body which conducts the examination on the requisition of the State Department in the best possible manner.

One of the grounds raised by Mr. Kaushik against Note-4 in the Advertisement is that there are lesser number of applicants for the specialized post of Assistant Professor and therefore, there was no need for the Commission to fix such condition for calling persons for



interview.

In response to the aforementioned argument, Mr. Pandey asserts that on principle, the candidates are called for interview in the ratio of 2:5 for each of the category of candidates and therefore, there are every chances that persons attaining qualifying marks in the domain examination would be the persons who would be called for interview.

After having heard the learned counsel for the parties, we find that insertion of Note-4 no doubt is an extra test to which the experienced candidates have been put to but, considering that qualifying marks in the domain examination has been fixed by the Commission, there would be practically little or no chances of many experienced persons who would be entitled to the weightage of experience would be excluded.

No doubt, the domain knowledge in the subject is like wattle and daub for an incumbent to the post of Professors but, the research experience and past experience also form an important part to test the competence of a candidate.



Though the learned Single Judge has not taken note of this aspect of the matter *viz.* that with the qualifying marks already having been fixed by the Commission, Note-4 was an unnecessary impediment in the way of more experienced persons who would have to first excel in their domain knowledge in order to take advantage of the experience earned as contractual employees, which might be of some disadvantage to some, but looking at the entire scheme of things, it appears that with the qualifying marks and the Commission fixing minimum marks over and above which the candidates would be called for interview would dovetail into each other. If there is any spill-over, it would only be minor.

We have given our anxious consideration to the arguments advanced on behalf of the parties and we find that the strength of the argument that fresh entrants also should be given an equal platform with the experienced once makes the scale dip deeper in favour of the fresh entrants and thus in favour of Note-4 in the Advertisement.

We, thus reckon that the learned Single Judge was justified in employing the aforementioned logic in testing



the validity of Note-4 and we find no reason to interfere with the same.

The appeal stands dismissed.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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