

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.31 of 2021

In

Civil Writ Jurisdiction Case No.4504 of 2018

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1. Bihar Staff Selection Commission through its Chairman, P.O.-Veterinary College, Patna-14.
2. The Chairman, Bihar Staff Selection Committee, P.O.-Veterinary College, Patna-14.
3. The Secretary, Bihar Staff Selection Committee, P.O.-Veterinary College, Patna-14.

... .. Appellant/s

Versus

1. Priya Ranjan Kumar, Son of Ram Prakash Singh, Resident of Village-Rabhubanshi Bigha, P.O.-Arai, P.S. Daudnagar, District-Aurangabad.
2. Sushil Kumar, Son of Sri Narayan Yadav, Resident of Maharshi Mehi Nagar, Ward No. 5, P.O. and P.S. and District-Madhepura.
3. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
4. The Director in Chief, Health Services, Government of Bihar, Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 37 of 2021

In

Civil Writ Jurisdiction Case No.4504 of 2018

=====

1. The State of Bihar through the Principal Secretary, Deptt of Health, Govt. of Bihar, Patna.
2. The Director in Chief, Health Services, Government of Bihar, Patna.

... .. Appellant/s

Versus

1. Priya Ranjan Kumar Son of Ram Pravsh Singh Resident of Village-Raghubanshi Bigha, P.O. Arai, P.S. Daud Nagar, District- Aurangabad
2. Sushil Kumar S/o Sri Nayan Yadav Resident of Maharshi Nagar, Ward No.5 at P.O. and P.S. and District Madhepura.



3. The Staff Selection Commission through its Secretary, Post Veterinary College, Patna- 14.
4. The Chairman, Bihar Staff Selection Commission Post Veterinary College, Patna-14.
5. The Secretary, Bihar Staff Selection Commission, Post Veterinary College, Patna-14.

... .. Respondent/s

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Appearance :

(In Letters Patent Appeal No. 31 of 2021)

For the Appellant/s : Mr. Lalit Kishore, Sr. Adv.
Mr.Satyam Shivam Sundaram, Adv.

For the Respondent/s : Mr. Narayan Singh, Sr. Adv.
Mr.Prabhat Prasoon, Adv.

(In Letters Patent Appeal No. 37 of 2021)

For the Appellant/s : Mr. S.D. Yadav, AAG -9.
Mr.Prem Ranjan Kumar

For the Respondent/s : Mr. Narayan Singh, Sr. Adv.
Mr.Prabhat Prasoon, Adv.

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 07-04-2023

1. Heard Mr. Lalit Kishore, the learned Senior Advocate for the appellant / Bihar Staff Selection Commission in L.P.A. No. 31/2021 and Mr. S.D. Yadav, learned AAG -9 for the respondent /State in L.P.A. No. 37/2021. Mr. Narayan Singh, the learned Senior Advocate has contested both these appeals.



2. At the instance of respondent nos. 1 and 2, who were the writ petitioners in C.W.J.C. No. 4504 of 2018, a Bench of this Court vide order dated 25.09.2018 held that it was improper for the Commission not to have awarded 10 marks to them, even though they deserved the same on the strength of their having acquired higher degree of B.Sc. and M.Sc. Consequently, they were not selected and were thrown out of consideration.
3. The case in nutshell is that an advertisement was published for filling up 215 posts of X-ray Technicians.
4. Rule -6 of Bihar X-ray Technicians Cadre Rules, 2014 provides qualification for being appointed as direct recruit to the post of X-ray Technician. A candidate ought to have the minimum qualification of Intermediate in Physics, Chemistry and Biology with English and a Diploma in Medical Radiography from a Govt. recognized Institution. Rule 7 further provides the manner in which marks



shall be allotted under different heads of qualification which is 25 marks for Intermediate Degree, 10 marks higher degree of B.Sc. and M.Sc. and 25 marks for Diploma in Medical Radiography Course. For the experience of a candidate in Govt. Hospital in the State of Bihar, 25 marks are awardable.

5. The respondents herein had the basic minimum qualification and had also B.Sc. and M.Sc. degrees but they were not awarded 10 marks, keeping them out of the zone of consideration.
6. In the above-noted process of selection, no written examination was conducted and only on the basis of qualification and the application preferred by the aspirants, assessment / evaluation was made whereafter, the successful candidates were put to interview test. The process got completed in the year 2017 and all the posts were filled up.
7. When the respondents approached this Court vide C.W.J.C. No. 4504 of 2018 as noted above, after having come to know that they have not been



awarded 10 marks for the higher degrees which they possessed, the Commission as well as the State came up with the defense that 10 marks was not awardable to a candidate only having higher degree of B.Sc. or M.Sc. but higher degree in concerned subject namely Medical Radiology. A Govt. clarification by way of a Circular was also put up before the writ Court which clarified that those 10 marks are awardable only to a higher degree with connected subject of Radiography.

8. It has been pointed out to us by Narayan Singh, the learned Senior Advocate for the respondent nos. 1 and 2 that such Circular came after the appointment process was initiated. He, therefore, submits that it was desperate attempt on the part of the State as well as the Commission to any how justify their act, which ground was rejected by the learned Single Judge.

9. We have examined the X-ray Technician Cadre Rules of 2014; specially Rule 6 and 7 thereof which



provides for basic minimum qualification and the manner in which evaluation has to be made. The advertisement which was issued was in consonance with the requirement of the Rules which also specified the same educational qualification and the methodology of marking the aspirants. There is no dispute that the respondents herein have higher degree and that also in science subjects; but only on such illusory ground which has been noted above, 10 marks were not awarded to them.

10. Mr. Lalit Kishore, the learned Senior Advocate for the Commission has submitted that now with the process of selection having been completed and all seats having been filled up, any order passed in this appeal affirming the judgment of the learned Single Judge would only create chaos and it would be difficult to either create two posts for their consideration or revisit the entire process of selection. In that case, all those persons who have been selected about five years ago would also face



the threat of loosing their job.

11. Mr. S.D. Yadav, the learned AAG -9 for the State has also heavily relied upon that point but on being confronted that such Circular came only after the selection process had begun, abandoned that argument and stated that something ought to be done so that persons, who have already been appointed may not lose their job or that their selection, if at all they have the qualification and the competence, is seamless.

12. We have given our anxious consideration to the arguments advanced on behalf of the appellants. We find no reason to hold any different view than held by the learned Single Judge wayback on 25.09.2018. The rules of the selection process could not have been changed midway. That apart, even the rules under which the advertisement was taken out does not specifically circumscribe giving of 10 marks to higher degree only to persons having acquired such higher degree in Medical Radiography



and no other.

13. Responding to the arguments of the Commission as well as the State, we are constrained to observe that this appeal by both of them is hopelessly time barred as they have been filed after about two years. The explanation offered in the application seeking condonation of delay is also not convincing. However, to put an end to this litigation, we have entertained the afore-noted appeals.

14. It is for the Commission and State to evolve a method to comply with the judgment passed by the learned Single Judge. This Court can only suggest that in case posts are required to be created for accommodating the respondents, such requirement shall only be for respondents herein (writ petitioners) as opening it to every person would amount to covering the whole of the water front, in which case, multiplicity of litigation would go unchecked.

15. We say so for another reason that the appointment process has already been completed; all



vacancies filled up and five years have passed by since then.

16. Finding no merit in these appeals, they are dismissed. The parties are left to bear their own costs.

17. Interlocutory applications, if any, stands disposed of.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.04.2023
Transmission Date	N/A

