

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.415 of 2022

In

Civil Writ Jurisdiction Case No.22674 of 2019

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1. The Bihar Staff Selection Commission Patna through its Secretary, Patna.
2. The Chairman, Bihar Staff Selection Commission, Patna.
3. The Secretary, Patna.Bihar Staff Selection Commission,

... .. Appellant/s

Versus

1. Abhay Kumar Son of Sri Rajaram Paswan Resident of Village and Post Munjahara, P.S. Goh, District-Aurangabad.
2. Raj Kumar Suman Son of Sukhdeo Suman Resident of Sonudih, Town and Village Sonudih, P.S. Goradih, Dist. Bhagalpur.
3. Satyendra Kumar Son of Prabhu Nath Singh Resident of Village and Post Katra, P.S. Bheldi, Dist. Saran.
4. Sunita Kumari W/o Indu Kumar, Resident of Muzaffra, Bardih, P.S. Islampur, Dist. Nalanda.
5. Deepak Kumar Son of Mahabir Prasad Resident of Mohalla Ram Krishnapuri, Masumganj, P.O. and P.S. Bhagwan Bazar, Dist. Saran.
6. Nimish Kumar Nishta Son of Ravi Kumar Resident of Village Gokhulpur, P.O. Satang, P.S. Chandi, Dist. Nalanda.
7. Vijay Kumar Son of Baleshwar Singh Resident of Pansalwa, P.S. Beldaur, Distt. Bhagaria.
8. Mukesh Kumar Son of Ram Binay Singh Resident of Sadhpur, P.O. Sadhpur, P.S. Garkha, Dist. Saran.
9. Trilok Kumar Son of Jayram Vishwakarama, Resident of Kurjee Balupur, P.O. Sadaquat Ashram, P.S. Digha, Dist. Patna.
10. Santosh Kumar Suman Son of Bhupendra Prasad Yadav Resident of Village Navtoliya, P.O. Maheshua, P.S. Madhepura, Dist. Madhepura.
11. Rajesh Kumar BNaitha Son of Sri Brijmohan Baitha, Resident of Village-Chandpur, P.O. Jalalpur, P.S. Tarwara, Dist. Siwan.
12. Mani Bhushan Kumar Son of Nagendra Sah Resident of Village Baluhan, P.O. Sohilarampur, P.S. Hathauri, Dist. Muzaffarpur.



13. Amarendra Kumar Son of Jageshwar Pandit Resident of Village-
Gokhulpur, Anchal Chandi, Dist. Nalanda.
14. The State of Bihar through the Principal Secretary, Department of
Health, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Lalit Kishore, Sr. Adv. Mr.Satyam Shivam Sundaram
For the Respondent/State	:	Mr.S.D. Yadav (Aag9)
For Respondent Nos. 1 to 13	:	Mr. Sunil Kumar Pandey, 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

Re: Interlocutory Application No. 01 of
2022.

This Interlocutory Application has been filed for
condoning the delay in preferring the instant memo of
appeal.

For the reasons stated in the Interlocutory
Application, the delay in filing the present appeal is
condoned.

The Interlocutory Application No. 01 of 2022
stands allowed.



L.P.A. No. 415 of 2022.

1. Heard Mr. Lalit Kishore, the learned Senior Advocate for the appellant / Bihar Staff Selection Commission and the learned Advocate for the respondents.
2. At the instance of respondents, who were the writ petitioners in C.W.J.C. No. 22674 of 2019, a Bench of this Court vide order dated 05.04.2021 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 236 posts of Operation Theatre Assistants.
4. Rule -6 of Bihar O.T. Assistants Cadre Rules, 2014 provides qualification for being appointed as direct recruit to the post of O.T. Assistants. A



candidate ought to have the minimum qualification of Intermediate in Physics, Chemistry and Biology with English and a Diploma Course in O.T. Assistants 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 O.T. Assistants Course. For the experience of a candidate in Govt. Hospital in the State of Bihar, 25 marks are awardable and further 15 marks in Interview.

5. The respondents herein had the basic minimum qualification and had also Honours Degree in B.Sc. and M.Sc. 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.

7. When the respondents approached this Court vide C.W.J.C. No. 22674 of 2019, as noted above after having come to know that they have not been awarded 10 marks for the higher degree 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. M.Sc. but concerned subject namely O.T. Assistants diploma course. 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 higher degree with connected subject of O.T. Assistants diploma course.

8. It has been pointed out to us by the learned counsel for the respondents that such Circular came after the appointment process was initiated. He, therefore, submits that it was a 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 Bihar O.T. Assistants Cadre Rules, 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 in consonance with the requirement of the Rules also specify 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 subject but only on such illusory ground which has been noted above, the 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 over and all seats having been filled, 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 losing their job and, therefore, something ought to be done so that the 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.

11. 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 on 05.04.2021. 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 proscribe giving of 10 marks to higher degree only to persons having acquired such higher degree in O.T. Assistants diploma course.



12. Responding to the arguments of the Commission as well as the State, we are constrained to observe that this appeal is hopelessly time barred as it has been filed after about one year and four months. The explanation offered in the application seeking condonation of delay is also not convincing. However, to put an end to this litigation, we entertained the afore-noted appeal.

13. It is for the Commission and State to evolve the method to comply with the judgment passed by the learned Single Judge. This Court can only prescribe 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 open the water front in which case, multiplicity of litigation would go unchecked.

14. We say so for another reason that the appointment process has already been completed, all vacancies filled and five years have passed by since



then.

15. Finding no merit in the appeal, it is dismissed.

The parties are left to bear their own costs.

(Ashutosh Kumar, J)

(Harish Kumar, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.04.2023
Transmission Date	N/A

