

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12137 of 2023

1. Santosh Kumar, Son of Laxmi Narayan, Resident of Mohalla - Shastri Nagar, Bharti Niketan School, Near Chitragupta Mandir Kadhi Bhandar Chowk, P.O. - Ramna P.S. - Minthanpura, Distt. - Muzaffarpur, Bihar - 842002.
2. Rajiv Ranjan, Son of Rambriksh Choudhary, Resident of Village - Khajoor Bana, Nanmuhiya, P.O. - Mahendrua, P.S. - Sultangaj, Distt. - Patna, Bihar.
3. Ambedkar Prasad, Son of Harchu Das, Resident of village - Bari Bishahar, P.O. - Baraat, P.S. - Barah, Barhat, Distt. - Banka, Bihar.
4. Om Prakash Sharma, Son of Shio Shankar Sharma, Resident of Village and P.O. - Bhagwatpur, P.S. - Tariya, District - Saran, Bihar.
5. Rina Kumari, W/o Raju Prasad Sukl Baidya, Resident of Village- Sahora, Anandpur, P.O. - Anandpur, P.S.- Ashok Paper Mill, District- Darbhanga, Bihar.
6. Niket Anand, S/o Ghanshyam Singh, Resident of Azad Chowk, Gangajala, Ward no. - 15, Near by Saket Anand, J.E. Kahara, P.O. Sharsha, P.S. Sharsha Sadar District - Saharsa, Bihar.
7. Sanatan Kumar, S/o Rameshwar Das, Resident of Village and P.O. - Phulwaria, Danauli, P.S. - Baliya, District - Begusari, Bihar.

... .. Petitioner/s

Versus

1. Union of India through the Director General of Employment and Training, Ministry of Labour and Employment Government of India, New Delhi.
2. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Labour Department, Employment and Training Government of Bihar, Patna.
4. The Director, Directorate of Employment and Training (Training Department) Niyojan Bhawan, Bailey Road, Patna, Bihar.
5. Bihar Technical Service Commission, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amarnath Tripathi, Sr. Adv
Md. Najmul Hodda, Adv



For the State : Ms. Bandana Singh, AC to SC-21
For the Commission : Mr. Nikesh Kumar, Adv

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 06-09-2023

1. The matter has been taken up today on motion being made for urgent listing.

2. Heard learned senior counsel for the petitioners. Learned counsel for the State as well as learned counsel for the respondent-Bihar Technical Service Commission (hereinafter referred as “Commission”) have also appeared and made submissions.

3. The petitioners have assailed the process of recruitment of Instructors for ITIs. The Advertisements bearing Nos. 07 to 036 of 2023 have all been assailed by way of the instant writ proceedings.

4. At the very outset, this court would record that the petitioners have not stated that they are applicants pursuant to the advertisement/s challenged by them. They have also not stated that they are prejudiced by any specific term in the advertisement/s.

5. Learned senior counsel for the petitioners has submitted that the advertisement/s is bad since it gives preferential treatment to Craft Training Instructors (hereinafter



referred as “CTI”) certificate holders issued under the Crafts Instructors Training Scheme (hereinafter referred as “CITS”). Placing reliance on Annexure-6 to the writ petition, he submits that the Government of India has issued direction making CTI certificate issued under the CITS an essential qualification and directing all State Governments to amend their respective service rules to include CTI certificate issued under the CITS as an essential qualification. The advertisement/s, however, fall short of compliance with the Government of India’s directive contained in the letter dated 02nd February, 2022 (Annexure-6 to the writ petition). This directive is binding upon the State Government under Article 73 of the Constitution of India read with entry no. 65 and 66 of the Union List. Other States, namely State of Uttar Pradesh, has kept CTI certificate issued under the CITS as an essential qualification. In the State of Bihar, however, the same has not been done. The result is that trained and untrained, who form separate and distinct class, are sought to be clubbed together.

6. Learned senior counsel for the petitioners has also referred to decision of this court in the case of ***Ranjan Kumar & Ors. vs. the Union of India & Ors.*** arising out of ***CWJC No. 7890 of 2013*** and analogous case wherein this court directed as



follows:-

“9. Since the above Rules has been put in place as per the gazette notification dated 25th July, 2013, the previous advertisement contained in Annexure- 6 is hereby quashed. Writ applications are allowed. The State is directed to issue a fresh advertisement in consonance with the requirements laid down in Bihar Industrial Training Instructions Cadre Rules, 2013, which should be made in conformity with the requirements laid down by NCVT as to the qualification of CTI.

10. So far as the issue of all such candidates, who may have become overage during the long gap of initiation of process of such selection or appointment, that is a matter of policy which ought to be considered by the State Government as a one time measure, for after all, such candidates can be expected to have some kind of a legitimate expectation in matter of giving an opening, for public employment, under the State.

11. In view of broad parameters, which has been considered and decided in CWJC No.7890 of 2013, no separate order as such is required to be passed in CWJC no.3881 of 2012.

Writ applications are allowed”

7. Learned counsel for the respondent-Commission has drawn attention of the court towards one of the advertisements, the terms of the other being the same, to submit



that the qualifications include CTI certificate issued under the CITS. The note below the qualifications further stipulates that applicants who do not possess this certificate of CTI issued under the CITS will be required to acquire the same within three years from their date of joining and failure to acquire such qualification may also entail termination of their services. The note reads as follows:-

"नोट:- वैसे आवेदक जो विभिन्न व्यवसायों के लिए यथाविहित अधिमान्य अर्हता नहीं रखते हैं, वे भी नियुक्ति हेतु आवेदन कर सकेंगे परन्तु यदि उनका चयन हो जाता है, तो उन्हें कार्यभार ग्रहण करने की तिथि से तीन वर्ष के अन्दर अपने व्यवसाय में सी० आई० टी० एस० का कोर्स पूर्ण करना होगा और उन्हें उक्त अवधि के लिए अवकाश प्रदान किया जाएगा। यदि कोई व्यक्ति अपने नियंत्रण के परे कारणों से उक्त कोर्स पूरा करने में असमर्थ हों तो उसे उक्त पाठ्यक्रमों को पूरा करने के लिये एक वर्ष और अनुमान्य किया जाएगा। यदि कोई व्यक्ति उक्त अवधि के भीतर सी० आई० टी० एस० प्रमाण-पत्र प्राप्त करने में असमर्थ रहता है तो उसका प्रथम वेतन वृद्धि अनुमान्य नहीं किया जाएगा तथा सरकार उसकी सेवा समाप्ति पर विचार कर सकती है, जिसके लिये संबंधित व्यक्ति का कोई दावा मान्य नहीं होगा।"

8. It is thus submitted that the grievance raised by the petitioners regarding non-implementation of the Government of India's directive is unfounded. It is also submitted that the order passed in *CWJC No. 7890 of 2013* has been complied and recording such compliance, the contempt proceedings arising of



the said writ petition, in ***MJC No. 3190 of 2018***, copy of which is Annexure-8 to the writ petition, have also been disposed of by recording compliance, which reads as follows:-

“Now a supplementary show cause has been filed on behalf of the opposite party no.3 and the petitioner has taken this Court to paragraph-7 which read as follows:

"That Bihar Technical Service Commission, Patna requested the General Administration Department to include the name of post "Trade Instructor" in the list related appointment of the Technical Service Commission and also requested to amend the appointment rules, vide its letter no. -07 dated 09.01.2020. Thereafter, the General Administration Department issued notification no. 6883 dated 03.08.2020 by which the aforesaid post of Trade Instructor was included in the list related to appointment by the Bihar Technical Service Commission. Accordingly, Bihar Technical Service Commission appointment -procedure (Amendment) Rules, 2021 has been issued vide Notification no.5214 dated 03.05.202".

It is his further submission that with the help of para-11 that the last date for applying online application has been rescheduled from 4.7.2023 to 3.8.2023 relating to revised



Advertisement No. 07 of 2023/36/2023.

In that view of the matter and the incorporation in his supplementary show cause showing that the petitioner is eligible to appear pursuant to the advertisement and only if she/they are selected will have to complete C.I.T.S. course in their trade within three years from the date of joining for which they will be granted leave.

This Court is convinced that the order has been complied with.

The MJC No. 3190 of 2018 stands disposed of.”

9. The petitioners have not specified how they are aggrieved by any terms of the advertisement/s that they seek to challenge. It is also not their case that they are applicants pursuant to the advertisement/s. They, therefore, cannot be considered as an aggrieved person and challenge at their instance may not be entertained by this court.

10. Considering the submissions of rival parties, this court is in agreement with the submissions advanced by learned counsel for the respondent-Commission. The advertisement/s appears to be in compliance with the Government of India's directive dated 02.02.2022. The same is evident from the note below the qualification clause in the advertisement/s, taken note of above. The order of this court in **CWJC No. 7890 of 2013**



also has been complied with as is evident from order passed in ***MJC No. 3190 of 2018***. The petitioners have not stated as to how they are aggrieved by the advertisement/s. It is also not stated that they are applicants pursuant to the advertisement/s assailed in the instant proceedings.

11. The petitioners have not made out a case so that it may be considered that they are aggrieved by the advertisement/s and, therefore, have no locus to assail the advertisement. In this regard, the court would refer to decision of the Hon'ble Apex Court in the case of ***Vishal Ashok Thorat & Ors. vs. Rajesh Shrirambapu Fate & Ors*** reported in ***(2020) 18 SCC 673*** wherein respondent no.1 was not an applicant pursuant to the advertisements, the Hon'ble Apex Court at paragraph-40 held as follows:-

“40. Although, the learned counsel for the parties have made elaborate submissions on the validity of Rule 3(iii) proviso, Rule 3(iv) proviso and Rule 4 but in the facts of the present case, where the writ petitioner i.e. Respondent 1 was held by the High Court not competent to challenge Advertisements Nos. 2 and 48 of 2017, the High Court committed error in proceeding to examine the validity of the 2016 Rules. The challenge to the 2016 Rules in the background of the present case ought not to have been allowed to be raised at the instance of the writ petitioner. Respondent 1, who did not participate in the selection and the High Court had specifically



rejected the entitlement of Respondent 1 to challenge Advertisements Nos. 2 and 48 of 2017, as held in para 49 of the judgment, permitting him to challenge the validity of the Rules in reference to the same advertisements is nothing but indirectly challenging something which could not be challenged directly by Respondent 1. The High Court in the facts of the present case, where Respondent 1 was not allowed to challenge the advertisements or the select list should not have been allowed to challenge the 2016 Rules insofar as the selection in question was concerned. The writ petition filed by Respondent 1 was not styled or framed as PIL. It is well settled that with regard to service jurisprudence, PIL are not entertained.”

12. This court would also take note of the fact that the last date for filling up of application forms lapsed long back, i.e., on 03.08.2023. The petition was filed after the last date, i.e., on 16.08.2023.

13. Writ petition is thus devoid of merit and dismissed.

(Madhuresh Prasad, J)

SUMIT/
SHASHANK-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.09.2023
Transmission Date	NA

