

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.507 of 2022

In

Civil Writ Jurisdiction Case No.11127 of 2015

=====

Bimal Kishore Singh, Male, aged about 47 years, Son of Late Baleshwar Singh, resident of Outhouse Bunglow No. 11, Near Kisanghar, P.O. and P.S. Pusa, Dr. Rajendra Prasad Central Agricultural University, through the Registrar, Pusa, Samastipur, Bihar.

... .. Appellant/s

Versus

1. Dr. Rajendra Prasad Central Agircultural University through the Registrar, Pusa, Samastipur, Bihar.
2. The Vice Chancellor, Dr. Rajendra Prasad Central Agricultural University, Pusa, Samastipur, Bihar.
3. The Registrar, Dr. Rajendra Prasad Central Agricultural University, Pusa, Samastipur, Bihar.
4. The Director Administration, Dr. Rajendra Prasad Central Agricultural University, Pusa, Samastipur, Bihar.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Ashish Giri, Advocate Ms. Riya Giri, Advocate Mr. Sumit Kumar Jha, Advocate
For the Respondent/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Chandra Mohan Singh, Advocate
For State	:	Mr. Sarvesh Kumar Singh, AAG 13 Mr. Rajat Kumar Tiwary, AC to AAG 13

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 24-01-2023

Re: I.A. No. 1 of 2022

Heard I.A. No. 1 of 2022 for condonation of delay in
filing the present L.P.A.



2. For the reasons stated in the application and affidavit, delay of about 35 days in filing the present L.P.A. is condoned. I.A. No. 1 of 2022 stands allowed.

Re: I.A. No. 2 of 2022

3. I.A. No. 2 of 2022 for impleading State as a party is not pressed by the learned counsel for the appellant. Accordingly, I.A. No. 2 of 2022 stands dismissed as withdrawn. Consequently, respondent No. 5 - The State of Bihar through the Principal Secretary, Agriculture Department, Government of Bihar, Patna which has been arrayed in the present L.P.A. as a party is deleted from the L.P.A. proceedings.

4. Learned counsel for the appellant is hereby directed to carryout necessary amendment in the cause title.

5. In the instant appeal, appellant has assailed the order of the learned Single Judge dated 18.07.2022 passed in C.W.J.C. No. 11127 of 2015. The appellant was a candidate for recruitment to the post of Fieldman pursuant to the advertisement issued on 27.07.2011. Prescribed qualification in the advertisement reads as under:



राजेन्द्र कृषि विश्वविद्यालय, बिहार, पूसा, समस्तीपुर

विज्ञापन सं.-01/रा.क.वि., पूसा दिनांक: 27.07.2011

सूचना

भारत सरकार के विश्व वैश्व, राजेन्द्र कृषि विश्वविद्यालय, पूसा के अन्तर्गत संचालित कन्वेल्वेन्सियल वॉलेंट ऑफ कलेजियेशन योजना में फिलडमैन के निकुल ही असाधारण रिक्त पदों पर सीधी नियुक्ति हेतु स्थिति प्रपत्र में आवेदन पत्र प्रेषित किये जाते हैं। आवेदन प्रपत्र अधोस्तरी के कार्यालय से किसी भी कार्य दिवस में 10 बजे पूर्वहन से 4.00 बजे अपराह्न के बीच सामान्य कोटी, पिछड़ा वर्ग एवं आर्यत पिछड़ा वर्ग के उम्मीदवारों के लिए रु. 250/- और अनु. जाति/अनु. ज. जाति के लिए रु. 100/- बैंक-ड्राफ्ट देकर प्राप्त कर सकते हैं। बैंक ड्राफ्ट सी.एन.डी., अ.ए.ए.यु., पूसा (कोड सं.-4512) एवं ए.ए.सी. समस्तीपुर (कोड सं. 00174) में भुगतान एवं निवेदन, राजेन्द्र कृषि विश्वविद्यालय, पूसा (Comptroller, Rajendra Agricultural University, Pusa) को देय होना चाहिए। डाक द्वारा आवेदन पत्र प्राप्त करने के लिए स्थल का पता लिखा हुआ 22x10 से.मी. अक्षर का लिफाफा जिस पर 22 रुपये का डाक टिकट चिपकाया हुआ एवं बैंक ड्राफ्ट के साथ भेजना अनिवार्य होगा। भरा हुआ आवेदन पत्र अधोस्तरी के कार्यालय में निर्दिष्ट डाक द्वारा दिनांक 25.08.2011 के अग्राह 4.00 बजे पूर्व पहुँच जाना चाहिए। निर्धारित तिथि एवं समय के बाद एवं अतुरे, अस्मत् तथा श्रुत पर हुए आवेदन पत्र पर किसी प्रकार का विचार नहीं किया जाएगा। बैंक ड्राफ्ट द्वारा जमा राशि को वापसी किसी भी परिस्थिति में जमा नहीं की जायेगी। आवेदन पत्र के साथ सैद्धांतिक योग्यता, अक्षांश, जन्म प्रमाण पत्र, अनुभव प्रमाण पत्र एवं जिलाधिकारी द्वारा निर्गत या प्रसिद्धाधिकृत जाति प्रमाण पत्र (अर्थात् वर्ग के लिए) को अनिवार्यतापूर्वक साथ में संलग्न करना अनिवार्य है। आवेदकों की विजयता उम्र सीमा 18 वर्ष एवं अधिकतम उम्र सीमा दिनांक 25.08.2011 को अनाधिकृत वर्ग (पुरुष) कर 37 वर्ष, अनाधिकृत वर्ग महिला पिछड़ा वर्ग/अर्थात् पिछड़ा वर्ग (पुरुष एवं महिला) का 40 वर्ष, अनु. जाति एवं अनु. जन जाति (पुरुष एवं महिला) 42 वर्ष एवं राजेन्द्र कृषि विश्वविद्यालय, पूसा में कार्यरत अकादमिक कर्मियों के लिए 50 वर्ष से अधिक नहीं होना चाहिए।

पद का पूर्ण विवरण

1. पद का नाम :-	फिलडमैन
2. जेसनमान :-	रु. 3050-4590/- (अनुसूचित)
3. पदों की संख्या :-	45 (अनु.-17, अ.वि.व.-11, अनु.जाति-09, पि.व.-05 वि.व. (महिला)-02 एवं अनु.जाति-01)
4. शैक्षणिक योग्यता :-	आई.एस.सी./आई.एस.सी.(एजी.) साथ ही एक वर्ष का डाटा कलेक्शन का अनुभव।

नोट :-

- नियुक्त उम्मीदवारों की सेवायें योजना की समिति के साथ स्वतः ही समाप्त हो जायेंगी।
- विश्वविद्यालय के पदों को बढ़ाने घटाने का समाप्त करने, परनाम, योग्यता, वेतनमान बदलने का अधिकार सुरक्षित रहेगा। इसके लिए कोई प्रकार का मान्य नहीं होगा।
- नियुक्त व्यक्ति विश्वविद्यालय के अधिकृत क्षेत्र में कहीं भी स्थानान्तरित/परिवर्तित किये जा सकते हैं।
- परीक्षा/साक्षात्कार के लिए कोई सजा भत्ता देव नहीं होगा।
- विश्वविद्यालय द्वारा निर्गत आवेदन पत्र ही मान्य होगा, अन्य प्रतिलिपि नहीं मान्य होगी।
- बैंक ड्राफ्ट विज्ञापन के बाद की तिथि का ही स्वीकार किया जाएगा।
- सुरक्षित कोटी के अधिकारों को जिलाधिकारी द्वारा निर्गत या उनके द्वारा प्रसिद्धाधिकृत जाति प्रमाण पत्र समर्थित करना होगा अन्यथा उन्हें आवेदन का स्वीकार नहीं मिलेगा।

कुलपति के आदेश से
हो/-
प्रभारी पदधिकारी (नियुक्ति)

6. Reading of the advertisement, it is crystal clear that last date of submission of application is 25.08.2011 with reference to experience certificate produced by the appellant dated 01.08.2003. Appellant had participated in the process of selection and appointment to the post of Fieldman. The selecting and appointing authority proceeded to select the appellant and order of appointment was issued on 06.05.2014. Thereafter, they have noticed that experience certificate furnished by the appellant was



not in respect of data collection as is evident from the advertisement read with the experience certificate dated 01.08.2003 issued by the Massina Agro Agency. In this regard, two show cause notices were issued to the appellant by the respondent – University. Since, they were not satisfied with the explanation of the appellant, in the result, proceeded to take impugned action which was subject matter of C.W.J.C. No. 11127 of 2015 and it was decided against appellant on 18.07.2022. Hence the present appeal.

7. Learned Senior counsel Mr. Y.V. Giri for appellant vehemently contended that selecting and appointing authority – University failed to apprise certificate dated 16.01.2014 issued by the Faculty of Basic Science and Humanities, Rajendra Agricultural University, Bihar, Pusa, Samastipur. Certificate dated 16.01.2014 reads as under:

**“FACULTY OF BASIC SCIENCE AND HUMANITIES
RAJENDRA AGRICULTURAL UNIVERSITY, BIHAR
PUSA (SAMASTIPUR) 848 125**

Phone: 06274-240272 (O)

Email – deanfbshpusa@yahoo.co.in

Fax: 06274-240255/240266

Dr. V.K. Shahi
Dean, FBS&H &
Principal Investigator

No.595/FBS&H,RAU, Pusa
Date: 16.01.2014



TO WHOM IT MAY CONCERNED

This is to certify that **Sri. Bimal Kishore Singh**, S/o late Baleshwar Singh has been working as **Computer Operator-cum-Laboratory Helper** in AMAAS Project, Faculty of Basic Sciences and Humanities, Rajendra Agricultural University, Bihar, Pusa Samastipur since 06.09.2007 till today. He is doing Computer typing, Soil exploration, data collection and other field related work of AMAAS Project.

To the best of my knowledge and belief he bears a good moral character, I wish him every success in life.

Sd/-

(V.K. Shahi)

Faculty of Basic Sciences & Humanities
R.A.U. Pusa (Samastipur)”

8. When compared to first experience certificate dated 01.08.2003 and in the later certificate dated 16.01.2014 experience of data collection has been shown. On the other hand, in the earlier experience certificate dated 01.08.2003, there is no iota of word ‘data collection experience’. Learned counsel for the appellant submitted that no doubt certificate is belated, at the same time prior to 27.07.2011 advertisement, the appellant had the experience in data collection. Therefore, the appellant has not played fraud in order to obtain selection and appointment to the post of Fieldman. In this regard, learned counsel for the appellant relied on two decisions of the Apex Court. One is that there is no fraud; the other one is experience. These decisions are: (i) **Shri**



Krishnan vs The Kurukshetra University reported in (1976) 1

SCC 311 (Paragraph Nos. 6, 8, 10) reads as under:

“6. Mr Sibal, learned Counsel for the appellant submitted two points before us. In the first place it was argued that once the appellant was allowed to appear at LL.B. Part II examination held on May 19, 1973 his candidature could not be withdrawn for any reason whatsoever in view of the mandatory provisions of clause 2(b) of the Kurukshetra University Calendar, Vol. I, Ordinance 10 under which the candidature could be withdrawn before the candidate took the examination. Secondly it was argued that the order of the university was mala fide because the real reason for cancelling the candidature of the appellant was the insistence of the District Education Officer that the appellant should not have been admitted to the Law Faculty unless he had obtained the permission of his superior officers. In order to appreciate the first contention it may be necessary to extract the relevant portions of the statute contained in Kurukshetra University Calendar, Volume I, Ordinance 10. Clause 2 of this ordinance runs as follows:

“2. The following certificates, signed by the Principal of the College/Head of the Department concerned, shall be required from each applicant:—

(a) that the candidate has satisfied him by the production of the certificate of a competent authority that he has passed the examinations which qualified him for admission to the examination; and

(b) that he has attended a regular course of study for the prescribed number of academic years.

Certificate (b) will be provisional and can be withdrawn at any time before the examination if the applicant fails to attend the prescribed course of lectures before the end of his term.”

The last part of this statute clearly shows that the university could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the university to withdraw the candidature of the



applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear. It was, however, submitted by Mr Nandy, learned Counsel for the respondent that the names of the candidates who were short of percentage were displayed on the notice board of the college and the appellant was fully aware of the same and yet he did not draw the attention of the university authorities when he applied for admission to appear in LL.B. Part II examination. Thus the appellant was guilty of committing serious fraud and was not entitled to any indulgence from this Court.

8. As regards the second point that the order was passed mala fide, it is difficult to find any evidence of mala fides in this case. The order suffers from yet another infirmity. The annexures filed by the appellant and the respondent as also the allegations made in the counter-affidavit clearly show that there were series of parleys and correspondence between the District Education Officer and the respondent in the course of which the respondent was being persuaded, to the extent of compulsion, to withdraw the candidature of the appellant because he had not obtained the permission of his superior officers. Mr Nandy appearing for the respondent has not been able to show any provision in the statutes of the university which required that the candidates attending the evening law classes who are in service should first get the prior permission of their superior officers. We have also perused the university statute placed before us by Counsel for the appellant and we do not find any provision which could have afforded justification for the respondent to cancel the candidature of the appellant on the ground that he had not obtained the previous permission of his superior officers.

10. Moreover, the stand taken by the respondent that as the appellant did not get the requisite permission from his superior officers, therefore he was not allowed to appear at the examination, does not merit consideration, because the impugned order does not mention this ground at all and it was not open to the respondent to have refused admission to the appellant to LL.B. Part III or for that matter to refuse permission to appear at the examination on a ground which was not mentioned in the impugned order.”



(ii) ***Chairman, V.O. Chidambaranar Port and Others***
vs. Capt Paul Nadar Bennet Singh reported in (2019) 2 SCC 654
(Paragraph No. 9) reads as under:

“9. It is to be pointed out that in the advertisement it was not indicated that the candidate should have a certificate of competency issued by the authorities which are recognised by the Government of India. In the case of the respondent, Tuticorin Port Trust had sent a letter to the Ministry of Shipping dated 29-9-2008 stating that the respondent is in possession of certificate of competency issued by the Maritime Authority of Singapore and requesting to issue a positive clarification which may help the appellants to engage the respondent as Pilot in the appellants' Port on a regular basis. The said letter reads as under:

“However, a clarification was sought from Nautical Advisor on the validity of his certificate, who in turn affirmed that Singapore Certificate is not accepted by Indian Administration under Reg.1/10 of STCW 95.

Capt. Paul Nadar Bennet Singh is in possession of qualification of MBA (Shipping and Port Management), Master of Human Resource, Advanced Diploma in Maritime Transportation and Master of Science (MS) in Counselling and Psychotherapy. He has a record of Sea Service as Master Mariner at different spells from 9-10-2003 to 22-12-2007. After his appointment as Pilot in this Port he is being provided with necessary training so as to acquire knowledge in handling ships in the Port Waters. By virtue of his experience in foreign-going vessel, he is having high knowledge in the shipping operations and his performance in the field is apparently excellent.

It is, therefore, requested that taking into account the factual position as brought out in Paras 2 and 3 above, to issue a positive clarification, which may help to engage, Capt. Paul Nadar Bennet Singh as Pilot in this Port on a regular basis, by accepting the competency certificate issued by the Maritime Authority of Singapore (a Commonwealth country).”



9. The respondent - University resisted the aforesaid contentions and submitted that there is no infirmity in the impugned action of the University read with the order of the learned Single Judge dated 18.07.2022 passed in C.W.J.C. No. 11127 of 2015. Cited decisions do not assist the case of the appellant, hence, no interference is called for in the present L.P.A.

10. Heard learned counsels for the respective parties.

11. Core issue involved in the present appeal is whether the appellant had data collection experience as on 25.08.2011 or not with reference to the last date prescribed for submission of application to the post of Fieldman pursuant to the advertisement dated 27.07.2011. Undisputed facts are that appellant was a candidate for recruitment to the post of Fieldman pursuant to the advertisement dated 27.07.2011 and the last date of submission of application is 25.08.2011. During the process of selection and appointment, appellant had furnished certificate issued by the Massina Agro Agency dated 01.08.2003. Perusal of the certificate, it is evident that there is no experience in respect of data collection. Thereafter, respondent – University noticed error in the certificates issued in favour of the appellant dated 01.08.2003 and 26.03.2011 issued by the Rajendra Prasad Central Agricultural University. Both the certificates are not relating to experience in



data collection. When the show cause notice was issued in respect of appellant was not having experience in data collection, the appellant must have approached the University in obtaining certificate in the month of January, 2014. To that effect, a certificate has been issued on 16.01.2014 indicating that appellant had experience of data collection. The later certificate relating to experience in data collection as on 25.08.2011 is not entertainable by the selecting and appointing authority for the reasons that 25.08.2011 is cut-off date for the purpose of age, qualification and other issues. Therefore, experience certificate dated 16.01.2014 cannot be accepted by the University for the post of Fieldman pursuant to the advertisement dated 27.07.2011.

12. Apex Court in the case of *Union of India and others vs. Mahendra Singh* reported in **2022 SCC Online SC 909** held that invariably candidates were required to strictly adhere the conditions imposed in the advertisement. If there is any deviation, in such an event candidature was required to be cancelled. The Apex Court decision is squarely applicable to the case in hand.

13. Learned counsel for the appellant relied on two decisions (i) *Shri Krishnan vs The Kurukshetra University* reported in (1976) 1 SCC 311; (ii) *Chairman, V.O. Chidambaranar Port and Others vs. Capt Paul Nadar Bennet*



Singh reported in **(2019) 2 SCC 654**. The aforesaid decisions are relating to no fraud. The University has not raised any issue that the appellant has played fraud, therefore, the cited decision **(1976) 1 SCC 311** in the case of *Shri Krishnan vs The Kurukshetra University* have no assistance to the case in hand. Another decision *Chairman, V.O. Chidambaranar Port and Others vs. Capt Paul Nadar Bennet Singh* reported in **(2019) 2 SCC 654**. cited on behalf of the appellant do not assist his case for the simple reason that later decision of the Apex Court reported in **2022 SCC Online SC 909** in respect of candidature instruction which is required to be adhered strictly would cover the issue involved in the present case. Further, no sympathy could be available to the appellant for the reasons that advertisement is crystal clear that what was the qualification prescribed for the post of Fieldman. If the appellant fails to furnish relevant certificate in respect of data collection, even though he had experience of data collection in terms of the certificate issued on 16.01.2014, at the same time 16.01.2014 certificate cannot be accepted by the selecting and appointing authority as it is beyond the last date 25.08.2011 which is crucial date for the purpose of determining qualification, age and experience.



14. In the light of these facts and circumstances, the appellant has not made out a case so as to interfere with the order of the learned Single Judge dated 18.07.2022 passed in C.W.J.C. No. 11127 of 2015. Accordingly, present L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.02.2023
Transmission Date	NA

