

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15325 of 2022

1. Heena Naz Daughter of Abdil Hannan, Resident of Sir Sayed Colony Ward no.02, P.S.-Araria District-Araria.
2. Aditi Daughter of Purnima Madhukar and Late Sardanand Madhukar, Resident of Khabra Urf Kiratpur Gurdas P.S.-Khabra District-Muzaffarpur.
- Petitioner/s

Versus

1. The Bihar Public Service Commission Patna, through Registrar, Bihar.
2. The Chairman, Bihar Public Service Commission, Patna.
3. The Registrar, Bihar Public Service Commission, Patna.
4. The Joint Secretary Cum Examination Controller, Bihar Public Service Commission, Patna.
- Respondent/s

with

Civil Writ Jurisdiction Case No. 17276 of 2022

Ankita D/o Late Anil Kumar A/37, Housing Colony, Kankarbagh P.O.-Lohianagar, P.S.- Kankarbagh, District- Patna, Town- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, the Government of Bihar Secretariat Building, Patna-80001
2. The Bihar Public Service Commission, through its Chairman, the Government of Bihar, Bihar Public Service Commission Building, 15, Jawaharlal Nehru Marg Bailey Road, Patna-800001.
3. The Examination Controller, Bihar Public Service Commission, the Government of Bihar, Bihar Public Service Commission Office-Building, 15, Jawaharlal Nehru Marg Bailey Road, Patna-800001.
4. The Secretary-cum-Legal Remembrance, the Government of Bihar Department of Law and Justice, Old Secretariat, Patna.
- Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 15325 of 2022)

For the Petitioner/s : Mr.Md. Ziaul Quamar, Adv.
Mr. Manish Kumar, Adv.

For the BPSC : Mr.Sanjay Pandey, Adv.
Mr. Nishant Kumar Jha, Adv.

(In Civil Writ Jurisdiction Case No. 17276 of 2022)

For the Petitioner/s : Mr.Ravi Shankar Ganguli, Adv.
Mr. Subodh Kr. Barnwal, Adv.

For the State : Mr.Gyan Prakash Ojha (GA7)

For the BPSC : Mr. Sanjay Pandey, Adv.
Mr. Nishant Kumar Jha, Adv.



**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 19-04-2023

The two writ petitions viz. CWJC No. 15325 of 2022 (Heena Naz & Another) and CWJC No. 17276 of 2022 (Ankita) have been taken up together and are being disposed of by this common judgment.

In CWJC No. 15325 of 2022 (Heena Naz & Another), the candidature of the two petitioners, one of EBC Category and the other of EWS Category respectively, have been rejected on the ground that they have made a wrong disclosure while registering themselves for depositing the fee and making on-line application for being considered for appointment to the post of Civil Judge (Junior Division) in connection with 31st Bihar Judicial Services Examination.

The writ applications were filed challenging the result published by the Bihar Public Service Commission (hereinafter called 'the Commission') as regards their candidature.

It was submitted on behalf of the writ petitioners that the advertisement issued by the Commission clearly



specified that an aspirant was required to annex the certificates of the Institution regarding their having passed the LLB Examination. However, while clarifying the aforementioned requirement, it was further provided in the aforesaid advertisement that at the time of interview, if the original certificates were not produced, it would put a cloud on the candidature of such candidate and, in that event, the decision of the Commission shall be final.

With respect to basic academic qualification making any candidate eligible for appearing in such examination, it was further provided that the certificate/mark-sheet of law or equivalent degree must be produced along with the on-line application form, the last date of filing such application form being 13.04.2020.

Clause 7 of the aforesaid advertisement further provides the time-line for registration; for depositing fee; and for filing on-line application forms. The dates of registering oneself; of depositing fee and of filing on-line application form was extended and finally the last date for registration was fixed on 31.08.2020; for depositing of fee to 05.09.2020 and for filing on-line application form to 12.09.2020.



Both the writ petitioners in CWJC No. 15325 of 2022 had obtained the degree of law from Aligarh Muslim University on 09.09.2020 i.e. prior to the last date of filing up the on-line application form.

The candidature of the petitioners was rejected by the Commission on the ground that while registering oneself, it was necessary for a candidate to declare that he had the requisite qualification for appearing in the 31st Judicial Service Examination, which necessitated a degree of law from the recognized university.

On the last date for registration, admittedly both the petitioners did not have a law degree. Nonetheless, they had appeared in the examination and were expecting their results and resultant certificate from the University came to them only on 09.09.2020.

Mr. Sanjay Pandey, learned counsel for the Commission has contended that a bare reading of the clauses of the advertisement makes it very clear that the conditions stipulated therein have been made mandatory which could not have been derogated from or else it would open a flood gate of claims and counter claims.



The manner in which the conditions have been stipulated clearly spell out that those conditions are mandatory, specially with respect to the qualification and the time limit within which such qualifications have been obtained.

With clarity, it was urged by Mr. Pandey that it has been provided in the advertisement that the academic certificate regarding eligibility must be of a date which anterior to the date when registration is to be made by the candidate.

Thus even if it is assumed, it has been argued, that the petitioners had valid law degree from a recognized university but, the statement in the registration form about their eligibility is incorrect as the LL.B certificate was obtained by the petitioners only after they had registered themselves. Had they made a correct disclosure while registering themselves as candidates, their candidature would have been rejected in the first instance as they would not have been eligible at the threshold.

It is quite fortuitous that because of the onset of Covid-19 Pandemic, the dates for registration; for depositing fee prior to filing of the online application form were extended but, the requirement under the advertisement remained the



same viz. the certificate must have been obtained prior to the date when registration was made by respective candidates.

The learned counsel for the petitioners, on the other hand, has submitted that the insistence of the Commission on such technicality was highly unwarranted and uncalled for in the circumstances. It is not the case of the petitioners having made any wrong representation with respect to their eligibility. All that has gone against them is that the certificate was granted by the University on 09.09.2020, which though was before the last date for filing the online application form but not before the last date for registering themselves as aspirants for the examination. In support of the aforesaid contention, learned counsel for the petitioner has relied upon some of the judgments of the Supreme Court of yesteryear, (refer to ***Charles K. Skaria & Ors. Vs. Dr. C. Mathew & Ors., (1980) 2 SCC 752*** and ***Dheerender Singh Paliwal Vs. Union Public Service Commission, (2017) 11 SCC 276***) wherein it has been held that the prescription in the prospectus/advertisement form that the requisite certificate be annexed along with the application form within a particular date is only directory and not mandatory as it is a sure mode



but not the sole means of testing the eligibility and filtering the candidates. In both the cases referred to above, the requisite qualification of the candidates came after the last date of filing of the form. However, in the absence of any material to discredit the genuineness of those certificates, the Supreme Court held that declaring such candidates to be ineligible was not correct. Such applicants may not have any legal right to claim a seat but, the overall circumstances would merit a just consideration of their cases.

No doubt, many good reasons could and may have weighed with the employer in formulating preferences, reservation, choice for the purposes of shortlisting candidates, which would be within the parameters of Articles 14 and 16 of the Constitution of India but, all of those conditions/prescriptions cannot be held to be mandatory.

The Supreme Court in one of the cases {***Dheerender Singh Paliwal*** (supra)} has found non-suiting of such candidates on pure technical grounds to be very trivial and such decision could not be sustained.

All that the examination taking body has to decide is whether a candidate has requisite qualification or not.



The manner of proving the qualification may have been indicated and which prescription should ordinarily be adopted but, if it is convincingly established that the concerned candidate has the requisite qualification, as is in the present case, the law degree of the current session, such candidate cannot be denied the benefit of appearing in the examination and being considered for being appointed.

"Equity overpowers technicality where human justice is on stake."

A late acquisition of certificate would only make a candidate qualified for writing such examination later and not in the ensuing examination. This is the only purpose of providing the deadline with respect to acquisition of certificate and nothing more.

In cases of both the petitioners, they were students of the current session whose examinations were held prior to their having registered themselves for appearing in the competitive examination. It is only the late process which led to the certificate being made available to them at a later point of time but, definitely before the last date of filing up the on-line application form.



Could they have been rejected on this score only?

Our considered view is in negative.

We do reckon that the prescription in the advertisement is normally to be followed but not to the extent of absurdities.

The flood gate arguments of the Commission is an argument in desperation.

If a candidate has the requisite qualification then this technicality ought not to come in his/her way of putting their qualification to use by appearing in public examination for obtaining job.

There is no cavil that both the petitioners do possess the required essential qualification viz. a degree of law from a recognized University. What could then be the justification in not accepting a late certificate when because of the pandemic, the dates of registering oneself, depositing the fee and filing the online application forms were extended successively; the last date of filling up the form being sometimes in the month of September.

This therefore takes us to the issue whether it would be equitable for this Court to direct the Commission and



the State to provide appointment to the petitioners in case, they otherwise qualify for being considered and appointed.

For testing the aforementioned fact, we had asked the Commission to state on affidavit as to the number of vacancies available, the number of posts remaining vacant because of non-joining or because of no candidate in respective category having made to the appointment process.

Pursuant to aforementioned request of ours, the commission has come up with an affidavit stating that the petitioner/Aditi comes from EWS category for which 23 posts were earmarked, all of which as on date have been filled up. Aditi has secured 501 marks against the cut-off marks for EWS being 499.

We have no idea as to who was the last of the successful candidates in EWS category, but from the affidavit of the Commission, it is absolutely clear that all posts have been filled up. Thus, nothing can be done about the candidature of Aditi.

So far as, petitioner/Heena Naz is concerned, she belongs to EBC category for which 47 posts were earmarked against which 46 appointment letters have been issued. One



post remains vacant in the aforementioned category only for the reason of there being a criminal case against one of the selected candidate viz. Rakhi Kumari, about whom a decision has not yet been taken by the State whether she would be considered suitable for a position in the judiciary.

In case the Government takes an informed decision of not giving her appointment, one post would fall vacant, which ought to be given to Heena Naz as she has secured much above the cut-off marks 447 for EBC category. Heena Naz has obtained 469 marks and thus is way ahead in merit for her to be non-suited on such flimsy ground.

We have taken this precaution that nobody who has found his/her entry in the service, ought not to be ousted from such list for no fault of his/her.

Thus, so far as the case of Heena Naz is concerned, we direct the Government to take a decision preferably within a period of thirty days with respect to the candidature of Rakhi Kumari and if it is found that it would not be practicable/prudent to give her appointment because of her criminal antecedent, that position ought to go to Heena Naz for which also decision shall be taken; requisition would be



required to be sent to the Commission whereafter the Commission shall do the needful.

We have also examined the case of Ankita, the writ petitioner in CWJC No. 17276 of 2022. Ankita appears to have filed her mark-sheet along with her application form, which was rejected by the commission on the ground that the mark-sheet cannot be a substitute for a certificate.

Mr. Ganguli, learned advocate for the petitioner/Ankita has submitted that the clarification in the advertisement makes it very clear that while filling up the form, the requisite degree or mark-sheet is necessarily to be filed. The contents of the clarificatory clause in the advertisement does not insist for both the certificate and the mark-sheet or particularly certificate and not mark-sheet.

Ankita has passed her law examination from Hidayatula National Law University, a University of repute so far as law teaching is concerned. There is no dispute with respect to her having passed the LLB examination in the current batch. Thus, in her case also, the objection of the Commission is not worth being sustained.

Again, for our satisfaction, we have perused the



marks obtained by her. Ankita, who comes from SC category for which 35 posts were earmarked, has obtained 438 marks against the cut-off in that category being 403 marks. It has also been intimated to us that out of 35 earmarked seats for SC category, only 29 posts have been filled and six seats have remained vacant.

Thus, in the case of Ankita, there would be no difficulty for the State to send requisition for her to the Commission for the needful.

We have also given anxious consideration to the argument of the State that the 32nd Judicial Service Examination process has been set afoot and all the vacancies which remained unfilled have been notified in the vacancy of 32nd Examination by virtue of a Circular of 1977. In this connection, it would be fruitful to refer to the judgment of the Division Bench of this Court in CWJC No. 3952 of 2020 (Swati Chaturvedi Vs. State of Bihar & Ors.) wherein it has conclusively been held that the Circular of 1977, which provides for carrying over the vacancies to the next ensuing examination process, has not found favour with the Bench on the ground that such Circular is neither statutory nor by way of



any Rule and is not applicable in cases of Judicial Service.

In view of the specific pronouncement of the Supreme Court in ***Malik Mazhar Sultan & Anr. Vs. U. P. P. S. C (3), 2009 (17) SCC 24***, such Circular cannot be given effect to and the effort should be to fill up the posts of Judicial Officers.

A select list survives till the second select list is brought out by the examination taking body so far as the judicial service is concerned. It would not be necessary here to adumbrate the reasons for saying so viz. the importance of filling up of posts of Judicial Officers as it forms the backbone of entire judicial system. As many number of posts in the judiciary would remain vacant, so many cases, which are burgeoning by the day, would remain unanswered.

We have also examined the Bihar Civil Service (Judicial) Recruitment Rules of 1955 which also does not provide filling up of vacancy from the list of successful candidates of one particular examination schedule till the next list is prepared. Rule 15 and 16 thereof only prescribes the minimum qualifying marks in written examination and in interview, but does not state as to what should be the cut-off



marks for filtering candidates for the purposes of selection.

In case of Manoj Kumar Tiwari Vs. The State of Bihar and Ors. (C.W.J.C. No. 14921 of 2019), a Division Bench of this Court had the occasion to consider the case from the perspective of the Rules of 1955. In that case, the candidate had secured 125.2 marks. The Patna High Court in its administrative side had taken a decision that the last candidate who was offered appointment had obtained 125.4 marks. Therefore, there could not be any reduction in the merit marks. This view of the High Court was challenged by Manoj Kumar Tiwary with reference to the Recruitment Rules, 1955 particularly the advertisement published in consonance with the Rules which provided that a candidate would qualify for appointment if he secures at least 45 marks in each theory paper and 50% in aggregate in written test, theory paper and viva-voce taken together. The Division Bench of the High Court clearly held that there is no dispute that there is a prescription of the Rule and only if a candidate crosses the threshold, he qualifies for appointment. Unless he has 50% in aggregate, both in written as well as viva-voce taken together, he shall not be appointed, but simultaneously, it was found that the



maximum marks combined is 250, the 50% of which would only be 125. On this logic, the Division Bench of Patna High Court in Manoj Kumar Tiwary (supra) found no reason to eliminate the petitioner therein, keeping in view that the vacancy against the said advertisement existed and no further process had been undertaken so as to carry forward the vacancy or fill it up expeditiously.

On an overall assessment of the facts and circumstances of the case, we find that a clear case has been made out so far as petitioner/Ankita (CWJC No. 17276 of 2022) is concerned as she has obtained more marks than the cut-off and six seats remain vacant till date.

The State, therefore, in the case of Ankita is directed to send necessary requisition to the Commission for the needful.

The entire process should be completed within a period of six weeks.

To sum up, with respect to the petitioner/Aditi, we only express regret for the reason that all the posts in EWS category has been filled up.

A decision shall be taken with respect to the



candidature of the Rakhi Kumari who hails from EBC category and if it is decided that she ought not to be given appointment, the case of petitioner/Heena Naz should be considered forthwith and necessary requisition be sent to the Commission for the needful. For the petitioner/Anikita, necessary requisition be sent to the Commissioner for her recommendation for the job.

With the aforementioned direction/observation, we dispose of both the writ petitions.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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CAV DATE	NA
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