

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9838 of 2021

=====

Santosh Kumar son of Rajeshwar Chaudhary Resident of Mahavir Asthan
Kuraich Sasaram P.S. Sasaram District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary Department of Education Government of Bihar, Patna.
3. The Bihar Public Service Commission through its Chairman, 15 Jawahar Lal Neharu Marg, Baily Road, Patna.
4. The Secretary, Bihar Public Service Commission, 15 Jawahar Lal Neharu Marg, Baily Road, Patna.
5. The Joint Secretary cum Examination Controller, Bihar Public Service Commission, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Arabind Nath Pandey, Adv.
For the State	:	Mr.Jitendra Kumar Roy, SC13
For the BPSC	:	Mr.Sanjay Pandey, Adv.
		Mr.Nishant Kumar Jha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 29-08-2024

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the Bihar Public Service
Commission.

2. The present writ application has been filed for the
following relief/s:-

*“A) To issue an appropriate writ
order or direction in the nature of certiorari
for quashing the revised result dated*



21.08.2020 published by the Joint Secretary cum Examination Controller, Bihar Public Service Commission by which the result of the petitioner was not included/published in the light of advertisement bearing no.2 of 2016.

B) To issue an appropriate writ, order or direction including a writ in the nature of mandamus to republish revised result of the petitioner by considering the name of the petitioner as Lecturer in Government Training College in the State of Bihar by following the selection process as laid in clause 5 (k) according to the advertisement bearing no.2 of 2016.

C) To hold and declare that the action of Commission for not considering/following the process in the light of clause 5 (k) is illegal, not proper and on the basis of extraneous consideration as the petitioner is entitled for selection as per marks obtained by him.

D) To issue an appropriate writ, order or direction to the concerned authority that rule of game cannot be changed in the middle of the appointment and also cannot change the terms of the advertisement in other way.

E) To hold and declare that illegally and wrongly the result of the



petitioner has been published by calling more than 2.5 times of the reserved vacant seat under backward class candidates only to given benefit to the candidates who have got less marks than the petitioner.

F) To issue an appropriate writ or order and direction for which the petitioner is entitled to.”

3. The brief synopsis of the case is that on 03.05.2016, an advertisement bearing no.2 of 2016 was published by the Joint Secretary cum Examination Controller, Bihar Public Service Commission (herein after referred to as BPSC), Patna, for appointment of Lecturers for Government Teachers Training Colleges, Government of Bihar in various subjects (16 subjects) against 478 post with pay scale of 9300-34800 (Annexure-1). Under the Backward class group (5) category wherein Hindi had 4 post, Social Science 08 post and in common group 18 posts were reserved.

4. The petitioner having fulfilled the requisite criteria with a degree of Post Graduation with minimum 55% along with a degree of Masters degree of Education, applied for the post of Lecturer under the Backward class and his application was accepted after scrutiny and admit card was issued for the written examination to be held on 25.08.2018.



5. The petitioner appeared in the examination and qualified in written exam with 51 marks and thereafter, interview letter was issued to him (Annexure-2). The petitioner appeared before the interview Board after verification of relevant documents on different dates i.e. on 11.12.2019 in common group, on 17.12.2019 in Social Science and on 03.01.2020 in Hindi. Thereafter, result was published on 27.02.2020 (Annexure-3).

6. Learned counsel for the petitioner submits that the said result was published in an illegal manner. There were several irregularities committed by the Commission, which was against the criteria prescribed in the advertisement. For reference, there are 94 successful candidates whose names have been given twice and 6 candidates whose names have been given thrice. Although, result of selected candidates should be published in one subject. It appears that in light of clause 5 (k), qualified candidates have not been called for interview. Therefore, the person who had got less marks i.e. 44 has been qualified by giving more marks in the interview.

7. Thereafter, the petitioner moved before this Court in C.W.J.C. No.7339 of 2020 against the publication of result dated 27.02.2020 published by the BPSC and during pendency of the writ petition, result was revised on 21.08.2020 by the Joint



Secretary cum Examination Controller, BPSC (Annexure-4). Therefore, the writ petition was disposed of on 15.09.2020 with observation that if the petitioner has any grievance against the revised list, he shall be at liberty to approach the appropriate forum including the writ Jurisdiction for redressal of his grievances (Annexure-5).

8. It is submitted that as per advertisement, altogether, posts were reserved in different subjects under the BC category, i.e. 18 for foundation course, 4 posts for English, 8 posts for Social Science etc and in light of clause 5(k) candidates should be invited 2.5 times but with malafide intention, more than 2.5 times candidates have been called for the Interview, only with a view to give benefit to the candidates, who have secured low marks.

9. From perusal of the mark sheet of the petitioner bearing Roll No.202149, it appears that he got 51 marks in written test, 12.57 marks in academic and only 5 marks in interview i.e. total 68.57 but the candidate who has got only 44 marks in written, his result has been published in the revised list (Annexure-6). The Commission knowingly did not revise the list as per terms of advertisement.

10. In light of liberty given by the Court, the petitioner filed



several representation including one on 22.09.2020 before the Authority but the same has not been considered till today (Annexure-7). As per advertisement, there were 18 vacant post in General category of Hindi subject, in which, result of written examination of 55 candidates has been published. Similarly 4 posts were vacant under the Backward class of Hindi subject and as per advertisement, result of written examination of only 10 candidates should be published but only to give benefit, result of 16 candidates have been published and by giving more marks in the interview, they have been selected, who have got less marks than the petitioner. Hence, the result of the petitioner has not been revised in legal manner as per advertisement.

11. It is submitted that the action of the respondent is violation of Article 14 and 16 of the Constitution of India.

12. A counter-affidavit has been filed on behalf of the BPSC (respondent nos.3 to 5) whereby it is stated that it is the State Government which lays down the terms and conditions as well as the Rules for recruitment and in accordance with that, the Commission has to execute the selection process.

13. The Education Department vide letter no.261 dated 13.05.2015 sent requisitions along with Bihar Education Service Rule 2014 for appointment on the posts of Lecturer for 18



subjects of Class 2nd in Bihar Education Service Research and Training Sub Cadre to the Commission. The total number of vacancies were 1060 out of which 50% were to be filled up through direct recruitment and rest 50% from School teachers working in various Government Schools in the State of Bihar through limited competitive examination. In the said letter, subject wise eligibility and subjects of objective examination were mentioned separately. Again the concerned Department vide letter no.61 dated 04.02.2016 sent revised requisition to Commission in which four subjects i.e. (i) Foundation Course, (ii) Inclusive Education, (iii) Education Technology and (iv) Planning and Research have one composite eligibility was fixed i.e., Post Graduation in relevant subject. It was also mentioned that for all the subjects there would be one objective examination and one interview (Annexure-A and B to the counter-affidavit).

14. Accordingly, the Commission for 16 subjects published a composite Advertisement no.02/2016 in the newspapers and also on the website of the Commission for appointment of 478 posts of Lecturers in the Government Training Colleges, Government of Bihar on the basis of Open Competitive Exam because for all the subjects one objective examination was scheduled. It was also stipulated in the said advertisement that preference for



subject would be taken at the time of interview. The last date of submission of applications was fixed as 22.06.2016 till 5:00 PM (Annexure-C).

15. Learned counsel appearing for the BPSC submits that Rule-28(1)(i) of the Bihar Education Service Rules, 2014 clearly stipulates that 50% posts will be recruited through open competitive examination. It is further stated that Rule-28(2) of the Bihar Education Service Rules, 2014 clearly envisages that minimum education qualification will be Post Graduation with minimum 55% marks along with M.Ed. with minimum 55% marks. In the light of the said Rules, the Commission has fixed the educational qualification in clause-4 of the Advertisement. After deciding the eligibility and ineligibility under Advertisement No.02/2016, the list was uploaded on the website of the Commission on 31.03.2017 and objections were invited in case of any doubt about the list till 21.04.2017.

16. The final list of eligible/ineligible candidates after scrutiny of the objections was uploaded on the website of the Commission on 12.07.2018. The objective examination for 60 marks for all the subjects relating to general syllabus with respect to Education was conducted on 25.08.2018.

17. It is submitted that before the publication of the result of



written examination, a meeting was held on 13.03.2019 in the office of Commission between the Hon'ble Chairman of the Commission and the Additional Chief Secretary of Education Department, Government of Bihar and they took the following decisions regarding publication of result of written examination:

1. The subject wise result of the following subjects published in the Advertisement viz. (i) Hindi, (ii) English, (iii) Urdu, (iv) Sanskrit, (v) Bengali, (vi) Maithili, (vii) Mathematics, (viii) Physics, (ix) Chemistry, (x) Botany, (xi) Zoology and (xii) Social Sciences (History, Geography, Political Science and Economics) must be published separately of eligible candidates having P.G. Degree in these subjects.
2. Combined result (2.5 times of the combined number of the total advertised posts according to column-5(a) of the Advertisement) for the subjects viz. (i) Foundation course, (ii) Inclusive Education, (iii) Educational Technology, (iv) Planning and Research must be published.

The category wise reservation must be given by combining the subject wise reservation list of all



the four subjects (including the combined list of the subject wise reservation list for the handicapped candidates).

18. The candidates declared successful in the result of 12 subjects in column-1 must be eligible for the result in the combined result of four subjects of column-2, if they will come in the merit list of the combined result of four subjects (including subject wise candidates with disabilities). The preference from the successful candidates of the written examination must be taken at the time of interview.

19. It is submitted that in view of the decision of the meeting dated 13.03.2019 (Annexure-D), a common group was made including four subjects i.e. (I) Foundation course, (II) Inclusive Education, (III) Educational Technology and (IV) Planning & Research and the result of the written examination was published on 25.06.2019 subject wise for 13 subjects, in which common group was included (Annexure-E).

20. It is stated that all the candidates who appeared for written examination were included in the common group because for this group the educational qualification was Post Graduate Degree in any one subject. For the remaining 12 subjects/group of subjects, candidates who had Post Graduate degree in the



concerned subjects were included. In the result of the written examination, some candidates from the common group and from their own subjects were declared successful because such candidate could secure positions in the merit list for the written examination in both common group and their own subjects.

21. As per Personnel and Administrative Reforms Department, Government of Bihar, notification no.2374 dated 16.07.2007 and letter no.6706 dated 01.10.2008, the minimum qualifying marks in Preliminary Examination for the candidates were fixed as General Category 40%, Backward Class 36.5%, Extremely Backward Class 34% and SC/ST, Women and physically handicapped candidates 32%. In view of the said notification, the Commission prepared the merit list for the result from the candidates who have secured minimum qualifying marks in the written examination for all 13 subjects/subjects group. It is further submitted that securing above mentioned minimum qualifying marks does not guarantee a place in the merit list. The details of total number of posts published in the advertisement and the no. of candidates called for interview is stated herein below:-

Sl. No.	subject/subje cts group	No. of posts advertised	No. of candidates called for interview	Column 3/Column 2(how many times of vacancies)	Remarks
1.	Common group	52+38+19+38= 147	478	3.25	109 candidates having marks equal to the last selected candidate in their respected



					category.
2.	Hindi	35	106	3.028	18 candidates having marks equal to the last selected candidate in their respected category.
3.	English	35	76	2.17	For SC category 15 candidates were required to be called for interview for 6 advertised posts. No candidate was available.
4.	Urdu	17	40	2.35	For SC category 8 candidates were required to be called for interview for 3 advertised posts. No candidate was available.
5.	Sanskrit	10	25	2.5	For SC category 5 candidates were required to be called for interview for 2 advertised posts. Only 3 candidates were available. For EBC category 5 candidates were required to be called for interview for 2 advertised posts, only 3 candidates were available.
6.	Bangla	03	01	.33	Only one candidate was available for interview.
7.	Maithili	05	02	.4	Only two candidates were available for interview.
8.	Math	34	80	2.35	For SC category 15 candidates were required to be called for interview for 6 advertises posts. Only 4 candidates were available. For EBC category 15 candidates were required to be called for interview to 6 advertised posts. 14 candidates were available. For BCL category 3 candidates were required to be called for interview for 1 advertised post. No candidate was available.
9.	Physics	31	70	2.258	For SC category 13 candidates were required to be called for interview for 5 advertises posts. Only 4 candidates were available. For BCL category 3 candidates were required to be called for interview for 1 advertised post. No candidate was available.
10.	Chemistry	31	77	2.48	For SC category 13 candidates were required to be called for interview for 5 advertises posts. Only 4 candidates were available.
11.	Botany	30	71	2.366	For SC category 13 candidates were required to be called for interview for 5 advertised posts. Only 8 candidates were available. For EBC category, 13 candidates were required to be called for interview for 5 advertises posts. 10 candidates were available.



12.	Zoology	31	93	03	*For SC category 13 candidates were required to be called for interview for 5 advertises posts, 12 candidates were available. *14 candidates having marks equal to the last selected candidate in their respected category.
13.	Social Science	69	251	3.637	77 candidates having marks equal to the last selected candidate in their respected category.
Total		478	1370		

22. The Commission on 02.11.2019 published the interview programme for the successful candidates of written examination under. Since, the result of written examination was declared subject wise, so, interview was also conducted subject wise from 09.12.2019 to 04.01.2020 in the office of the Commission (Annexure-F).

23. After the interview the academic marks of each candidate who appeared for interview was calculated for all the 13 subjects. It is obvious that the calculation of academic marks for common group and different subjects could not be the same. As per the guidelines given by the Education Department, Government of Bihar vide its letter no. 02 dated 06.01.2020 on the calculation of academic marks in the common group the highest marks obtained by the candidate in any subject out of subjects of post graduation was considered for academic marks calculation. In this way, the final merit list was prepared by addition of marks obtained in the written examination, calculated



academic marks on the basis of highest marks obtained by the candidate in any subject out of subjects of post graduation and marks obtained in the interview in common group. For calculation of academic marks for 12 different subjects was based on the marks obtained in the specified subject. In this way, the marks obtained by a candidate for final result was different for common group and other specified subjects and for this reason the merit list for the common group and other 12 subjects could be made separately and not an integrated list (Annexure-G).

24. The Commission published the subject wise final result for 13 subjects under Advertisement No. 02/2016 on 27.02.2020. In the final result many candidates were declared successful in more than one subject. Thereafter, the Commission vide its letter no. 05 dated 08.05.2020 sent recommendation of successful candidates for appointment on the posts of lecturer in the Government Training Colleges under Advertisement No. 02/2016 to the Education Department.

25. Some candidates of above said advertisement had filed a writ petition bearing CWJC No. 5697/2020 against the final result published by the Commission. The Hon'ble Court vide order dated 09.07.2020 directed the Commission to revise the list



strictly in accordance with the terms of the advertisement (Annexure-H).

26. It is submitted that the Commission pursuant to the aforesaid order of the Hon'ble Court published the revised result under Advertisement No. 02/2016 on 21.08.2020 declaring 451 candidates as successful. Further, 19 vacancies under different subject in different categories remained unfilled due to non-availability of suitable candidates, 8 posts under different subject/subjects group have been kept reserved for the candidates who have M.A. degree in Special/ Mental Retardation/Visual Impairment in the light of order dated 13.08.2018 passed in CWJC No. 15081/2018 and other analogous cases. It is further stated that out of said 8 posts 1 post for Backward Class Lady (06) Category in English subject has been kept reserved for the candidate of Backward Class Lady (06) Category who have M.A. degree in Special/ Mental Retardation/Visual Impairment in light of aforesaid order. Thereafter, recommendation of successful candidates has been sent to the department concerned vide Commission's letter no. 14 dated 21.08.2020. Appointments have been made accordingly and thus, the selection process was over (Annexure-I series).

27. In clause 5 (ka) of the advertisement, it is clearly



stipulated that interview will be conducted on the basis of marks obtained in the objective examination. One objective examination for all subjects was conducted in the light of the letter no. 61 dated 04.02.2016 of the Education Department (Annexure-B). It is further mentioned in the said clause 5 (ka) that candidates will be called for interview 2.5 times of the number of vacancies reserved category-wise. The details of total numbers of posts advertised and number of candidates called for interview has been given in the table above. In the light of the order of the point 3 of the decision of the meeting between the Chairman of the BPSC and Additional Chief Secretary, Education Department, Govt. of Bihar dated 13.03.2019, few candidates were selected in more than one subject/subjects group in the result of the written examination dated 25.06.2019 because they were in the merit list of more than one subject.

28. In clause 5 (ka) of the advertisement, it is mentioned that the final result will be prepared by adding the marks obtained in the objective examination, academic marks and interview marks. The same procedure has been followed by the Commission for preparing the final result. Although, in the final result dated 27.02.2020, 100 candidates were shortlisted in more than one subject due to their presence in the merit list of more than one



subject. As the merit list for different subjects was different due to difference in academic marks as well as interview marks, one common merit list was not possible to prepare. The Commission has published the result in light of the requisition of the Education Department and in terms of advertisement. Thus, the terms of advertisement have not been violated. The Commission has followed both clause 5(ka) and 5(kha) of the advertisement.

29. It is stated that the petitioner secured lesser marks than the cut-off marks of his category and therefore, he was not declared to be successful. The details of the marks secured by the petitioner in his respective groups/subjects and cut-off marks of the same are as follows:-

Sl. No.	Roll No.	Name	Merit Sl.	Res. Cat.	Group/sub ject	Writte n marks	Academ ic marks	Intervie w marks	Total marks	Cut-off marks
1.	202149	Santosh Kumar	321	05	Common Group	51	12.570	4	67.570	75.519
			39		Hindi	51	12.570	5	68.570	69.027
			151		Social Science	51	11.368	6	68.368	71.712

30. It is submitted that the Commission has not changed the rules of examination and published the result of written examination in accordance with the advertisement. The interview programme for the successful candidates of written examination was published on 02.11.2019. Since, the result of written exam was declared subject wise so, interview was also conducted



subject wise for which Professors of specified subjects were called as experts.

31. It is lastly submitted that the petitioner, who is not successful took a calculated chance by participating in the selection process and now by challenging the said process. The entire selection process under Advt. No.02/2016 for appointment of Lecturers in Government Teachers Training Colleges in the State of Bihar has been quashed by this Court vide order dated 22.03.2021 passed in CWJC No.15081 (*Ravi Kumar & Ors. vs. The State of Bihar & Ors. and analogous cases*). However, the Commission has filed an appeal vide LPA No.436/2021 against the order dated 22.03.2021. LPA No.436/2021 has been disposed of after setting aside the order dated 22.03.2021.

32. Be that as it may, on bare perusal of the facts and circumstances of the case and considering the rival submissions of the parties, this Court is of the view that marks of the petitioner in his respective groups/subjects is lower than the cut-off marks of the subjects and even in Hindi subject, he has secured less marks than the cut-off marks, therefore, he was not declared successful, which is clear from the subject wise post details, cut-off marks provided vide different annexures by the Commission. Admittedly, the candidate having 44 marks only in



the written exam has got selected in the BC category (Hindi Group) as he secured more marks in the interview than the petitioner. The interview process is generally held by expert bodies of the specified subjects and it is in their capacity to provide marks to the candidates in accordance with their merit.

33. In this aforesaid background, I am not inclined to interfere with the result published by the Commission in Advertisement No.2 of 2016.

34. With the aforesaid observation, this writ application is dismissed.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.09.2024
Transmission Date	NA

