

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14524 of 2015

Dr. Anand Krishna Son of late Surendra Nath Singh Resident of Village and Post- Akawana, Police Station- Barhara, district Bhojpur at Ara,.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Department of Science and Technology, Govt. of Bihar, Patna.
3. The Joint Secretary to the Govt. Department of Science and technology, Govt. of Bihar, Patna.
4. The Principal, Govt. Polytechnic, Guljarbagh, Patna-7
5. All India Council for Technical Education (AICTE)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siyaram Sahi Mr. Ranjan Kumar Singh
For the State	:	Mr. R. K. Priyadarshi- SC 32
For the AICTE	:	Ms. Archana

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 17-05-2024

The present writ application has been filed for a direction to the respondents to consider the claim of the petitioner for promotion in Lecturer (Selection Grade) with effect from 03.03.2009, with all consequential benefits. The petitioner has also prayed for quashing of the order, contained in Memo No. 1617, dated 20.07.2011, issued under the signature of Joint Secretary, Department of Science and Technology Department, Government of Bihar, Patna, by which the claim of the petitioner for promotion in Lecturer (Selection Grade) has been rejected on the ground that



higher qualification of the petitioner is not related to the field of his basic subject, as such, the higher qualification of Ph.D. acquired by the petitioner is not valid as per the norms of the All India Council for Technical Education (in short, 'AICTE') for grant of Lecturer (Selection Grade) under the Career Advancement Scheme to the petitioner.

2. The facts involved in the present case, in narrow compass, is that the petitioner, having the qualification of B. Tech. in Textile and M.B.A., was appointed as Lecturer, on 28.02.1998, in Government Polytechnic College, Gulzarbagh, in Textile Engineering Department.

3. The petitioner joined the College on 03.03.1998 and was subsequently upgraded in Lecturer (Senior Scale) with effect from 03.03.2004 under Career Advancement Scheme, vide notification issued under Memo No. 531, dated 25.02.2008.

4. During his service period, the petitioner completed his Ph.D, in the faculty of management in June, 2005, with research topic "Management Problem of Textile Industry in India" from Baba Saheb Bhim Rao Ambedkar Bihar University.

5. For the purpose of promotion to Lecturer (Selection Grade) in the higher pay scale of 12000-420-15200, under Career Advancement Scheme, the Joint Secretary, Department of Science



and Technology, Government of Bihar, issued letter no. 783, dated 30.03.2011, having the name of the petitioner at serial no. 5, with a request to be present before the Department Promotion/Selection Committee with all required original documents, scheduled to be held on 20.04.2011, in the office of the Bihar Public Service Commission.

6. The Department Selection Committee, in its meeting, dated 20.04.2011, recommended the name of six Lecturers, including the petitioner, for promotion to Lecturer (Selection Grade) with effect from 03.03.2009, under Career Advancement Scheme with a condition that before issuing the order of promotion, the Administrative Department must be satisfied that the petitioner possesses the prescribed qualification, as per the norms of the AICTE.

7. The Joint Secretary, Department of Science and Technology, issued a letter to the petitioner on 15.04.2011 requesting him to be available with entire educational qualification certificates by 18.04.2011. The petitioner sent all the educational qualification certificates to the Department through the Principal, Government Polytechnic College, Gulzarbagh. After verification of the educational qualification, the Joint Secretary issued the impugned letter, dated 20.07.2011, to the Principal, Government



Polytechnic College, Gulzarbagh, stating therein that the petitioner's higher qualification, i.e. Ph.D. in Textile Management does not relate to his basic qualification, i.e. B. Tech. in Textile Engineering. Accordingly, the benefit of Ph.D. is not applicable under Career Advancement Scheme of the AICTE and is not valid for the purpose of promotion as Lecturer (Selection Grade) in the pay scale of 12000-420-15200.

8. The petitioner submitted reply to the aforesaid impugned letter to the Director and others, enclosing all the documents and stating therein that he is eligible to be promoted as Lecturer (Selection Grade) as he has Masters degree and five years experience as Lecturer (Senior Scale) and has a consistently satisfactory performance and appraisal reports by the Departmental Selection Committee. He has also stated that the Textile Management is part of Textile Engineering, which the petitioner teaches at Government Polytechnic College, Gulzarbagh and the same come within the ambit of technical education as per the norms of the AICTE.

9. Learned Counsel for the petitioner argued that AICTE, through its letter, dated 30.12.1999 (Annexure 2), addressed to the Secretaries dealing with Technical Education of all State Government and Union Territories,



recommending revision of pay scales and service conditions of teachers of technical education, in which Clause 8.3 deals with Lecturer (Selection Grade), wherein it is stated that a Senior Lecturer/Lecturer (Senior Scale) who has a Master's degree and 5 years' experience as Senior Lecturer or Lecturer (Senior Scale), and has consistently satisfactory performance appraisal reports will be eligible to be placed as Lecturer (Selection Grade), subject to the recommendation of the Selection Committee.

10. Further, the AICTE, through its letter, dated 30.12.1999, stated the qualification for the purpose of Head of Department, having the same pay scale of 12000-420-18300, as Master's Degree in appropriate branch of Engineering/Technology with First Class at Master's or Bachelor's Level, or Ph.D. with First Class Master's Degree in appropriate branch of Humanities and Science. Further, 5 years' experience in teaching/industry/research at the level of Lecturer or equivalent was required.

11. The petitioner further submits that he got the Lecturer (Senior Scale) with effect from 03.03.2004 and after completing five years, the petitioner is validly entitled for promotion as Lecturer (Selection Grade) as he has the required eligibility, i.e. Masters degree/Ph.D. in the subject in which he is teaching. He contends that there is nothing to show that



Master's/Ph.D. has to be done in relevant subjects. Even if, the Ph.D. is ignored, then also, the petitioner has the degree in M.B.A., which is master's degree.

12. The impugned letter has been issued in mechanical manner contrary to the norms of the AICTE. The M.B.A. is also considered as Master's degree and is equivalent to Master's in Engineering. The rest five Lecturers, who were considered for promotion by the Departmental Selection Committee, along with the petitioner, have been granted promotion as Lecturer (Selection Grade), vide Memo No. 1577, dated 13.07.2011.

13. Learned Counsel for the petitioner relies on the decision of the Supreme Court, rendered in the case of **Ashish Kumar v. State of U.P. and Others**, reported in (2018) 3 SCC 55.

14. On the other hand, learned Counsel for the State as well as AICTE argued that the petitioner does not fulfill the eligibility criteria as prescribed in the Government resolution and the AICTE norms, as such, the petitioner is not entitled to be granted promotion in the Lecturer (Selection Grade). The petitioner has done B. Tech. in Textile Engineering, but his Ph.D. in Textile Management cannot be treated to be Ph.D., in basic subject of Textile Engineering, which is the core fundamental subject of the petitioner. The Ph.D./Master's have to be done in



appropriate subject/relevant subject. They lay stress upon the words 'relevant/appropriate subject'.

15. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

16. The petitioner has relied upon the decision of the Supreme Court, in the case of **Ashish Kumar** (supra), to support his argument with use of stroke ('/') between qualifications, the same is used when either of the qualifications are required.

17. The Government of Bihar came out with a resolution, dated 02.01.2003, for grant of revised pay scale of different category of post, including Lecturer (Selection Grade) under Career Advancement Scheme, implemented by the AICTE, vide its letter, dated 30.12.1999. The relevant qualification prescribed under Career Advancement Scheme are at Clause 3.5 and 3.6 of the aforesaid resolution.

18. Clause 3.5 (ii) deals with Lecturer (Selection Grade). The eligibility condition, as prescribed for grant of promotion as Lecturer (Selection Grade), is as follows:

“(ii) व्याख्याता (प्रवर कोटि) – अभियंत्रण/गैर अभियंत्रण संकायों के कमशः मास्टर डिग्री/ पीएच.डी उपाधि धारित वरीय व्याख्याता/व्याख्याता (वरीय वेतनमान) जो वरीय व्याख्याता/व्याख्याता (वरीय वेतनमान) के पदों पर पाँच वर्षों का



अनुभव रखते हों वे चयन समिति के अनुशंसोपरान्त इस कोटि में प्रोन्नत हो सकेंगे।”

19. Clause 3.6 (i) says that the prescribed conditions and restrictions, including the revised pay scale recommended by the AICTE, will be implemented as part of the entire scheme.

20. The AICTE came out with a notification on revision of pay scale and associated terms and conditions of service of Teachers, Librarians and Physical Education personnel in Diploma Level Technical Institution on 30.12.1999. The cadre structure of the Diploma Level Technical Institution is given in Clause 3, which is as follows:

“3.0 CADRE STRUCTURE

For each Diploma level institutions there shall be one post of Director/ Principal. In addition each Department shall have one post of Head of Department. The other Cadres shall be as given in Table 3.1

**TABLE 3.1
CADRE STRUCTURE OF
DIPLOMA LEVEL INSTITUTIONS**

Level	Cadre
I	Lecturer
II	Senior Lecturer

The ratio of Senior Lecturers to Lecturers shall be 1:3.

The required total strength of teachers in the institutions including Heads of Departments will be determined by the Staff/ Student ratio as per AICTE norms.

In addition to the Cadre Structure given in Table 3.1, the Career Advancement Scheme shall



provide for the following teaching positions but within the overall sanctioned strength of each Department:

- I) Lecturer (Senior Scale)
- ii) Lecturer (Selection Grade)”

21. The prescribed qualification and experience required for various teaching posts in diploma level technical institutions are given in Appendix-B of this notification. Clause 5.0 2. (I) of the notifications says that the revised qualifications and experience will be required only for fresh appointees to that post and will not be insisted on for existing incumbents working on those positions.

22. The Career Advancement Scheme, in the said notification of the AICTE, is prescribed in Clause 8.1. The Career Advancement provided for movement of career to Lecturer (Senior Scale), Senior Lecturer/Lecturer (Senior Scale) to Lecturer (Selection Grade). For promotion under Career Advancement Scheme, the condition prescribed in Clause 8.1 (b) is as follows:

(i) The candidate must have consistently satisfactory performance appraisal reports.

(ii) Assessment and selection would be made by a selection committee, as required for normal selection by the respective institution.

(iii) The prescribed teaching/ contact hours of a teacher selected promoted under the Career Advancement Scheme shall



remain the same as that of the substantive post he/she is occupying.

23. Clause 8.2 deals with Lecturer (Senior Scale) and Clause 8.3 deals with Lecturer (Selection Grade).

24. It is not in dispute that the petitioner was granted Lecturer (Senior Scale) and was entitled to be considered for Lecturer (Selection Grade) as per Career Advancement Scheme. Clause 8.3 says that a Senior Lecturer/Lecturer (Senior Scale) who has a Master’s degree and 5 years experience as Senior Lecturer of Lecturer (Senior Scale), and has consistently satisfactory performance appraisal reports will be eligible to be placed as Lecturer (Selection Grade), subject to the recommendation of the Selection Committee.

25. Table A-1 prescribes pay scales for teachers of Diploma Level Technical Institutions and Table A-2 prescribes pay scales for teaching positions under Career Advancement Scheme for Diploma Level Technical Institutions. Tables A-1 and A-2 are as follows:

TABLE A-1
SCALES OF PAY FOR TEACHERS FOR DIPLOMA LEVEL
TECHNICAL INSTITUTIONS

Sl. No.	Category	Existing pay-scales (Rs.)	Proposed pay-scales (Rs.)
1.	Lecturer	2200-75-2800-100-4000	8000-275-13500



2.	Senior Lecturer	3000-100-3500-125-5000	10000-325-15200
3.	Head of Deptt.	3700-125-4950-150-5700	12000-420-18300
4.	Principal	4500-150-5700-200-6300	16400-450-20000

TABLE A-2
SCALES OF PAY FOR TEACHING POSITIONS UNDER CAREER ADVANCEMENT

SCHEME FOR DIPLOMA LEVEL TECHNICAL INSTITUTIONS

Sl. No.	Category	Existing pay-scales (Rs.)	Proposed pay-scales (Rs.)
1.	Lecturer	3000-100-3500-125-5000	10000-325-15200 (Senior Scale)
2.	Lecturer	3700-125-4950-150-5700	12000-420-18300 (Selection Grade)

26. On close looking of the Government resolution, dated 02.01.2003, based upon the AICTE norms and the AICTE norms, dated 30.12.1999, it appears that for grant of pay scale of Lecturer (Selection Grade), under Career Advancement Scheme, the teacher is required to have Master’s degree in Engineering/non-engineering faculty/Ph.D. holder Senior Lecturer or Lecturer (Senior Scale), who have five years of experience on their respective post.

27. The Career Advancement Scheme, at Clause 8.3 of the notification, dated 30.12.1999, from Lecturer (Senior Scale) to Lecturer (Selection Grade) says that a Senior Lecturer/Lecturer (Senior Scale), who has a Master’s degree and 5 years’ experience



as Senior Lecturer or Lecturer (Senior Scale), and has consistently satisfactory performance appraisal reports will be eligible to be placed as Lecturer (Selection Grade), subject to the recommendation of the Selection Committee.

28. The controversy hinges around the fact that according to the respondent-State, the petitioner is not having the requisite eligibility qualification for grant of Lecturer (Selection Grade) under the Career Advancement Scheme.

29. Upon perusal of cadre structure of Diploma Level Technical Institutions, as prescribed in Clause 3, there is one post of Director/Principal, and in addition to that, each Department shall have one post of Head of Department. The other cadre shall be Lecturer and Senior Lecturer. In addition to the cadre structure, at Table 3.1 of the AICTE norms, dated 30.12.1999, the Career Advancement Scheme shall provide, but within the overall sanctioned strength of each Department, the teaching positions of Lecturer (Senior Scale) and Lecturer (Selection Grade).

30. The Appendix B of the notification provides qualification for recruitment on the post under the cadre strength, but for grant of Career Advancement Scheme, separate provisions have been made in Clause 8 of the notification, dated 30.12.1999 and Clause 3.5 and 3.6 of the resolution, dated 02.01.2003.



31. The qualification prescribed for direct recruitment under the cadre strength cannot be made applicable for grant of in situ promotion/career progression under the Career Advancement Scheme.

32. The case of the petitioner is required to be dealt with under the Career Advancement Scheme for grant of pay scale of Lecturer (Selection Grade). During the course of argument, the respondent-State as well as AICTE relied upon the qualification prescribed, at Appendix B, for appointment/promotion as Head of the Department, which, in my opinion, is not applicable in the facts of the present case. For moving from Lecturer (Senior Scale to Lecturer (Selection Grade) under Career Advancement Scheme, the teachers should have a Master's degree and five years' experience as Senior Lecturer/Lecturer (Senior Scale) and has consistently satisfactory performance appraisal reports, will be eligible to be placed as Lecturer (Selection Grade), subject to the recommendation of the Selection Committee.

33. The petitioner has Master's degree as he has completed M.B.A. and Ph.D. also on the topic "Management Problem of Textile Industry in India". He is also having five years experience as Lecturer (Senior Scale) and his case was considered by the duly constituted Departmental Promotion/Selection



Committee, which recommended the name of the petitioner for promotion with a rider that before issuing the order of promotion, the Administrative Department must be satisfied that the petitioner possesses the prescribed qualification, as per the norms of the AICTE.

34. Even the resolution of the State Government, based upon the AICTE norms, dated 30.12.1999, says that under Career Advancement Scheme for grant of promotion from Lecturer (Selection Grade), one must have the qualification of Master's degree in Engineering/non-engineering faculty/Ph.D. holder Senior Lecturer or Lecturer (Senior Scale), who have five years of experience on their respective post.

35. The Supreme Court, in paragraphs 16 and 19 of **Ashish Kumar** (supra) has held as follows:-

“**16.** The careful reading of original advertisement which is in vernacular language indicates that what was prescribed was, “In Psychology subject graduate/LT/BT/BE^d”. Use of stroke between graduate and LT/BT/BE^d indicates that all were alternate qualifications. The advertisement cannot be read to mean providing for graduate in Psychology with LT/BT/BE^d as has been read by the High Court and contended by the respondent.



19. There is one more reason to accept the meaning of the advertisement as noticed above. In the advertisement, with regard to various qualifications, words "या" (or), "साथ" (with), "अथवा" (either) and stroke '(/)' have been used. The appointing authority is well aware of the meaning of stroke '(/)', words "or", "either" and "with" which have been frequently used in the qualifications which is apparent from the advertisement i.e. Annexure A-1. The appointing authority used word 'with' "साथ", when it wanted both the qualifications together. Wherever stroke '(/)' has been used it was used when either of the qualifications were indicated. The advertisement Annexure A-1 contains qualifications for various posts and in several qualifications stroke (/) has been used. A look into those qualifications clearly indicate that stroke (/) was used in the other qualifications denoting one or either qualification."

36. The Supreme Court, in the case of **Amresh Kumar Sinha and Others v. The State of Bihar and Others [SLP (C) No. 8219-8226 of 2019]**, has held "fulfillment of educational qualifications prescribed under the recruitment rules for the purposes of promotion are not necessary for non-functional in situ promotion. In other words educational qualification required for the purpose of promotion is not necessary for grant of in situ promotion, i.e., only for extending the monetary benefit where



there are no promotional avenues and the employees are likely to be stagnated.”

37. Thus, in the backdrop of aforesaid discussion and upon reading the conditions for grant of Career Advancement, as prescribed in the Government Circular as well as in the norms of the AICTE, I come to the conclusion that the petitioner was fulfilling all the conditions regarding qualification and length of service for grant of promotion under Career Advancement Scheme from Lecturer (Senior Scale) to Lecturer (Selection Grade) in the pay scale of 12000-420-15200. The rejection of the claim of the petitioner by the respondent authorities for grant of promotion/financial progression under Career Advancement Scheme by the impugned order on the ground that the petitioner is not fulfilling the criteria of educational qualification is misconceived and is based upon the facts, which does not exist.

38. In the result, this writ application is allowed, The impugned order, contained in Memo No. 1617, dated 20.07.2011, issued under the signature of Joint Secretary, Department of Science and Technology Department, Government of Bihar, Patna, is hereby set aside.



39. The respondents are directed to grant pay scale of Lecturer (Selection Grade) to the petitioner with all consequential and monetary benefits with effect from 03.03.2009, i.e. the date the Department Promotion/Selection Committee recommended the name of the petitioner for grant of pay scale of Lecturer (Selection Grade).

40. There shall be no order as to costs.

41. Interlocutory application(s), if any, are also disposed accordingly.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	01-04-2024
Uploading Date	17-05-2024
Transmission Date	N/A

