

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.445 of 2021

In

Civil Writ Jurisdiction Case No.9247 of 2020

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Md. Athar @ Mohammad Athar, S/o Late Sultan Ahmad, Resident of
Mohalla- Quazi Tola, P.S. Arrah Town, District- Bhojpur.

... .. Appellant

Versus

1. The State of Bihar through its Additional Chief Secretary, Govt. of Bihar, Patna.
2. The Chairman, Bihar Staff Selection Commission Veterinary College Campus, Patna- 14.
3. The Secretary, Bihar Staff Selection Commission Veterinary College Campus, Patna- 14.
4. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
5. The Civil Surgeon cum Chief Medical Officer, Nalanda.
6. Incharge Medical Officer, Primary Health Centre Islampur, Nalanda.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Ataul Haque, Advocate

For the Respondent/s : Mr. P.K. Shahi, learned Advocate General

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

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

Date : 20-02-2024

Pursuant to our order dated 06.02.2024, Mr. Sunil Kumar, Secretary, Bihar Staff Selection Commission, Veterinary College Campus, Patna is present in the Court.

2. Appellant has assailed the order of the learned Single Judge dated 17.04.2021 passed in C.W.J.C. No. 9247 of 2020, his grievance is that he was a candidate for the post of Lab Technician pursuant to the advertisement issued by the Bihar Staff Selection Commission. He is stated to have been



awarded 26.42 marks in the competitive examination. However, his experience certificate has not been taken note of on the score that it was not uploaded through On-line to that effect Annexure-R/1 along with the counter affidavit filed in the C.W.J.C. No. 9247 of 2020. The learned Single Judge has taken note of these facts and circumstances and proceeded to dismiss the writ petition.

3. Learned counsel for the appellant submitted that appellant had uploaded experience certificate, however, it was not uploaded due to technical glitch and it is a curable defect in all fairness with reference to merit of the candidate, Bihar Staff Selection Commission should have summoned the appellant for furnishing undisputed experience certificate, which has been noted down by the Bihar Staff Selection Commission vide Annexure-R/1 to the extent that appellant had furnished experience certificate as a Lab Technician, PHC Islampur Nalanda, which is supported by Civil Surgeon version.

4. *Per contra*, learned counsel for the respondent resisted the aforementioned contention and supported the orders of the learned Single Judge to the extent that experience certificate was not produced at the relevant point of time, therefore, experience certificate of the appellant cannot be taken



on subsequent date.

5. Heard learned counsel for the respective parties.

6. The appellant was a candidate for recruitment to the post of Lab Technician pursuant to advertisement. There is a criteria for award of marks for experience held by the candidate, if such marks is awarded in that event appellant would stand in the eligibility list. Non-consideration of experience certificate has resulted in non-eligible to the post of Lab Technician resulted in approaching this Court. Perusal of Annexure-R/1, it is evident that a computer display is “**Error Failed to upload PDF document.**” This type of error or technical glitch is beyond the control of the candidate, therefore, Bihar Staff Selection Commission cannot punish him.

7. Be that as it may recently Apex Court in the case of *Sweety Kumari vs. State of Bihar & Ors.* reported in *AIR Online 2023 SC 750* proceeded to condone such belated submission of certificate. In the light of principle laid down by the Hon’ble Supreme Court in the cited decision the appellant has made out a case. Accordingly, order of the learned Single Judge dated 17.04.2021 passed in C.W.J.C. No. 9247 of 2020 stands set aside. In the result L.P.A No. 445 of 2021 stands allowed.



8. Bihar Staff Selection Commission-Respondent is hereby directed to subject the appellant for interview, thereafter, depending upon his merit, if he is within the zone of consideration for selection his name shall be incorporated at appropriate place in the select list. We have been informed by the Bihar Staff Selection Commission that matter is pending consideration before the Hon’ble Supreme Court in which there is status quo order is operating. Therefore, further action in the matter will have to be decided by the Commission subject to outcome of the Hon’ble Supreme Court decision. Insofar as interview and till incorporation of his name or giving an acknowledgment to the appellant to the extent that he is eligible or not eligible. Such action shall be undertaken within the period of two months from the date of receipt of this order and further action may be kept in abeyance till Hon’ble Supreme Court decide the aforementioned pending case.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

Manish/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	26.02.2024
Transmission Date	N.A.

