

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10224 of 2022

Dr. Aseem Kumar Thakur S/o Late Kameshwar Thakur, Presently residing at and Posted as Principal, Kameshwar Narayan Singh Government Polytechnic Samastipur, Kishunpur Tabhka, Bibhutipur, District - Samastipur - 848160.

... .. Petitioner/s

Versus

1. The State of Bihar through the Addl. Chief Secretary, Department of Finance Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Science and Technology Govt. of Bihar, Patna.
3. The Secretary, Department of Science and Technology, Govt. of Bihar, Patna.
4. The Joint Secretary, Department of Science and Technology, Govt. of Bihar Patna.
5. The Deputy Secretary, Department of Science and Technology, Govt. of Bihar, Patna.
6. The Chairman, Bihar Public Service Commission, J.N.L. Marg, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava Mr. P. K. Jaipurkar Mr. Anshuman Jaipurkar Ms. Anukriti Jaipurkar Mr. Rajnikant Kumar
For the Respondent/s	:	Mr. Kameshwar Pd. Gupta (GP 10)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 06-02-2024

By notification, dated 05.06.2018, the petitioner was appointed provisionally as the Principal, Polytechnic College, with effect from 02.07.2015 on the pay scale of Rs. 37,400 – 67,000/- plus A.G.P. Rs. 10,000/- and special allowance of Rs. 2,000/-



(Level 14), issued by the Department of Science and Technology, Government of Bihar, Patna.

2. The grievance of the petitioner is that the petitioner has been declared ineligible candidate by the Bihar Public Service Commission in the selection process, conducted by it for the post of Principal of Engineering Colleges, which was advertised, vide Advertisement No. 15 of 2020, dated 06.08.2020.

3. The main contention of the petitioner is that the petitioner has erroneously been denied appointment and his candidature has wrongfully been rejected despite the fact that the petitioner was having adequate experience of more than three years in the requisite pay scale of Principal, i.e. equivalent to the Professor with effect from 02.07.2015.

4. In the aforesaid background the petitioner has filed the present writ application for a direction to the respondent authorities to consider the application of the petitioner submitted pursuant to the Advertisement No. 15 of 2020, dated 06.08.2020, for the post of Principal in Government Engineering Colleges, under the Science and Technology Department, Government of Bihar, as the petitioner fulfills all the criteria and experience for the post advertised. The petitioner has also prayed for quashing of the Letter No. 1508, dated 31.05.2022 (Annexure 7) of the Science



and Technology Department, Government of Bihar, whereby the respondents refused to issue experience certificate since 02.07.2015.

5. The brief facts of the case is that the Bihar Public Service Commission published Advertisement No. 15 of 2020, dated 06.08.2020, inviting online applications from the eligible candidates for filling up 32 posts of Principal in Government Engineering Colleges in the Science and Technology Department, Government of Bihar.

6. The petitioner applied for the post of Principal and submitted online application on 02.09.2020. At the time of submission of his online application form, the petitioner was working as Principal, Kameshwar Narayan Singh Government Polytechnic College, Samastipur, and after having obtained permission from the Department, he duly applied for the advertised post of Principal in Government Engineering Colleges.

7. Earlier, pursuant to the advertisement issued by the Bihar Public Service Commission for appointment on the post of Principal in Polytechnic College, the petitioner had applied and participated in the selection process. After the selection process was over, the candidature of the petitioner was rejected on the



ground that the petitioner was not working against a post having AGP of Rs. 9,000/-, as Head of the Department.

8. The petitioner had moved before this Court challenging the rejection of his candidature on the post of Principal, Polytechnic College and at the stage of letters patent appeal, bearing L.P.A. No. 655 of 2016, the petitioner succeeded and a Division Bench of this Court, vide order, dated 19.07.2017, held that the appellant (petitioner herein) shall be deemed to be holding the post as Head of the Department with AGP of Rs. 9,000/- with effect from 17.10.2011 and in rejecting his claim by holding that the appellant/petitioner did not fulfill the requisite criteria, the Division Bench held that the respondents have committed an error in this regard inasmuch as while considering the claim of the eligible candidates, the appellant's case has been left out on account of improper consideration.

9. In compliance of the order, dated 19.07.2017, passed in LPA No. 655 of 2016, the Science and Technology Department, Government of Bihar, issued Office Order No. 1397, dated 05.06.2018, by which on the recommendation of the Bihar Public Service Commission, dated 01.11.2017, the petitioner was provisionally appointed with effect from 02.07.2015 as the Principal, Polytechnic College, on the pay scale of Rs. 37,400 –



67,000/- plus A.G.P. Rs. 10,000/- and special allowance of Rs. 2,000/- (Level 14), which would be subject to the final outcome of the S.L.P. preferred by the Department against the order, dated 19.07.2017, passed in LPA No. 655 of 2016.

10. The dispute involved in this writ application is that the petitioner is not having adequate experience at Professor level (Level 14) and the same is the ground of rejection of the candidature of the petitioner.

11. The relevant clause for experience in the advertisement no. 15 of 2020, dated 06.08.2020, is minimum 15 years of experience in teaching/research/industry, out of which at least three years shall be at the post equivalent to that of Professor, in the pay scale of Level 14.

12. Learned Counsel for the petitioner submits that in pursuance to the Advertisement No. 15 of 2020, dated 06.08.2020, the petitioner was required to furnish experience certificate for appointment on the post of Principal in Government Engineering Colleges, as such, the petitioner, vide Letter No. 218, dated 05.04.2022, requested the Department to issue experience certificate in the light of the Office Order No. 1397, dated 05.06.2018, by which the petitioner was appointed as Principal in the pay scale of Level 14 with effect from 02.07.2015 and as on



the date of submission of his application in the year 2020, the petitioner was having more than three years experience as Principal in the pay scale of Level 14.

13. However, the respondent-Department, vide Letter No. 1508, dated 31.05.2022, refused to issue experience certificate to the petitioner with effect from 02.07.2015, which is arbitrary and unreasonable in view of the fact that the petitioner was working as Incharge Principal of the Darbhanga Engineering College, Darbhanga, with effect from 29.06.2012 and after notification, dated 05.06.2018, the petitioner started working as regular Principal, Polytechnic College, and was granted the pay scale of Level 14 with effect from 02.07.2015.

14. Learned Counsel further submits that the petitioner submitted hard copy of the list of documents, which the petitioner had uploaded pursuant to the Advertisement No. 15 of 2020, to the Bihar Public Service Commission, vide Letter No. 674, dated 02.09.2020, wherein Column (xii) states regarding the experience certificate, dated 14.08.2020 and experience certificate, dated 17.08.2020 (total 11 pages).

15. The petitioner again furnished the relevant proof of experience certificate, issued by the Department, as contained in Letter No. 2205, dated 09.09.2020 and Letter No. 2907, dated



15.12.2015, vide petitioner's Letter No. 737, dated 12.09.2020, through registered post/speed post, dated 14.09.2020 to the Bihar Public Service Commission, which would show that the petitioner had already submitted the relevant documents before 18.04.2022, which ought to have been considered by the respondent authorities. The petitioner fulfilled all the qualification and experience criteria, as required under the Advertisement No. 15 of 2020, for the post of Principal in Government Engineering Colleges.

16. Learned Counsel also submits that none of the candidates, who have been selected for the post of Principal in Government Engineering Colleges, under the Science and Technology Department, Government of Bihar, have done their Post-graduate and Doctorate from reputed institution of Indian Institute of Technology, Roorkee, like the Petitioner.

17. The old experience certificate issued by the Science and Technology Department, Government of Bihar, dated 15.12.2015 was not considered by the Bihar Public Service Commission and declared the petitioner as ineligible candidate, having inadequate experience equivalent to that of the Professor level (pay scale in Level 14). The respondent-Bihar Public Service Commission wrongly rejected the candidature of the petitioner by



not considering the experience certificate of the petitioner in proper manner despite the notification, dated 05.06.2018, issued pursuant to the order passed by this Court in LPA No. 655 of 2016 with effect from 02.07.2015, in the pay scale of Level 14. The respondent authorities cannot take advantage/benefit of their own wrong, causing injustice to the petitioner despite the clear direction of this Court, in LPA No. 655 of 2016. The denial of the Department to grant experience certificate to the petitioner with effect from 02.07.2015 on the post of Principal, Polytechnic College, is unjust and not tenable in the eyes of law.

18. The petitioner, referring to the supplementary affidavit, has also submitted that pursuant to the Advertisement No. 15 of 2020, the result has been published by the Bihar Public Service Commission on 27.07.2022, which shows that only 10 candidates in the unreserved category has been selected and three posts in the unreserved category is still vacant.

19. Per contra, learned Counsel for the respondent nos. 1 to 4, argued that the petitioner was appointed against the post of Principal, Government Polytechnic Colleges of the State of Bihar, vide Memo No. 1397, dated 05.06.2018 , with effect from 02.07.2015, only on provisional basis, subject to outcome of the SLP pending before the Hon'ble Supreme Court against the order,



dated 19.07.2017, passed in LPA No. 655 of 2016. Hence, at present, the petitioner shall not be entitled to get the experience certificate from 02.07.2015, and he is being treated as Principal from the actual date of his joining, i.e. 11.06.2018.

20. On the other hand, learned Counsel for the respondent no. 6-Bihar Public Service Commission submits that the petitioner applied for the post of Principal in Government Engineering Colleges under the Science and Technology Department, Government of Bihar, but he did not possess the experience required as per the advertisement, which would be evident from Letter No. 2205, dated 09.09.2020, issued by the Joint Secretary, Science and Technology Department, while issuing experience certificate of the petitioner. Accordingly, the Expert Committee of the Bihar Public Service Commission declared the petitioner as ineligible on the ground that the petitioner has inadequate experience at Professor level (pay scale in Level 14). The Bihar Public Service Commission has acted on the basis of requisitions/guidelines/rules and regulations framed by the State Government, through Department of Science and Technology.



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

22. From the advertisement issued by the Bihar Public Service Commission for appointment of regular Principals in Government Engineering Colleges, having 32 vacancies, the eligibility criteria, apart from the educational qualification, contains the experience also, for which the term of the advertisement says that the candidate must have minimum 15 years of experience in teaching/research/industry, out of which three years shall be at the post equivalent to that of Professor, having the pay scale in Level 14.

23. Previously, the Science and Technology Department had issued two certificates with regard to the experience of the petitioner. The first one is dated 15.12.2015, annexed As Annexure P/8 to the writ application and the second one is dated 09.09.2020, annexed at Annexure P/13 to the second supplementary affidavit. Upon going through the experience certificate, dated 15.12.2015, it appears that the petitioner worked as Assistant Professor from 1986 to 2011 and from 17.1.2011, he worked as Associate Professor and with effect from 29.06.2012, he continued to work as Incharge Principal, Darbhanga Engineering College,



Darbhanga. In the second experience certificate, dated 09.09.2020, the details of work experience of the petitioner on the various posts with corresponding pay scales are mentioned and the petitioner has been shown to be working as regular Principal with effect from 11.06.2018, having the pay scale in Level 14.

24. The bone of contention lies here, for which the submission of the petitioner that as per the notification, issued by the Department of Science and Technology, Government of Bihar, dated 05.06.2018, the petitioner has been granted the post of Principal with effect from 02.07.2015 in the pay scale of Level 14, and as such, from 2015, as on the date of publication of the advertisement, the petitioner was fulfilling the eligibility criteria regarding three years experience at the post equivalent to that of Professor in the pay scale of Level 14; whereas, the submission of the Department is that the petitioner has been given the post of Principal pursuant to an order passed by this Court in LPA No. 655 of 2015 and the State has preferred S.L.P. before the Hon'ble Supreme Court against the order passed in the Letters Patent Appeal, as such, the grant of pay scale of Level 14 at the post of Principal, Polytechnic College to the petitioner with effect from 02.07.2015 was provisional and was subject to the final outcome of the S.L.P. and, therefore, the Department has rightly counted the



experience of the petitioner from the date of submission of his actual joining on 11.06.2018 in terms of the notification, dated 05.06.2018. As such, refusal by the Department to issue experience certificate with effect from 02.07.2015, vide impugned Letter No. 1508, dated 31.05.2022 is perfectly correct.

25. Considering the aforesaid discussion and the submissions advanced on behalf of the parties, it is evident that the petitioner is having the actual teaching experience since long inasmuch as he was made Incharge Principal of Darbhanga Engineering College, Darbhanga, in the year 2012 and since then he is working as Incharge Principal till the petitioner applied for the post of principal in Government Polytechnic Colleges pursuant to the Advertisement No. 02 of 2015, published by the Bihar Public Service Commission. The petitioner was wrongly denied appointment by the Bihar Public Service Commission/State on the post of Principal of Polytechnic Colleges, which led to the filing of the writ application and the Letters Patent Appeal by the petitioner and the Division Bench of this Court directed the respondents to appoint him on the post of Principal, Polytechnic Colleges, in the pay scale of Level 14, with effect from 02.07.2015. In pursuance thereof, the Department issued notification, dated 05.06.2018,



granting him the pay scale in Level 14 on the post of Principal with effect from 02.07.2015.

26. Accordingly, in my considered opinion, the petitioner was having experience of more than three years at the post equivalent to that of the Professor in the pay scale of Level 14 on the date of publication of Advertisement No. 15 of 2020, dated 06.08.2020, by the Bihar Public Service Commission. As such, the refusal to grant experience certificate to the petitioner with effect from 02.07.2015 by the Department of Science and Technology, Government of Bihar, is not justified in law as well as in the facts.

27. In the result, the impugned Letter No. 1508, dated 31.05.2022, is set aside and the respondent no. 2-Principal Secretary of the Science and Technology Department, Government of Bihar, is directed to issue experience certificate to the petitioner with effect from 02.07.2015 as Principal, Polytechnic College, in the pay scale of Level 14, within a period of fifteen days from the date of receipt/production of a copy of this order.

28. However, it is made clear that this experience certificate shall be subject to final outcome of the S.L.P. preferred by the State against the order passed in L.P.A. No. 655 of 2016.

29. After receipt of the experience certificate, the petitioner shall produce the same immediately within a period of



two weeks of receipt of the experience certificate before the Bihar Public Service Commission and the Bihar Public Service Commission, in turn, is directed to consider the candidature of the petitioner for the three vacant posts of Principal in Government Engineering Colleges in accordance with law and in terms of the Advertisement No. 15 of 2020, dated 06.08.2020, and take a final decision within a period of four weeks from the date of submission of experience certificate by the petitioner.

30. It is further made clear that till the final decision is taken by the Bihar Public Service Commission, one post of Principal of Government Engineering College shall be kept reserved by the Department of Science and Technology, Government of Bihar, Patna.

31. In the result, this writ application is allowed.

32. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	12-12-2023
Uploading Date	06-02-2024
Transmission Date	N/A

