

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15281 of 2021

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Ashwini Bhardwaj Son of Binay Singh Resident of Baramasia, Near Cyber
Zone, P.S. Dhawar, District- Dhanbad (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Education Department, Govt. of Bihar, Patna, Bihar.
2. The Secretary, Education Department, Govt. of Bihar, Patna, Bihar.
3. The Addl. Chief Secretary, Education Department, Govt. of Bihar, Patna.
4. The Director (Admin.) cum Addl. Secretary, Education Department, Govt. of Bihar, Patna, Bihar.
5. The Bihar Public Service Commission, Bihar, Patna through its Chairman, 15, JawaharLal Nehru Marg, Bailey Rd, Patna, Bihar 800001.
6. The Chairman, Bihar Public Service Commission, Bihar, 15, JawaharLal Nehru Marg, Bailey Rd, Patna, Bihar 800001.
7. The Joint Secretary cum Examination Controller, Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms.Soni Shrivastava, Adv. Mr.Ravi Bhardwaj, Adv.
For the State	:	Ms.Abhanjalli Shekhar, Adv.
For the BPSC	:	Mr.Sanjay Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
Date : 10-09-2024

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ application has been filed for direction to
the respondent authorities to appoint the petitioner on the post of
Lecturer in Government Training Colleges- Arts & Craft against
advertisement no.04/2016 dated 03.05.2016.

Re: I.A. No.02/2023



3. The present Interlocutory application has been filed by the petitioner for adding the issue in the main writ petition i.e. “To quash memo no.708 dated 07.06.2022 whereby the representation filed by the petitioner has been rejected by respondent Education Department (Annexure-P/9 of the I.A. application).

4. In the interest of justice, I. A. No.02 of 2023 is allowed and disposed of.

Re: CWJC No.15281 of 2021

5. Learned counsel for the petitioner submits that the petitioner participated in the examination held by the Bihar Public Service Commission (hereinafter referred to as “BPSC”) for appointment on 26 vacant posts of Lecturer in Government Training Colleges-Arts & Craft. Out of 26 vacancies, there were 13 vacancies under unreserved category and rest 13 vacancies were for reserved categories. The petitioner is a candidate of unreserved category.

6. After the written examination and on the basis of performance of the candidates, a merit list was prepared and published by the BPSC on 04.07.2020, where the petitioner was placed at serial no.8 amongst the 13 unreserved vacancies.

7. It is further submitted that after the result was published,



no information was given to the petitioner regarding the date of counseling and further action ought to be taken by the BPSC and/or by the State-respondents.

8. The petitioner kept on visiting the website of the BPSC, but no such information regarding counselling was ever posted on the website of the BPSC. The petitioner did not receive any correspondence and/or information regarding further process.

9. The petitioner resides in Jharkhand and he came to Patna in June, 2021 and was shocked to know that counselling process had already been completed on 19.08.2020 and 20.08.2020 and some candidates had joined their respective posts. It is further submitted that out of 13 vacancies, only 10 candidates have been appointed and rest 3 posts are still vacant.

10. Thereafter, the petitioner filed representation before the Authorities and he had specifically stated that he was never informed about the counselling failing which he could not appear for the same, more-so, considering that the COVID 19 was at its peak at the said time i.e. in August, 2020. The petitioner is a non-resident of State of Bihar and even in that view of the matter, it was not possible for him to personally enquire from the office of the respondents during the COVID times when the modes of transportation were restricted.



11. Learned counsel for the petitioner further submits that the Authorities had the contact details of the petitioner but they never remotely suggested that they had sent any communication on the address or on the mobile of the petitioner also. It was never intimated to the petitioner that the further information regarding the counselling will be published on the website.

12. A counter-affidavit is filed on behalf of the respondent no.4 and it is stated that the petitioner has appeared in the written examination which was conducted on 26.08.2018 vide his Admit Card Roll No.400129 and successfully passed in the said examination and obtained merit serial 08 in the unreserved category, where 26 candidates from different categories were selected and all placed in the merit list for their further document verification/counselling. The merit list for successful candidates was published by the Joint Secretary-cum-Examination Controller, BPSC vide notice dated 04.07.2020 (Annexure-A of the counter-affidavit).

13. Learned counsel for the respondent no.4 submits that the announcement was made in which the dates 19.08.2020 & 20.08.2020 were fixed for the verification/counselling of those candidates who had been recommended by the BPSC and the same was published on the respective website by the



Department concerned.

14. A total 24 candidates participated in the counselling/verification and those who have participated, they all were appointed provisionally on probation and posted in the Training Institutes/Colleges vide notification no.822 dated 26.08.2020 and notification no.829 dated 31.08.2020, respectively.

15. It is submitted by learned counsel for the respondent no.4 that the petitioner was absent on both dates of counselling. He neither participated in the counselling nor informed the appropriate Authority about his reason for absence on or before the dates of counselling/verification.

16. It is stated in para-13 of the counter-affidavit that the petitioner informed by his letter representation dated 15.06.2021 that he has been selected as a Lecturer in the subject of Arts and Crafts and due to COVID-19 pandemic, Lockdown and his family difficulties, he could not participate in the verification/counselling.

17. It is submitted that altogether approximately, after lapse of 10 months time, from the day of notification in which all 24 candidates were appointed provisionally on probation, the petitioner approached the Authorities. The Department is not



biased against the petitioner as the department is also bounded by the administrative order which was notified by the Chief Secretary, Appointment Department, Bihar vide letter III/PSC-5023/54-3131-A dated 05.04.1955 in which it is clearly stated that **“Where recruitment is made to a service at one time during the year, the Public Service Commission will be consulted once a year, if during the year an unforeseen vacancy occurs in such a service, and it has to be filled immediately, the latest list of candidates approved by the Commission may be used for filling the vacancy”** (Annexure-D to the counter-affidavit).

18. It is submitted that the Education Department has full sympathy over the petitioner, therefore, the department has requested to issue necessary guidelines/instructions over this matter from the BPSC vide its office letter 2/A1-03/2020 1003 dated 22.10.2021 (Annexure-E to the counter-affidavit).

19. A supplementary counter-affidavit is filed by the respondent no.4, in which, at para-6, it is stated that a press communique has been published in the daily newspaper by which information was circulated informing therein the date of counselling and document verification for appointment to the post of Lecturer (Arts and Craft) to be fixed for 19.08.2020 and



left over candidates have been given another chance on 20.08.2020 for counselling and verification (Annexure-A and A/1 to the supplementary counter-affidavit).

20. It is stated at para-7 of the supplementary counter-affidavit that the notice of counselling and document verification has also been uploaded on the official website of Education Department, Government of Bihar on 13.08.2020 (Annexure-B to the supplementary counter-affidavit).

21. A query was made by this Court, vide order dated 23.07.2024, i.e., whether any advertisement for appointment of the Lecturer in the Government Training Colleges has been made or not after the advertisement no.04/2016? In reply, learned counsel for the respondent no.4 filed a counter-affidavit dated 03.08.2024 and drawn attention of this Court towards para-6 and 7 of the counter-affidavit, wherein, it is stated that no advertisement has been published for making appointment of the Lecturer (Arts and Craft) in the Government Training Colleges after Advt. No.04/2016 and this advertisement had already attained its finality and the appointment process has been completed in the year, 2020 itself.

22. Pursuant to the query made by this Court, vide order dated 08.08.2024 to inform this Court that out of 13 posts for



UR category in the Advertisement No.04/16, how many posts are vacant till date, a third supplementary counter-affidavit has been filed on 20.08.2024, in which, at para-6 it is stated that after completion of the selection process under Advertisement No.04/2016, out of 13 posts only one post is vacant under UR category.

23. Considering the argument of the parties and on perusal of the record, it is clear that the petitioner was a resident of the State of Jharkhand and counselling/document verification notice was published in the local newspapers of the State of Bihar and not in the State of Jharkhand. Further, no separate communication was made to the petitioner to appear in the counselling. Petitioner admitted that he always used to visit the website of the BPSC but not the website of Education Department, Government of Bihar, therefore, he could not get knowledge of the counselling. A notice regarding counselling should have been published even on the website of the BPSC which was the examination agency of Advertisement No.04/2016. Also, the plea of the petitioner cannot be denied that the date of counselling/verification was fixed when COVID-19 was at its peak and there was a Lockdown in whole country.



24. Furthermore, it is an admitted fact that one post under the UR category is still vacant and no other advertisement with respect to making appointment of the Lecturer (Arts and Crafts) in the Government Training Colleges after Advertisement no.04/2016, was later on published by the BPSC, therefore, I, deem it appropriate to direct the concerned Authority to appoint the petitioner on the said vacant post under the UR category, preferably, within a period of one month from the date of production of this order.

25. It is hereby clarified that the petitioner shall not be entitled to claim Seniority, pay or any other wages from the initial date of joining of other candidates of Advertisement No.04/2016, rather he shall be entitled for all the benefits from the date he actually joins the post.

26. With the aforesaid direction and observations, this writ application is disposed off.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.09.2024
Transmission Date	NA

