

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.829 of 2023

In
Civil Writ Jurisdiction Case No.6411 of 2022

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The Registrar, Bihar Animal Sciences University Near Jai Prakash International Airport, Patna.

... .. Appellant/s

Versus

1. Md. Aman Hassan Son of Md. Shamim Hassan Resident of Jabbar Chak, P.S.- Tatarpur, District- Bhagalpur.
2. The State of Bihar through the Director, Higher Education, Government of Bihar, New Secretariat, Patna.
3. The Director, Higher Education, Government of Bihar, New Secretariat, Patna.
4. The Bihar Animal Sciences University, Near Jai Prakash International Airport, Patna through its Vice Chancellor.
5. The Vice Chancellor, Bihar Animal Sciences University, Near Jai Prakash International Airport, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate with Mr. Alok Kumar Rahi, Advocate
For the Respondent/s	:	Mr. Arjun Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 27-02-2024

We have heard Mr. Anjani Kumar, learned Senior Advocate, duly assisted by Mr. Alok Kumar Rahi, learned Advocate for the appellant and Mr. Arjun Kumar, learned counsel for the respondents.

2. The challenge has been made to an order dated 31.05.2023 passed by the learned Single Judge in CWJC No. 6411 of 2022, whereby the writ petition was allowed and the



respondent Bihar Animal Sciences University, Patna was directed to consider the petitioner for appointment on the vacant post of Assistant Professor-cum-Junior Scientist under appropriate category within a period of one month.

3. The learned Senior Counsel representing the appellant has contended that the writ petition was allowed on the basis that the impugned act of bringing about the changes in the selection procedure by providing minimum marks for interview or viva voce test in the midst of selection process, which had already been initiated amounts to changing the rules of game mid-way and hence impermissible in view of the decisions in the case of *K Manjusree Vs. State of Andhra Pradesh* and *Another[(2008) 3 SCC 512]* and *Hemani Malhotra Vs. High Court of Delhi [(2008) 7 SCC 11]*, is not tenable as the same has been passed without appreciating the facts and circumstances of the case in hand.

4. Referring to Clause 3 and 30 of the General Instruction and Conditions of the advertisement dated 06.10.2021, it is submitted that there was clear stipulation that the candidates were advised to check/visit website of the University regularly for updates of recruitment process and the Chairman of the Selection Committee shall have the power to



lay down the procedure in respect of any matter not mentioned above. The Selection Committee was empowered to decide its own method of evaluation of the performance of the candidate in interview. Learned Senior Counsel, thus submits that for the purpose of deciphering the cut-off marks or pass marks for the interview, it ought to be a similar specific provision in the instruction but it could not be made available at the relevant time. Accordingly, the candidates were instructed vide notification dated 08.02.2022 issued in terms of the Bihar Animal Sciences University Statute, 2020 prescribing that a candidate must obtain at least 50% marks in interview to be considered in the merit or for selection was approved by the Academic Council of the University vide Agenda No. 2 dated 19th September, 2020. The aforesaid notification was published in the Bihar Extraordinary Gazette and it was well within the knowledge of the writ petitioner-respondent herein.

5. Adverting to the aforesaid facts, learned Senior Counsel further contended that the respondent actually belongs to EBC category in which he applied for, but no selection has been made in the said category and a direction to the appellant University to appoint the respondent to the vacant post of Assistant Professor-cum Junior Scientist under the appropriate



category, who was not found even suitable in interview, is not proper. Moreover, the petitioner admittedly participated in the interview knowing very well the stipulation brought by the notification dated 08.02.2022 and only because in the final result the candidate having been rendered unsuccessful he cannot turn around and contend that the criteria for selection process was bad and improper. Candidate having participated in the selection process without any protest cannot be allowed to turn around and question the very process having failed to qualify. Reliance has also been made on a judgment rendered in the case of ***Jharkhand Public Service Commission Vs. Manoj Kumar Gupta & Anr. [(2019) 20 SCC 178]***.

6. *Per contra*, learned counsel for the respondents supported the judgment of the learned Single Judge on the strength of the mandate of the Hon'ble Apex Court in the case of ***K Manjusree and Hemani Malhotra*** (supra).

7. Having heard the learned Advocates for the respective parties and after careful consideration of the materials, it appears that the advertisement for appointment on various posts including Assistant Professor-cum-Junior Scientist was published in February 2020 vide employment notice no. 1/2020. The respondent being eligible applied in the category of



EBC and PDW physically handicapped. The appellant having found the respondent-writ petitioner fit issued letter dated 27.08.2021 inviting him to appear on 09.09.2021 for interview. However, the process of interview was stalled on account of some administrative reason. Subsequent thereto, the appellant University re-advertised the remaining vacancies with minor changes through employment notice no. 5/2021 with clear indication that the candidates who have applied pursuant to the earlier employment notice no. 1/2020 need not apply again and their candidature would be considered subject to fulfillment of eligibility criteria. Even then the subject stipulation was not notified. The appellant University issued fresh interview letter requiring the appearance of the writ petitioner in the interview conducted by the Selection Committee on 10.03.2022. The evaluation of the writ petitioner was done by the selection committee and he was awarded 6 marks in the interview out of 15 marks and hence, declared not fit for selection in view of the Bihar Animal Sciences Statute 2020 duly notified in the Bihar Extraordinary Gazette on 08.02.2022, having stipulation under sub rule 3 of Rule 6 of the Statute that a candidate must obtain at least 50% marks in the interview to be considered in the merit order for selection.



8. It is the admitted fact that the aforementioned stipulation was not the part of either the first advertisement vide employment notice no. 1/2020 or the subsequent employment notice no. 5/2021.

9. It has been brought in existence through the notification dated 08.02.2022 and thus, undoubtedly prescribing minimum marks for interview has been brought out in the midst of the selection process. The law in this regard is well settled that the process of selection is to be governed by the rules and regulations which was in force at the time of issuance of advertisement. Once the vacancies advertised under the rules prevalent at that time, the selection process ought to be completed as per the prevalent rules/regulations and any amendment in the prevalent rules or introducing a new rule cannot deprive the right of a candidate for consideration on the basis of the prevalent rules and terms and conditions of the advertisement.

10. The Apex Court while highlighting the issue involved in the case in hand in a catena of judgments has held that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. The learned Single Judge has rightly relied upon



the judgments of *K Manjusree and Hemani Malhotra* (supra) wherein the Apex Court in clear terms held that once the minimum marks are not prescribed for viva voce before commencement of the selection process, the authority concerned cannot either during selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Any Additional requirement during commencement or midst of the selection process, shall certainly change the rule of the game.

11. So far the reliance of the learned Senior Advocate for the appellant, in the case of Manoj Kumar Gupta (supra) the same is not applicable. In the cited case the scheme framed by the UGC for State Level Eligibility Test, there was a provision for constitution of Moderation Committee for aiding the decision in arriving at the cut-off marks, in each subject, before declaring result. The Hon'ble Supreme Court held that need for fixation of qualifying marks for paper III would only arise when the Moderation Committee meets and decides what should be the level of competence expected from the people who are to be considered for appointment as Lecturer. This was held to be not a change brought about but an additional aspect brought in



while determining the merit of the candidate.

12. Moreover, the Two Judge Bench decision has not considered the earlier three Judges Bench decisions in the case of *Manjusree and Hemani Malhotra (supra)*

13. In view of the discussions made hereinabove and the position obtaining in law, this Court does not find any error in order/judgment passed by the learned Single Judge. The Letters Patent Appeal sans any merit stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	NA
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