

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2052 of 2021

DR. Subodh Kumar Son of Krishan Deo Singh Resident of Housed No. WM-130301/31, Sri Krishna Nagar, Ward No.31, P.O. Motihari, P.S. Motihari Town, Distirct-East Champaran at Motihari (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar thorough the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Science and Technology Department, Government of Bihar, Patna.
3. The Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg (Bailey Road), Patna thorough the Secretary.
4. The Chairman, The Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg (Bailey Road), Patna.
5. The Secretary, The Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg (Bailey Road), Patna.
6. The Joint Secretary-Cum-Examination Controller, The Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg (Bailey Road), Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vijay Kumar Singh, Adv.
For the State	:	Mr. Kumar Alok, SC7
For the B.P.S.C.	:	Mr. Sanjay Pandey, Adv.
		Mr. Nishant Kumar Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 30-07-2024

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Bihar Public
Service Commission.

2. The present writ petition has been filed seeking the
following reliefs:

*“(I) For issuance of an appropriate writ in the nature of
MANDAMUS, commanding and directing the
Respondent Bihar Public Service Commission to*



insert/include the following academic merit in the advertisement no.16/2000 published for recruitment of Professor in the subject of Chemistry under Nationalized Engineering Colleges of Bihar :-

a)Design of new curricula and courses - 02 per curricula

(b)M Phil/P.G. dissertation - 2 per degree awarded

(c) JRF & SRF award/NET -maximum 7 credit

Examination/SET Examination

(d)Awards/Fellowship

International -07 credit

National -05 credit

on the ground that the said academic merit is mandatory for recruitment for the post of Professor under the Notification dated 18.07.2018 issued by the Commission and published in the University Grant Commission and published in the Gazette of India Extraordinary Part III Section 4 but the same has been arbitrarily ignored by the Respondent Bihar Public Service Commission.

(II) For issuance of an appropriate writ in the nature of MANDAMUS,commanding and directing the Respondent Authorities to start the selection process only after inclusion of the aforesaid eligibility criteria in the advertisement and not otherwise.

(III) For issuance of any other appropriate writ/writs,order /orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. Having heard learned counsel for the parties and for the reasons stated in the interlocutory application, the interlocutory application no. 01 of 2021 is allowed and this interlocutory application shall also be treated as a part of the main writ petition.

4. The short fact of the present case is that the Science and Technology Department, Government of Bihar sent



a requisition on the Bihar Public Service Commission for appointment of altogether eight Professors in the subject of Chemistry in different Nationalized Engineering Colleges of the State. Pursuant to the requisition sent by the Science and Technology Department, the Bihar Public Service Commission published an advertisement under Advertisement No.16/2020 issued under the signature of the Respondent no.6 (Annexure-2 of writ petition) whereby and whereunder eligible and intending candidates have been called upon to submit their on-line application in prescribed form for their appointment against the post of Professor in the Nationalized Engineering Colleges in the subject of Chemistry. According to the said advertisement against altogether eight vacancies for the Professor in the Nationalized Engineering Colleges under Bihar, three posts are meant for the candidates of unreserved candidates. It is stated that Item no.3 of the said advertisement prescribed for educational qualification whereas the Item no.4 prescribed for the procedure of selection.

5. The University Grant Commission issued a Notification with respect to UGC regulations on minimum qualifications for appointment of teachers and other academic staff in universities and colleges and measures for the



maintenance of standards in higher education, 2018 which was published in the Gazette of India, Extraordinary Gazette in Part-III, Section -4 on 28th July, 2018. In Paragraph no.4.1 of the aforesaid Notification of University Grant Commission provides for Direct Recruitment and Sub-Paragraph no.4.1 (III) provides for eligibility for direct recruitment of Professor. The same has been re-produced here under :-

III. Professor

Eligibility (A or B)

A.

(i) An eminent scholar having a Ph.D. degree in the concerned/allied/relevant discipline, and published work of high quality, actively engaged in research with evidence of published work with, a minimum of 10 research publications in the peer reviewed or UGC-listed journals and a total research score of 120 as per the criteria given in Appendix-II, Table 2.

(ii) A minimum of ten years of teaching experience in university/college as Assistant Professor/Associate Professor/Professor, and/or research experience at equivalent level at the University/National Level Institutions with evidence of having successfully guided doctoral candidate.



OR

B. An outstanding professional, having a Ph.D. Degree in the relevant/allied/applied disciplines, from any academic institutions (not included in A above)/ industry, who has made significant contribution to the knowledge in the concerned /allied/relevant discipline, supported by documentary evidence provided he/she has ten years' experience.

6. According to Appendix-II, Table 2 of the aforesaid Notification dated 18.07.2018 issued by the University Grant Commission for faculty of Sciences /Engineering/ Agriculture /Medical/ Veterinary Sciences (1) For Design of new curricula and courses, 02 per curricula /course has been allotted, (2) For International Awards/Fellowship, 07 marks has been allotted whereas for National Awards/ Fellowship, 05 marks has been allotted and (3) For M Phil/P.G. dissertation, 2 per degree has been awarded.

7. Similarly All India Council for Technical Education issued a notification dated 01.03.2019 with respect to AICTE regulations on pay scales service conditions and minimum qualifications for the appointment of teachers and other academic staff such as Library, Physical, Education And Training & Placement personnel in technical institutions and



measures for the maintenance of standards in Technical Education-(Degree) Regulation,2019 and the same was published in the Gazette of India, Extraordinary, Part-III-Section -4 (Annexure-P/4 of the writ petition).

8. Learned counsel for the petitioner submits that from bare perusal of the Advertisement published by the Bihar Public Service Commission as well as the Notification issued by the University Grant Commission, it is evidently clear that the Respondent Bihar Public Service Commission ignored the following academic merit in the recruitment of the Professor as mandatory required under the Notification issued by the University Grant Commission :-

Design of new curricula and courses - 02 per curricula

M Phil/P.G. dissertation - 2 per degree awarded

Awards/Fellowship

International -07

National -05

9. Learned counsel for the petitioner further submits that pursuant to the aforesaid advertisement the petitioner had submitted his on-line application bearing Application No.000029 and registration no.202016000062 with relevant enclosures on the website of Bihar Public Service Commission in the prescribed form and also sent its hard copy



through the speed post on 14.09.2020 which was duly received by the Bihar Public Service Commission on 17.09.2020. He further submits that from perusal of the profile of the petitioner attached with the on-line application form, it is evidently clear that the petitioner had obtained at least 4 Award of National Fellowship (DST-JRF, DST-SRF, CSIR-RA, INSA- Summer Scientist etc.) and 3 Award of International Fellowship (PDF- Portugal, Yearlong Visiting Professional Fellow- South Korea, CSIR-Indian Overseas- National Poolship for RA, Chair Professor Ethiopia under UNDP Program), as also the petitioner had done Design of new curricula and courses for Applied Chemistry/Industrial Chemistry. The petitioner had also supervised seven thesis of M.Phil/P.G. dissertation under one year research program.

10. Learned counsel for the petitioner further submits that in the advertisement, the Respondent Bihar Public Service Commission ignored the relevant academic merit such as Design of new curricula and courses, Awards/Fellowship in National/International strata and guidance of M.Phil/ P.G. dissertation as mandatory required under the University Grant Commission Act, 2018 which cause serious prejudice to the petitioner. He further submits that if the Respondent



Commission published the advertisement strictly in consonance with the Rules and Regulations of the University Grant Commission as well as the All India Council for Technical Education, the petitioner is most suitable and eligible candidates amongst all the applicants since the petitioner has academic merit in Design of new curricula and courses, Awards Fellowship in National/ International and M Phil/ P.G. dissertation. Hr further submits that the respondent Commission is duty bound to implement rules and regulations as framed by the University Grant Commission and All India Council for Technical Education in its true spirit and since any ignorance therein is failure on the part of recruitment of eligible and suitable candidate.

11. Learned counsel for the petitioner further submits that during the pendency of the writ application, the Respondent Bihar Public Service Commission had issued the list of total ineligible candidates, 32 in number. In the said list the name of the petitioner has been placed at serial no. 24 (Annexure-P/6 of the I.A.). According to the said list, the reasons of declaring the petitioner as ineligible for the following reason :-

(I) Submitted experience certificates not as per advertisement.



(II) Unavailability of certificate/proof for Associate Professor Level Pay Scale 13A-1 and Associate Professor Level-10.

(III) Number of research papers at the level of Associate Professor in SCI/AICTE/UGC approved list of Journals is less than 10 (ten).

(IV) Ph.D Guidance claimed but does not attached 02 successful Ph.D guidance documents as Supervisor/Co-Supervisor.

12. Learned counsel for the petitioner further submits that the reason no. I for declaring the petitioner as ineligible is totally uncalled for since the petitioner had submitted the experience certificate as per advertisement. Similarly the reason no.II for declaring the petitioner as ineligible is also unreasonable and untenable since according to the advertisement there is only requirement for three years service of Associate Professor or equivalent post whereas the petitioner had enclosed the certificates of Professor for more than 8.5 years which is higher post of Associate Professor. Similarly, the reason no.III for declaring the petitioner as ineligible is also unreasonable and untenable since according to the advertisement, there is only requirement for 10 Research Paper as published in Journals though altogether 36 Research



Papers of the petitioner has been published in Journals. Similarly, the reason no. IV for declaring the petitioner as ineligible is also unreasonable and untenable since in the last option of experience condition no.2 of the advertisement it is clearly mentioned that "At least 10 research publications at the level of Associate Professor in SVI journals /UGC/AICTE approved list of journals till the date of eligibility of promotion" In the said option there is no discussion about Ph. D. Research Supervision. It is also relevant to mention that in the AICTE UGC Rule, the Research is not mandatory.

13. A counter affidavit has been filed on behalf of the respondents no. 3 to 6 by way of which learned counsel for the Commission submits that the commission is a recommending body and in the matter of appointment or otherwise abides by the rules and regulations framed by the State Government. He further submits that in the present matter the General Administration Department, Government of Bihar vide letter no. 3690 dated 13.03.2020 with letter no. 686 dated 20.02.2020 of the Science and Technology Department, Government of Bihar sent requisitions mentioning therein necessary qualifications and experiences required for the appointment to 16 posts of Professor (Chemistry) in



Government Engineering Colleges (Annexure-A series of the counter affidavit). On the basis of the aforesaid requisition received from the Departments, the Commission published Advertisement No. 16/2020 for appointment to 16 posts of Professor (Chemistry) in Government Engineering Colleges in accordance with the Bihar Engineering Education Service Rules, 2020, information and approval of draft of advertisement given by the Department concerned time to time. The last date for filling up the application form was 11.09.2020 and receiving of application form in the office of the Commission was 18.09.2020 (Annexure-B series of the counter affidavit).

14. Learned counsel for the Commission further submits that the required essential qualifications/ experiences, age limit and selection process according to the requisitions of the concerned Department and as published in the Advertisement No. 16/2020 are as follows:-

A. Educational Qualification:-

Eligibility	Experience
Ph.D. Degree in Chemistry and First Class or equivalent at either Bachelor's or Master's level in Chemistry.	1. Minimum of 10 years of experience in Teaching/Research/Industry out of which at least 3 years shall be at a post equivalent to that of an Associate Professor.



	and 2. At least 6 research publications at the level of Associate Professor in SCI journals/UGC/AICTE approved list of journals and at least 2 successful Ph.D. guided as Supervisor/co-supervisor till the date of eligibility of promotion. or At least 10 research publications at the level of Associate Professor in SCI journals/UGC/AICTE approved list of journals till the date of eligibility of promotion.
--	---

B. Basis of selection: Selection shall be made on the basis of following details for which weightage scheme shall be as follows:

Total weightage-100		
Academic Background (weightage-20 marks)	(Evaluation of Academic Performance. Research Interview Performance, Domain Knowledge and Teaching Skill. (weightage-60 marks) (Engineering, Humanities and 20 marks) Science)	Interview (weightage-20 marks)
(a), Maximum 10 (10% of percentage marks obtained in M.sc. in relevant branch (b). Maximum 5 (5% of percentage marks obtained in B.sc. (Hons.) (c) Ph.D.-05	(a) Research Publication (Weightage-20 maximum) (b) Seminar Presentation (Weightage-10 maximum) obtained in M.Sc. in (c) Sponsored Research Project/ Project (Weightage-10 maximum) (d) Research Guidance (M.Phill, M.E., M.Tech)-(Weightage-10 maximum) (e)Ph.D.Guidance-(Weightage-10 maximum) Note:- • Referred journals-3 each publications • Non referred but recognized and reputable journals and periodicals with ISBN/ISSN Number-	



	2/publication • Seminar/Conference proceedings as full papers etc. (Abstracts not to be included) -International-5/publication -National-2.5/publication • Text reference books published by the International Publishers having ISBN/ISSN Numbers with an established peer review system by sole author 5/chapter National-1/chapter • Subject books by National/State Level publishers and Central Govt. publications with ISBN/ISSN Numbers - By sole author-2.5/chapter Inedited books-0.5/chapter • Subject books by other local publishers with ISBN/ISSN Numbers - By sole author-1.5/chapter Inedited books -0.25/chapter • Chapters contribution to edited knowledge based volumes (published by International publishers) having ISBN/ISSN Number-2/chapter • Chapters in knowledge based volumes Published by Indian/National level Publishers with ISBN/ISSN Numbers and with numbers of National and International directories -1/chapter <u>PROJECTS</u> • Major projects amount mobilized with grants above Rs. 30.0 Lakh Each Project-1.5 Weightage • Major projects amount mobilized with grants above Rs. 5 Lakh up to 30.0 Lakh Each Project- 1.0 Weightage • Minor projects (amount mobilized with grants above Rs. 50,000 up to 5 Lakh) Each Project - 0.5 Weightage • Major policy document of Government Bodies at Central and State level Patent/Technology transfer/Product/Process 5.0 for Each one of International level	
--	--	--



	3.0 for Each Output/Patent of National level <u>RESEARCH GUIDANCE</u> - Degree awarded only (M.Phill/M.E/M.Tech) - 1.5/each candidate Degree (Ph.D.) awarded- 2.5/each candidate Thesis submitted-1.5/each candidate - Participation and Presentation of Research papers (Oral/Poster) as follows:- (a) International Conference-4/Each Research Paper (b) National-2/Each Research Paper (c) Regional/State level-1/Each Research Paper (d) Local University/College level- 0.5/Each Reserach Paper	
--	---	--

Note 1:- CGPA and Grade of the rules made by the Board/University shall be converted into percentage/numbers. In case, there is no rule for the Board/University then formula of AICTE to convert CGPA and Grade into percentage/numbers shall be acceptable.

15. Learned counsel for the Commission further submits that the provisions of educational qualification and experience for eligibility has been made by the Commission in the Advertisement No. 16/2020 for appointment on the post of Professor (Chemistry) in Government Engineering Colleges in the light of requisition of the Department, recruitment rules and also letter no. 1603 dated 18.06.2020 of the Science & Technology Department, Government of Bihar (Annexure-C of the counter affidavit). He further submits that the Commission is bound to act as per the provision of the Advertisement which have been published in the light of the requisition, recruitment



rules, correspondence and approval of draft of Advertisement by the Department concerned. In such situation, the Commission cannot insert/include the academic marks/ merit as prayed in the writ petition. This is beyond the jurisdiction of the Commission.

16. Learned counsel for the Commission further submits that the Commission requested the Department concerned to appoint/depute the subject experts for scrutiny and examine the eligibility/ineligibility (candidature) of the candidates. The Department concerned deputed the experts vide its letter no. 333 dated 29.01.2021, letter no. 541 dated 15.02.2021, letter no. 841 dated 09.03.2021 and letter no. 1236 dated 16.04.2021 (Annexure-D of the counter affidavit). The experts have scrutinized the eligibility/ineligibility (candidature) of the candidates on the basis of their applications and attached educational certificates/documents as per the provisions mentioned in the Advertisement and also in the light of notice published on 20.08.2021. The petitioner was found ineligible on the basis of the report of the Experts. It is also pertinent to state that the petitioner has not submitted the required experience certificate at the level of 13A-1 and Assistant Professor, Level 10. Further, number of research papers at the level of Associate Professor in SCI/AICTE/UGC approved list of journals is less



than 10 (ten). Ph.D. guidance has been claimed but did not attach 02 successful Ph.D. guidance documents as Supervisor/Co-Supervisor found that his minimum 10 (ten) research publications in SCI/AICTE/UGC is required to be eligible. This fact is clear from Annexure-6 of the writ petition (list of ineligible candidates after submitting representation) and clause-3 of the Advertisement.

17. A counter affidavit has been filed on behalf of the respondents no. 1 and 2 by way of which learned counsel for the State submits that the prayer made by the petitioner is not maintainable since the B.P.S.C. has no jurisdiction to include additional eligibility criteria as suggested by the petitioner. The criteria for the selection shall be strictly in accordance with the provisions laid down in Bihar Engineering Education Service Rule, 2020. Since, there is a rule of the Department for the entire selection process and eligibility criteria, hence, no additional criteria can be included beyond the Bihar Engineering Education Service Rule, 2020 which has been framed in exercise of powers so conferred by proviso of Article 309 of the Constitution of India. Hence, in view of the aforesaid fact the prayer of the writ petitioner has no merit and same is fit to be dismissed.



18. Learned counsel for the State further submits that the recruitment rule has already been framed in exercise of powers so conferred by proviso of Article 309 of the Constitution of India and vide Notification no.565 dated 13.02.2020, same has been issued under the constitutional provisions by which entire selection process for the post of Assistant Professor, Associate Professor, Professor, Principal for the Engineering Colleges under Science, Technology and Technical Education is fully explained in the said rule and hence, no additional criteria can be included in any advertisements beyond the Bihar Engineering Education Service Rule, 2020. He further submits that it is also a well settled law that once the process of selection is started, it cannot be stopped. In the present matter, the respondent authority i.e. the B.P.S.C has already concluded the selection process for the Advertisement No- 16/2020 strictly in accordance with the provisions of Bihar Engineering Education Service Rule, 2020 and hence, the prayer of the writ petitioner has got no merit and same is fit to be dismissed.

19. Having heard the arguments advanced on behalf of the parties and from perusal of the records, it is admitted fact that the selection process in Advertisement No. 16/2020 has



already been completed by the Bihar Public Service Commission and the qualification and the experience was set by the expert body and the B.P.S.C. has no power to amend or include the other criteria prayed by the petitioner.

20. Accordingly, the present writ petition stands dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	04.07.2024
Uploading Date	31.07.2024
Transmission Date	NA

