

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5223 of 2021

Dr. Safeer Alam, Son of Late Musheer Alam, Resident of Wasiabad, H. No. 168, Noorulla Road, Allahabad at present residing at Professors Colony, SKUAST Kashmir, Shalimar, Srinagar, Jammu and Kashmir.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Animal Husbandry Department, Govt. of Bihar, New Secretariat, Patna.
2. The Chief Secretary Govt. of Bihar, Old Secretariat, Patna.
3. Principal Secretary, Animal and Fisheries Resources Department, Govt. of Bihar, New Secretariat, Patna.
4. The Principal Secretary to governor Raj Bhawan, Secretariats, Patna.
5. The Bihar Animal Sciences University (BASU) Patna, through its Registrar, Veterinary College Campus, Patna 800014.
6. The Vice Chancellor Bihar Animal Sciences University (BASU) Patna, Veterinary College Campus, Patna 800014.
7. The Registrar Bihar Animal Sciences University (BASU) Patna, Veterinary College Campus, Patna 800014.
8. Arbind Kumar Thakur, S/o not known, Director, Extension Education, Bihar Animal Sciences University (BASU) Patna, Veterinary College Campus, Patna 800014.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Verma, Advocate Mr. Abhishek Kumar, Advocate Mr. Onkar, Advocate
For the BASU	:	Mr. Anjani Kumar, Sr. Advocate Mr. Alok Kumar Rahi, Advocate
For the State	:	Mr. Abador Rahman Shakeb, AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 04-12-2024

1. The Petitioner has approached this Court under Constitutional Writ Jurisdiction for issuance of writ in the nature of Mandamus or any other writ / writs, order or



direction, commanding the Respondent University to make selection / appointment to the post of Director, Extension Education in Bihar Animal Sciences University (BASU), Patna, after publishing the final result of the selection test held in pursuance of Advertisement No. 6/2019, dated 26th of September, 2019 and also to quash the impugned decision of the Respondent – University in selecting the Private Respondent on the post of Director, Extension Education (BASU), Patna on the basis of enlargement of eligibility criteria in Advertisement No. 6/2019, dated 26th of September, 2019, by discarding previous two advertisements bearing Advertisement No. 2 / 2018, dated 6th of January, 2018 and 5 / 2019, dated 18th of July, 2019.

2. It is the case of the Petitioner that the Respondent authority in BASU published an Advertisement No. 2 / 2018 in January, 2018 for selection and appointment of Director, Extension Education in the said university. Subsequently, Advertisement No. 2 / 2018 was replaced by Advertisement No. 5 / 2019, published in July, 2019. The said advertisement was also discarded with yet another advertisement bearing Advertisement No. 6 / 2019, dated



26th of September, 2019, in which the Petitioner submitted his candidature and in respect of which selection process was taken up. The Petitioner duly appeared before the Selection Board on 2nd of December, 2019, on which date, the selection test was held. However, no final result was published. It is alleged by the Petitioner that backdoor appointment was made in favour of the Private Respondent even when the Private Respondent was ineligible for the appointment to the said post.

3. It is contended on behalf of the Petitioner that the Petitioner had requisite qualification and experience for the said post but the Private Respondent was selected on the basis of Employment Notice No. 6 / 2019, dated 26th of September, 2019.

4. It is further contended on behalf of the Petitioner that BASU issued Advertisement No. 5 / 2019, dated 18th of July, 2019, revising the essential qualification by including "Allied Branches". The Petitioner applied under the said advertisement, submitting his application along with supporting documents. The Private Respondent also applied under the said advertisement. The allegation of



the Petitioner is that the Respondent authority diluted the qualifications by including “Allied Branches” only to show favouritism arbitrarily to the Respondents.

5. The contention on behalf of the Respondents in this regard is that the Respondent did not get any candidate for selection on the basis of Advertisement No. 2 / 2018. Therefore, Advertisement No. 5 / 2019 was published enlarging the scope of eligibility. It is also contended on behalf of the Respondents that Advertisement No. 6 / 2019 was published in order to get more candidates for proper selection and it was stated in the said advertisement that the applicants who filed their application for selection in Advertisement No. 5 / 2019 did not require to file fresh application for selection and their applications were retained for consideration.

6. The Petitioner has challenged successive publication of advertisement as arbitrary action on the part of the University without approval of the Board of Management.

7. It appears from the record that as many as five candidates were shortlisted after 10th of October, 2019 and



the interview was conducted on 2nd of December, 2019. After interview, the Selection Committee submitted its recommendation to the Board of Management in a sealed envelop on 4th of January, 2020. The Board of Management approved the recommendation, selecting the Private Respondent as most suitable candidate. It is also ascertained from the materials on record that during interview the Petitioner obtained 62 marks, out of 100, while the Private Respondent got 68 marks, out of 100. Accordingly, the Private Respondent was issued appointment letter on 10th of January, 2020, specifying a tenure of 5 years or until retirement. The appointment of the Private Respondent was formally confirmed by the Board of Management in its 5th meeting held on 3rd of July, 2020.

8. When the Petitioner was not selected, he sought for certain information about the selection process under the Right to Information Act. Some information was given to the Petitioner and remaining information was withheld.

9. Under the aforesaid factual backdrop, the Petitioner has filed the instant writ petition.

10. It is contended on behalf of the Petitioner that



the revision of eligibility criteria in Advertisement No. 5 / 2019, by including “Allied Branches” was arbitrary and the recruitment process cannot be changed after the Advertisement No. 2 / 2018.

11. It is urged, on the contrary, on behalf of the Respondents that the Advertisement No. 2 / 2018 did not attract applications for selection, necessitating inclusion of proper subject matter to widen the pool of candidates. The inclusion “Allied Branches” was well within the university discretion and does not per se said to be *mala fide*.

12. It is also contended on behalf of the Petitioner that Private Respondent’s qualification of B.Sc. in Agriculture (Hons.), M.Sc. in Agriculture, Communication and Extension and Ph.D. in Extension Education were classified as “Allied Branches”. The Petitioner contends that these did not lay with the advertised criteria which primarily emphasized Veterinary, Animal Sciences, Dairy Technology and Fisheries. The classification “Allied Branches” lacks clarity and uniform standard. Therefore, the Respondent’s selection on the basis of his qualification on Agriculture cannot be held to be valid and specific act on



the part of the Respondents amply shows *mala fide* in selection process.

13. It is already noted that the writ petitioner challenged the appointment of the Private Respondent, praying for issuance of writ of mandamus, commanding the Respondent authorities to select / appoint the petitioner to the post of Director, Extension Education in BASU, Patna, on the ground that the university broadened the scope of eligibility criteria by Advertisement Nos. 5 / 2019 and 6 / 2019.

14. It is not in dispute that the petitioner submitted his candidature, knowing the eligibility criteria mentioned in the said advertisement.

15. In ***Union Public Service Commission v. M. Sathiya Priya***, reported in ***(2018) 15 SCC 796***, it is observed by the Hon'ble Supreme Court in paragraph 17 as hereunder:

“17.The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of UPSC and is duly represented by the officers of the Central Government and the State



Government who have expertise in the matter. In our considered opinion, when a High-Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to CAT and the High Court to sit over the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, malafides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not



has to be decided by the duly constituted expert body i.e. the Selection Committee. The courts have very limited scope of judicial review in such matters.”

16. In ***Baidyanath Yadav Vs. Aditya Narayan Roy & Ors.***, reported in (2020) 16 SCC 799, the Hon'ble Supreme Court observed in paragraph 4.3 as hereunder: -

“4.3 It can be concluded from the above that it was not for the High Court to address questions of comparative merit of the candidates, and neither is it appropriate for us to do the same. All we may look into is whether there was any serious violation of statutory rules, or any bias, mala fides or arbitrariness in the entire selection process. To address this question, it is essential to revisit the process prescribed for the selection of non-SCS officers to IAS.”

17. Same view was reiterated in ***Basavaiah Vs. Dr. H.L. Ramesh & Ors.***, reported in (2010) 8 SCC 372.

Paragraph 20 of the said judgement runs thus:

“20. It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinised the qualification, experience and published work of the appellants before



selecting them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts. The Expert Committee had in fact scrutinised the merits and demerits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University.”

18. In case of ***Bedanga Talukdar Vs. Saifudaullah Khan & Ors.***, reported in ***(2011) 12 SCC 85***, the Hon’ble Supreme Court has observed in Paragraph 29 & 32 as under:-

“29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure.



Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

32. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no



relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of Respondent 1 on the basis of identity card submitted after the selection process was over, with the publication of the select list.”

19. In case of ***Ramesh Chandra Shah & Ors. v. Anil Joshi & Ors.***, reported in ***(2013) 11 Supreme Court Cases 309***, the Hon'ble Supreme Court clearly held that having participated in process of selection with full knowledge that recruitment was being made under General Rules, the petitioner waived his right to question the advertisement or the methodology adopted for making the selection. The person who consciously takes part in selection process cannot thereafter turn around and question the method of selection and its outcome.



20. The petitioner knew on the date of submission of his candidature on the basis of Advertisement No. 5/2019, though the scope of eligibility criteria was broadened by the Public Service Commission. Therefore, at this stage, he cannot challenge the selection of the Private Respondent who took part in the same selection process.

21. Having heard the learned counsels for the parties and on careful perusal of the entire materials on record, it is pertinent to mention, at the outset, that a selection process cannot be challenged by a candidate unless there is manifest arbitrariness in the process. Indisputably, Respondents did not get any candidate on the basis of Advertisement No. 2 / 2018. Therefore, the said advertisement was cancelled and a new advertisement was published widening the scope of eligibility criteria. The Petitioner before filing his candidature knew about the eligibility criteria as advertised in Advertisement No. 5 / 2019.

22. Considering such aspect of the matter, I do not find any scope to interfere with the selection process challenged by the Petitioner in the instant writ petition.



23. In view of the above discussions, this Court finds that the instant writ petition is devoid of any merit.

24. Accordingly, the writ petition is dismissed on contest.

25. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	N.A.F.R.
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