

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14452 of 2024

Nilima Daughter of Sri Suresh Chandra Sharma, resident of Bhootnath Road,
6MF-6/207, Infront of Old Agam Kuan Police Station, Bahadurpur Housing
Colony, District-Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
3. The Bihar State University Service Commission Patna through its Chairman.
4. The Chairman, Bihar State University Service Commission, Patna.
5. The Secretary, Bihar State University Service Commission, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Avinash Kumar, Advocate Mr. Kumar Satyam, Advocate
For the Respondents	:	Mr. Standing Counsel 12 Mr. Kamlesh Kishore, AC to SC-12
For the BSUSC	:	Mr. Pawan Kumar, Advocate Mr. Utsav, Advocate Ms. Pratibha, Advocate

CORAM: HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT

Date : 26-09-2024

Heard learned counsel for the parties.

2. The petitioner has challenged the order as contained in Notice No. 1375 dated 28.08.2024, issued under the signature of the Secretary, Bihar State University Service Commission, Patna whereby the petitioner's candidature for the post of Assistant Professor in the subject of Chemistry pursuant to the Advertisement dated 21.09.2020 issued by the Bihar State University Service Commission (for short 'The Commission') has



been rejected on the ground that the petitioner has not submitted five point Ph.D. certificate.

3. The Commission had issued an advertisement dated 21.09.2020, inviting applications for the post of Assistant Professors in different Universities and the constituent colleges of the State of Bihar including Assistant Professors in Chemistry subject. The application along with the requisite documents was required to be submitted online as well as the hard copy of the downloaded online application along with the requisite documents. The last date for submission of the online application was 02.11.2020 which was extended to 24.11.2020. The last date for submission of the hard copy of the online application along with the requisite documents was 24.11.2020 which was extended to 30.12.2020.

4. Clause 4.1 of the advertisement, *inter alia*, provided that the candidate registered for Ph.D. programme prior to July, 2009 is required to submit a certificate containing that **(a)** the Ph.D. degree of the candidate has been awarded in the regular mode; **(b)** the Ph.D. Thesis has been evaluated by at least two external examiners; **(c)** an open Ph.D. Viva Voce of the candidate has been conducted; **(d)** the Candidate has published two research papers from his / her Ph.D. work, out of which at least one is in a



referred journal; (e) the candidate has presented at least two papers based on his/her Ph.D. work in conferences /Seminars sponsored/ funded /supported by the UGC /ICSSR / CSIR or any similar agency.

5. The certificate containing the fulfillment of the above conditions is to be certified by the Registrar or Dean (Academic Affairs) of the University.

6. It is an admitted case of the petitioner that the petitioner did not submit the aforementioned Ph.D. Certificate within the time stipulated in the advertisement issued by the Commission. The interview for the post of Assistant Professor, Chemistry pursuant to the advertisement dated 21.09.2020 is stated to have already been concluded on 14.09.2024.

7. Learned counsel for the petitioner contends that since the petitioner possesses the required Ph.D. degree, her candidature ought not to have been rejected by the Commission by the impugned notice dated 28.08.2024 on the ground of non submission of the five point certificate in respect of Ph.D. certificate within the period stipulated in the advertisement.

8. It has been further contended that the date of acquiring eligibility is one thing and the proof thereof certifying the eligibility is quite another. In support of his contention learned



counsel for the petitioner has placed reliance on the following judgments of the Hon'ble Supreme Court:

(i) ***Dolly Chhanda v. Chairman, JEE*** reported in
(2005) 9 SCC 779

(ii) ***Charles K. Skaria v. C. Mathew (Dr)***
reported in ***(1980) 2 SCC 752***

9. Learned counsel for the Commission on the other hand has submitted that the selection process has to be conducted strictly in accordance with the stipulated selection procedure in the advertisement. When a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. He has further submitted that the petitioner in the instant case did not submit the five point certificate with regard to his Ph.D. degree within the period stipulated in the advertisement and it was under that circumstances that the petitioner's candidature had to be rejected for non compliance of the terms and conditions of the advertisement. He has further submitted that the law in this regard have already been settled by the Full Bench of this Court in the case of ***Braj Kishore Prasad vs. State of Bihar*** reported in ***1998 (3) PLJR 34*** and by the Hon'ble Supreme Court in the case of ***Bedanga Talukdar v. Saifudaullah Khan***, reported in ***(2011) 12 SCC 85***.



10. I have heard the learned counsel for the parties and have perused the materials on record.

11. It is not in dispute that in the advertisement dated 21.09.2020, issued by the Commission inviting application, *inter alia*, for the post of Assistant Professor, Chemistry, one of the requirement was that the candidate must submit the Ph.D. five point criteria certificate issued by the Registrar or Dean (Academic Affairs) of the University on or before the last date prescribed in the advertisement, which was 02.11.2020 for online, extended to 24.11.2020; for hard copy on 24.11.2020, extended upto 30.12.2020.

12. It is also not in dispute that the petitioner did not submit his Ph.D. five point criteria certificate within the last date prescribed in the advertisement.

13. The petitioner had submitted his five point Ph.D. certificate on 26.05.2024 which is subsequent to the last date prescribed.

14. In the above backdrop of the admitted facts, the issue that arises for determination by this Court in the instant writ petition is that whether the petitioner, who did not submit her Ph.D. five point criteria certificate along with her applications as per the terms and conditions of the advertisement dated 21.09.2020 can be permitted to appear in the examination on



submission of her five point Ph.D. criteria certificate subsequent to the last date of submission as prescribed in the advertisement.

15. The issue for determination as framed above is no longer a res integra.

16. The Full Bench of the Patna High Court in the case of ***Braj Kishore Prasad vs. State of Bihar*** reported in **1998 (3) PLJR 34**, in paragraph-26 thereon, it has been held as under:

“26. Having regard to all these considerations, I hold that:

(a) Where the advertisement specifies the last date for filing of supporting or other documents, that date must be given effect to, and any document received after such date shall be rejected by the selecting authority.

(b) In appropriate cases where the selecting authority is of the view that the time for furnishing of documents should be extended, it may grant such extension by issuing a public notice to this effect so that all candidates may get the benefit of such extension. In the absence of any such extension granted by the selecting authority, the date/dates mentioned in the advertisement should be treated to be the last date for filing of documents, and no document shall be accepted thereafter.

(c) No application/document shall be entertained by the Commission if the same is filed after the last date specified in the advertisement, or the extended date notified by the commission, even if the same is filed before the finalisation of the select list.

(d) In appropriate cases where this Court is satisfied that a case of extreme hardship or injustice has resulted on account of factors beyond the control of the concerned candidate, this Court in exercise of its writ jurisdiction may grant relief in deserving cases. But in doing so, the Court must be satisfied that the candidate concerned has acted



diligently, and is not guilty of delay or laches in taking necessary steps for procuring the requisite certificates, etc. However, no relief shall be granted where the requisite certificate is produced for the first time after the process of selection is complete and the selecting authority has made its recommendation."

17. The Hon'ble Supreme Court in the case of ***Bedanga Talukdar v. Saifudaullah Khan***, reported in (2011) 12 SCC 85 in paragraph -29, it has been held as under:

" ...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..."

18. From perusal of the ratio laid down in the case of ***Braj Kishore Prasad vs. State of Bihar (F.B.)*** (supra) and in the case of **Bedanga Talukdar** (supra) it is noticed that the selection process has to be conducted strictly in accordance with the stipulated selection procedure. 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 in the Rules. Even if the 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, but the power of relaxation, if exercise, has to be given due publicity.

19. In the instant cases it is an admitted position that the application submitted by the petitioner within the schedule mentioned in the advertisement did not conform to the terms and conditions prescribed in the advertisement dated 21.09.2020 issued by the Commission. No any provision for relaxation of the terms and conditions of the advertisement has been pointed out by



the learned counsel for the petitioner, either in the advertisement or in the relevant recruitment rules.

20. Under the circumstances, when the law laid down by this Court as well as by the Hon'ble Supreme Court is that the selection process has to be conducted strictly in accordance with the stipulated selection procedure prescribed in the advertisement; and in view of the fact that there exist no provision for relaxation of the terms and conditions of the advertisement, either in the advertisement or in the relevant recruitment rules, I am of the considered view that the petitioner's candidature can not be accepted on the strength of Ph.D. five point criteria certificate, submitted subsequent to the last date of submission of the application prescribed in the advertisement or the time extended for such submission by the Commission.

21. For the reasons and discussions made hereinabove, I find no merit in this writ petition and the writ petition stand dismissed.

(Nani Tagia, J)

Nishant/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.09.2024.
Transmission Date	NA

