

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.972 of 2024
In
Civil Writ Jurisdiction Case No.10339 of 2022

=====

Rakesh Ranjan, Son of Shiv Shankar Prasad Yadav, resident of Golghar, Park Road, P.S.- Gandhi Maidan, District- Patna.

... .. Appellant/s

Versus

1. The Bihar State University Service Commission, 8th Floor, Bihar School Examination Board, Academic Building, Bhudh Marg, Patna- 800001 through its Secretary.
2. The Secretary, The Bihar State University Service Commission, 8th Floor, Bihar School Examination Board, Academic Building Bhudh Marg, Patna- 800001.
3. The Patna University through its Registrar.
4. The Vice Chancellor, Patna University, Patna.
5. The State of Bihar through the Principal Secretary Education Department, Bihar.
6. The Directorate, Mass Education cum Secretary Bihar State Literacy Mission Authority, Bihar, Patna.
7. Dr. Shashi Gupta, Wife of Anand Kumar, Resident of Golghar, Park Road, District- Patna, Presently Residing at House of Nagendra Singh (Jailor), Mukhtar Toli (Near Bata Showroom), Nala Road, P.S. Kadamkuan, District- Patna- 800003.

... .. Respondent/s

=====

Appearance :	
For the Appellant/s	: Mr. Y.V.Giri, Sr. Advocate Ms. Vagisha Pragya Vacaknavi, Advocate Mr.Pranav Kumar, Advocate
For the Commission	: Mr. Harsh Singh, Advocate
For the State	: Mr. Sarvesh Kumar Singh, AAG 13 Mr. Rajat Tiwari, AC to AAG-13 Mr. Tej Pratap Singh, AC to AAG-13 Mr. Ravi Kumar, AC to AAG-13 Mr. Abhinav Alok, AC to AAG-13
For the Writ Petitioner	: Mr. Satyabir Bharti, Advocate Mr. Prince Kumar Mishra, Advocate

=====



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 29-11-2024

The controversy herein is as to who is entitled to the appointment to the single post of Assistant Professor in Rural Studies in a selection carried out by the Bihar State University Service Commission (for brevity 'the Commission'). The appointments were to be made to the vacant post of Assistant Professors in different Universities and constituent Colleges, as per the requisition made by the Education Department, Government of Bihar. The dispute raised by the writ petitioner was against the marks awarded to the 5th Respondent for teaching experience. Both the writ petitioner and the 5th Respondent; who is the appellant herein, obtained 10 marks each for the teaching experience. The 5th Respondent in the overall tally obtained one mark more than the writ petitioner, thus getting selected for appointment.

2. The learned Single Judge, by an order dated 25.07.2023, noticing the contention raised by the writ petitioner that the 5th Respondent had completed his Post-Graduation only in July 2014; thus, putting at peril his claim of teaching as a faculty since 10.01.2011, directed the Vice-Chancellor, Patna



University to constitute a committee of experts, who will act as a fact finding committee as regards the existence and contents of the documents produced by the 5th Respondent. The 5th Respondent thereafter filed an interlocutory application for modification of the order dated 25.07.2023, wherein, on 08.08.2023, another interim order was passed directing that the fact finding committee shall also verify the teaching experience of the writ petitioner. A report was submitted by the Vice-Chancellor, Patna University, Patna finding that there is no evidence available of the 5th Respondent having engaged any classes between 10.01.2011 to 2014, as claimed in the certificate. However, from July 2015 to 2018 while the 5th Respondent was continuing as a Ph.D. Research Scholar, he is said to have engaged classes and completed his Ph.D. in December, 2018. As far as the writ petitioner is concerned, it was reported that there was no evidence of the writ petitioner having any teaching experience between 2001 to 2007. The writ petitioner completed her Master Degree in 2003 and from 2007 to 2020, she had engaged classes and honorarium was also paid to her.

3. The learned Single Judge found that the report of the Vice-Chancellor had not been disputed, either by the writ



petitioner or the 5th Respondent and hence, relying on the report filed, placing reliance also on Clause 5.4 of the advertisement; found the teaching experience, certified between 2015 to 2018, in the case of the 5th Respondent to be not possible of acceptance since that was the period when he was associated as a Research Scholar, pursuing his Ph.D. The certificate submitted by the writ petitioner was also found to be in-accurate. In that circumstance, the Respondent-Commission was directed to award marks under the heading teaching experience to the writ petitioner and the 5th Respondent on the basis of the report of the Vice-Chancellor, Patna University and prepare the result of the selection process. Admittedly, the Commission had complied with the directions and issued an order of selection in favour of the writ petitioner. The challenge is against the impugned judgment and the directions therein.

4. Shri Y. V. Giri, learned Senior Counsel, appeared for the appellant and contended that the learned Single Judge had gone on the premise that the teaching experience should be that acquired after the acquisition of Ph.D. qualification. The tabulation form indicating the criteria for short-listing the candidates available under Clause 7 of the advertisement, with the heading 'Selection Process', was specifically pointed out to



contend that it only speaks of teaching experience/Post-doctoral experience, which clearly indicates that the teaching experience could be even that obtained prior to the acquisition of Ph.D. Reference is also made to Clause-11 containing important instructions wherein sub-clause (xx) and (xxi) speak of certificate of teaching experience and Post-doctoral experience certificate; which are clearly distinguishable. It is further argued on the basis of the counter affidavit dated 03.10.2023 filed by the State and the documents produced as Annexure-R/1 series, that the petitioner was continuously engaged as a Consultant with the State Government from 01.08.2014 to 29.04.2019 and there is no question of her having acquired any teaching experience during the said period. It is asserted that the learned Single Judge had clearly erred, in finding that there is no dispute raised against the report of the Vice-Chancellor of the Patna University. Both the writ petitioner and the 5th Respondent disputed the statements made by the Vice-Chancellor of the Patna University, Patna. If at all reconsideration was directed, it should have been an open remand and not a direction to the Commission to consider the issue on the basis of the report submitted by the Vice-Chancellor of the Patna University.

5. Shri Satyabir Bharti, learned Counsel appearing for



the writ petitioner, pointed out that the 5th Respondent had obtained the Ph.D. qualification only in the year 2019 and hence, the teaching experience can only be deemed to be that acquired after such qualification having been obtained. The writ petitioner, on the other hand, had acquired the Ph.D. qualification in the year 2006 and at least after that her teaching experience spoken of in the certificate produced before the Commission and also confirmed by the report of the Vice-Chancellor, Patna University, has to be reckoned. The writ petitioner also is a person who obtained NET qualification as early as in 1999. With respect to the engagement as a Consultant, it is pointed out that, it was on an honorarium to be paid only on the days in which the writ petitioner was engaged. In any event, the engagement as a Consultant did not impede the petitioner from taking up teaching assignments, which has been confirmed by the Government, in the very same counter affidavit. The teaching experience of the 5th Respondent would far out-weigh the teaching experience of the writ petitioner, which hardly is for one year prior to the advertisement.

6. Shri Harsh Singh, learned Counsel appearing for the Commission, submits that the very intention of awarding marks for teaching experience was to ensure that a similar



experience as in a regular assignment of an Assistant Professor; is given weightage for the purpose of selection. The minimum eligibility for applying to the post of an Assistant Professor is a Ph.D. and in such circumstance, the teaching experience for which weightage is granted; as per the selection criteria, would only include the experience obtained after the acquisition of Ph.D.

7. Shri Sarvesh Kumar Singh, learned A.A.G.-13 supported the Commission.

8. As we noticed at the outset, the controversy is in a narrow compass, as to what is the teaching experience to be conferred on each of the candidates i.e. the writ petitioner and the 5th Respondent. The selection criteria as available in the advertisement, a translated copy of which was handed over to us, indicate teaching/post-doctoral experience (two marks for one year each) being the criteria. This has to be read along with Clause 5.4, which is extracted herein:-

“5.4. The time taken by candidate to acquire M.Phil and/or Ph.D. degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching positions. Further the period of active Service spent on pursuing Research Degree simultaneously with teaching without taking leave will be considered as experience for the purpose of direct recruitment.”



9. As per the aforesaid clause, the time taken by a candidate to acquire M.Phil and/or Ph.D. degree will not be considered as teaching or research experience, to be claimed for appointment to the teaching position. Only active service spent on pursuing research degree, simultaneously with teaching, without taking leave would be considered as experience. Hence, the teaching experience in the course of research studies has to be one which is in a regular assignment. This indicates a simultaneous pursuit of research studies, without leave from the active or regular teaching service.

10. There is a clear distinction insofar as teaching assignments carried out while pursuing research studies; with reference to which is the first limb of Clause 5.4 and research studies carried out while in regular or active service as a teacher, that too without availing any leave of absence from service; relatable to the second limb of Clause 5.4. Insofar as the first limb the teaching experience do not qualify for weightage, while the second limb qualifies as valid experience.

11. The 5th Respondent does not have a contention that he had any regular or active service simultaneous to which he had pursued a research degree. The report of the Vice-Chancellor, Patna University is clear insofar as the petitioner



having no teaching experience between 01.01.2011 to 2014. From January, 2015 to 24.07.2020, the 5th Respondent was engaged in the classes in the Rural Studies, while he was also a Ph.D. Research Scholar in the Department, having completed his Ph.D. work in December, 2018. Hence, it was not an active service of teaching, carried on by the 5th Respondent, with simultaneous pursuit of research studies. The 5th Respondent was a research scholar in the University and he was engaged in classes too, which is within the prohibitive first limb of Clause 5.4; wherein a teaching or research experience while pursuing a M.Phil or Ph.D., is not to be treated as a valid claim for being considered as a teaching experience for appointment to the post of Assistant Professor.

12. The question as to whether the teaching experience should be after acquisition of Ph.D. qualification, is not relevant for consideration since, admittedly, the 5th Respondent had no teaching experience up to 2014 and from July, 2015 to December, 2019, he was a Ph.D. Research Scholar, who was also engaged in classes. His claim for a valid teaching experience can only be between January, 2015 to July 2015 and from January, 2019 to the date of advertisement; entitling him only to two marks at the most.



13. Insofar as the writ petitioner is concerned, it has been categorically stated by the Vice-Chancellor, Patna University that she had continuously engaged classes from 2007 to 29.10.2020. The writ petitioner admittedly obtained her Ph.D. qualification in 2006. Even if, we reckon the writ petitioner having engaged classes from 01.08.2014 to 29.04.2019 as a Consultant; thus unable to carry on teaching assignments, her teaching experience between 2007 to 2014 cannot be ignored or effaced.

14. We make it clear that, in the circumstance of the maximum marks available for the teaching experience, is only 10, with two marks awarded for each year, we are not called upon to consider whether the writ petitioner had the opportunity to claim teaching experience between 2014 and 2019. The claim of teaching experience from 2007 to 2014, as we noticed, cannot be ignored or effaced and hence, she is entitled to the 10 marks available for teaching experience.

15. We make it clear that we have not made any observation regarding the acceptance of a teaching experience, being possible only after acquisition of a Ph.D., which is the contention of the Commission. The question does not arise, with respect to the writ petitioner since admittedly she has obtained



the Ph.D. qualification in the year 2006, prior to the teaching experience claimed by her. Insofar as the 5th Respondent is concerned, even if the teaching experience of the writ petitioner prior to and after acquisition of Ph.D. is reckoned; but, disentitling him from the experience claimed during the continuance of study as a research scholar, the 5th Respondent fell short with only two marks obtained, while the petitioner obtains the entire 10 marks as per the selection criteria.

16. The tabulation of the marks as originally made by the Commission is available in Paragraph-4 of the impugned judgment. The petitioner obtained 96 marks while the 5th Respondent obtained 97 marks; when both the writ petitioner and the 5th Respondent had obtained 10 marks each for the teaching experience. The 5th Respondent, as per our findings, would obtain only two marks for teaching experience and hence, his total marks would be 89 as against the 96 scored by the writ petitioner.

17. We also reckon the submission of the learned Senior Counsel that there was a dispute raised with respect to the report of the Vice-Chancellor of the Patna University, by both the writ petitioner and the 5th Respondent. However, the factual findings of the Vice-Chancellor of the Patna University



regarding the teaching experience are unassailable. The 5th respondent obtained Ph.D. only in January, 2019, in pursuance to his research studies from 2015 to 2018, is undisputed. That the writ petitioner obtained her Ph.D. in the year 2006 is admitted and her engagement as a teacher between 2007 and 2014 cannot at all be disputed, thus, entitling her to the full marks for her teaching experience, in the selection as per the criteria stipulated. The dispute raised by the writ petitioner and the 5th Respondent as against the factual findings recorded by the Vice-Chancellor is without merit and is of no consequence.

18. We find absolutely no reason to interfere with the judgment of the learned Single Judge and dismiss the appeal.

19. Interlocutory application, if any, shall also stand closed.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	20.11.2024
Uploading Date	29.11.2024
Transmission Date	

