

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.512 of 2018

Sanjay Gandhi, son of Sri Sheo Dutt Ram, resident of Village - Dhanaura,
P.O. - Naraw, P.S. - Autar Nagar, District - Saran (Chapra).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, the General Administrative Department, Government of Bihar, Patna
2. In the High Court of Judicature at Patna through its Registrar General, High Court, Patna.
3. The Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Shrivastava, Advocate Mr. Kanhaiya Pandey, Advocate Mr. Shailendra Gandhi, Advocate
For the State	:	Mr. P.K. Shahi, AG
For the High Court	:	Mr. Satyabir Bharti, Advocate Mr. Abhishek Anand, Advocate Ms. Sushmita Sharma, Advocate Ms. Kanupriya, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-01-2024

The petitioner is a candidate who appeared in the 29th Bihar Judicial Services Competitive Examination held for selection of Civil Judges (Junior Division). The advertisement was issued by the Bihar Public Service Commission in the year 2016. The petitioner appeared and qualified in the Preliminary Test and was called for the written test wherein he secured 356 marks. This



enabled him to be called for the *viva voce*/ interview in which he asserts he answered the questions properly and accurately. However, having not received the minimum qualifying marks in the interview, he was not selected. The petitioner obtained only 28 marks out of 100 marks in the interview and there was a prescription that a candidate who appears in the interview has to get a minimum of 35 per cent marks for being appointed to the post of Civil Judge (Junior Division). The petitioner on being informed of his non-inclusion in the final select-list, filed the above writ petition.

2. The petitioner before this Court alleged that the prescription of the minimum marks in interview was brought in by Bihar Civil Service (Judicial Branch) (Recruitment) Amendment Rules, 2014 of the General Administration Department. This is alleged to be *ultra vires*, unconstitutional and invalid since the mandate of law, as contemplated under Section 26 of the Bihar and Orissa General Clauses Act, 1917, has not been followed. The mandate according to the petitioner is that the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby. Admittedly, there was no such publication made. The petitioner before us also claimed that while a different qualifying standard was applied to



the Scheduled Caste candidates, to which category the petitioner belonged, in the Preliminary and Main test, no such reduction in standard was allowed in the Interview. Such denial of a reduced standard to the reserved category also vitiates the selection, is the contention.

3. We heard Shri Abhinav Shrivastava, learned counsel for the petitioner and Shri Satyabir Bharti, learned counsel appearing for the Bihar Public Service Commission.

4. At the outset, it has to be noticed that even according to the petitioner, the prescription of a minimum qualifying marks for the interview was available in the advertisement for selection. The petitioner without objection appeared in the examination and also attended the interview. The petitioner challenged the prescription under which he applied and participated in the selection only after he was declared to have failed. The petitioner having not at the outset challenged the prescription, after participating in the interview, cannot claim that the prescription was bad.

5. Yet another contention raised by the petitioner was that he was asked by the Interview Committee Members as to what he would do in Judicial Service since he is over aged. The said allegation also is an afterthought since it should have been raised immediately after the interview and not when the candidate was



found to have failed in the interview or rather failed to achieve the minimum standard prescribed.

6. The further contention under the General Clauses Act also is not sustainable. As pointed out by the learned counsel for the respondents, the provision under Rule 26 is applicable only when it is expressly provided in the enactment which confers power to make rules or bye-laws that the rules or bye-laws should be made, after previous publication. In this context, it is also to be noticed that the persons likely to be affected are unidentifiable in so far as a fresh recruitment is concerned. The above prescription, so as to effectively communicate the change, to those persons likely to be affected, can only be in the case of promotions or any change in conditions of service made to existing employees. In any event, there is no prescription pointed out which mandates the rules to be promulgated after a previous publication. We hence find the contention to be untenable.

7. In so far as prescription of minimum marks, at a lower standard, it is for the appointing authority to decide as to what would be the standard for selection of candidates. In the present case, the rule has been amended bringing in minimum marks in interview for the purpose of selection to the post of Judicial Officers and the rule itself provides it to be 35 per cent in which circumstance there cannot be any relaxation granted, which



is not available in the rules. Considering also the fact that the selection is made to the post of Judicial Officers, we do not find any reason to interfere with the same.

8. We also garner support from the decisions of the Hon’ble Supreme Court in *K.H. Siraj v. High Court of Kerala and others; (2006) 6 SCC 395* and *Arunachal Pradesh Public Service Commission and another v. Tage Habung and others; (2013) 7 SCC 737* wherein the prescription of minimum marks for the interview was upheld.

9. We find absolutely no reason to entertain the writ petition and for all the reasons stated above, the writ petition would stand rejected.

(K. Vinod Chandran, CJ)

Rajiv Roy, J: I agree.

(Rajiv Roy, J)

P.K.P./-

AFR/NAFR	
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