

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1314 of 2023

In

Civil Writ Jurisdiction Case No.10699 of 2023

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1. Sameer Sharma Son of Ram Vilash Sharma, resident of M.I.G. 343, Lohiya Nagar, Kankarbagh, P.O. Lohiya Nagar, P.S. Kankarbagh, District-Patna.
 2. Rohit Kumar Choudhary, Son of Rambali Choudhary, resident of Village-Bela, P.O. Lakhshuna, P.S. Punpun, District-Patna.
 3. Abhishek Ranjan, son of Mahendra Prasad, resident of A-45, Mata Khudi Lane, Mata Ki Mandir, Mahendru, P.O. Mahendru, P.S. Sultanganj, District-Patna.
 4. Amit Kumar son of Dudheshwar Prasad, resident of Adarsh Nagar, Nokha, P.O. and P.S.-Nokha, District-Rohtas.
 5. Manoj Kumar, son of Rambachan Ram, resident of Police Colony, Lane No. 3, Gola Road, Danapur, P.O. Danapur Cantt., P.S. Danapur, District-Patna.
 6. Harkesh Kumar, son of Lalbabu Prasad Chaurasia, resident of Chhawahi Takki, P.O. Gopalganj, P.S. Manjha, District-Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Patna.
2. The Additional Chief Secretary, General Administration Department, Bihar, Patna.
3. The Director General cum-Chairman-cum-Managing Director, Bihar Police Building Construction Corporation, Near B.M.P. 5 Campus, Kautilya Nagar, Patna-14.
4. The Secretary, Bihar Police Building Construction Corporation, Near B.M.P. 5 Campus, Kautilya Nagar, Patna-14.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Akash Anand, Advocate

For the Respondent/s : Mr. P.K. Verma, AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 09-04-2024

Heard the parties.

2. The appellants are the Junior Engineers working under



the Bihar Police Building Construction Corporation, who challenge the order of this Court dated 10.10.2023 passed by a learned Single Judge in CWJC No. 10699 of 2023. The learned Single Judge while dismissing the writ petition has negated the claim of the petitioners for giving weightage to them in the matter of selection on contractual basis, in terms of advertisement dated 24.03.2023, in like manner as has been given to the Accountant appointed by the Corporation on the basis of their past experience.

3. The learned Counsel for the appellants while assailing the order/judgment under appeal has submitted that the writ petitioners-appellants herein have been appointed on contractual basis in the Corporation as Junior Engineers on different dates and since then discharging their duties to the entire satisfaction of the authorities concerned. Nonetheless when the Corporation has come out with an advertisement dated 24.03.2023 for appointment to the post of Assistant Engineers (Civil) on contract basis, no weightage has been given to the appellants for their experience.

4. Referring to various circulars issued by the General Administration Department in relation to the matter of



appointment in different departments, the learned Counsel for the appellants contended that guidelines having been issued, prescribing the mode and manner of appointment to be made on contractual basis, specifically stipulating that it is to be made after following the necessary prescription. It is clarified that even for contractual appointment, the appointment has to be made against sanctioned and vacant post after issuance of proper advertisement. The roster has to be followed, the salary has to be paid and the weightage is to be given for experience/service rendered by the employee. The learned Single Judge found that the guidelines applying to regular appointments.

5. The learned Counsel for the appellant has also taken this Court to the notification issued by the Road Construction Department in order to buttress his submission that in exercise of power under Article 309 of the Constitution of India vide notification no. 5565 dated 09.11.2022 known as Bihar Engineering Service Class-II appointment (Amendment) Rules, 2022 has been incorporated. In the afore-noted rules, a new rule has been inserted as rule 8(5), whereby 25 marks have been accorded for experience for those employees who were working



on contractual basis. Only 75 marks have been fixed for competitive examination.

6. It is further contended that the respondent Corporation had earlier issued an advertisement for selection of Assistant Engineer(Civil) on contract, prescribing the eligibility as to pass in GATE examination, however, the said advertisement was withdrawn on protest and a fresh advertisement contained in memo no. 877 dated 24.03.2023 has been issued but despite the representation made by the appellants, the weightage of experience has not been incorporated.

7. The action of the respondents is put to challenge in CWJC No. 10699 of 2023 on the ground of being in violation of Government circulars issued by the General Administration Department and the rules framed by Road Construction Department for appointment of Assistant Engineers (Civil). Parity has also been sought for with the Accountants of the Corporation in whose selection/appointment process, weightage of their past experience have been acceded to.

8. The subsequent advertisement dated 02.11.2023 issued by the Corporation has also been referred to, wherein by clause 4 of the resolution the contractual appointees have been given a



weightage for the purposes of selection to the post of Assistant Engineer (Electrical).

9. On the other hand, learned Counsel for the State as well as Corporation argued in support of the order/judgment passed by the learned Single Judge and submitted that the reliance placed by the writ petitioners-appellants is wholly misconceived, as the same are applicable only to the Government departments and not to any public undertaking of the State.

10. It is further contended that the Board of Directors of any public undertaking is competent to decide the procedure of employment on contract basis, remuneration and the conditions regulating their services. Keeping in view the requirements for various works, the Corporation has determined the eligibility/qualification for employment on contract basis.

11. Having carefully considered the rival contentions of the parties and after perusal of the materials available on record, prima facie, this Court finds that the reliance placed by the learned Counsel for the appellants, specially rule 8(5) of the notification dated 09.11.2022, would only be relevant for regular appointment, where the weightage shall be given to



those who have worked on contractual basis, by awarding additional marks calculating the number of working years/days.

12. The very advertisement, questioned by the appellant, is issued for appointment to the post of Assistant Engineer (Civil) on contract basis. It is to be noted that the resolution/circulars prescribing the guidelines, stipulating modes and manners of selection/appointment of contractual employees, applies only to Government departments; and the Public Sector Undertaking/Board cannot be compelled to follow the rules mandatorily. It is open for the Public Sector Undertaking/Board to prescribe its own procedure and eligibility criteria as per its requirement in accordance with law.

13. Well settled it is that prescription of eligibility criteria and qualification is the prerogative of the employer who alone is aware and conscious of their requirements. The Courts cannot substitute the criteria of requirement on their assessment of what it should be. It is settled law that a candidate has no right to be appointed, but only a right to be considered for appointment, but such right is always subject to minimum eligibility conditions and till such time appointment is made, different conditions may be laid down at different times [**Vide. P. Suseela Vs. University**



Grants Commission, (2015) 8 SCC 144].

14. Further the weightage given in the case of recruitment to the post of Assistant Engineer (Electrical), also on contract basis is to persons employed in the same cadre. Here, the petitioners are Junior Engineers (Civil) and the recruitment is to the post of Assistant Engineers (Civil). There cannot hence be raised any ground of discrimination.

15. In view of the aforesaid discussions and the position obtaining in law, this Court does not find any infirmity in the order/judgment impugned.

16. The Letters Patent Appeal sans any merit, stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
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