

Letters Patent Appeal No.608 OF 2006

Against the judgment and order dated 26-7-2006
Passed in C.W.J.C. No. 7462 of 2000 by a Bench of
this Court.

AVINASH VATSYAYAN, SON OF LATE SHIV NANDAN MISHRA,
RESIDENT OF 81, JAGAT AMARAWATI, MAHESH NAGAR, POLICE
STATION, KOTWALI, DISTRICT- PATNA..... APPELLANT

Versus

1. THE STATE OF BIHAR THROUGH THE SECRETARY, SCIENCE AND TECHNOLOGY DEPARTMENT, GOVT. OF BIHAR, PATNA.
2. THE SECRETARY, SCIENCE AND TECHNOLOGY DEPARTMENT, GOVT. OF BIHAR, PATNA.
3. THE SECRETARY, CO-OPERATIVE DEPARTMENT, GOVT. OF BIHAR, PATNA..
4. THE BISCOMAUN, THROUGH ITS ADMINISTRATOR, PATNA, BIHAR.
5. THE ADMINISTRATOR, BISCOMAUN, PATNA. BIHAR... RESPTS.
6. DINESH CHANDRA SINGH, SON OF DR. LALA PD. SINGH R/O + P.S. IDHEDHI, DISTRICT- BUXAR... PERFORMA RESPONDENT

WITH

LPA No.628 of 2006

1. JAINATH TIWARY, SON OF SRI GANESH TIWARY, RESIDENT OF VILLAGE- MATULLI, P.S. SIDHWALIA, DISTT. GOPALGANJ
2. SATYENDRA KUMAR SINGH SON OF SRI SHEO SHANKAR SINGH, RESIDENT OF VILLAGE- NAINI, P.S. MUFFASIL, DIST. SARAN- CHHAPRA..... APPELLANTS

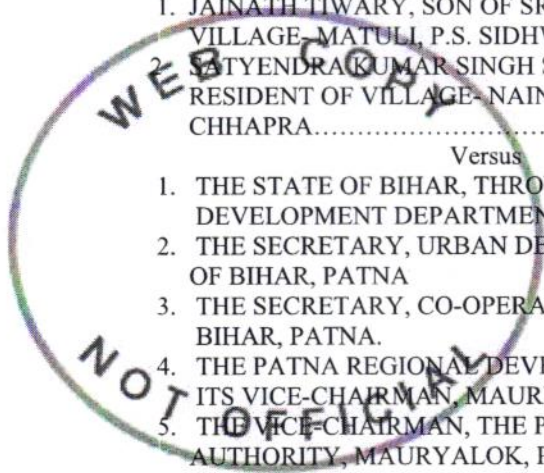
Versus

1. THE STATE OF BIHAR, THROUGH THE SECRETARY, URBAN DEVELOPMENT DEPARTMENT, GOVT. OF BIHAR, PATNA.
2. THE SECRETARY, URBAN DEVELOPMENT DEPARTMENT, GOVT. OF BIHAR, PATNA
3. THE SECRETARY, CO-OPERATIVE DEPARTMENT, GOVT. OF BIHAR, PATNA.
4. THE PATNA REGIONAL DEVELOPMENT AUTHORITY THROUGH ITS VICE-CHAIRMAN MAURYALOK, PATNA.
5. THE VICE-CHAIRMAN, THE PATNA. REGIONAL DEVELOPMENT AUTHORITY, MAURYALOK, PATNA.
6. THE BIHAR STATE CO-OPERATIVE MARKETING UNION THROUGH ITS MANAGING DIRECTOR, BIHAR, PATNA
7. THE MANAGING DIRECTOR, BIHAR STATE CO-OPERATIVE MARKETING UNION, PATNA..... RESPONDENTS.
8. SRI KAMESHWAR PRASAD SINGH, SON OF SRI SHANKAR SINGH, RESIDENT OF VILLAGE- KOHARGARH, P.S. EKMA, DIST. CHAPRA
9. SANTOSH KUMAR SINGH, SON OF SRI MANINDRA NATH SINGH, RESIDENT OF MOHALLA- MACKCHUND TOLI, P.S. CHUTIA, DISTRICT- RANCHI..... PETITIONERS..... RESPONDENTS.

WITH

LPA No.680 of 2006

SURENDRA KUMAR, SON OF SRI DUDHESHWAR PRASAD,



RESIDENT OF VILLAGE- TITAI BIGHA, P.S. MAKHDUMPUR,
DISTRICT- JEHANABAD..... APPELLANT

VERSUS

1. THE STATE OF BIHAR, THROUGH THE SECRETARY, URBAN DEVELOPMENT DEPARTMENT, GOVT. OF BIHAR, PATNA.
2. THE SECRETARY, URBAN DEVELOPMENT DEPARTMENT, GOVERNMENT OF BIHAR, PATNA.
3. THE SECRETARY, COOPERATIVE DEPARTMENT, GOVT. OF BIHAR, PATNA..
4. THE PATNA. REGIONAL DEVELOPMENT AUTHORITY THROUGH ITS VICE-CHAIRMAN, MAURYALOK, PATNA
5. THE GAYA REGIONAL DEVELOPMENT AUTHORITY THROUGH ITS VICE-CHAIRMAN, GAYA
6. THE BIHAR STATE CO-OPERATIVE MARKETING UNION THROUGH ITS MANAGING DIRECTOR, BIHAR PATNA
7. SRI NARENDRA SINGH, S/O SRI YADUNATH SARAN SINGH, R/O MOHALLA- RAJENDRA NAGAR, P.S. KADAMKUAN, DISTT. PATNA
8. THE GAYA MUNICIPAL CORPORATION THROUGH ITS CHIEF EXECUTIVE OFFICER, GAYA RESPONDENTS.

WITH

LPA No.720 of 2006

1. SHIV SHANKAR PRASAD SINGH , SON OF LATE SURYA NR.SINGH, PRESENTLY POSTED AS SENIOR LECTURER, GOVT. POLYTECHNIC, MUZAFFARPUR
2. SHAILESH BIHARI PANDAY, SON OF SRI SWAIMBER PANDEY EARLIER WORKING AS SENIOR LECTURER, GOVT. POLYTECHNIC, MUZAFFAPUR, PRESENTLY WORKING AS LECTURER, GOVT. POLYTECHNIC, GULZARBAGH, PATNA.-7
3. SUSHIL KUMAR MISHRA, SON OF SRI INDRA NARAYAN MISHRA, PRESENTLY WORKING AS LECTURER, GOVERNMENT POLYTECHNIC, GAYA
4. AWADHESH PD.SINGH, SON OF SRI BANWARI SINGH, PRESENTLY WORKING AS LECTURER, GOVT. POLYTECHNIC, BARAUNI APPELLANTS

Versus

1. THE STATE OF BIHAR THROUGH SECRETARY, SCIENCE AND TECHNOLOGY DEPARTMENT, GOVT. OF BIHAR
2. THE SECRETARY, SCIENCE AND TECHNOLOGY DEPARTMENT, GOVT. OF BIHAR, PATNA.
3. THE SECRETARY, COOPERATIVE DEPT. GOVT. OF BIHAR, PATNA.
4. THE BISCOMAUN THROUGH ITS ADMINISTRATOR, PATNA.
5. THE ADMINISTRATOR, BISCOMAUN- PATNA..... RESPTS.

WITH

LPA No.787 of 2006

1. SUSHIL KUMAR SRIVASTAVA , SON OF JALESHWAR PRASAD SRIVASTAVA, RESIDENT OF MOHALLA SRI NAGAR HATA, P.S. KHAZANCHI HAT, DISTRICT- PURNEA, PRESENTLY WORKING AS LECTURER, GOVT. POLYTECHNIC, PURNEA... APPELLANT

Versus

1. THE STATE OF BIHAR THJROUGH SECRETARY, SCIENCE AND TECHNOLOGY DEPARTENT GOVT. OF BIHAR, PATNA.

2. THE SECRETARY, SCIENCE AND TECHNOLOGY DEPARTMENT, GOVT. OF BIHAR, PATNA.
3. THE SECRETARY, INDUSTRIES DEPARTMENT, GOVT. OF BIHAR, PATNA.
4. THE BIHAR STATE PHARMACEUTICAL AND CHEMICAL DEVELOPMENT CORPORATION LIMITED THROUGH ITS MANAGING DIRECTOR, BIHAR, PATNA.
5. THE MANAGING DIRECTOR, BIHAR STATE PHARMACEUTICAL AND CHEMICAL DEVELOPMENT CORPORATION LIMITED, BIHAR, PATNA..... RESPONDENT.

WITH

LPA No.788 of 2006

1. TRIVENI PRASAD SINGH, SON OF LATE BHIKSHUK PRASAD SINGH, PRESENTLY WORKING AS LECTURER, GOVT. POLYTECHNIC, SAHARSA
2. RAMESH KUMAR, SON OF LATE PRABHU MAHTO, PRESENTLY WORKING AS LECTURER, GOVT. POLYTECHNIC, GAYA.....APPELLANTS

Versus

1. THE STATE OF BIHAR THROUGH SECRETARY, SCIENCE AND TECHNOLOGY DEPARTMENT, GOVT. OF BIHAR, PATNA.
2. THE SECRETARY, SCIENCE AND TECHNOLOGY DEPARTMENT, GOVERNMENT OF BIHAR, PATNA.
3. THE SECRETARY, AGRICULTURE DEPARTMENT, GOVT. OF BIHAR, PATNA
4. THE BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED THROUGH ITS MANAGING DIRECTOR, BIHAR, PATNA.
5. THE MANAGING DIRECTOR, BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED, BIHAR, PATNA.
6. AMRENDRA KUMAR SINGH, SON OF SRI CHANRA KISHORE PD. SINGH EARLIER WORKING AS LECTURER, GOVT. POLYTECHNIC, SAHARSA, PRESENTLY RETIRED... RESPTS.

WITH

LPA No.795 of 2006

1. KAMESHWAR PRASAD SINGH SON OF SRI SHANKAR SINGH, RESIDENT OF VILLAGE KOHARGARH, P.S. EKMA, DISTT-CHAPRA AT PRESENT- RESIDING AT ROAD NO. 14, RAJIV NAGAR, P.S. DIGHA, DISTRICT- PATNA.
2. SANTOSH KUMAR SINGH SON OF SRI MANINDRA NATH SINGH, RESIDENT OF MOHALLA- MACKCHUND TOLI, P.S. CHUTIYA, DISTRICT- RANCHI.....APPELLANTS

Versus

1. THE STATE OF BIHAR THROUGH ITS SECRETARY, URBAN DEVELOPMENT DEPARTMENT, GOVT. OF BIHAR, PATNA.
2. THE SECRETARY, URBAN DEVELOPMENT DEPARTMENT, GOVT. OF BIHAR, PATNA.,
3. THE SECRETARY, COOPERATIVE DEPARTMENT, GOVT. OF BIHAR, PATNA.
4. THE PATNA REGIONAL DEVELOPMENT AUTHORITY, THROUGH ITS VICE- CHAIRMAN, MAURYALOK, PATNA.

5. THE VICE-CHAIRMAN, PATNA REGIONAL DEVELOPMENT AUTHORITY, MAURYA LOK, PATNA.
6. THE BIHAR STATE COOPERATIVE MARKETING UNION LIMITED, THROUGH ITS ADMINISTRATOR, BIHAR, PATNA.
7. THE ADMINISTRATOR, BISCOMAUN, PATNA
8. SRI NARAYAN YADAV S/O NAME NOT KNOWN TO THE APPELLANT, MINISTER URBAN DEVELOPMENT DEPARTMENT AND CHAIRMAN, P.R.D.A. PATNA R/O 22 BAILEY ROAD, SHASHTRINAGAR, P.S. SHASHTRINAGAR, DISTT. PATNA...
..... RESPONDENTS.
9. SATYENDRA KR. SINGH S/O SHRI SHEO SHANKAR SINGH, RESIDENT OF VILLAGE- NAINI, P.S. MUFASSIL, DISTRICT-SARAN, CHAPRA
10. JAINATH TIWARY SON OF SRI GANESH TIWARY, RESIDENT OF VILLAGE- MATAULI, P.S. SIDHWALIA, DISTRICT-GOPALGANJ..... RESPONDENTS.

WITH

LPA No.1110 of 2004

1. RAM VINAY ROY SON OF LATE CHITAN RAI, REISEDENT OF VILLAGE PAVITRA NAGAR, POST. OFFICE, HARNAHI, P.S. SHEOHAR, DISTT.- SHEOHAR, AN EMPLOYEE OF BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LTD. SINHA LIBRARY ROAD, PATNA. ON DEPUTATION TO BIHAR STATE HYDROELECTRIC POWER CORPORATION LTD. SONE BHAWAN, BIRCHAND PATEL MARG, PATNA.
2. JAIRAM CHAUDHARY SON OF KEDAR CHAUDHARY, RESIDENT OF MOHALLA YADUBANSHI NAGAR, P.O. DIGHAGHAT, P.S. DIGHA, DISTT. PATNA, AN EMPLOYEE OF BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED, SINHA LIBRARY ROAD, PATNA. ON DEPUTATION TO BIHAR STATE HYDROELECTRIC POWER CORPORATION LTD. SONE BHAWAN, BIRCHAND PATEL MARG, PATNA.
3. DEVENDRA PRASAD SINGH SON OF LATE KAMLA SINGH, RESIDENT OF MOHALLA DIGHAGHAT (AKHARA ROAD), P.O. DIHGA GHAT, P.S. DIGHA, PATNA, AN EMPLOYEE OF BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED, SINHA LIBRARY ROAD, PATNA. ON DEPUTATION OF BIHAR STATE HYDRO ELECTRIC POWER CORPORATION LIMITED, SONE BHAWAN, BIRCHAND PATEL MARG, PATNA.
4. SHYAMDEO PRASAD SON OF LATE MOHIT RAI, RESIDENT OF VILLAGE MAKHDUMPUR, P.O. DIGHA GHAT, P.S. DIGHA, DIST. PATNA, AN EMPLOYEE OF BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED, SINHA LIBRARY ROAD, PATNA. ON DEPUTATION TO BIHAR STATE HYDRO ELECTRIC POWER CORPORATION LIMITED, SONE BHAWAN, BIRCHAND PATEL MARG, PATNA.
5. CHANDRA KANT LAL DAS SON OF LATE KALA NANDLAL DAS, RESIDENT OF MOHALLA NEPALI NAGAR, DIGHA ASHIANA ROAD, P.O. ASHIANA NAGAR, P.S. DIGHA, DISTT. PATNA, AN EMPLOYEE OF BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED, SINHA LIBRARY ROAD, PATNA, ON DEPUTATION TO BIHAR STATE HYDRO ELECTRIC POWER

CORPORATION LIMITED, SONE BHAWAN, BIRCHAND PATEL MARG, PATNA.

- 6 SHRINATH RAI SON OF BHOLA RAI, RESIDENT OF MOHALLA DIGHA GHAT, HARIPUR COLONY, POST OFFICE DIGHA GHAT, P.S. DIGHAGHAT, DISTT. PATNA. , AN EMPLOYEE OF BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED, SINHA LIBRARY ROAD, PATNA ON DEPUTATION TO BIHAR STATE HYDRO ELECTRIC POWER CORPORATION LIMITED, SONE BHAWAN, BIRCHAND PATEL MARG- PATNA.
- 7 HIRA MANI DEVI WIFE OF LATE UPENDRA PRASAD SINGH, RESIDENT OF VILLAGE RAJEYAN, P.O. RAJEYAN, P.S. PIRO, DISTT. BHOJPUR, AN EMPLOYEE OF BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED, SINHA LIBRARY ROAD, PATNA, ON DEPUTATION TO BIHAR STATE HYDRO ELECTRIC POWER CORPORATION LIMITED, SONE BHAWAN, BIRCHAND PATEL MARG, PATNA.
- 8 SACHCHIDANAND RAI, SON OF RAM KRIPAL RAI, RESIDENT OF VILLAGE NAKATA DIYARA, P.O. DIGHA, P.S. DIGHA, DISTT. PATNA., AN EMPLOYEE OF BIHAR STATE AGRO INDUSTRIES DEVELOPEMTN CORPCPORATION LIMITED, SINHA LIBRARY ROAD , PATNA. ON DEPUTATION TO BIHAR STATE HYDRO ELECTRIC POWER CORPORATION LIMITED, SONE BHAWAN, BIRCHAND PATEL MARG, PATNA..... APPELLANTS

Versus

1. THE STATE OF BIHAR THROUGH ITS CHIEF SECRETARY, GOVT. OF BIHAR, PATNA.
2. THE BIHAR STATE HYDRO ELECTRIC POWER CORPORATION LIMITED THROUGH THE MANAGING DIRECTOR, HAVING HIS OFFICE AT SONE BHAWAN, 2ND FLOOR, BIRCHAND PATEL MARG, PATNA.
3. THE MANAGING DIRECTOR, BIHAR STATE HYDRO ELECTRIC POWER CORPORATION LIMITED, SONE BHAWAN, SECOND FLOOR, BIRCHAND PATEL MARG, PATNA.
4. THE MANAGER (PERSONNEL AND ADMINISTRATION), BIHAR STATE HYDRO ELECTRIC POWER CORPORATION LIMITED, SONE BHAWAN, 2ND FLOOR, BIRCHAND PATEL MARG, PATNA.
5. THE ASSISTANT MANAGER (ACCOUNTS), BIHAR STATE HYDRO ELECTRIC CORPORATION LIMITED, SONE BHAWAN , 2ND FLOOR, BIRCHAND PATEL MARG, PATNA.
6. THE BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED , THROUGH ITS MANAGING DIRECTOR, SINHA LIBRARY ROAD, PATNA.
7. THE MANAGING DIRECTOR, BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED, SINHA LIBRARY ROAD, PATNA.
- 8 .THE SECRETARY, BIHAR STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LIMITED, SINHA LIBRARY ROAD, PATNA..... RESPONDENTS

(L.P.A. 608 OF 2006)

FOR THE APPELLANT :- MR. CHITRANJAN SINHA,
SR. ADVOCATE &

MR. RAM SHANKAR DAS, ADVOCATE
 FOR THE STATE MR. LALIT KISHORE, A.A.G. III,
 MR. ANSHUMAN AC TO AAG III.
 FOR BISCOMAUN :- MR. RAJESH PD. CHOUDHARY, ADVOCATE

(L.P.A. 628,680 AND 795 OF 2006)

FOR THE APPELLANTS :- MR. SHASHI ANUGRAH NARAYAN
 SR. ADVOCATE
 MR. Y.V. GIRI, SR. ADVOCATE
 MR. CHITRANJAN SINHA, SR. ADVOCATE
 MR. AJAY KUMAR, ADVOCATE

FOR THE STATE :- MR. LALIT KISHORE, A.A.G. III,
 MR. ANSHUMAN SINGH, A.C. TO AAG III
 FOR BISCOMAUN MR. RAJESH PD. CHOUDHARY, ADVOCATE
 FOR P.M.C. :- MR. SHEKHAR SINGH, ADVOCATE

(L.P.A. 720 OF 2006)

FOR THE APPELLANTS :- DR. K.N. SINGH, SR. ADVOCATE
 MR. MIRTUNJAY KR. ADVOCATE
 FOR THE STATE :- MR. LALIT KISHORE, A.A.G. III,
 MR. ANSHUMAN SINGH, AC TO AAG III
 FOR BISCOMAUN :- MR. RAJESH PD. CHOUDHARY, ADV.

(L.P.A. 787 AND 788 OF 2006)

FOR THE APPELLANTS MR. PUSHKAR NARAYAN SAHI, ADVOCATE,
 MR. MIRTUNJAY KUMAR, ADVOCATE.
 FOR THE STATE :- MR. LALIT KISHORE, A.A.G. III,
 MR. P.K. VERMA, A.A.G. XI
 MR. ANSHUMAN SINGH, AC TO AAG III
 MR. NAND KUMAR SINGH, AC TO AAG XI

P R E S E N T

THE HON'BLE MR. JUSTICE SHIVA KIRTI SINGH
 THE HON'BLE MR. JUSTICE C.M. PRASAD

Shiva Kirti Singh, J

All these eight Letters Patent Appeals have been treated analogous to each other and have been heard together because of a common issue of law as well as facts as to whether the appellants were sent to their present employers

on simple deputation and therefore liable to be repatriated or whether their services had, in fact, been transferred in the name of deputation for the purpose of absorption in accordance with a policy decision. While two of the Letters Patent Appeals bearing nos.787 and 788 of 2006 arise out from a different judgment dated 13-7-2006, the remaining appeals arise out of a common judgment dated 26-7-2006.

2. Mr. Shashi Anugarah Narain, learned senior counsel for both the appellants of L.P.A. No. 795 of 2006 led the arguments in all the cases, mainly on the basis of facts available in the records of that appeal. For the sake of convenience, the facts will be referred to from the records of that appeal only unless it is deemed necessary to refer specifically to the facts from some other appeals.

3. As noticed earlier L.P.A. No. 795 of 2006 and five other L.P.As. seek to challenge a common judgment dated 26-7-2006 whereby the writ court dismissed four writ petitions bearing C.W.J.C. Nos.1139 and 1899 of 2001 and C.W.J.C.Nos. 7462 and 13598 of 2000, after rejecting the contention advanced on behalf of the petitioners that petitioners had been sent on deputation from BISCOMAUN because Biscomaun at that time was under an Administrator

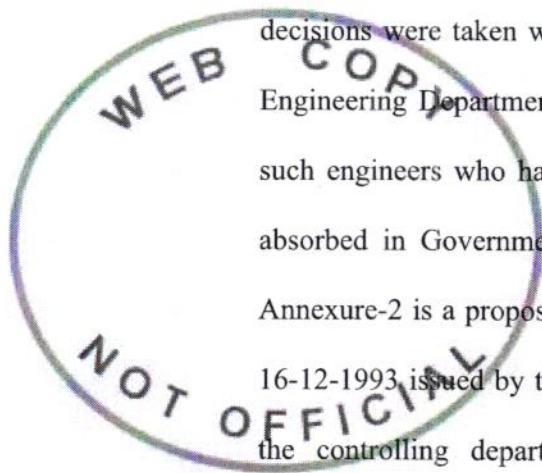
and like several other public undertakings of Bihar was suffering from poor financial condition and inviability and as per recommendation of a High Level Committee constituted by the State of Bihar the deputation was for the purpose of being absorbed in different wings/ departments of the State of Bihar and equality of treatment also requires that petitioners be treated as permanently absorbed like similar deputationists from BISCOMAUN and several other public undertakings who have been permanently absorbed. The writ court accepted the stand of the State and the Patna Regional Development Authority (P.R.D.A.) that petitioners should be treated like ordinary deputationists whose deputation can be terminated at any time. The stand of the State Government was that it had never taken a decision to absorb the petitioners and similarly situated persons in different wings/ departments of the State and only as a temporary measure the petitioners had been sent on deputation. The learned single Judge also accepted the stand of the State that engineers who were continuing on deputation in P.R.D.A. had to be repatriated because of an order dated 8-2-2000 passed in a Public Interest Litigation bearing C.W.J.C.No. 2290 of 1990.

4. On behalf of appellants the judgment under

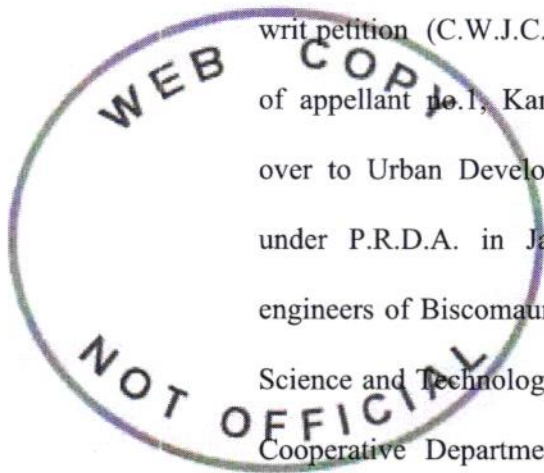
appeal have been challenged mainly on the ground that the learned single Judge has failed to distinguish several other judgments rendered in identical situations including a judgment by the same Judge taking a different view that such transfer of service, in view of policy decision at highest level of the State Government could not be treated as a case of simple deputation, rather it was a case of transfer of service for the purpose of absorption because the concerned Public undertakings, Corporations etc. had become financially unviable and it had become difficult for them either to take work from many categories of employees or to pay them their salary and emoluments. According to learned counsel for the appellants the writ court has taken an over simplistic and technical view in these cases by disregarding the fact that even according to State the petitioners were sent on deputations some time in 1990 as per the policy decision of the State Government, as recommended by High Level Committee constituted by the State of Bihar and that in the counter affidavit filed on behalf of Biscomaun it was clearly stated that Biscomaun is not in a position to pay salary to its employees.

5. Before coming to the detailed arguments

advanced by Mr. Shashi Anugrah Narain, learned Sr. Advocate, it will be useful to take note of certain basic relevant facts. The appellants in L.P.A. No. 795 of 2006 are degree holder engineers who were appointed in Biscomaun in 1982-83. Annexure-1 to the memorandum of appeal contains minutes of decisions taken on 12-2-1993 in presence of High Officials like Development Commissioner, Bihar, Administrator, Cooperative Bank, Patna, Administrator, Bisomaun, Patna and representative of Finance/Personnel Department. As per that decision, working of various units and department of Biscomaun were reviewed and relevant decisions were taken which included a decision to close the Engineering Department and to take steps for absorption of such engineers who have necessary qualifications for being absorbed in Government Department against vacant posts. Annexure-2 is a proposal contained in memo no. 3359 dated 16-12-1993 issued by the Co-operative Department which is the controlling department of BISCOMAUN containing proposal for consideration by a Committee of the Cabinet for approval of Economic policy and economic co-ordination. That proposal included a proposal to close the engineering department of BISCOMAUN and for absorption of qualified

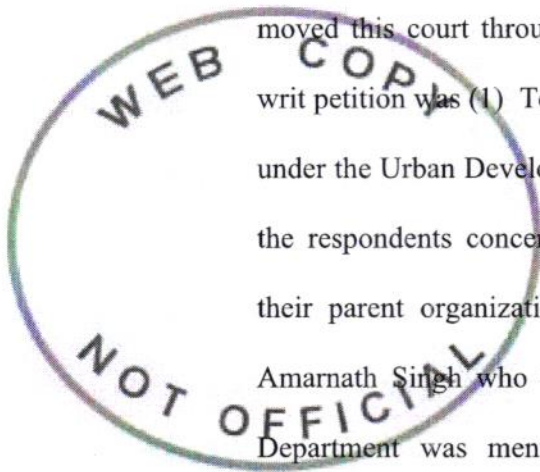


engineers in Government department against vacant posts. The proposal shows that it had the approval of State Minister for Cooperatives. Although no formal policy decision was issued by the State of Bihar but in pursuance of decision noticed above, it is not in dispute that the engineering department of Bisomaun was closed and services of several graduate engineers as well as some diploma engineers of Bisomaun were transferred on deputation basis to different departments of the State Government like Science and Technology, Transport, Urban Development, Labour and Employment etc. Annexures 3 and 4 series to the connected writ petition (C.W.J.C.No. 1139 of 2001) show that services of appellant no.1, Kameshwar Prasad Singh were handed over to Urban Development Department for being posted under P.R.D.A. in January/February, 1993. Some other engineers of Bisomaun had also been sent on deputation to Science and Technology Department, Transport Department, Cooperative Department. Copies of deputation orders of 1994 and of 1997 have also been annexed. Services of appellant no.2, Santosh Kumar Singh were handed over to Urban Development Department on deputation pursuant to their request through letter dated 14-2-1995 contained in



annexure-6 series. That letter simply asked for his services without mentioning that it was required on deputation.

6. In the connected writ petition specific pleadings were made that several other similarly situated engineers of Bisomaun were absorbed elsewhere and also in P.R.D.A. but the matter of absorption of the appellants remained pending. Since the writ petitioners had apprehension that on account of delay in passing formal orders of their absorption, the respondents may create a situation for their services being returned to Biscomaun where the engineering department was closed and they would not get service or salary for moved this court through writ petition. The prayer in the writ petition was (1) To absorb the services of the petitioners under the Urban Development Department and (2) to restrain the respondents concerned from returning their services to their parent organization. Judgment in the case of one Amarnath Singh who was sent on deputation to Transport Department was mentioned to show that order for his repatriation was quashed by judgment dated 12-9-1997 in C.W.J.C. No. 3513 of 1994 on the finding that repatriation, in the facts of the case would amount to termination of his service. That judgment (annexure-13) was challenged by the



respondents State of Bihar but the L.P.A. before the Division Bench of this Court as well as S.L.P. (Civil) No. 312 of 1999 were dismissed. A similar judgment dated 9-12-99 passed by a learned single Judge of this Court in the case of Ramashray Singh and the concerned department of Industry and Technology, directed the Government of Bihar to take a decision in the matter of absorption of Ramashray Singh and others within two months keeping in view the Government decision dated 24-27th May, 1984 following which those petitioners were sent on deputation and also keeping in mind the judgment in the case of Amarnath Singh (Annexure-13).

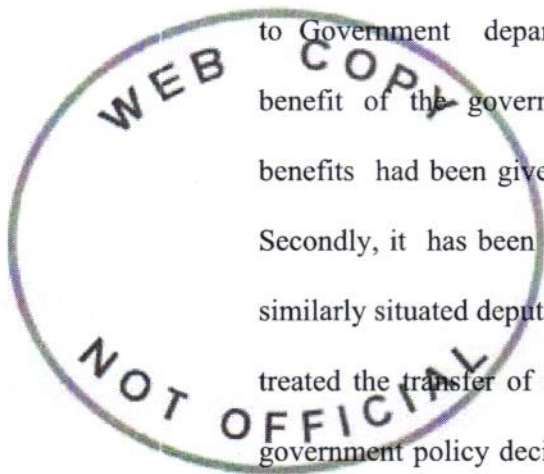
7. On the basis of aforesaid facts learned Senior Counsel for the appellants, Mr. Shashi Anugrah Narain made a pointed challenge to the four reasons indicated by learned single Judge for dismissing the writ petition. The first reason that the Government policy to send the eligible engineers of Biscomaun on deputation for absorption was not formally notified, was assailed on the ground that for a number of years such policy held the field, and was acted upon. The surplus employees of various Boards, Corporations under Government control were sent on deputation and absorbed. Simply because the policy communicated to all concerned

has not been formally notified, should not make any adverse impact upon the right of the appellants to receive similar benefits of absorption and retention of their services in the transferred departments as has been done in case of large number of other employees who were similarly situated. It was pointed out that Government cannot be allowed to take advantage of its own lapses in not notifying the policy although it was implemented over a long period under orders of the State Government itself. It was further submitted that employees are entitled to legitimate expectation that they would also get the same benefits as given to other similarly situated employees even if the policy has not been formally notified as a resolution of the State Government. Once a decision was actually taken by the Competent Authority and communicated to all Boards, Corporations under the State Government as well as to concerned department, according to learned senior counsel for the appellants, it would not matter at all that such policy was not formally notified.

8. We have no hesitation in accepting the aforesaid submission, both on the basis of requirements of equality, reasonableness and equity as well as on the well established principle of administrative law that decision by a public

authority when communicated to the concerned parties, becomes effective and cannot be treated as mere notings in the files.

9. The next reason adopted by the learned writ court is that the deputationists, in law, can have no right to oppose an order of repatriation as is being assailed on behalf of some of the appellants. To meet this reason, it has been submitted that once it is held that even in absence of a formal notification, the Government policy to transfer the services of persons like the petitioners for absorption is valid, then use of the term "deputation" while transferring the services of the appellants to Government departments cannot deprive them of the benefit of the government policy noticed above whose benefits had been given to many similarly situated persons. Secondly, it has been shown from judgments in the case of similarly situated deputationists that in the past this Court had treated the transfer of services of similar employees under government policy decision to be really not a deputation but a transfer for the purpose of absorption. In some of the judgments it was held that generally a deputationist has no right to continue in the loanee department and he can be sent back to his present department but if the earlier department or



organization is closed or has become so crippled financially as not to be in a position to continue the service and pay salary, there cannot exist any lien for the concerned employees over the earlier service/ post. In fact, prior to the two judgments under appeal, as the discussions would reveal, this Court had always taken the view that the transaction in question was not a simple deputation as is ordinarily understood in service jurisprudence rather, as a fact the term deputation was used only as a good and acceptable mechanism to transfer services of suitable employees to organizations and departments where vacant posts were available and where their services could be utilized and absorbed in the light of policy decision noticed and discussed earlier.

10 In our considered view the aforesaid submissions in respect of second reason adopted by the writ court also have merits and in the peculiar facts of the case the principle that deputationists have no right to continue on deputation could not have been invoked against the appellants.

11. Thirdly, it was submitted that the learned writ court has wrongly placed reliance upon a Division Bench Judgment in the case of State of Bihar Vrs. Gopal Prasad, 2003 (4)

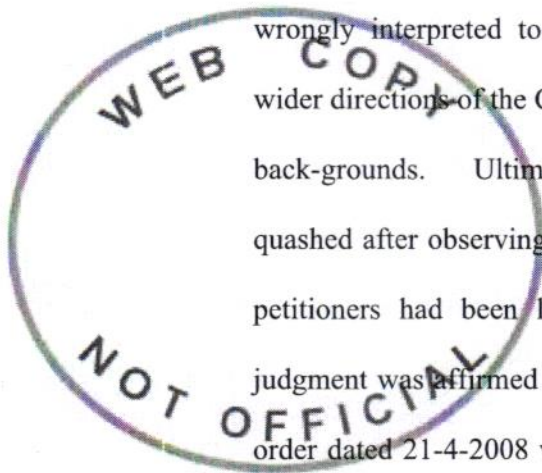
PLJR 495. It was pointed out that in that case the deputation orders were found to be illegal because they had been issued after 16-11-1999 which was accepted as the cut off date and as per subsequent policy decision of the government, general deputation of employees other than government servants could not be made in government departments. It was pointed out that the concept of cut- off date and that earlier deputations had not been adversely affected by such judgment stands explained by another Division Bench judgment of this court in the case of Md. Amanullah Vrs. State of Bihar, reported in 2004 (1) 145. Undisputedly the deputation of the appellants in these appeals is prior to 16-11-99 except of the appellants of L.P.A. No. 1110 of 2004. It may be mentioned here that nobody has appeared on behalf of the appellants in the aforesaid L.P.A. No. 1110/04 but so far as appellants in other appeals are concerned their deputations being prior to 16-11-99, it has rightly been submitted that the Division Bench judgment in the case of State of Bihar Vrs. Gopal Prasad (supra) could not have been used against such appellants.

12. The fourth and the last reasoning of the learned writ court that repatriation was required to be made in view of

order dated 8-2-2000 passed in Arun Mukherjee's case (a Public Interest Litigation) has also been assailed by pointing out that the said absorption was only in respect of such staff of P.R.D.A. working on deputation whose services were not satisfactory and on account of poor performance of those employees a general observation was made that they could be repatriated. It was further submitted that services of the appellants were never found unsatisfactory and the said order in Arun Mukherjee's case could not be used against the appellants in view of special facts and policy decision discussed above and also because the appellants were not a party to that case and were not even aware of that order. It was also pointed out that recently a learned single judge of this Court has allowed the writ petitions of similarly situated employees vide judgment and order dated 28-2-2007 passed in C.W.J.C.No. 3381 of 2006 (Lalan Prasad Singh Vrs. The State of Bihar and others) and C.W.J.C.No. 3565 of 2006 (Abhinash Kumar Singh and others Vrs. State of Bihar and ors)

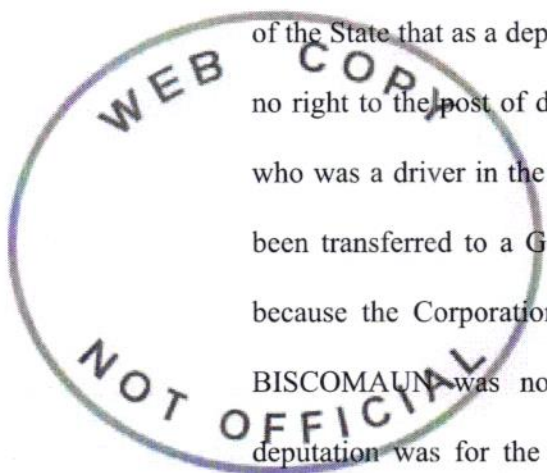
13. A perusal of the aforesaid judgments show that petitioners in those two cases were Assistant Engineers in BISCOAUN and like the appellants of these cases they

were also sent on so called deputation to P.R.D.A. where their services were absorbed after obtaining opinion of the Advocate General but the Secretary of Urban Development Department, Government of Bihar directed for return of their service to BISCOMAUN on the ground that their absorption was without adequate authority and without the approval of the State Government. In that case also a stand was taken that the repatriation was required on account of order dated 14-10-2004 passed in Arun Kumar Mukherjee's case. The learned single Judge gave a finding that observations made in various orders in the case of Arun Kumar Mukherjee had been wrongly interpreted to serve narrow interests and not the wider directions of the Court to which were issued in different back-grounds. Ultimately the repatriation orders were quashed after observing that after long years of service those petitioners had been left in a blind alley. The aforesaid judgment was affirmed by a Division Bench of this Court by order dated 21-4-2008 whereby L.P.As 419 and 373 of 2007 were dismissed by a reasoned order in which reliance was placed upon judgment of the Supreme Court in the case of Jamil Ahmad Vrs. Industrial Development Commissioner and others, reported in (2004) 13 SCC 736. We are also of the



view that order passed in Arun Mukherjee case was for a different purpose and has no application to the appellants.

14. Although the reasons and grounds given out in the order under appeal have been noticed above and found to be not sustainable in law, in deference to the learned counsel appearing in this appeal it is deemed necessary to take note of some judgments cited on behalf of the appellants and also some submissions by different counsels appearing in different appeals. In the case of Md. Shamim Ansari Vrs. The State of Bihar, 2002 (2) PLJR 579 a learned single Judge in somewhat similar circumstances considered the submissions on behalf of the State that as a deputationist the petitioner of that case had no right to the post of deputation. In that case the petitioner who was a driver in the Sugar Development Corporation had been transferred to a Government department on deputation because the Corporation like many other Corporations and BISCOMAUN was not in good financial position and deputation was for the purpose of rehabilitation of eligible employees. The learned single Judge, in somewhat similar circumstances as in these cases, held that the normal rule governing a deputationist has no application to a case where deputation is not in the ordinary sense of the term and is

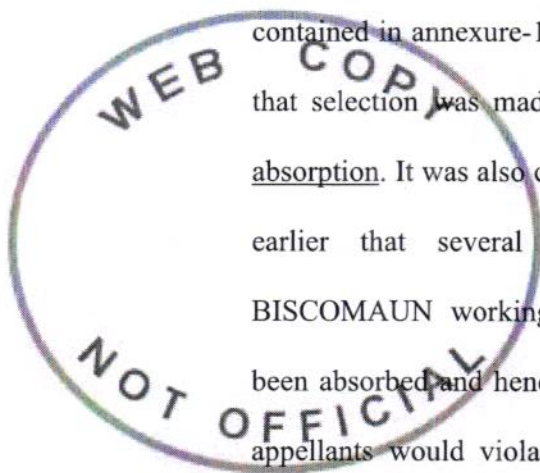


more a case of rehabilitation. Since the parent department of that petitioner has ceased to exist for all intent and purposes, it was further held that it would be futile and unrealistic to suggest that the deputationist continued to have lien in his parent department. That judgment clearly covers the main issue in these cases also.

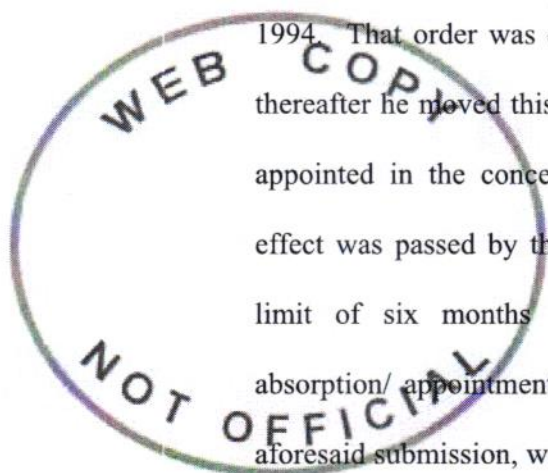
15. The aforesaid view was followed by another learned single Judge in the case of Raghunath Sharma Vrs. State of Bihar, 2003(2) PLJR 396. However, in this case the deputation was made after 16-11-1999 and as per subsequent Division Bench judgment in the case of State of Bihar Vrs. Gopal Prasad (supra) it has been held that deputations of employees other than Government Servants made in a Government department after 16-11-99 would be illegal and in violation of a clear policy decision of the State Government.

16. On behalf of appellants of L.P.A. No. 720 of 2006 Shri Krishnandan Singh, learned Senior Advocate, while adopting the arguments of Mr. Shashi Anugrah Narayan, learned Senior Counsel noticed earlier, highlighted the facts that the appellant in his case was still working on deputation in Science and Technology Department, Government of Bihar

on the basis of deputation made on 13-12-1994 which was actually for the purpose of absorption as per government policy decision; the prayer of this appellant is that he should not be repatriated because the Engineering wing of BISCOMAUN where he was earlier employed has been closed under policy decision and the appellant cannot be taken back in service. Materials including annexures 3 to 5 and 19 to the connected writ petition were highlighted to show that even for deputation there was a selection process and after interview only suitable and eligible persons were taken on deputation. It was shown that in the communication contained in annexure-19 dated 13-12-1994 it was mentioned that selection was made for deputation with provisions for absorption. It was also contended on the basis of facts noticed earlier that several similarly situated employees of BISCOMAUN working on similar nature of deputation have been absorbed and hence denial of absorption in the case of appellants would violate Article 14 of the Constitution of India. Reliance was placed on a judgment dated 12-2-2004 passed in C.W.J.C.No. 2471 of 1998 (Amarnath Singh Vrs. State of Bihar) which is appended as annexure-4 to reply to the counter-affidavit available in records of this appeal. That

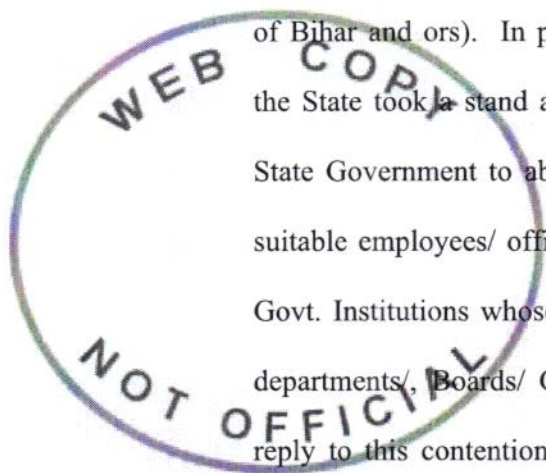


judgment has been passed by the same learned single Judge whose orders are on appeal. He considered the prayer of Amarnath Singh for issuance of a direction either to regularize him on the post of Motor Vehicle Inspector or to appoint him on regular basis against vacant post. That petitioner was earlier working in Bihar State Agro Industries Development Corporation Ltd and he was also deputed like the appellants to a department of the Government of Bihar which happened to be department of Transport. In 1993 an order for his repatriation was issued but was quashed by order dated 12th September, 1997 passed in C.W.J.C. No. 3513 of 1994. That order was confirmed up to the Apex Court and thereafter he moved this Court again for being regularized or appointed in the concerned department. An order to that effect was passed by the learned single Judge fixing a time limit of six months to complete the exercise for his absorption/ appointment. On a careful consideration of the aforesaid submission, we have no option but to agree that the State Government has been taking discriminatory and conflicting stand. Since the deputation of the appellants is of the same nature as in the case of Amarnath Singh (supra), the learned writ court should have adhere to its own earlier views



which would be also in consonance with the principle of equality in treatment of its employees by the State.

17. Mr. Chitranjan Sinha, learned senior Advocate has appeared for the appellant of L.P.A. No. 608 of 2006 who was, in a similar manner deputed from Biscomaun to Science and Technology Department on 13-12-1994 and posted in Govt. Polytechnic at Ranchi. He has referred to a counter-affidavit filed on behalf of State in L.P.A. No. 342/96 (Shri Jagarnath Prasad Vrs. The State of Bihar and ors) which has been appended as part of annexures-5 series to C.W.J.C.No. 1139 of 2001 (Satyendra Kumar Singh and others Vrs. State of Bihar and ors). In paragraph-20 of that counter affidavit the State took a stand and admitted the extant policy of the State Government to absorb the services of the eligible and suitable employees/ officers of the Biscomaun or other semi Govt. Institutions whose financial position was not good, in departments/ Boards/ Corporations/ Authority. There is no reply to this contention and hence it must be accepted that such a policy of the State Government was admittedly in operation at the relevant time. Even in the order under appeal the learned single Judge has observed in paragraph-2 at page-2 of the judgment that the writ petitioners were sent on



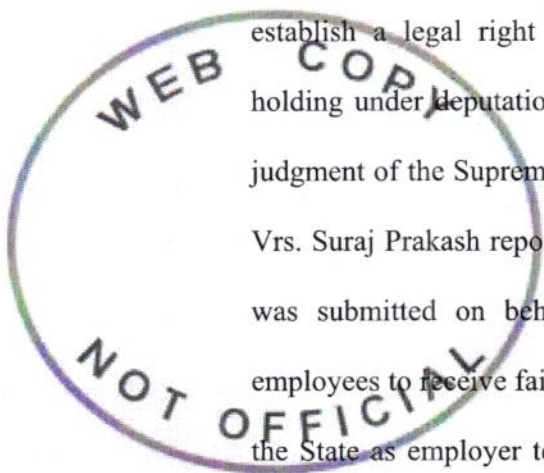
deputation in different departments of the Government of Bihar some time in the year 1990, as per policy decision of the State, as recommended by High Level Committee constituted by the State of Bihar.

18. It was further submitted on behalf of appellant of L.P.A. 608 of 2006 that on account of dismissal of the writ petition by order under appeal, the appellant has been dismissed by the order of Jharkhand Government dated 13-10-2008 which is merely a consequential order which has been brought on record through I.A. No. 7174 of 2008 and either the same should be set aside by a specific order or a general clarification be issued that all consequential orders of dismissal or repatriation pursuant to orders under appeal shall stand set aside.

19. On behalf of State learned A.A.G. 3, Mr. Lalit Kishore placed reliance upon a catena of decisions by the Supreme Court and by this Court on the well accepted general principle of law that ordinarily an order of deputation does not create any legal right to continue on deputation. With due respect to the learned AAG-3 those judgments need not be enumerated and considered because the Principle relating to deputation as understood in ordinary terms is well settled and

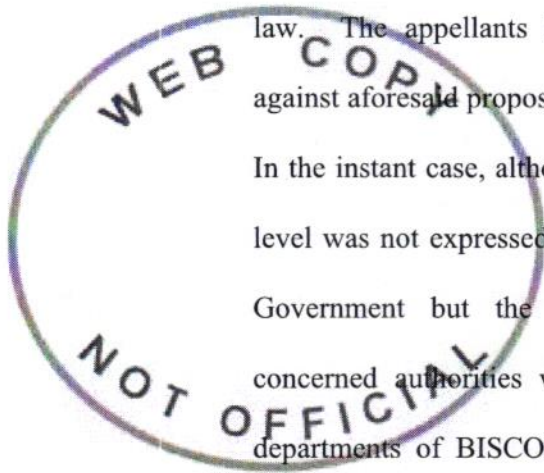
has not been disputed by the appellants. As noticed earlier, by placing reliance upon several judgments of this Court the appellants have taken a clear and categorical stand that in the case of appellants the deputation was not an ordinary deputation as understood generally in service- jurisprudence, rather it was a device for rehabilitation of eligible employees of the defunct or loss making Boards and Corporations etc. under a policy decision which was acted upon and benefited large number of employees, except the appellants.

20. Learned AAG-3 further submitted that no mandamus can be issued in favour of the appellants unless they can establish a legal right to the posts which they are/ were holding under deputation. For this reliance was placed upon judgment of the Supreme Court in the case of State of Punjab Vrs. Suraj Prakash reported in AIR 1963 SC 507. In reply it was submitted on behalf of the appellants that right of employees to receive fair treatment and corresponding duty of the State as employer to act fairly has been well recognized by catena of recent judgments and hence the appellants cannot be denied relief on the technicality that their claims are not based upon any Statute or Rules. We find merit in the contention advanced on behalf of the appellants that now



requirements of acting reasonably and fairly is an essential constituent of Article 14 of our Constitution.

21. Learned senior counsel for the State has placed reliance upon judgment of the Supreme Court in the case of Bachhitra Singh Vrs. State of Bihar, AIR 1963 SC 395 for advancing and supporting the contention that the opinion of the concerned authority will amount to a decision of the Government only when it is communicated to the persons concerned. It was also submitted that as per Rules of Business that action must be taken by the authority concerned in the name of the Governor as per well established principle of law. The appellants have not expressed any reservation against aforesaid proposition of law as already noticed earlier. In the instant case, although the decision taken at the highest level was not expressed formally as a resolution of the State Government but the same was communicated to the concerned authorities who acted upon the same. Many departments of BISCOMAUN were closed and its eligible employees were transferred to different departments for the purpose of rehabilitation and not on simple deputation. The issue, in such a situation would be, whether for non-publication of a formal "Resolution", the employees like the



appellants can be made to suffer and left in lurch after many years of service under so called deputation which they accepted as a measure for their rehabilitation. On the promise made by the authorities who were competent to take such a policy decision the appellants gave up their old service and its legal benefits and opted for a rehabilitation scheme which was to work under the technicality of absorption after deputation. In such circumstances, non-issuance of the requisite "Resolution" in the name of head of the State cannot be allowed to adversely affect the employees like the appellants. It has rightly been submitted on behalf of the appellants that in such circumstances the principle of Promissory Estoppel will come to their aid and they will have legitimate expectation of being rehabilitated against vacant posts on which they have worked for long period on being found eligible in all respects. There is no complaint that the services of the appellants were unsatisfactory.

22. The judgment of the Apex Court in the case of M.P. Sugar Mills Vrs. State of U.P., AIR 1979 SC 621 explains the meaning of promissory estoppel as a principle evolved by equity to avoid injustice so that where one party has by his words or conduct made to the other a clear promise intended

to create legal relations or effect a legal relationship to arise in the future, knowing or intending that such promise would be acted upon by the other party, the maker would not be entitled to go back upon it, if it would lead to inequitable consequences having regard to dealings between the parties. The appellants did not fight for their rights against the erstwhile employer and on the promise of rehabilitation apparent from the policy which was acted upon in the past, they agreed for and accepted the transfer of their services to different departments in the garb of deputation. Equity warrants in such a situation that the State Government should complete its promise or assurance so that the appellants may be treated as employees of the concerned departments and not as mere deputationists. It is not in dispute that the appellants are in the late evening of their service life and some of them have only 2-3 years to superannuate .

23. In support of the submissions based on the doctrine of Legitimate Expectation, learned senior counsel for the appellants has placed reliance upon a Division Bench Judgment of this Court in the case of Vijay Choudhary Vrs. State of Bihar and others, 1995(2) PLJR 201. In paragraph-14 of that judgment a statement of law from the Halsbury

laws of England (4th Edition) Volume 1 (1) 151 has been extracted and the same reads as follows:-

“ A person may have legitimate expectation of being treated in a certain way by an administrative authority, even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority including an implied representation or from consistent past practice. In common parlance it means that the authority ought not to act so as to defeat the expectations without some overriding reason of public policy to justify its doing so.”

In the facts of the case, the counsels for the appellants have rightly advanced submissions in support of case of the appellants on the basis of doctrine of legitimate expectation.

24. In the light of what has been discussed and held above, it follows as a logical corollary that all the appeals must succeed except L.P.A. No. 1110 of 2004. Accordingly, the judgment and orders under challenge in other appeals are set aside. Further, the impugned orders or actions under challenge whereby the appellants have either been ordered to be repatriated or are threatened with repatriation are quashed.

The respondent-authorities are directed to treat the deputation of appellants not as simple deputation but one under a valid policy for the purpose of rehabilitation or absorption through the device of transfer of service and to take follow up action, if required, within three months. The respondents will also

keep in mind and act as per earlier judgments which were accepted by them and similarly situated employees were absorbed because the State and its officials, ie., the respondents are duty bound to ensure equality of treatment to the appellants. Till such decision or follow up actions are taken the appellants shall be allowed to continue on the posts which they held on deputation and for all practical purposes they shall be treated to be the employees of the concerned departments where they are/ were working on deputation. The writ petitions are allowed to the aforesaid extent. It is made clear that if, on account of the judgment and orders under appeals any of the appellants whose appeals have been allowed have been repatriated from their posts under the State or dismissed from service, such impugned or consequential orders of repatriation or dismissal shall stand quashed and they shall be reinstated and allowed to work with all consequential benefits. In the facts of the case there shall be no order as to costs.

25. L.P.A. No. 1110 of 2004 has to be dismissed for two reasons. Firstly, because nobody has appeared to press this appeal and secondly because the appellants of this appeal were admittedly sent on deputation in the year 2001 which

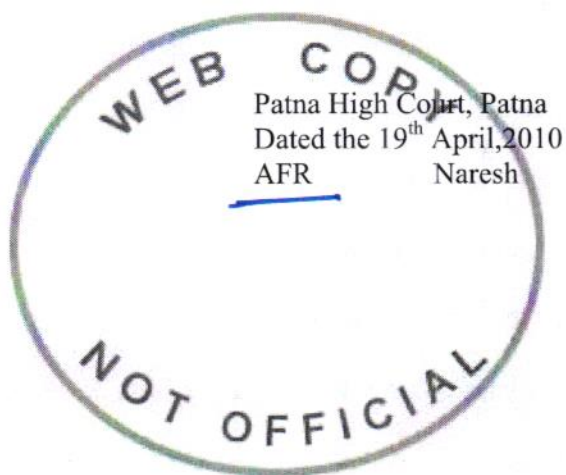
was after the cut off date of 16-11-1999 and hence their initial deputation itself was illegal and contrary to the revised policy of the State Government as per law declared by a Division Bench of this Court in the case of State of Bihar Vrs. Gopal Prasad, 2003(4) PLJR 495. Hence, while other appeals stand allowed as indicated above, this appeal is dismissed but without costs.

(Shiva Kirti Singh,J)

I agree

Chandra Mohan Prasad,J

(Chandra Mohan Prasad,J)

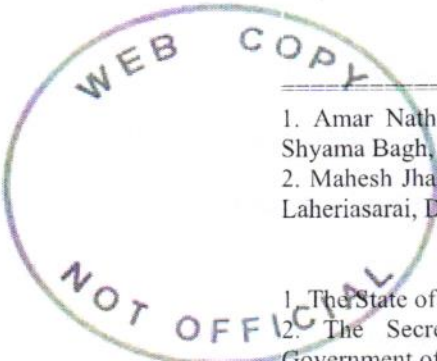


IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.991 of 2012

IN

Civil Writ Jurisdiction Case No.7712 of 2010



1. Amar Nath Mishra, son of late Diwanath Mishra, resident of Raj Quarter, Shyama Bagh, P.S. University, Town & District Darbhanga.
2. Mahesh Jha, son of Ramdev Jha, resident of Mohalla Naya Balbhadrapur, P.S. Laheriasarai, District Darbhanga.

..... Petitioners- Appellant/s

Versus

1. The State of Bihar.
2. The Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
3. The Principal Secretary, Department of Science and Technology, Government of Bihar, Patna.
4. The Joint Secretary, Department of Science and Technology, Government of Bihar, Patna.
5. The Principal, Government Polytechnic College, Darbhanga.

..... Respondents-Respondent/s

6. Pratap Narayan Thakur, son of late Arjun Thakur, resident of Mohalla-Sultanganj, Near Mahadev Mandir, P.S. and District-Madhubani.

Petitioner-Respondent

Appearance :

For the Appellant/s : Mr. Bidhanesh Misra, Advocate
Mrs. Tanuja Mishra, Advocate
Mr. Chandan Jha, Advocate
For the Respondent/s : Mr. Anil Kumar Sinha, A.C. to S.C.5

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-01-2015

The appellants herein, were appointed as part time Lecturers in the Government Polytechnic, Darbhanga- 5th respondent herein between 1995 and 1999. Claiming the relief of regularization of their services, they approached this Court, by filing CWJC No.5418 of 2000. The same was

disposed of by this Court through order dated 07.02.2007 directing the Chief Secretary of the State, to constitute a committee of three members of Secretaries, in terms of the judgment of the Hon'ble Supreme Court in **Secretary, State of Karnataka and others Vs. Uma Devi (3) and others** {(2006) 4 SCC 1} and to take the necessary steps, depending upon the recommendation of the Committee.

A Committee was constituted by the Chief Secretary as directed by this Court. On 20.11.2008, an order was issued stating that the appellants do not qualify for being regularised. The appellants filed CWJC No.7712 of 2010 challenging the said order.

The principal ground urged by the appellants is that though a committee of three members was constituted and entrusted with the work of evaluation of the cases for regularization, only one member passed the order. The learned Single Judge disposed of the writ petition just by observing that the respondents shall act with prudence, henceforth.

Not satisfied with the nature of disposal given by the learned Single Judge, the appellants filed this Letters Patent Appeal.

Heard Sri Bidhanesh Misra, learned counsel for

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the appellants and Sri Anil Kumar Sinha, learned counsel for the respondents.

When the appellants approached this Court earlier, the writ petition was disposed of directing, that a Committee of three members of Secretary shall be constituted, in terms of the judgment of Hon'ble Supreme Court in **Uma Devi's case** (supra). That direction was implemented by the Chief Secretary and a Committee was constituted. It was incumbent upon the Committee to meet and to consider the case of the appellants.

Had it been a case, where one member was absent, there could have been a semblance of legality for the recommendation or findings of the Committee, in which two members were present. In the instant case, however, the impugned order was passed only by one member. It is just understandable as to what legality, it can carry. The very purpose of constitution of the Committee was defeated. The only member, who dealt with the matter, ought to have adjourned it to a next date, so that it could be considered when the Committee in its entirety or at least two of its members, meets.

The patent illegality, that crept into the proceedings ought to have been dealt with, in the writ

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petition.

Hence, Letters Patent Appeal is allowed and the order dated 29.09.2011 passed by the learned Single Judge in CWJC No.7712 of 2010 is set aside. As a result, the writ petition is allowed and the order dated 20.11.2008 passed by the respondent is set aside. It is directed that three members Committee shall examine the cases of the appellants in accordance with law and pass appropriate order within a period of two months from today.

Interlocutory applications, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

Sunil/-

(Gopal Prasad, J)

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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5799 of 2017

1. Kumud Ranjan Prabhat Son of Sri Shiv Narayan Rai Resident of Village- Mannipur, P.O.- Sari, P.S. Waris Nagar, District- Samastipur.
2. Raj Ranjan Kant Son of Sri Surendra Prasad Resident of Village +P.O. Saidabad Mannipur, P.S. Kako Pali, District- Jehanabad.
3. Rahmate Alam Son of late Islam Resident of Village- Dihuli Ishhak, P.O. Dihuli Bujurg, P.S. Sakra, District- Muzaffarpur.
4. Md. Naushad Ansari Son of Md. Farooque Ansari Resident of Village- Etwan, P.O.- Dhanej, P.S. Kochas, District- Rohtas.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Principal Secretary, Science and Technology Department Govt. of Bihar, Patna.
3. Bihar Public Service Commission through its Secretary, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
4. Chairman, Bihar Public Service Commission, Bihar, Patna.
5. Additional Secretary Cum Examination Controller, Bihar Public Service Commission, Patna.
6. Principal Secretary, Road Construction Department, Govt. of Bihar, Patna

.... Respondents

Appearance :

- | | | |
|----------------------|---|--------------------------------|
| For the Petitioner/s | : | Mr. Pramod Kumar, Adv. |
| For the Respondent/s | : | Mr. Prabhat Ranjan, AC to GP-6 |
| For the BPSC | : | Mr. Sanjay Pandey, Adv. |

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-08-2017

Heard Mr. Pramod Kumar, learned counsel appearing for the petitioners, Mr. Prabhat Ranjan, learned AC to GP-6, for the State and Mr. Sanjay Pandey, learned counsel for the Bihar Public Service Commission.

The writ petition was filed by four petitioners complaining against fixation of cutoff date by the respondent Bihar Public Service Commission in the advertisement so published for appointment of Assistant Engineers (Civil and Mechanical), a copy of which is



present at Annexure 3. During the course of argument it transpired that of the four petitioners while petitioner nos. 1, 2 and 4 were yet to qualify on the educational qualification as they continued to be students of 8th Semester, the petitioner no.3 Rahmate Alam was a graduate and thus fully eligible to apply but the only impediment on his way was that he fell short on age on the basis of the cutoff date so fixed by the Commission for determining the minimum age of an applicant which was fixed as 1.8.2016. According to learned counsel the petitioner's age was short by three and half months.

It is taking note of these admitted circumstances that this writ petition, in so far as petitioner nos. 1, 2 and 4 is concerned, was disposed of by holding them ineligible to apply on grounds of not fulfilling the educational qualification and the matter proceeded in so far as petitioner no.3 Rahmate Alam is concerned. While granting time to the respondent State and the respondent Bihar Public Service Commission to inform as to how and why, when the advertisement in question was published in the year 2017, they have fixed the cutoff for determining the minimum age of the applicant as 1.8.2016 i.e. retrospectively and not the year in which the advertisement was published, the Commission was directed to provisionally accept the application of the petitioners, subject to the outcome of this writ petition.



Counter affidavits have been filed on behalf of the respondents. The Principal Secretary has been very candid in his stand in the counter affidavit so filed on his behalf. In paragraph 7 of the counter affidavit it is mentioned that on query made by the Bihar Public Service Commission through letter no. 2455 dated 22.11.2016 as to what would be the cutoff date for determination of the age of a candidate for filing his/her application for appointment, a reply was sent through letter no. 9533 dated 28.11.2016 informing them that the cutoff date needs to be regulated in terms of the circular no. 212 dated 23.1.2006 of the Department of Personnel and Administrative Reforms, a copy of which is enclosed at Annexure 'C' to the counter affidavit of the Principal Secretary and Annexure 14 of the supplementary affidavit.

While it is the argument of Mr. Pramod Kumar, learned counsel for the petitioners, that in terms of the circular dated 23.1.2006 of the Department of Personnel and Administrative Reforms it is the year of the advertisement which should be the year to fix the cutoff date for determining the minimum age limit, the main contest is coming from the Commission and according to Mr. Pandey, learned counsel appearing for the Commission, this has been the practice of the Commission while issuing advertisement in relation to vacancies. According to Mr. Pandey, it is the year for which a



vacancy is determined which also becomes the basis for determining the cutoff date and since in the present case the vacancies have been calculated for the year 2016, hence the cutoff date has been fixed as 1.8.2016. Mr. Pandey, learned counsel for the Commission simply relies on the past practice adopted by the Commission in this regard. He has also produced a copy of the last advertisement issued by the Bihar Public Service Commission for filling up of the post of Assistant Engineer (Mechanical) bearing Advertisement Nos. 1, 2, 3 and 4 of 2011 and informs that the cutoff date for each of the advertisement was fixed as 1.8.2011 except advertisement No. 3 of 2011 in which the cutoff was fixed as 1.8.2010.

I have heard learned counsel for the parties and have perused the records.

There is no dispute amongst the parties that the cutoff date is guided by the circular of the Department of Personnel and Administrative Reforms dated 23.1.2006 present at Annexure 14 of the supplementary affidavit and Annexure 'C' to the counter affidavit of the Principal Secretary, Road Construction Department. In fact as I have already noted, even the Commission was in a dilemma to seek a query in this regard as manifest from their letter bearing no. 2455 dated 22.11.2016 and their query was responded to by the Road Construction Department through their letter dated 28.11.2016 at



Annexure 'A' in reference to the circular no. 212 dated 23.1.2006 of the Department of Personnel and Administrative Reforms which has been incorrectly mentioned as General Administration Department. In fact a copy of the letter of the General Administration Department has also been enclosed by the Principal Secretary in his affidavit vide Annexure 'B' which again makes reference to circular no. 212 dated 23.1.2006 of the Department of Personnel and Administrative Reforms on the issue of fixation of cutoff date. It is now to be seen as to what is the import of the advisory issued by the Department of Personnel and Administrative Reforms in so far as it concerns determination of cutoff and for the purpose I deem it necessary to put on record paragraphs 2 and 3 of the circular which runs as under:

“2. इस संबंध में यह उल्लेखनीय है कि बिहार लोक सेवा आयोग के पूर्व परामर्श से कार्मिक एवं प्रशासनिक सुधार विभाग के पत्रांक - 11013 दिनांक- 17.06.77 द्वारा अधियाचना भेजने हेतु एक समय सारणी परिचारित की गई थी। उक्त परिपत्र के अनुसार प्रति वर्ष रिक्तियों का आकलन पहली अप्रिल की स्थिति के अनुसार करते हुए 30 अप्रिल तक अधियाचना आयोग को भेजी जानी थी। तदनुसार आयोग द्वारा विज्ञापन का प्रकाशन 15 जुलाई तक कर दिया जाना था। उक्त आधार पर नियुक्ति हेतु कट ऑफ डेट का निर्धारण 01 अगस्त किया गया था। परन्तु हाल के वर्षों में उक्त समय सारणी का अनुपालन नहीं होने के कारण राज्य सरकार की सेवाओं/संवर्गों में नियमित रूप से नियुक्ति की कार्रवाई संभव नहीं हो पा रही है।

3. उपर्युक्त तथ्यों के आलोक में अनुरोध है कि रिक्तियों का आकलन प्रतिवर्ष किया जाए तथा तदनुसार आयोग को अधियाचना प्रतिवर्ष भेजना सुनिश्चित किया जाए। परन्तु यदि



किसी कारण से ऐसा संभव नहीं हो सकें तो वैसी स्थिति में जो उम्मीदवार अंतिम विज्ञापन/परीक्षा के समय उम्र के आधार पर पात्रता रखते थे और उसका बाद भी अगले वर्ष या उसके बाद वाले वर्ष में भी परीक्षा होने पर परीक्षा में भाग लेने हेतु अधिकतम उम्र सीमा के आधार पर योग्य होते, परन्तु विज्ञापन नहीं होने के कारण अधिकतम उम्र सीमा पार कर जाते हैं और कालक्रम में अगली परीक्षा हेतु विज्ञापन निकालते समय उम्र सीमा के आधार पर अयोग्य हो जाते हैं तो वैसे अभ्यर्थियों को ऐसी परीक्षा में भाग लेने का अवसर दिया जाए तथा मात्र उम्र के आधार पर अयोग्य होने की स्थिति में उन्हें परीक्षा में भाग लेने से वंचित नहीं किया जाए।”

A plain reading of the advisory at paragraph 2 would show that a schedule has been fixed for initiating a selection process and which obliges the requisitioning department to calculate the vacancies by the 1st April and send its requisition by 30th April to enable the Commission to publish the advertisement by 15th July fixing a cutoff date on 1st August of that year. The circular of the Department of Personnel and Administrative Reforms also grants protection to such of the candidates who have crossed the age limit due to delayed advertisements. Paragraph 3 of the advisory has an overriding effect when it provides that notwithstanding any delay in publication of an advertisement, such of the candidates who were within the prescribed age limit on the date of the last advertisement and would be within limit even in the next two following years but had crossed the age limit due to non-publication of advertisement each year, such



candidates should be allowed to participate in the examination and should not be debarred from participating in the selection process on age grounds.

Two stipulations are very clear from the circular of the Department of Personnel and Administrative Reforms dated 23.1.2006 i.e. (a) the cutoff date for minimum age is to be fixed in the year of the advertisement; and

(b) all those persons who have become over age due to time lag between the previous advertisement and the subsequent advertisement, should be allowed to participate by granting them age relaxation.

Mr. Pandey has very strenuously argued that as per the past practice the cutoff date has been determined on the basis of year for which the vacancies have been calculated.

In my opinion, the fixation of cutoff date for allowing the candidates to participate in a selection process has got nothing to do with the determination of vacancies nor any such stipulation is present in the circular dated 23.1.2006. While the determination of a vacancy is a step towards inviting application, the determination of the cutoff date is determined by the year of advertisement and has no nexus with the year of determination of vacancy. In my opinion, any other interpretation given to the circular dated 23.1.2006 would be





discriminatory because by a retrospective fixation of a date for the purpose of minimum age, all such applicants who are eligible to participate in the examination as per the year of advertisement, are kept out for no justifiable reason. The policy decision so relied upon by the parties while giving relief to such of applicants who had become overage due to delayed advertisements, does not shut the doors for those who but for retrospective fixation of a cut off date in an advertisement, are fully eligible to participate in the examination, if the cut off date is fixed as per the year of the advertisement.

In fact the very advertisement relied by learned counsel for the Commission, issued in the year 2011, would confirm that of the four advertisements so published in the same year, while three of them fixed the cutoff as 1.8.2011, one of them had a cutoff as 1.8.2010.

In my opinion, the practice adopted by the Commission to determine the cutoff date on the basis of the year of vacancy, is contrary to the stipulations so present in the circular so claimed to be followed by the Commission for determining such cutoff date which nowhere prescribes for a retrospective fixation of a cutoff date rather the stipulation present at paragraph 2 is self eloquent that it has to be the year of publication of advertisement and the reason is plain and simple i.e. allowing maximum participation in a selection process.



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For the reasons so discussed, the retrospective cutoff date fixed by the Commission in their Advertisement No. 2, 3 and 4 of 2017 is held contrary to the stipulations present in the circular of the Department of Personnel and Administrative Reforms dated 23.1.2006 and is accordingly modified to read as 1.8.2017 and since the application of the petitioner no.3 has been accepted by virtue of the interim order passed on 3.5.2017, the interim order is hereby confirmed.

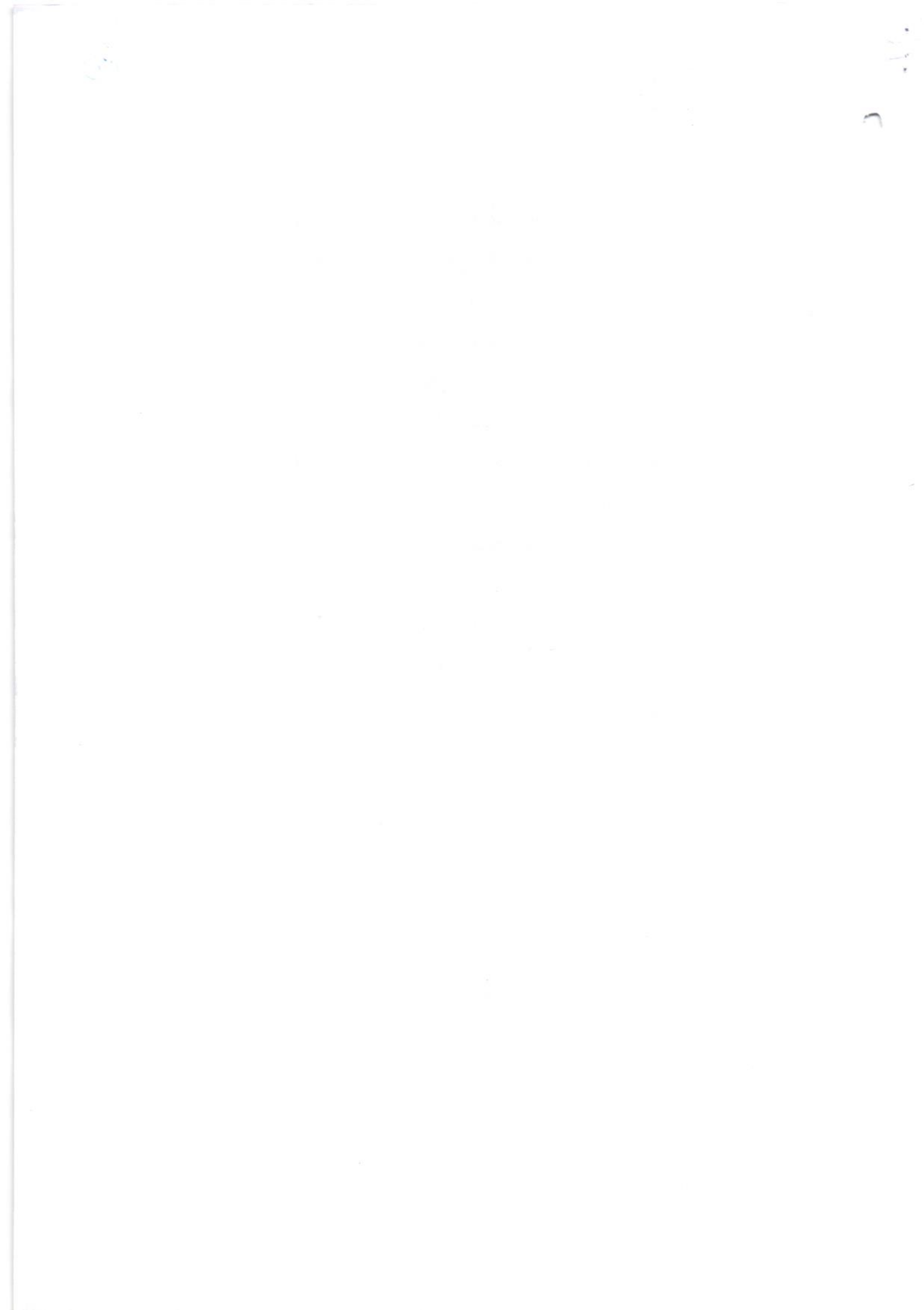
The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.09.2017
Transmission Date	NA





IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8760 of 2019

1. Ram Manohar Pandey, aged about 39 years, Male, S/o Sri Brajendra Kumar Pandey Resident of Mohalla-Kalyan Vihar, Ambedkar Path, P.S. Rupaspur, P.O. B.V. College, Patna-800014, Dist.-Patna
2. Dharmendra Kumar, aged about 33 years, Male, S/o Sri Subhash Chandra Yadav Resident of New Bigrapur, P.S. Jakkanpur, P.O. G.P.O. Patna-800001, Dist.-Patna
3. Rajiv Kumar Singh, aged about 41 years, Male, S/o Late Dip Narayan Prasad Singh Resident of Pokhar Road, Badi Sardho, Sardho, P.S. Sabour, P.O. Jichho, Bhagalpur-813210, Dist.-Bhagalpur
4. Ankur Utsav, aged about 27 years, Male, S/o Sri Arunesh Kumar Srivastava Resident of B-104, Arvind Lok Residency, Near Bhabha School, Hanuman Nagar, Kankarbagh, P.S. Patrakar Nagar, Town-Patna, Dist.Patna

... .. Petitioners

Versus

1. The State of Bihar, through the Principal Secretary, Science and Technology Department, Govt. of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Patna-800001
2. The Joint Secretary, Science and Technology Department, Govt. of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Patna-800001
3. All India Council for Technical Education through its Secretary, Nelson Mandela Marg, Vasant Kunj, New Delhi-110070
4. The Chairman, All India for Technical Education, Nelson Mandela Marg, Vasant Kunj, New Delhi-110070
5. The Secretary, All India Council for Technical Education, Nelson Mandela Marg, Vasant Kunj, New Delhi-110070

... .. Respondents

with

Civil Writ Jurisdiction Case No. 9152 of 2019

1. Ram Manohar Pandey, aged about 39 years, Male, S/o Sri Brajendra Kumar Pandey Resident of Mohalla- Kalyan Vihar, Ambedkar Path, P.S.- Rupaspur, P.O.- B.V. College, Patna- 800014, District- Patna.
2. Dharmendra Kumar, aged about 33 years, Male, S/o Sri Subhash Chandra Yadav Resident of New Bigrapur, P.S.- Jakkanpur, P.O.- G.P.O. Patna-800001, District- Patna.
3. Rajiv Kumar Singh, aged about 41 years, Male, S/o Late Dip Narayan Prasad Singh Resident of Pokhar Road, Badi Sardho, Sardho, P.S.- Sabour, P.O.- Jichho, Bhagalpur- 813210, District- Bhagalpur.
4. Ankur Utsav, aged about 27 years, Male, S/o Sri Arunesh Kumar Srivastava Resident of B- 104, Arvind Lok Residency, Near Bhabha School, Hanuman Nagar, Kankarbagh, P.S.- Patrakar Nagar, Town- Patna, District- Patna.

... .. Petitioners

Versus



1. The State of Bihar, through the Principal Secretary, Science and Technology Department, Government of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Patna- 800001.
2. The Joint Secretary Science and Technology Department, Government of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Patna- 800001.
3. All India Council for Technical Education through its Secretary, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070.
4. The Chairman All India Council for Technical Education, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070.
5. The Secretary All India Council for Technical Education, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 8760 of 2019)

For the Petitioner/s	:	Mr. Navin Prasad Singh, Adv.
For the Respondent/s	:	Mr. Lalit Kishore, AG
		Mr. Anshuman Singh, AC to AG
For the AICTE	:	Mr. Kumar Brijnandan, Adv.
		Mr. Tarees Hameed, Adv.

(In Civil Writ Jurisdiction Case No. 9152 of 2019)

For the Petitioner/s	:	Mr. Navin Prasad Singh, Adv.
For the Respondent/s	:	Mr. Lalit Kishore, AG
		Mr. Anshuman Singh, AC to AG
For the AICTE	:	Mr. Kumar Brijnandan, Adv.
		Mr. Tarees Hameed, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 05-08-2019

In each of the two writ petitions the prayer is common and a challenge is made to the amendment in the Bihar Polytechnic Education Service Rules, 2014 (hereinafter referred to as 'the Rules') notified through notification No. 06/2014 vide Memo No. 889 dated 10.4.2017, whereby Table-2 of Appendix-I of 'the Rules' has been substituted to waive of the requirement of a written test for the purpose of evaluation of work knowledge and



teaching skill and which has given way to evaluation on the basis of percentile obtained by a candidate in the Graduate Aptitude Test in Engineering Examination (hereinafter referred to as 'the GATE'). Consequentially the petitioners have also questioned the advertisement dated 7.3.2019 and 8.3.2019, copies of which are placed on record at Annexures 5 series, together with Corrigendum at Annexure 9 dated 11.3.2019.

For the sake of ready reference and to demonstrate the commonness in the relief prayed that we reproduce the prayer so made in paragraph 1 of the respective writ petitions which runs under:

“ C.W.J.C.No. 8760 of 2019

(i) For setting aside the Amendment in Bihar Polytechnic Education Service Rules, 2014 through the notification of Department of Science and Technology, Government of Bihar, contained in Memo No. Vi Pra (I) Astha- 06/2014, 889 through which the Table-1 and Table-2 of Appendix- I of the Bihar Polytechnic Education Service Rules, 2014 has been substituted by the newly amended Table-1 and Table-2 of Appendix- I whereby, the eligibility and educational qualification has been changed by adding 30% of percentile obtained in Graduate Aptitude Test Score (GATE Score), contrary to the qualification for direct appointment to the post of Lecturer in Polytechnic



Institutions determined by the All India Council for Technical Education.

(ii) For quashing the advertisements published through press communique dated 7.3.2019 and 8.3.2019 of Science and Technology Department, Government of Bihar, for appointment to the post of Lecturer in faculty of Electronics and Mechanical respectively in Government Polytechnics/ Government Women's Polytechnic Institutes on contract basis, whereby a provision has been made that apart from other qualifications, candidates should be required to have qualified Graduate Aptitude Test in Engineering (GATE) and the selection should be made on the basis of GATE score in the year 2016, 2017 or 2018.

(iii) For quashing the advertisements published through press communique dated 7.3.2019 of Department of Science and Technology, Government of Bihar for appointment to the post of Lecturer in Electronics and through press communique dated 8.3.2019 of Department of Science and Technology, Government of Bihar for appointment to the post of Lecturer in Mechanical in various Government Polytechnics/ Government Women's Polytechnic Institutes on contract basis.

(iv) For quashing the corrigendum published by the Department of Science and Technology, Government of Bihar through press communique dated 11.3.2019 of the advertisement dated 7.3.2019 and 8.3.2019 whereby the criteria of selection process has been changed by removing the interview from the selection



process and further the weightage scheme of selection process has been reduced from total weightage 100 to total weightage 70 contrary to Bihar Polytechnic Education Service Rules, 2014.

(v) For direction to the respondents particularly the Department of Science and Technology, Government of Bihar, to accept/ receive and consider the applications from all the petitioners for appointment to the post of Lecturer in Mechanical and Electronics on contract basis.

(vi) For direction to the respondents to allow the petitioners to participate in the selection process treating them eligible for appointment to the post of Lecturer in Mechanical and Electronics in Government Polytechnics/ Government Women's Polytechnic Institutes in the State of Bihar on contract basis."

C.W.J.C.No. 9152 of 2019

(i) For setting aside the Amendment in Bihar Engineering Education Service Rules, 2014 through the notification of Department of Science and Technology, Government of Bihar, contained in Memo No. Vi Pra (I) Astha- 04/2014, 890 dated 10.4.2017 through which the Table-1 and Table-2 of Appendix- I of the Bihar Engineering Education Service Rules, 2014 has been substituted by the newly amended Table-1 and Table-2 of Appendix- I whereby, the eligibility and educational qualification has been changed by adding 30% of percentile obtained in Graduate Aptitude Test Score (GATE Score), contrary to the qualification for direct appointment to the post



of Assistant Professor in Engineering Colleges determined by the All India Council for Technical Education.

(ii) For quashing the advertisements published through press communique dated 8.3.2019 of Science and Technology Department, Government of Bihar, for appointment on the post of Assistant Professor in Engineering Colleges on contract basis, whereby a provision has been made that apart from other qualifications, candidates should be required to have qualified Graduate Aptitude Test in Engineering (GATE) and the selection should be made on the basis of GATE score in the year 2016, 2017 or 2018.

(iii) For quashing the advertisements published through press communique dated 8.3.2019 of Department of Science and Technology, Government of Bihar for appointment to the post of Assistant Professor in Electronics and Communication Engineering in various Engineering Colleges on contract basis.

(iv) For quashing the corrigendum published by the Department of Science and Technology, Government of Bihar through press communique dated 11.3.2019 of the advertisement dated 8.3.2019 whereby the criteria of selection process has been changed by removing the interview from the selection process and further the weightage scheme of selection process has been reduced from total weightage 100 to total weightage 70 contrary to Bihar Engineering Education Service Rules, 2014.



(v) For direction to the respondents particularly the Department of Science and Technology, Government of Bihar, to accept/ receive and consider the applications from all the petitioners for appointment to the post of Assistant Professor in Mechanical Engineering and Electronics and Communication Engineering on contract basis.

(vi) For direction to the respondents to allow the petitioners to participate in the selection process treating them eligible for appointment to the post of Assistant Professor in Mechanical Engineering and Electronics and Communication Engineering in Engineering Colleges in the State of Bihar on contract basis.”

It is because of the identical nature of the reliefs prayed as well as commonness of the issue raised that these two writ petitions have been heard analogous and with consent of the parties are being disposed of by this common judgment at the stage of admission.

While C.W.J.C.No. 8760/2019 espouses the cause of the candidates seeking appointment on the post of Lecturer in Government Polytechnic, a similar prayer is espoused on behalf of the candidates seeking appointment on the post of Assistant Professor in Engineering Colleges in C.W.J.C.No. 9152 of 2019.

For the sake of convenience and bearing note of commonness of the issue, we would be referring to the pleadings



made in C.W.J.C.No. 8760/2019 unless clarified with a specific reference to other writ petition.

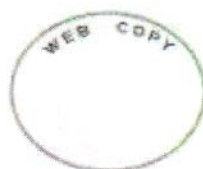
Mr. Navin Prasad Singh, learned counsel appearing on behalf of the petitioners raising grievance in so far as the appointment on the post of Lecturers and Professors respectively are concerned submits that not only the amendment Rules but even the advertisement runs contrary to the parent Rule in so far as the evaluation of the candidates on their work experience and teaching skill is concerned.

Mr. Singh, learned counsel appearing for the petitioners, has referred to the Bihar Polytechnic Education Service Rules, 2014, a copy of which is enclosed at Annexure 7 to the writ petition, to submit that these Rules were framed under Article 309 of the Constitution of India and provides for appointment to different posts of Teachers in Government Polytechnics/ Government Women's Polytechnics Institutes as well as for career advancement and to regulate their service conditions. In reference to Rule 3 he submits that the cadre structure is provided therein and sub-rule (3) thereof provides that the pay scales and service conditions of the members of this service would be determined by the State Government. He next refers to the scheme present at Rule 5 to submit that it is to be done on the basis of recommendation



made by the Bihar Public Service Commission and the scheme of appointment is provided at Appendix-I which can be amended by the Government but would have to be in tune with the parent provision.

Learned counsel has next taken us through Appendix- I to the Rules, referred to in Rule 5, to submit that while Table-1 of Appendix-I prescribes qualification and experience to be possessed by an applicant against such appointment, Table-2 under Appendix-I provides for a weightage scheme. Concentrating on the issue canvassed in the writ petition which is in respect of appointment of Lecturers and Assistant Professors in the Government Polytechnics/ Government Women Polytechnics from the Engineering Branch he submits, that the basic qualification for such appointment as per Table-1 is a degree in Engineering/ Technology in the relevant branch. Adverting to the weightage scheme at Table-2 he submits that the distribution of 100 marks can be found in Table-2 and while 30 marks is ear-marked on academics, 50 marks is on evaluation of work knowledge/ teaching skill on the basis of a written test, the remaining 20 marks is ear-marked for interview. It is submitted that while the pre-amended scheme of evaluation though resting on the syllabus prescribed for GATE, laid no mandatory condition for passing such examination



to obtain such weightage, there is a clear deviation in the amendment introduced to Table-2 of Appendix-I vide the impugned notification bearing No. 889 dated 10.4.2017, whereby the evaluation on the basis of a written test has given way to evaluation on the basis of marks obtained in the GATE examination subject to award of a maximum of 30 marks on work knowledge and teaching skill. This deviation according to Mr. Singh is contrary to the Rules as also the eligibility criteria fixed by the All India Council for Technical Education (hereinafter referred to as 'the AICTE'), a copy of which is enclosed at Annexure 6 to the writ petition.

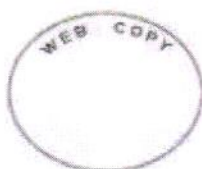
Learned counsel has referred to Entry 66 of List I to submit that the field of coordination and determination of standard in Institutions for higher education or research in Scientific and Technical Institutions is reserved for the Parliament and though Entry 25 of List III of Schedule 7 to the Constitution empowers both Union as well as the State to legislate in the field of education including technical education but such reservation is subject to the provisions of Entry 64, 65 and 66 of List I. He thus submits that while the AICTE has laid down the eligibility conditions for appointment of Lecturers which has a parliamentary sanction under Entry 66 of List I, the Rules framed by the State Legislature



in exercise of jurisdiction under Entry 25 of List III has to be in tune and subject to the Rules framed by the AICTE and cannot be in conflict thereof. It is argued that although the Rules as originally framed had no such conflict, there is a clear deviation by the amendment which makes passing of GATE an essential condition for inviting evaluation on work experience/ teaching skill because the non-passing of the said examination would deprive a candidate from being evaluated on his work knowledge as well as teaching skill, even if he possesses such experience and has the basic eligibility for such consideration.

Learned counsel to support his submissions has relied upon the following judgments:

- (i) (1987) 4 SCC 671 (**Osmania University Teachers' Association v. State of Andhra Pradesh & anr.**)- paragraphs 14 to 17
- (ii) (1995) 4 SCC 104 (**State of T.N. & anr. v. Adhiyaman Educational & Research Institute & ors.**)- paragraph 41
- (iii) (1990) 7 SCC 120 (**Dr. Preeti Srivastava & anr. v. State of M.P. & ors.**)
- (iv) (2005) 5 SCC 420 (**Prof. Yashpal & anr. v. State of Chhattisgarh & ors.**)- paragraphs 31 to 33



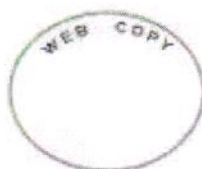
It is the submission of Mr. Singh that although the distribution of the marks has also undergone a change to reserve 50% on academics, 30% on evaluation on work knowledge and teaching skill and 20% for interview, yet the amendment would deprive the candidates of 30 marks on work knowledge and teaching skill simply because he has not passed the GATE examination. It is argued that in case, passing of a GATE was made an essential qualification then perhaps such scheme of weightage would have an explanation because each candidate would be equally placed for such evaluation but such is not the case and Table-1 which prescribes the eligibility qualification does not mandate passing of such examination. He submits that the Rules as it was originally framed, gave equal opportunity to all candidates for evaluation on work knowledge and teaching skill by holding of a written test but it is waiving such transparent evaluation and with a view to oust candidates who have not passed GATE that the scheme of evaluation on the basis of marks secured in GATE has been introduced which clearly creates a class within a class of candidates.

Learned counsel has next turned to the advertisement at Annexure 5 series of the respective writ petitions to submit that the respondent State in its Science and Technology Department have



committed a serious illegality in not appreciating the distinction in between an eligibility to apply and an evaluation of a successful candidate. To canvass his point learned counsel has referred to the stipulation present at paragraph 5 of the respective advertisements to submit that whereas the eligibility stipulations for such appointment present at Table-1 of Appendix I does not mandate passing of a GATE examination, but the stipulations at paragraph 5 of the respective advertisements, disqualifies a candidate from applying if he has not passed such examination. He submits that the illegality on behalf of the State does not stop here rather is perpetuated when by issuing a Corrigendum to the advertisement at Annexure 9, they have even interfered with the weightage scheme to waive of the requirement of an interview and to evaluate the candidates on the basis of academics by grant of weightage of 40 marks and 30 marks for evaluation on domain knowledge and teaching skill, on the basis of score obtained in the GATE. According to Mr. Singh, the Corrigendum is in the teeth of weightage scheme present at Table-2 of Appendix-I which requires the employer to evaluate a candidate as against 100 marks.

It is the submission of Mr. Singh that a passing of GATE is condition for admission to Post Graduate courses but since these petitioners are already Post Graduates they are not required to pass



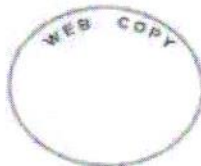
such examination. It is thus the submission of Mr. Singh that it is by virtue of such illegality committed by the State in its Science and Technology Department that though the petitioners are eligible for appointment as per the eligibility at Table-1 of Appendix-I to the rules at Annexure 8 but they are deprived of the appointment so notified through the advertisement in question because they have not passed the GATE.

Mr. Advocate General resisting the writ petitions has submitted that there is no issue of a validity arising in the present case because issue of validity usually is tested in context with the Parent Act, whereas in the present case the Rules in question has been framed by the State Government in exercise of powers vested under Article 309 of the Constitution of India and not in exercise of jurisdiction vested under the Rule making power under any act. It is thus the submission of Mr. Advocate General that no issue of the rule being ultra vires would arise in such circumstances.

Adverting to the merits of the challenge he submits that Annexure 7 is the Rules framed by the State of Bihar and Rule 3 thereof provides for the cadre structure of the Bihar Polytechnic Education Service. He submits that sub-rule (3) of Rule 3 enables the State to lay down the pay scales and the service conditions for the members of the service and it is in course of such exercise that



the qualifications have been laid down in Table-1 of Appendix-I while a weightage scheme is provided at Table-2 of Appendix-I which is accompanying the Rules. Mr. Advocate General while not disputing the power vested in the AICTE to frame rules to lay down eligibility conditions for appointment on technical posts of the present kind and not questioning overriding import of such rules, a copy of which is enclosed at Annexure 6, submits that the issue of conflict would arise only if the Bihar Rules would lower the qualification as prescribed by the AICTE and which is not the case here. According to Mr. Advocate General, the eligibility conditions which has been laid down in the Rules framed by the AICTE at Annexure 6 prescribes the minimum qualification for appointment of teachers and academic staff in technical education but it does not restrict the State Government in prescribing a qualification which is in betterment of such basic eligibility criteria because it is the exclusive right of the employer to appoint the right person. In reference to the advertisement, Mr. Advocate General, while not contesting that the exclusion of the candidates who have not passed the GATE travels beyond eligibility criteria at Table-1, continues to defend the action by submitting that since it is only by way of stopgap arrangement and since the appointment is to be made on contract pending regular



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appointment, the exercise may not be interfered with. According to Mr. Advocate General, it is the prerogative of the employer to prescribe for a mode of selection as well as of designing the weightage system for selecting best amongst applicants for the post in question.

Responding to the judgment relied upon by Mr. Singh it is submitted that the case of **Osmania University Teachers' Association** (supra) was a case where the State framed rules which lowered the qualification and which was commented upon by the Supreme Court to strike down the process. According to the learned Advocate General, there is no conflict in between the Rules framed by the AICTE and the Rules framed by the State of Bihar placed on record at Annexures 6 and 7 respectively to the writ petition save and except that for the purpose of grant of weightage on teaching skill and work knowledge, a qualification has been introduced in betterment of the qualification earlier prescribed and which does not in any manner effect the validity of the Rules either on its scheme or on the issue of conflict.

We have heard learned counsel for the parties and have perused the records and having considered the issue in dispute, we do not find the necessity to make any comment on the issue of conflict in between the Rules framed by the AICTE at Annexure 6



and the Rules framed by the State of Bihar under Article 309 of the Constitution of India at Annexure 7 because there is no conflict. To that extent we are in agreement with the submission of Mr. Advocate General that the qualifications laid down in the Rules framed by the AICTE for direct recruitment to the teaching post in technical education are the minimum prescribed qualification and which in no manner restrains the State Government to have a preferential category in betterment of such basic eligibility qualification.

In the nature of the dispute thus which transpires from the arguments advanced by Mr. Singh, learned counsel appearing on behalf of the petitioner as responded to by Mr. Advocate General we do not find it necessary to delve into the issue of separation of powers because in our opinion such conflict does not arise in the present case. It is now to be seen whether the amendment to Table-2 of Appendix-I to the Rules framed by the State of Bihar vide Memo No. 889 dated 10.4.2017 at Annexure 8, in so far as evaluation on work knowledge and teaching skill is concerned, would sustain the test of Articles 14 and 16 of the Constitution of India and/or whether it strikes at the very root of the equality clause i.e. equal opportunity and equal treatment to all, in the matters of public employment.



For the purpose we are persuaded to take note of some of the relevant provisions of Service Rules, 2014, which was framed for appointment to the post of teachers in Government Polytechnics/ Government Women's Polytechnics institutes. While Rule 3 provides for the cadre structure and empowers the State Government to frame service condition, the regulatory provision for direct appointment is present in Rule 5 and which is provided in Appendix-I accompanying the said rule. Since the present case relates to the appointment of Lecturers and Assistant Professors in Government Polytechnics/ Government Women's Polytechnics from the field of Engineering, we would be making reference to the prescribed qualification and experience for such direct appointment as present in Table-1 of Appendix-I which runs under:

Post	Qualifications	Experience
Lecturer	<u>Engineering/ Technology</u> Bachelor's degree in Engineering/ Technology in the relevant branch with First Class or equivalent. If the candidate has a Master's Degree in Engineering/ Technology, First Class or equivalent is required at Bachelor's or Master's level.	-----

The weightage scheme as it originally existed in Table-2 of Appendix-I in so far as field of Engineering/ Technology is concerned provided as follows:

Cadre Post	Total Weightage- 100		
	Academic Record and Research Work	Evaluation of Work-Knowledge and Teaching Skill Through	Interview (Weightage- 20)



	(Weightage- 30)	Written Test (Weightage- 50)	
Engineering/ Technology	(a) 15% of Percentage Marks obtained in B.Tech. In relevant branch/subject (b) 10% of Percentage Marks obtained in M. Tech in relevant branch (c) Ph.D.- 05	(b) For Engineering/ Technology stream, the syllabus of Graduate Aptitude Test Engineering (GATE)	

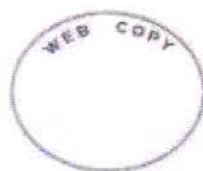
A plain look at the qualifications prescribed for such appointment at Table-1 would confirm that the basic qualification for such appointment is a Bachelor Degree in Engineering/ Technology. In so far as the weightage scheme is concerned, as against total weightage of 100 marks, 30 marks is ear-marked for academic record/ Research work, 50 marks is reserved for evaluation on work knowledge/ teaching skill to be done through written test and 20 marks is reserved for interview. Now whereas weightage of 30 marks on academic record allows 15% of the marks obtained in B.Tech., 10% marks obtained in M.Tech. and 5% marks obtained in Ph.D., the evaluation on work knowledge and teaching skill was to be done through a written test for which the Syllabus of GATE was prescribed. In other words, while the academic record gave preferential marks to those having M.Tech. and Ph.D. qualification, in so far as the evaluation on work knowledge and teaching skill is concerned, each of the candidate had to go through a written test thus providing equal opportunity to all candidates. The scheme reflected transparency and fairness



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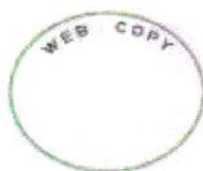
in selection procedure. This weightage scheme at Table-2 has been interfered with by the impugned amendment at Annexure 8 whereby now 50 marks is reserved for academic record/ research work, 30 marks is reserved for evaluation on work knowledge and teaching skill on the basis of marks obtained in GATE and 20 marks for interview. There is absolutely no issues on rearrangement of weightage marks amongst the different categories, the problem which arises by virtue of this amendment is, that in the process of amending the scheme of evaluation on work knowledge and teaching skill, the State has done away with the scheme of written test and in so far as the candidates seeking appointment in the Engineering/ Technology Branch is concerned, they are now to be assessed on the basis of percentile obtained by them in the GATE examination subject to a maximum of 30 marks.

It is the contention of the petitioners that qualifying in GATE is a mandatory requirement for seeking admission in Masters/ Doctoral programme in Engineering/ Technology/ Architecture and since the petitioners are already having Post Graduate qualification they are not required to appear at such examination. According to Mr. Singh, while the petitioners are not required to pass GATE examination because they are already Post



Graduates, this situation deprives them of the valuable 30 marks for being evaluated on their work knowledge/ teaching skill.

We do agree with the issue canvassed and are completely at loss to appreciate this change in the procedure of evaluation of candidates on their work knowledge/ teaching skill because while the weightage scheme as it was originally framed, allowed equal opportunity to all the candidates for being tested on their work knowledge/ teaching skill through a written test to be held on the pattern of GATE, the State by waiving of such requirement has deprived the candidates who are not even required to pass GATE examination for being evaluated on their work knowledge and teaching skill even if they do possess such experience. Even if the State under Article 309 has a right to frame rules in matters of public employment, every such rule has to withstand the test of arbitrariness and rationality besides being transparent on the procedure but the amendment substituting Table-2 of Appendix-I through Memo No. 889 dated 10.4.2017 whereby it is decided to waive of the transparent evaluation of candidates on their work knowledge/ teaching skill by way of a written test and to simply mark candidates on the basis of marks obtained in the GATE examination, not only hits transparency but also discriminates against such of the candidates who are already



Post Graduates and are not required to pass such GATE examination.

Much has been canvassed by Mr. Advocate General in reference to the rules as it was originally framed that the written test so prescribed for such evaluation had a Syllabus of GATE and thus, if the State has now allowed the candidates to be marked on the basis of passing of such examination, not much change has happened on the procedure but in our opinion such stand is only taken for rejection because an evaluation of a personal attainment of a candidate either on academics or work knowledge or teaching skill, has to possess a degree of equality for placing the candidates at equal level and even if a better qualification within such requirement would be justifiable as one can see in the case of academic record/ research work where while 25% marks is reserved for basic qualification of B. Tech. the candidates possessing Post Graduates and Ph.D. qualification are given additional marks, the process of evaluation of teaching skill/ work knowledge on the basis of marks obtained in the GATE examination ousts such of the candidates from such consideration who have either not passed the GATE examination or are not required to pass such examination. Resultantly they are deprived



of a valuable consideration of 30 marks earmarked for such purpose.

As we have observed there can be a preferential category within a particular category but a weightage scheme which deprives a candidate from consideration against a particular attribute in its entirety suffers from vice of arbitrariness besides being discriminatory and lacking on reasonableness. In fact this change in weightage scheme has created a class within a class of candidates in so far as evaluation on work knowledge/ teaching skill is concerned and the object is entirely missing. The basic eligibility as present in Table-1, Appendix-I for an applicant to apply against such post, does not prescribe passing of a GATE examination as a condition of eligibility. In our opinion, until passing of a GATE examination is made a condition of eligibility, the State cannot make it a basis for evaluation of a candidate on the issue of work knowledge and teaching skill. Such is the arbitrary consequences of such form of evaluation that despite candidates possessing work experience and teaching skill, they are yet deprived of such consideration simply because they have not passed the GATE examination. The case of the petitioners is even worse because being Post Graduate they are not even required to



pass such examination and yet the substituted rule deprives them of such consideration.

Mr. Advocate General has tried to equate the passing of the GATE examination at par with the acquisition of Post Graduate/ Ph.D. qualification which parity is a misnomer because while a Post Graduate qualification or Ph.D., is in betterment of academic qualification, passing of GATE examination is no academic qualification rather it simply provides a passage for admission to Post Graduate courses. The amendment, in our opinion, in so far as it deprives the candidates like the petitioners to a consideration for evaluation on their work knowledge and teaching skill simply because they have not passed the GATE examination, is arbitrary and discriminatory besides lacking in object.

In such view of the matter and for the discussions above, the amendment to Table-2 of Appendix-I vide Memo No. 889 dated 10.4.2017 in so far as it ousts the candidates who have not passed the GATE examination for being evaluated on their work knowledge/ teaching skill is held discriminatory and is accordingly set aside in its entirety.

This brings us to the issue of advertisement. The advertisement issued by the Science and Technology Department



at Annexures 5 series together with its Corrigendum at Annexure 9, is even worse for it perpetuates illegality when it makes passing of GATE a condition of eligibility for even applying against the post so advertised. Such is the prescription present at paragraph 5 of the advertisement at Annexure 5 series to the respective writ petitions. This prescription introduced in the advertisements impugned in the two writ petitions is held contrary to the eligibility condition so prescribed at Table-1 of Appendix-I of 'the Rules' and consequently the prescriptions at para 5 of the advertisement(s) to the extent it mandates passing a GATE, a condition of eligibility for applying against the post, is held illegal and is accordingly quashed and set aside.

We now move to Annexure 9 which is a Corrigendum dated 11.3.2019 issued by the Science and Technology Department to the advertisement at Annexure 5 series and which in fact substitutes the weightage scheme at Table-2 Appendix-I to provide for a total weightage of 70 marks as against the weightage prescribed in Table-2 Appendix-I of 'the rules' at 100 marks. The Corrigendum dated 11.3.2019 in so far as it interferes with the weightage scheme at Table-2 to restrict the consideration at 70 marks, is held in conflict with the same and is accordingly quashed and set aside.

In consequence of the order that we have passed and since the period for receiving online applications has come to a close, we



direct the Principal Secretary, Science and Technology Department, Bihar, Patna to either open the portal for inviting online applications in the light of the position that we have settled above allowing all the candidates who hold the eligibility conditions as prescribed in Table-1 Appendix-I of 'the rules', to apply against the posts advertised and/or to issue appropriate orders inviting application from every candidate who possesses the basic eligibility to apply against the posts advertised, to be submitted before the designated authority. Let such exercise be completed by the Principal Secretary, Science and Technology Department, Govt. of Bihar within three weeks from today.

Since we have struck down the amendment to Table-2 Appendix-I of 'the rules' in its entirety, the evaluation obviously is to be carried out as per the scheme originally framed as present in Table-2 of Appendix-I which, accompanies the Service Rules, 2014.

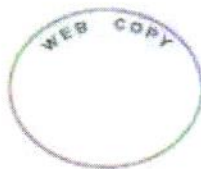
The writ petitions are allowed with the directions above.

(Jyoti Saran, J)

(Partha Sarthy, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.08.2019
Transmission Date	NA



IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10224 of 2022

Dr. Aseem Kumar Thakur S/o Late Kameshwar Thakur, Presently residing at and Posted as Principal, Kameshwar Narayan Singh Government Polytechnic Samastipur, Kishunpur Tabhka, Bibhutipur, District - Samastipur - 848160.

... .. Petitioner/s

Versus

1. The State of Bihar through the Addl. Chief Secretary, Department of Finance Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Science and Technology Govt. of Bihar, Patna.
3. The Secretary, Department of Science and Technology, Govt. of Bihar, Patna.
4. The Joint Secretary, Department of Science and Technology, Govt. of Bihar Patna.
5. The Deputy Secretary, Department of Science and Technology, Govt. of Bihar, Patna.
6. The Chairman, Bihar Public Service Commission, J.N.L. Marg, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava Mr. P. K. Jaipuriar Mr. Anshuman Jaipuriar Ms. Anukriti Jaipuriyar Mr. Rajnikant Kumar
For the Respondent/s	:	Mr. Kameshwar Pd. Gupta (GP 10)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 06-02-2024

By notification, dated 05.06.2018, the petitioner was appointed provisionally as the Principal, Polytechnic College, with effect from 02.07.2015 on the pay scale of Rs. 37,400 – 67,000/- plus A.G.P. Rs. 10,000/- and special allowance of Rs. 2,000/-



(Level 14), issued by the Department of Science and Technology, Government of Bihar, Patna.

2. The grievance of the petitioner is that the petitioner has been declared ineligible candidate by the Bihar Public Service Commission in the selection process, conducted by it for the post of Principal of Engineering Colleges, which was advertised, vide Advertisement No. 15 of 2020, dated 06.08.2020.

3. The main contention of the petitioner is that the petitioner has erroneously been denied appointment and his candidature has wrongfully been rejected despite the fact that the petitioner was having adequate experience of more than three years in the requisite pay scale of Principal, i.e. equivalent to the Professor with effect from 02.07.2015.

4. In the aforesaid background the petitioner has filed the present writ application for a direction to the respondent authorities to consider the application of the petitioner submitted pursuant to the Advertisement No. 15 of 2020, dated 06.08.2020, for the post of Principal in Government Engineering Colleges, under the Science and Technology Department, Government of Bihar, as the petitioner fulfills all the criteria and experience for the post advertised. The petitioner has also prayed for quashing of the Letter No. 1508, dated 31.05.2022 (Annexure 7) of the Science



and Technology Department, Government of Bihar, whereby the respondents refused to issue experience certificate since 02.07.2015.

5. The brief facts of the case is that the Bihar Public Service Commission published Advertisement No. 15 of 2020, dated 06.08.2020, inviting online applications from the eligible candidates for filling up 32 posts of Principal in Government Engineering Colleges in the Science and Technology Department, Government of Bihar.

6. The petitioner applied for the post of Principal and submitted online application on 02.09.2020. At the time of submission of his online application form, the petitioner was working as Principal, Kameshwar Narayan Singh Government Polytechnic College, Samastipur, and after having obtained permission from the Department, he duly applied for the advertised post of Principal in Government Engineering Colleges.

7. Earlier, pursuant to the advertisement issued by the Bihar Public Service Commission for appointment on the post of Principal in Polytechnic College, the petitioner had applied and participated in the selection process. After the selection process was over, the candidature of the petitioner was rejected on the



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ground that the petitioner was not working against a post having AGP of Rs. 9,000/-, as Head of the Department.

8. The petitioner had moved before this Court challenging the rejection of his candidature on the post of Principal, Polytechnic College and at the stage of letters patent appeal, bearing L.P.A. No. 655 of 2016, the petitioner succeeded and a Division Bench of this Court, vide order, dated 19.07.2017, held that the appellant (petitioner herein) shall be deemed to be holding the post as Head of the Department with AGP of Rs. 9,000/- with effect from 17.10.2011 and in rejecting his claim by holding that the appellant/petitioner did not fulfill the requisite criteria, the Division Bench held that the respondents have committed an error in this regard inasmuch as while considering the claim of the eligible candidates, the appellant's case has been left out on account of improper consideration.

9. In compliance of the order, dated 19.07.2017, passed in LPA No. 655 of 2016, the Science and Technology Department, Government of Bihar, issued Office Order No. 1397, dated 05.06.2018, by which on the recommendation of the Bihar Public Service Commission, dated 01.11.2017, the petitioner was provisionally appointed with effect from 02.07.2015 as the Principal, Polytechnic College, on the pay scale of Rs. 37,400 –

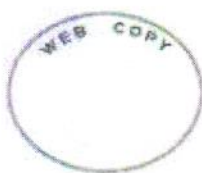


67,000/- plus A.G.P. Rs. 10,000/- and special allowance of Rs. 2,000/- (Level 14), which would be subject to the final outcome of the S.L.P. preferred by the Department against the order, dated 19.07.2017, passed in LPA No. 655 of 2016.

10. The dispute involved in this writ application is that the petitioner is not having adequate experience at Professor level (Level 14) and the same is the ground of rejection of the candidature of the petitioner.

11. The relevant clause for experience in the advertisement no. 15 of 2020, dated 06.08.2020, is minimum 15 years of experience in teaching/research/industry, out of which at least three years shall be at the post equivalent to that of Professor, in the pay scale of Level 14.

12. Learned Counsel for the petitioner submits that in pursuance to the Advertisement No. 15 of 2020, dated 06.08.2020, the petitioner was required to furnish experience certificate for appointment on the post of Principal in Government Engineering Colleges, as such, the petitioner, vide Letter No. 218, dated 05.04.2022, requested the Department to issue experience certificate in the light of the Office Order No. 1397, dated 05.06.2018, by which the petitioner was appointed as Principal in the pay scale of Level 14 with effect from 02.07.2015 and as on



the date of submission of his application in the year 2020, the petitioner was having more than three years experience as Principal in the pay scale of Level 14.

13. However, the respondent-Department, vide Letter No. 1508, dated 31.05.2022, refused to issue experience certificate to the petitioner with effect from 02.07.2015, which is arbitrary and unreasonable in view of the fact that the petitioner was working as Incharge Principal of the Darbhanga Engineering College, Darbhanga, with effect from 29.06.2012 and after notification, dated 05.06.2018, the petitioner started working as regular Principal, Polytechnic College, and was granted the pay scale of Level 14 with effect from 02.07.2015.

14. Learned Counsel further submits that the petitioner submitted hard copy of the list of documents, which the petitioner had uploaded pursuant to the Advertisement No. 15 of 2020, to the Bihar Public Service Commission, vide Letter No. 674, dated 02.09.2020, wherein Column (xii) states regarding the experience certificate, dated 14.08.2020 and experience certificate, dated 17.08.2020 (total 11 pages).

15. The petitioner again furnished the relevant proof of experience certificate, issued by the Department, as contained in Letter No. 2205, dated 09.09.2020 and Letter No. 2907, dated



15.12.2015, vide petitioner's Letter No. 737, dated 12.09.2020, through registered post/speed post, dated 14.09.2020 to the Bihar Public Service Commission, which would show that the petitioner had already submitted the relevant documents before 18.04.2022, which ought to have been considered by the respondent authorities. The petitioner fulfilled all the qualification and experience criteria, as required under the Advertisement No. 15 of 2020, for the post of Principal in Government Engineering Colleges.

16. Learned Counsel also submits that none of the candidates, who have been selected for the post of Principal in Government Engineering Colleges, under the Science and Technology Department, Government of Bihar, have done their Post-graduate and Doctorate from reputed institution of Indian Institute of Technology, Roorkee, like the Petitioner.

17. The old experience certificate issued by the Science and Technology Department, Government of Bihar, dated 15.12.2015 was not considered by the Bihar Public Service Commission and declared the petitioner as ineligible candidate, having inadequate experience equivalent to that of the Professor level (pay scale in Level 14). The respondent-Bihar Public Service Commission wrongly rejected the candidature of the petitioner by



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not considering the experience certificate of the petitioner in proper manner despite the notification, dated 05.06.2018, issued pursuant to the order passed by this Court in LPA No. 655 of 2016 with effect from 02.07.2015, in the pay scale of Level 14. The respondent authorities cannot take advantage/benefit of their own wrong, causing injustice to the petitioner despite the clear direction of this Court, in LPA No. 655 of 2016. The denial of the Department to grant experience certificate to the petitioner with effect from 02.07.2015 on the post of Principal, Polytechnic College, is unjust and not tenable in the eyes of law.

18. The petitioner, referring to the supplementary affidavit, has also submitted that pursuant to the Advertisement No. 15 of 2020, the result has been published by the Bihar Public Service Commission on 27.07.2022, which shows that only 10 candidates in the unreserved category has been selected and three posts in the unreserved category is still vacant.

19. Per contra, learned Counsel for the respondent nos. 1 to 4, argued that the petitioner was appointed against the post of Principal, Government Polytechnic Colleges of the State of Bihar, vide Memo No. 1397, dated 05.06.2018 , with effect from 02.07.2015, only on provisional basis, subject to outcome of the SLP pending before the Hon'ble Supreme Court against the order,



dated 19.07.2017, passed in LPA No. 655 of 2016. Hence, at present, the petitioner shall not be entitled to get the experience certificate from 02.07.2015, and he is being treated as Principal from the actual date of his joining, i.e. 11.06.2018.

20. On the other hand, learned Counsel for the respondent no. 6-Bihar Public Service Commission submits that the petitioner applied for the post of Principal in Government Engineering Colleges under the Science and Technology Department, Government of Bihar, but he did not possess the experience required as per the advertisement, which would be evident from Letter No. 2205, dated 09.09.2020, issued by the Joint Secretary, Science and Technology Department, while issuing experience certificate of the petitioner. Accordingly, the Expert Committee of the Bihar Public Service Commission declared the petitioner as ineligible on the ground that the petitioner has inadequate experience at Professor level (pay scale in Level 14). The Bihar Public Service Commission has acted on the basis of requisitions/guidelines/rules and regulations framed by the State Government, through Department of Science and Technology.



21. I have heard learned Counsel for the parties concerned and have carefully gone through the materials available on record.

22. From the advertisement issued by the Bihar Public Service Commission for appointment of regular Principals in Government Engineering Colleges, having 32 vacancies, the eligibility criteria, apart from the educational qualification, contains the experience also, for which the term of the advertisement says that the candidate must have minimum 15 years of experience in teaching/research/industry, out of which three years shall be at the post equivalent to that of Professor, having the pay scale in Level 14.

23. Previously, the Science and Technology Department had issued two certificates with regard to the experience of the petitioner. The first one is dated 15.12.2015, annexed As Annexure P/8 to the writ application and the second one is dated 09.09.2020, annexed at Annexure P/13 to the second supplementary affidavit. Upon going through the experience certificate, dated 15.12.2015, it appears that the petitioner worked as Assistant Professor from 1986 to 2011 and from 17.1.2011, he worked as Associate Professor and with effect from 29.06.2012, he continued to work as Incharge Principal, Darbhanga Engineering College,



Darbhanga. In the second experience certificate, dated 09.09.2020, the details of work experience of the petitioner on the various posts with corresponding pay scales are mentioned and the petitioner has been shown to be working as regular Principal with effect from 11.06.2018, having the pay scale in Level 14.

24. The bone of contention lies here, for which the submission of the petitioner that as per the notification, issued by the Department of Science and Technology, Government of Bihar, dated 05.06.2018, the petitioner has been granted the post of Principal with effect from 02.07.2015 in the pay scale of Level 14, and as such, from 2015, as on the date of publication of the advertisement, the petitioner was fulfilling the eligibility criteria regarding three years experience at the post equivalent to that of Professor in the pay scale of Level 14; whereas, the submission of the Department is that the petitioner has been given the post of Principal pursuant to an order passed by this Court in LPA No. 655 of 2015 and the State has preferred S.L.P. before the Hon'ble Supreme Court against the order passed in the Letters Patent Appeal, as such, the grant of pay scale of Level 14 at the post of Principal, Polytechnic College to the petitioner with effect from 02.07.2015 was provisional and was subject to the final outcome of the S.L.P. and, therefore, the Department has rightly counted the



experience of the petitioner from the date of submission of his actual joining on 11.06.2018 in terms of the notification, dated 05.06.2018. As such, refusal by the Department to issue experience certificate with effect from 02.07.2015, vide impugned Letter No. 1508, dated 31.05.2022 is perfectly correct.

25. Considering the aforesaid discussion and the submissions advanced on behalf of the parties, it is evident that the petitioner is having the actual teaching experience since long inasmuch as he was made Incharge Principal of Darbhanga Engineering College, Darbhanga, in the year 2012 and since then he is working as Incharge Principal till the petitioner applied for the post of principal in Government Polytechnic Colleges pursuant to the Advertisement No. 02 of 2015, published by the Bihar Public Service Commission. The petitioner was wrongly denied appointment by the Bihar Public Service Commission/State on the post of Principal of Polytechnic Colleges, which led to the filing of the writ application and the Letters Patent Appeal by the petitioner and the Division Bench of this Court directed the respondents to appoint him on the post of Principal, Polytechnic Colleges, in the pay scale of Level 14, with effect from 02.07.2015. In pursuance thereof, the Department issued notification, dated 05.06.2018,



granting him the pay scale in Level 14 on the post of Principal with effect from 02.07.2015.

26. Accordingly, in my considered opinion, the petitioner was having experience of more than three years at the post equivalent to that of the Professor in the pay scale of Level 14 on the date of publication of Advertisement No. 15 of 2020, dated 06.08.2020, by the Bihar Public Service Commission. As such, the refusal to grant experience certificate to the petitioner with effect from 02.07.2015 by the Department of Science and Technology, Government of Bihar, is not justified in law as well as in the facts.

27. In the result, the impugned Letter No. 1508, dated 31.05.2022, is set aside and the respondent no. 2-Principal Secretary of the Science and Technology Department, Government of Bihar, is directed to issue experience certificate to the petitioner with effect from 02.07.2015 as Principal, Polytechnic College, in the pay scale of Level 14, within a period of fifteen days from the date of receipt/production of a copy of this order.

28. However, it is made clear that this experience certificate shall be subject to final outcome of the S.L.P. preferred by the State against the order passed in L.P.A. No. 655 of 2016.

29. After receipt of the experience certificate, the petitioner shall produce the same immediately within a period of



two weeks of receipt of the experience certificate before the Bihar Public Service Commission and the Bihar Public Service Commission, in turn, is directed to consider the candidature of the petitioner for the three vacant posts of Principal in Government Engineering Colleges in accordance with law and in terms of the Advertisement No. 15 of 2020, dated 06.08.2020, and take a final decision within a period of four weeks from the date of submission of experience certificate by the petitioner.

30. It is further made clear that till the final decision is taken by the Bihar Public Service Commission, one post of Principal of Government Engineering College shall be kept reserved by the Department of Science and Technology, Government of Bihar, Patna.

31. In the result, this writ application is allowed.

32. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	12-12-2023
Uploading Date	06-02-2024
Transmission Date	N/A

