

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.9608 of 2016

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Deepak Kumar, Advocate, Patna High Court, son of Birendra Kumar Singh  
resident of Mahaveer Colony, Beur, Anisabad, Patna - 2.

.... .... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary.
2. The Principal Secretary, the Panchayati Raj Department, Govt. of Bihar, Patna.
3. The Director, Panchayati Raj Department, Govt. of Bihar Patna.
4. The Secretary, Ministry of Law and Justice, Union of India, New Delhi.

.... .... Respondent/s

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#### Appearance :

For the Petitioner	:	Ms. Anju Mishra, Advocate
For the State	:	Mr. Anjani Kumar, A.A.G.-IV
For Union of India	:	Mr. S.D.Sanjay, ASG
		Mr. Anshay Bahadur Mathur, C.G.C.

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

**And**

**HONOURABLE MR. JUSTICE SUDHIR SINGH**

#### ORAL JUDGMENT

**(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

**Date: 31-01-2017**

The challenge in the present writ application in public interest is to Rule 5(a) (i) of the Bihar *Gram Katchahry Nyaya Mitra* (Employment, Service Conditions and Duties) Rules, 2007 (for short, ‘the Rules’). The relevant clause reads as under:-

“5. *For appointment:-*

(a) *Qualification:-*

- (i) He/she must be a citizen of India and resident of the concerned district of the State of Bihar;
- (ii) At least a law graduate from any recognized institute or university shall be eligible for appointment on the post of *Nyaya Mitra of Gram Katchahry.*”



The aforesaid Rules have been framed in exercise of the powers conferred under Section 146 read with Section 94(2) of the Bihar Panchayat Raj Act, 2006 (for short, 'the Act'). It is submitted that the condition that the candidate must be resident of the concerned district of the State of Bihar is violative of mandate of Articles 14, 15, 16, 35(a) (i) and 162 of the Constitution of India. It is pointed out that the Constitution of *Gram Katchahry* by election was upheld by this Court in a judgment reported as AIR 1996 Patna 112, Krishna Kumar Mishra and another v. The State of Bihar & others, therefore, a *Nyaya Mitra* is not an appropriate candidate to handle the legal issue as he/she must be an advocate having at least three years' experience.

In the counter affidavit, it has been pointed out that the Rules have been framed to regulate terms and conditions of appointment of *Nyaya Mitra* in each *Gram Katchahry* of the State which is elected body of *Sarpanch* and *Panches* constituted under Section 90 of the Act. Section 94(2) of the Act provides for *Nyaya Mitra* in each *Gram Katchahry* for assistance to the respective *Gram Katchahay* to be appointed in the manner as prescribed. Therefore, the Rules have been framed for appointment of *Nyaya Mitra*. Relevant provisions of Act read as under:

**94. Assistance to Gram Katchahry–** (1) There shall be a secretary in every *Gram Katchahry* to be appointed in the manner as may be prescribed.



(2) There shall be a person called Nyaya Mitra having at least a three year Law Degree from a recognised Institution or University to assist the *Gram Katchahry* or any bench thereof in the discharge of its duties. Such Nyaya Mitra shall be appointed in the prescribed manner.

(3) In order to enable the *Gram Katchahry* to perform its functions effectively, the State Government shall, in the prescribed manner, make arrangements for training of the *Sarpanch*, the *Up-Sarpanch* and *Panches* of the *Gram Katchahry*.

**146. Power of Government to make Rules** -(1) The Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) Every rule made under this section shall be laid before each House of the State Legislature.

(3) A Rule under this Act may be made with retrospective effect and when such a Rule is made the reasons for making the Rule shall be specified in a statement and laid before both Houses of the State Legislature. Subject to any modification made under this Act, every Rule made under this Act shall have effect as if enacted in this Act.

(4) In making a Rule under this section the Government may provide that a person guilty of breach thereof shall, on conviction, be punished with fine which may extend to five hundred rupees and where the breach is a continuing one with further fine which may extend to a maximum of twenty-five rupees for every day on and after the first day on which the breach continues.”

It is further stated that *Nyaya Mitra* is appointed on contract basis which is not a full-fledged civil post, but it is a contract employment. It is an advisory post to assist the *Gram Katchahry* in discharge of its duties. Such Rules are not in conflict with the



Constitution of India or the Act. There is reference to the few judgments of the Hon'ble Supreme Court as to the extent of judicial interference in the Rules framed.

During the course of argument, learned counsel for the petitioner argued that the qualification based upon the resident of the concerned district violates Article 16(3) of the Constitution of India as the Parliament alone is competent to make any law in regard to class or classes of employment or an appointment to an office under the Government of, or any local or other authority within, a State or a Union Territory. It is, thus, contended that condition of being resident of the concerned district of the State of Bihar as a condition for appointment contravenes Article 16(2) of the Constitution of India and, thus, not tenable. Reliance is placed upon the judgment of the Hon'ble Supreme Court reported as (2002) 6 SCC 562 (Kailash Chand Sharma v. State of Rajasthan).

We do not find any merit in the argument raised. Firstly, *Nyaya Mitra* under the Rules is not a person holding a civil post. It is an appointment on contract basis to assist each *Gram Katchahry* and has to be paid fixed contract amount of Rs.2500/-. The contract of the candidate terminates with the completion of tenure of *Gram Katchahry*. Thus, the purport and object of providing a Graduate in Law to work as *Nyaya Mitra* is to help an elected body of



the *Gram Katchahry* in discharge of the functions. Since he/she is being appointed on the contract basis and the period of the contract is co-terminus with the period of *Gram Katchahry*, therefore, no legal or equitable right accrues in favour of such appointee as the work assigned is of advisory and of temporary nature.

Since the amount to be paid is nominal, therefore, the person residing within the District will be able to provide assistance expected of him by a *Gram Katchahry*. A Law Graduate staying in another district will not be able to provide any assistance to the *Gram Katchahry* on account of sheer lack of motivation to work in different district where it may not be feasible or economically sensible to work on such paltry amount.

Article 16 (2) of the Constitution of India prohibits discrimination, *inter alia*, on the basis of residence in respect of any employment or office under the State. The engagement of *Nyaya Mitra* on a contract basis is not an employment or any office under the State, but his/her role is that of a wholly advisory, that too for a limited period, therefore, it does not violate Article 16(2) of the Constitution. The terms of engaging a *Nyaya Mitra* fall within the exclusive domain of the executive in terms of Section 94 and 146 of the Act.



The power of judicial review in respect of qualification fixed has been examined by the Hon'ble Supreme Court from time to time. In Sanjay Kumar Manjul v. UPSC, (2006) 8 SCC 42, it was laid down that the statutory authority is entitled to frame the statutory rules laying down the qualifications essential for holding a particular post. The Court held to the following effect:-

“25. The statutory authority is entitled to frame the statutory rules laying down the terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned which can take ultimate decision therefor.

26. The jurisdiction of the superior courts, it is a trite law, would be to interpret the rule and not to supplant or supplement the same.

27. It is well settled that the superior courts while exercising their jurisdiction under Article 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post.”

In P.U. Joshi v. Accountant General, (2003) 2 SCC 632, the Hon'ble Supreme Court held that the questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service is within the exclusive discretion and jurisdiction of the State, subject to the limitations or restrictions envisaged in the Constitution of India. The Court held to the following effect:

“10. We have carefully considered the submissions made on



behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

In Chandigarh Admn v. Usha Kheterpal Waie, (2011) 9

SCC 645, the Hon’ble Supreme Court held that it is for the rule-



making authority to prescribe the mode of selection and minimum qualification for any recruitment. It was held to the following effect:-

“22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor trench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of the Constitution, statute and rules. (See *J. Ranga Swamy v. Govt. of A.P.*, (1990) 1 SCC 288 : 1990 SCC (L&S) 76 and *P.U. Joshi v. Accountant General*, (2003) 2 SCC 632: 2003 SCC (L&S) 191. In the absence of any rules, under Article 309 or statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of PhD is unreasonable.”

In another judgment, reported as (2012) 9 SCC 545, State of Gujarat v. Arvindkumar T. Tiwari, the Hon’ble Supreme Court held that fixing eligibility criteria for a particular post falls within the exclusive domain of the legislature/executive and cannot be subject matter of judicial review unless it is found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service or that it has no relationship with the objective to be achieved. The Court held to the following effect:-

“12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the





legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility, etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of “fair play”, “good conscience” and “equity”. (Vide *State of J&K v. Shiv Ram Sharma*, (1999) 3 SCC 653: 1999 SCC (L&S) 801: AIR 1999 SC 2012, and *Praveen Singh v. State of Punjab*, (2000) 8 SCC 633 : 2001 SCC ( L&S) 62.)”

The judgment in Kailash Chand Sharma’ case referred to by learned counsel for the petitioner relates to grant of bonus marks to the applicant belonging to the District and Rural areas. The Rajasthan High Court struck down such condition observing that this kind of weightage will give a complete go-by to the merit of the candidates and would seriously affect the efficiency of administration/teaching. The Hon’ble Supreme Court has struck down the said benefit. The Court concluded as under:

“33. The above discussion leads us to the conclusion that the award of bonus marks to the residents of the district and the residents of the rural areas of the district amounts to



impermissible discrimination. There is no rational basis for such preferential treatment on the material available before us. The ostensible reasons put forward to distinguish the citizens residing in the State are either non-existent or irrelevant and they have no nexus with the object sought to be achieved, namely, spread of education at primary level. The offending part of the circular has the effect of diluting merit, without in any way promoting the objective. The impugned circular dated 10-6-1998 insofar as the award of bonus marks is concerned, has been rightly declared to be illegal and unconstitutional by the High Court.”

Keeping in view, the nature and period of engagement, we do not find that either Article 14 or 16(2) of the Constitution are violated and the condition of restricting for appointment only to the resident of the concerned District of the State of Bihar where *Gram Katchahry* is situated cannot be said to be suffering from any illegality. Consequently, the writ application is dismissed.

**(Hemant Gupta, ACJ)**

**(Sudhir Singh, J)**

Sunil/-

AFR/NAFR	A. F. R
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