

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6411 of 2022

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Md. Aman Hassan Son of Md. Shamim Hassan Resident of Jabbar Chak, P.S.-
Tatarpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director, Higher Education, Government of Bihar, New Secretariat, Patna.
2. The Director, Higher Education, Government of Bihar, New Secretariat, Patna.
3. Bihar Animal Sciences University, Near Jai Prakash International Airport, Patna through its Vice Chancellor.
4. The Vice Chancellor, Bihar Animal Sciences University, Near Jai Prakash International Airport, Patna.
5. The Registrar, Bihar Animal Sciences University, Near Jai Prakash International Airport, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arjun Kumar, Advocate
For the State	:	Mr. Prabhakar Jha, G.P.-27
		Mr. Mukund Mohan Jha, AC to GP-27
For the University	:	Ms. Namarata Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 31-05-2023

Heard Mr. Arjun Kumar, learned counsel for the petitioner, Mr. Prabhakar Jha, learned G.P.-27 for the State and Mrs. Namrata Mishra, learned counsel appearing for the Bihar Animal Sciences University.

2. Dissatisfied with his non selection/appointment on the post of Assistant Professor Cum Junior Scientist in the department of Fish Processing Technology in the college of Fisheries, Kishanganj, under the Bihar Animal Sciences University, Patna, in short (BASU) under the reserve category of



extremely backward class and/or Physically Handicapped (Divyang), the petitioner has filed the present writ application for a direction to the respondents to appoint the petitioner on the vacant post of Assistant Professor cum Junior Scientist under the appropriate category.

3. The Bihar Animal Sciences University, Patna, invited on-line applications sometime in February 2020 from eligible candidates for appointment on the post of University Professor cum Chief Scientists, Assistant Professor cum Senior Scientists and Assistant Professor cum Junior Scientist from eligible candidates vide Employment Notice No. 01 of 2020 describing the eligibility criteria, reservation criteria and other relevant conditions for appointment in the college of Fisheries. The last date for submission of on-line application form and fee was 12.3.2020. As per the advertisement at Annexure-1, there were five posts of Assistant Professor cum Junior Scientist out of which one (01) post was unreserved, one (01) post was for EBC-F, one (01) post was SC, one (01) for BC and one for EWS(Female).

4. Clause 37 of the general instructions and conditions of the Employment Notice described that as per Circular No. 11/आ०नी०-1-11/2015 सा०प्रा० 2342 dated 15.02.2016 in case of unavailability of female candidate (UR-F), SC-F, EBC-F, BC-F



and EWS-F post may be filled up with male candidates of same category in the same transaction. Clause 36 of the general instructions and conditions of advertisement prescribed that “reservation shall only be applicable to the original resident of Bihar State, horizontal reservation to Divyang/Grand Child of Freedom Fighter shall be applicable as per the guidelines of Government of Bihar.

5. The petitioner who claims to have fulfilled the eligibility criteria having first class in Bachelor of Fisheries Sciences, 7-24 OGPA in Master of Fisheries Sciences, Ph.D from ICAR-Central Institute of Fisheries Education, Mumbai, National Eligibility Test qualified, Research Publication Holder in various topics having publication in various journals, paper presentation and participants in various Academic seminars of excellence applied for the post of Assistant Professor cum Junior Scientist in the department of Fish Processing Technology under the category of EBC and PWD Physically Handicapped (*Divyang*). Interview letter dated 27.8.2021 was issued to the petitioner to appear on 9.9.2021 for interview. The interview of the petitioner was fixed on 9.9.2021 but, in the meanwhile, on 7.9.2021 the process of interview was postponed due to some reason and the petitioner could not be interviewed on 9.9.2021.



6. The respondent Bihar Animal Sciences University, Patna, re-advertised the earlier posts with minor changes through Employment Notice No. 05/2021 dated 6.10.2021 with a clear indication that the candidates who have already applied for the post earlier vide Employment Notice No. 01 of 2020, need not apply again as their candidature will be considered subject to fulfillment of eligibility criteria. There was no change in general instructions and conditions of advertisement relating to reservation to EBC category and to Physically Handicapped Persons in the Employment Notice dated 6.10.2021. The Bihar Animal Sciences University, Patna, issued a fresh interview letter dated 3.3.2022 to the petitioner requiring him to appear on 10.03.2022 and was accordingly interviewed by the Selection Committee. The petitioner produced all the relevant documents/testimonials, reservation certificate etc. at the time of interview. The Bihar Animal Sciences University published the recommendations of the Selection Committee on 13.3.2022 for appointment on various posts and three (03) candidates were selected for the post of Assistant Professor cum Junior Scientist, namely, Dr. Abhishek Thakur and Dr. Puja Saklani from unreserved category and Dr. Parmanand Prabhakar from SC category. The petitioner was not selected despite having required credentials including EBC



certificate and PWD (Physically Handicapped (Divyang)) certificate. The petitioner filed a representation in this regard which is at Annexure-8.

7. A counter affidavit has been filed by the respondent, Bihar Animal Sciences University, Patna, stating therein that as per Bihar Government Circular No. 11/2015-GA-2342 dated 15.02.2016, in case of unavailability of female candidate, UR-Female, SC-Female, EBC-Female, BC-Female and EWS-Female post may be filled up with the male candidate of the same category in the same transaction. No female category was available in the said category. Accordingly, petitioner's candidature was considered who submitted his application in the category of EBC and the Screening Committee found him eligible under the EBC-Female category. The University in its counter affidavit has admitted that in both advertisements there was provisions that in case of unavailability of EBC-Female candidate, the post shall be transferred to EBC-male candidate and there was a provision that Physically Handicapped Persons shall be given horizontal reservation.

8. On 10.03.2022 the Selection Committee submitted its recommendations of suitable and not suitable candidates wherein three (03) candidates were only found suitable; i.e. one



from UR, one from SC and one from EWS category and the petitioner was declared not found suitable for concerned post as he could not secure statutory mandatory required percentage of 50 per cent in interview for selection. The respondent relied upon Bihar Animal Sciences University Statute, 2020 published in Official Gazette on 8.2.2022 in this regard, particularly Rule 6 sub Clause (iii) which says that “*a candidate must obtain at least 50 per cent marks in the interview to be considered in the merit order for selection*”. The copy of the Notification dated 8.2.2022 of the Rule is annexed at Annexure-G to the counter affidavit.

9. Learned counsel for the petitioner argued that in the advertisement published for appointment and/or in the interview letter, there was no condition that a candidate was required to secure at least 50 per cent marks in the interview for appointment on the post. The process for appointment commenced in February, 2020 and the advertisement for appointment was published inviting application from desirable candidates. The second advertisement was issued on 6.10.2021 and in this advertisement also there was no condition that a candidate was to secure 50 per cent marks in the interview.

10. By way of filing counter affidavit at Annexure-G, for the first time a Notification of the Government of Bihar in



Animal and Fisheries Resources Department, dated 7.2.2020 has been brought on record which was published in Bihar Gazette on 8.2.2022 whereby the Bihar Animal Sciences University Statute, 2020 came into force and made applicable in the University. Rule 6(iii) of the same prescribes that a candidate must obtain at least 50 per cent marks in interview to be considered in the merit order for selection. Accordingly, the submission is that the Provisions to secure 50 per cent marks in the interview, came into force after publication of the Notification/Statute in the Official Gazette on 8.2.2022 whereas the selection process had already commenced in February 2020 and/or on 6.10.2021 for appointment on the post of Assistant Professor cum Junior Scientist and other Post when advertisements were published. As such, any Notification, Rule/Statute issued after commencement of selection process cannot be made applicable in the present case.

11. It has further been submitted that neither in the advertisements nor in the important conditions and instructions given in the advertisements or in the interview letter, the petitioner was informed that he was required to secure 50 per cent marks in the interview, the petitioner was denied appointment only on the ground that he failed to secure 50 per cent marks in the interview.



The petitioner has specifically claimed that two (02) posts are still vacant and the same has not been denied by the respondents.

12. On the other hand, learned counsel for the respondents University argued that in both the advertisements, there was a provision of transferability of candidates in the case of non-availability of female candidate and provision for Horizontal Reservation was present. A separate merit list on each category and every subject of the department was prepared by the Selection Committee and the Selection Committee submitted its recommendation for suitable and non-suitable candidates wherein for the post of Assistant Professor cum Junior Scientist, only three (03) candidates were found suitable and the petitioner was not found suitable as he could not secure statutory mandatory required percentage of 50 per cent marks in interview for selection.

13. Learned counsel has relied upon Rule 6 (iii) of the Bihar Animal Sciences University Statute 2020 which provides at least 50 per cent marks in the interview to be considered in the merit order for selection.

14. I have heard rival submissions of learned counsel appearing for the parties and have gone through the relevant materials available on record. Admittedly, the advertisements for appointment on various posts including the five (05) posts of



Assistant Professor cum Junior Scientist in the department of Fish Processing Technology, college of Kishanganj, was published in February, 2020 and republished in October, 2021. Petitioner applied pursuant to the first advertisement published in February, 2020 vide Employment Notice No. 01/2020 under EBC Category and PWD category. The second advertisement dated 6.10.2021 vide Employment Notice No. 05/2021 clearly indicates that the candidates who have applied pursuant to the earlier Employment Notice No. 01/2020, need not apply again and their candidature would be considered subject to fulfillment of eligibility criteria. It is also not disputed that the petitioner was found eligible having fulfilled all the eligibility criteria as per the terms of the advertisement, was called for the interview and was considered under EBC category since no female category under EBC category was available. The evaluation of the petitioner done by the Selection Committee at Annexure-F to the counter affidavit filed by the University shows that the petitioner was awarded 6 marks in the interview out of 15 marks which is below 50 per cent in the interview, as such, he has been declared not fit for selection.

15. Now the main question which requires consideration is as to whether the Rules of the game i.e. the criteria



for selection can be altered in the midst of the selection process and/or after the selection process has commenced.

16. As per the settled principle of law, the selection process starts from the date of issuance of the advertisement when the applications are called for for the first time. In the present case, the advertisement was published for the first time sometime in February, 2020. The selection process comes to an end with the preparation of select list for appointment. While process of selection was in progress, the Bihar Animal Sciences Statute, 2020 was notified on 7.2.2020 and was published in the Bihar Gazette on 8.2.2022 having the Provision in Sub Rule (iii) of Rule 6 of the Statute which says that “*a candidate must obtain at lest 50 per cent marks in the interview to be considered in the merit order for selection*”. It has authoritatively been held by the Apex Court and various other Courts that the vacancies when advertised under the rules as prevalent at that time, the selection process when started is to be completed under the prevalent rules/regulations and any amendment in the prevalent Rules or introducing a new Rule, if any, subsequent to the advertisement shall be prospective and the candidate can not be deprived of his/her right for consideration or eligibility on the basis of new Rules brought during selection process and/or the selection process has commenced/started. There



is no doubt that the authority competent to make rules and regulate the selection can prescribe by Rules, the minimum marks for interview but if minimum marks are not prescribed for interview before commencement of selection process, it cannot be introduced in the midst of the selection process.

17. The Hon'ble Supreme Court in the Judgment reported in ***(2008) 3 512 (K Manjusree Vs. State of Andhra Pradesh and Another)*** has held that the Rules of the game i.e. "the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced". If the Selection Committee wants to prescribe minimum marks for interview, it should do so before commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before commencement of the selection process, it cannot be either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview.

18. In another Judgment, the Hon'ble Supreme Court in the case of ***Hemani Malhotra Vs. High Court of Delhi with its analogous case*** reported in ***(2008) 7 Page 11 in paragraph-15*** has held which is quoted herenblow:-



“15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce test was illegal”.

19. Coming back to the facts of the present case it has not been brought on record that at the time of commencement of selection process, the conditions of advertisements, instructions, rules and regulations prescribed minimum qualifying marks for interview. After the commencement of selection process and before its completion, a rule called *“The Bihar Animal Sciences*



Statute, 2020” was introduced after its publication in the Official Gazette on 8.2.2022 in which for the first time the minimum qualifying marks for interview has been prescribed as 50 per cent, the Selection Committee which sat on 10.03.2022 and interviewed the petitioner, declared him “not fit for selection” on the ground that the petitioner did not secure minimum qualifying marks of 50 per cent in the interview inasmuch as out of 15 marks in the interview, the petitioner has secured only 6 marks.

20. From the discussions hereinabove and the law laid down by the Hon’ble Apex Court, there is no escape from the conclusion that after the commencement of the selection process, the same has to be completed as per the prescribed criteria/rules, prevalent at that point of time and the amended Rules and/or Rules introduced during the midst of the selection process shall not apply to the vacancies advertised prior to coming into force the new Rules/Statute. The rights of the candidates who applied for appointment/selection in response to the advertisement when there was no such criteria of securing minimum qualifying marks in interview could not be taken away as to debar him from consideration on the basis of the new Rules/Statute introduced in the midst of the selection process. It is evident from the available facts that previous Rules/Advertisements did not have any



minimum marks for interview. Therefore, prescribing minimum qualifying marks for interview was not permissible in the midst of the selection process. As such, I am of the opinion that prescribing minimum 50 per cent qualifying marks for interview by the respondents is illegal and unacceptable.

21. In the result, this writ application is allowed and the Respondents i.e. Bihar Animal Sciences University, Patna, is directed to consider the petitioner for appointment on the vacant post of Assistant Professor cum Junior Scientist under the appropriate category within a period of one month from the date of receipt/production of a copy of this order.

22. There shall be no order as to costs.

(Anil Kumar Sinha, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	26/04/2023
Uploading Date	01/06/2023
Transmission Date	

