

(1998) 06 PAT CK 0005

In the Patna High Court

Case No : C.W.J.C. No's. 10895 and 11970 of 1996

Bharat Bhushan Prasad and Dr. Ram Narain Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-06-1998

Acts Referred:

Constitution of India, 1950 — Article 323
Executive Business Rules — Rule 55

Citation : (1998) 3 PLJR 602

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Advocate : Ram Balak Mahto, Rajendra Pd. Singh and Shivendra Kshore, in C.W.J.C. No. 10895 and Kamlapati Singh, Ishwari Singh and Ram Krishna Singh, in C.W.J.C. No. 11970, for the Appellant; Anil Kumar Tiwari, for B.P.S.C., A.K. Singh, Kamla Pati Singh, Ishwari Singh and J.P. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, J.—On the requisition of the State of Bihar, the Bihar Public Service" Commission issued Advertisement No. 1 of 1995 inviting applications from eligible candidates for appointment to the posts of Director-cum-Principal, Engineering College. Three such posts which were lying vacant were advertised, one of which was reserved for a member of Scheduled Caste, while the other two were unreserved posts. The Bihar Public Service Commission interviewed the candidates who had applied pursuant to the aforesaid advertisement, and ultimately recommended for appointment the names of Bharat Bhushan Pfasad, Petitioner in C.W.J.C. No. 10895 of 1996 and Dr. Ram Narain Singh, Petitioner in C.W.J.C. 11970 of 1996. The Government found that the advertisement issued inviting applications from eligible candidates, was defective inasmuch as the norms prescribed by All India Council for Technical Education were not followed. It is not in dispute that the posts in question are to be filled up by direct recruitment, having regard to the norms and standards for Engineering Colleges prescribed by All India Council for Technical Education which have been accepted

by the Government of Bihar. Since the advertisement was found to be defective, instead of acting on the recommendation made by the Bihar Public Service Commission, by its communication dated 22.7.1996 (Annexure-1) the State of Bihar had issued a requisition to the Bihar Public Service Commission to readvertise the three posts in accordance with the norms and then to recommend suitable names for appointment against those posts. The Petitioners in both the writ petitions have imposed the said requisition bearing No. 1395 dated 22.7.1996. They have prayed that after quashing the aforesaid requisition the State of Bihar may be directed to act upon the recommendation of the Respondent. Commission forwarded to the State of Bihar vide letter No. 195 dated 21.11.1995, and issued the consequential letters of appointment in favour of the Petitioner in both the writ petitions.

2. Since the issues involved in both the writ petitions are common, and identical reliefs have been prayed for in both the writ petitions, they have been heard together and are being disposed of by this common judgment. The representative facts are taken from C.W.J.C. No. 10895 of 1996.

3. It is not in dispute that there are several Engineering Colleges which are established and controlled by the Department of Science and Technology, Government of Bihar. The posts of Director/ Principal of the aforesaid Engineering Colleges are filled up by the method of direct recruitment having regard to the norms and standards prescribed by All India Council for Technical Education (AICTE for short). The norms laid down by the AICTE also prescribe the educational and other qualifications which must be fulfilled by a candidate before he can be appointed to a teaching post in the aforesaid Government Engineering Colleges. The Petitioner at the relevant time was holding the substantive post of Joint Director (Technology) but was officiating as Director in the Department. The Petitioner in the connected writ petition was holding the substantive cadre post of Professor of Civil Engineering, and claimed to be the senior most qualified and eligible Professor for appointment to the post of Director/Principal of the Government Engineering Colleges. The case of the Petitioners is that several posts of Director/Principal of Engineering Colleges were lying vacant and temporary arrangements had been made by the Government by posting persons on officiating basis against the vacant posts. This led to filing of a writ petition before the High Court by one Dr. Chandra Nand Thakur being C.W.J.C. No. 3814 of 1992 (R) who made a grievance that despite the fact that he was the seniormost teacher, he had not been made incharge Principal/Director of BIT and his junior one Dr. I.D.P. Singh had been posted as incharge Principal of B.I.T. Sindri. Another writ petition was filed by the said Dr. I.D.R Singh being C.W.J.C. No. 1977 of 1993 (R) for a declaration that he was the seniormost teacher, and he be allowed to continue as incharge Principal/Director of B.I.T. Sindri. Ultimately, the High Court quashed the impugned notification but with a direction to the State to make regular appointment to the post of Principal/Director of B.I.T. Sindri. Three letters patent appeals were dismissed by order dated 30.11.1994. Since the Court observed that during the intervening period Dr.

Thakur should be asked to perform the duties of Principal/Director,. B.I.T. Sindri, and no such notification was issued, nor had the State initiated the process for making appointment against the aforesaid post a contempt petition being M.J.C. No. 206 of 1994 (R) was filed by Dr. Thakur, By order dated 22.12.1995 the High Court directed the Respondent to fill up the post of Principal/Director in accordance with law in a regular manner. Since Dr. Thakur had already superannuated the contempt proceeding was dropped. By issuance of letter bearing Memo No. 495 dated 18-4-1995 (An-nexure-7), the Joint Secretary in the Department of Science and Technology wrote to the Secretary of the Respondent-Commission to recommend three names for appointment to the post of Director/Principal. Government Engineering College. Two of the posts were general while one was reserved for a member of a scheduled caste. In the requisition appended to the letter the relevant eligibility condition including educational qualification was mentioned. The Respondent-Commission published the Advertisement No. 1 of 1995 inviting applications from eligible and qualified candidates with the requisite qualification. In the requisition it was mentioned that the candidates must not be more than 50 years of age, but the age was relaxable as per rules for scheduled caste/scheduled tribe/government servants. The advertisement therefore, mentioned that candidates belonging to scheduled caste, scheduled tribe and Government servants were entitled to relaxation of the years in the matter of age.

4. It may at this stage be noticed that AICTE norms prescribe the qualification and experience of candidates eligible for appointment to the post of Professor as; also to the post of Principal. They are as follows:

PROFESSOR

Providing leadership in both post-graduate and under-graduate courses in relevant field of specialisation.

i. Ph. D. with First Class Bachelor's or Master's Degree in Engg/Technology or Research and research guidance; Consultancy service Ph. D. Degree with First Class Bachelor of M. Sc. in appropriate batch for teaching posts in Humanities and. Sciences. Policy Planning, Monitoring and Evaluation and Promotional Activities both at Departmental and institutional level

ii. 10 years distinguished ex-perience in teaching./industry/research, out of which 5 years must be at the level of Assistant Professor or equivalent. Curriculum Development and developing resource materials. Design and development of new programmes. Continuing education activities. Interaction with industry and Society. Students counselling and interaction Administration both at Department and institutional levels. NOTE: Candidates from industry/profession with recognised professional work of high standard recognised at Nationallinternational level equivalent to Doctorate would also be eligible.

PRINCIPAL

Academic and Administrative management of the institutions Same as that of Professor. Policy planning and providing academic and administrative leadership. Desirable Administrative experience in a responsible position. Monitoring and Evaluation and research activities. Promotion of industry-institution interaction and R and D work. -Providing consultancy services. Participation in Policy planning at the Regional/National level for development of technical education.

It may be noticed that AICTE norms do not prescribe any age limit. It is also not in dispute that the "Note" mentioned in the norms providing that candidates from industry/profession with recognised professional work of high standard recognised at National /International level equivalent to Doctorate would also be eligible, was not included in the advertisement as the same was deleted. Thus there are two points on which the advertisement differs from the norms prescribed by the AICTE namely, (a) prescription of age limit for appointment to the post of Principal; And (b) deletion of the "Note" applicable to the qualification and experience of candidates for the post of Professor. It may also be noticed that since the qualification and experience prescribed for Principal were the same as that of Professor, the "Note" also applied in the case of appointment to the post of Principal.

5. It is not in dispute that the qualification mentioned in the advertisement was pursuant to the letter of Government bearing No. 1591 dated 20.6.1994 (Annexure-9). A mere perusal of Annexure-9 would show that the Joint Secretary in the Department of Science and Technology had addressed communications to the Accountant General, Bihar with a copy to the Secretary, Bihar Public Service Commission stating that in the matter of appointment to the teaching posts mentioned therein which are to be filled up by direct recruitment, the Government had decided that relaxation of five years shall, be given to Government servants in the matter of age.

6. By letter, Annexure-10 dated 20th June, 1994, the same Joint Secretary had informed the Secretary of Bihar Public Service Commission that as directed, pursuant to the meeting held on 30.12.1993 with the members of the Commission, the Government had decided that in regard to Engineering Colleges, Government Polytechnic State Women Polytechnic and Mining Organisations, for the post of Associate Professor/Head of the Department/Principal, the "note" to the prescribed qualification as contained in paragraph (ii) was to be deleted. The advertisement may be issued keeping in view, the amended qualification deleting the "note".

7. The case of the Petitioners is that acting on the basis of Annexures 9 and 10 issued by the Joint Secretary in the, Department of Science and Technology, Government of Bihar, the Respondent-Commission published the advertisement pursuant to which the Petitioner applied. They were interviewed on 20th November, 1995. The Petitioner had come to know that the Selection Committee had prepared a merit list in which the name of the Petitioner appeared at the top

and the second candidate recommended was Ram Narain Singh (Petitioner in the concerned writ petition). According to the Petitioner, the names were published on the notice board on 21.11.1995 declaring that they had been recommended by the Commission for appointment to the Posts of Director/Principal, Government Engineering Colleges a procedure rather unusual. A copy of the aforesaid notice said to have been displayed on the notice board has been annexed as Annexure-12. By Annexure 3 dated 21st November, 1995, the Bihar Public Service Commission recommended the names of the two Petitioners for appointment to the post of Director/Principal, Government Engineering Colleges against unreserved posts. The letter of recommendation also mentions that no suitable candidate was available for appointment against the reserved post.

8. Despite the recommendation of the Respondent-Commission the Government of Bihar did not issue the letter of appointment in favour of the Petitioners. The life of the recommendation made by the Commission is only one year and the same was to expire on 20.11.96. However, on 22.7.1996 the State of Bihar wrote to the Bihar Public Service Commission and sent a requisition for readvertising the posts since it was found that the earlier requisition sent was not in accordance, with law. The recommendation made was, therefore, being returned with a request that the eligibility conditions mentioned in the requisition be treated as the conditions of eligibility prescribed by AICTE. In the fresh requisition sent, two important changes deserve notice. It is firstly mentioned against column 18 that the qualification required be the same as that of Professor, meaning thereby that the "note" portion of the qualification should not be deleted. Secondly, as regards the age limit, the same is prescribed in column 20 as 50 years but with a condition that the upper age limit is relaxable by five years in the case of scheduled caste/scheduled tribe and no upper age limit is prescribed for Government "servants. It will thus be seen that there are" two significant changes made in the conditions relating to eligibility

9. The grievance of the Petitioners is that the impugned annexure directing the Bihar Public Service Commission to readvertise the posts has been issued on honest ground. It is submitted that "note" portion of the eligibility criteria prescribed in AICTE norms has been deleted by the Respondents in the case of Assistant Professor, Professor and Principal. The Respondents have been appointed Assistant Professor and Professor on the basis of recommendation of the B.P.S.C. pursuant to identical advertisement, but in the case of the Petitioners objection are raised on the ground that "Note" portion of the eligibility criteria prescribed by the AICTE norms was wrongly deleted.

10. On receipt of fresh requisition the Bihar Public Service Commission made a query from the Secretary of the Department as to how Advertisement No. 1 of 1995 was not in accordance with law. When on the basis of the same eligibility criteria mentioned in Advertisement No. 28 of 1994, the persons recommended have been appointed on the post of Professor. A copy of the aforesaid letter has been annexed as annexure-14.

11. In these facts and circumstances the Petitioners pray the impugned letter (Annexure-1) requiring the Bihar Public Service Commission to readvertise the posts should be quashed, as it proceeds on non est ground and is arbitrary and discriminatory.

12. A very detailed counter-affidavit has been filed by the State of Bihar running into 74 pages. Reference has been made to the notings in the file maintained in the Department of Science and Technology to show that it is wrong to state that the Government had at any time taken a decision to delete the "note" from the norms prescribed by AICTE. It was equally wrong to state that the State of Bihar had at any time decided to grant relaxation in the matter of age to the extent of five years only in the case of Government servants. On the contrary it was the Government's firm decision that there was no age bar so far as the candidates in Government Service were concerned. In the counter-affidavit there is insinuation against the Petitioner of C.W.J.C. No. 10895 of 1996 that taking advantage of his position as Director in the Department, he misused his position and was instrumental in getting wrong instruction issued to the Bihar Public Service Commission. In fact, even the Joint Director at the relevant time was also a candidate for one post and his connivance was also apparent. It is the firm case of the State that the earlier advertisement published by the Bihar Public Service Commission was defective, in as-much as it did not conform to the AICTE norms which were accepted by the State of Bihar. It excluded the category of persons which was included under the "note" portion of the norms prescribed by AICTE. By prescribing an age limit for candidates in Government service, the advertisement excluded Government Servants who were more than 55 years of age, when the Government's firm decision was that there should be no age qualification for the appointment of persons in Government Service to higher posts even in the matter of direct recruitment. It has also been contended on behalf of the State that the Petitioners cannot ask this Court to issue a writ of mandamus directing the State to appoint them on the basis of the recommendation made by the Bihar Public Service Commission. The recommendation made by the Bihar Public Service Commission is not binding upon the State and in appropriate cases the State may not accept the recommendation made and ask the Commission to make a fresh recommendation having regard to relevant circumstances. In any event the mere fact that the Petitioners had been recommended by the Bihar Public Service did not confer on them any right of appointment, and for good reasons the Government may refuse to make an appointment or even cancel an appointment at any time before such person actually assumed charge of his office, even after appointment.

13. I shall first deal with the legal submission urged on behalf of the State that no writ of mandamus can issue in a case of this nature, and the State Government cannot be compelled to appoint the Petitioners even if their names have been recommended by the Bihar Public Service Commission. The State has rightly relied upon a decision of the Supreme Court in *Jatinder Kumar and Others*

Vs. State of Punjab and Others, and submitted that for good reasons the State Government may not appoint the persons recommended by the Public Service Commission. That was a case in which the Appellants had been selected by the Subordinate Service Selection Board for direct appointment to the posts of Assistant Sub-inspector of Police. The advertisement had been issued in anticipation of the proposal for disbandment of the Punjab Armed Police Battalion, and in respect of creation of some additional posts for the District Police a request was made for selecting 170 more candidates for direct appointment to the posts of Assistant Sub-inspector, but the proposal having been turned down by the Government there were no vacancies and, therefore, the question arose whether the Appellants had unfettered right to be appointed even though the aforesaid proposal had not been accepted and consequently there were no vacancies. Answering in the negative the Court observed:

.... The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however, does not clothe the Appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz, bad conduct or character. The Government also can not appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. We are supported in our view by the two earlier decisions of this Court in A.N. D'silva Vs. Union of India (UOI), and The State of Haryana Vs. Subash Chander Marwaha and Others, .

14. It is by now well settled that a candidate whose name has been recommended for appointment by the Selection Committee does not acquire an in defeasible right of appointment to the post for which he has been recommended. The appointment authority may for good reasons not appoint at all. Even if by inadvertence or otherwise a letter of appointment is issued and later an illegality is noticed by the appointing authority, it may cancel the appointment at any time before the appointee actually takes charge of the post of which he is appointed. In the instant case therefore, the Petitioners cannot pray for a writ of mandamus directing that the State Government be compelled to accept the recommendation made by the Respondent Commission, and consequently they be appointed to the post for which they have been

recommended. It is not their case that the State Government is trying to favour any particular candidate whose name appears lower in the merit list. The State has found that the advertisement issued was not in accordance with the norms accepted by the Government and, therefore, the recommendation made pursuant to such defective advertisement could not be acted upon.

15. The question then remains whether the Government was justified in issuing the impugned letter and requisition requesting the Bihar Public Service Commission to readvertise the post in accordance with the norms laid down in the requisition. Counsel for the Petitioner strongly contended that the impugned letter has been issued on non-est ground which is really another facet of malice in law. I shall now consider the material brought on record relating to this question. As earlier noticed two defects have been pointed out in the earlier advertisement, namely (i) the prescription of age limit for candidates in Government Service when there should have been none; and (ii) the deletion of the "note" prescribed by the AICTE norms which have been accepted by the Government. On account of these two defects, according to the State, several persons who were otherwise eligible for appointment, have been excluded from consideration.

16. In a very detailed counter-affidavit running into 74 pages the State has adverted to the notings in the files and several relevant annexures. The counter-affidavit refers to a discussion which took place on 9.5.1991 in which the officers of the Department of Science and Technology, Government of Bihar and two members of the Bihar Public Service Commission took part. It is related to issuance of Advertisement No. 7 of 1990 for the post of Professor of Mathematics in Engineering Colleges. The minutes recorded that the age limit stipulated in the requisition provided that the maximum age limit 50 years relaxable in the case of Government servants. The upper age limit can be raised by five years in the case of SC/ST. A photo copy of memo No. 3195 dated 26.7.1991 has been annexed and marked as annexure A-1 to the counter-affidavit. The memo refers to the discussion that took place on 9.5.1991. This shows that it was agreed that those candidates in government service were not to be disqualified on the ground of age. The matter again came up for consideration when the question of appointment of Associate Professor, Electrical and Telecommunication in Government Women Polytechnic, Ranchi, arose towards the end of the year 1993. Consequent to a meeting between B.R.S.C. authorities and the Joint Director (Science) and Joint Director, Technical on 30.12.1993, the Bihar Public Service Commission sent a letter No. 2044 dated 7.1.1994 to the Department of Science and Technology. The office intimation by the then Deputy Director (Technical) was crystalised by the Joint Director in a proposal by the Joint Director (Science) on 10.1.1994 and so far as relating to the post of Professor, it was suggested that the permissible limit should be 50 with relaxation in age limit for Government servants to the extent of five years only. Thus the maximum proposed age limit was 55 in the case of professor. The office note in the file dated 4.2.1994 stated that the fixation of age limit involved a matter of policy

and it was proposed that order of the Chief Minister through the Chief Secretary should be taken after the aforesaid proposal was placed before the Minister incharge. On 5.5.1994 the approval of the Minister incharge was obtained and a draft letter was placed on record with a suggestion that concurrence of the Department of Personnel and Administrative Reforms be taken prior to the issuance of the aforesaid letter. The then Deputy Director, Technical and Joint Director (Science) and the then Joint Secretary-cum-Director as also the Secretary of the Department did not pay any heed to the office note dated 4.2.1994 and 12.5.1994. The draft letter was approved and the letter was finally issued on 20.6.1994. In this manner the order of the Chief Minister was never obtained even though under the relevant Rules of Executive Business, cases raising questions of policy and cases of administrative importance not covered by the 3rd schedule as also the question whether any matter involves policy of Government or whether it is of administrative importance had to be submitted before the Chief Minister through the Chief Secretary after consideration by the Minister incharge. Similarly, under Rule 55 of the Rules of Executive Business the Personnel and Administrative Reforms Department was to be consulted before framing rules of recruitment, appointment and promotion affecting any service, cadre or group of posts or before promulgating any order, appointment procedure or resolution relating thereto. The third schedule of the Rules of Executive Business refers to policy proposals involving any important change of policy or practice. It is, therefore, contended that the Rules of Executive Business were not followed and the statement made in Annexure-9 to the effect that the Government had taken a decision to grant five years relaxation in age to Government servants was not a correct statement. In fact, the letter dated 20.6.1994 was issued even without obtaining the approval of the Department of Personnel and Administrative Reforms and the Chief Minister as required by the Rules of Executive Business. Similarly, it is explained that the issuance of letter (Annexure-10) dated 20.4.1994 that the State Government had decided to delete the "note" portion of the AICTE norms, was not justified. In this regard also a question had arisen in November 1993 as to whether a person who held B. Tec. degree and had five years and more experience while working in Central/ State Government Boards/Corporation could be considered to be equivalent to Masters degree in Electrical and Telecommunication Engineering for appointment to the post of Head of Department in Electrical and Telecommunication Engineering in Government Womens' Polytechnic, Ranchi. On query by the Bihar Public Service Commission the Joint Director (Technical) had observed on 8.12.1993 that no provision had been made by the AICTE to presume five years of professional experience to be equivalent to M. Tech. degree. On 10.12.1993 the Joint Secretary-cum-Director, proposed to delete the said "note" on the basis that AICTE had never made such provision to consider a person having five years or more professional experience to be equivalent to M. Tec. degree. The Secretary of the Department concurred with the proposal of the Joint Secretary, but again the office pointed out that the "note" was appended to the essential qualification in the norms fixed by the AICTE itself and, therefore it would not be

proper for the Department to delete the same without consulting the AICTE. The then Deputy Director (Technical) sought direction of the then Joint Director (Technical) in the light of the office note, but the Joint Director made an observation that in his view no such provision had been made by the AICTE, and the Joint Secretary-cum- Director peremptorily put an end to the matter by saying that the matter had already been decided. It is not necessary to refer to all the notings in the file and the views expressed therein with a view to avoid prolixity. Suffice it to notice that much before the initial requisition was made for appointment to the posts in question, this matter was under consideration of the Government at different levels. It appears that after the first requisition was made, the Respondent Commission by its letter dated 28.4.1995 sought clarification from the Department on the question whether the Government had taken decision to delete the "Note" as the deletion of the "Note" did not relate to the post of Principal. The then Secretary replied by letter dated 20.7.1995 that since the qualification for the post of Principal was the same as that for the post of Professor and as the "Note" had been deleted from the qualifications specified for the post of Professor, probably the "Note" had also been deleted from the qualifications necessary for the post of Principal. This in substance was the decision of the Government. The letter of the Secretary has been annexed as Annexure-D to the Counter-affidavit.

17. It is further stated that on receipt of the recommendation of the Bihar Public Service Commission, the Department of Science and Technology, Government of Bihar did not accept the same. In reply to a question put by Hon'ble Member of the Legislative Assembly the Government clarified its stand and the matter was placed on the table of the House on 16.7.1996. It is explained that after issuance of first Advertisement No. 1 of 1995 several objections were received by the Government from Teachers Association as well as individual teachers who complained that the Advertisement was not in conformity with AICTE norms. The Petitioner in C.W.J.C. No. 10895/96 was the Director incharge and he ordered the Joint Director (Science) to investigate into the matter. Both of them were candidates who had applied in response to the aforesaid Advertisement. The interview was conducted on 20.11.1995. On 21.11.1995 the concerned file was endorsed to the Deputy Director, Planning by the Joint Director (Science). In the meantime, two more representations were received and the Minister Incharge directed the Secretary to send the file after examining all the issues. The Secretary directed the Special Secretary to examine the matter. On 4.12.1995 the Special Secretary requested the Secretary of the Department to send a letter to Bihar Public Service Commission requesting it to stay the process in relation to all other requisitions till the question of age limit was once again decided in view of the fact that disposal of the objections received may take some time. He also requested the Secretary that the processing of the recommendations received may be stopped pending orders in the matter. On 5.12.1995 the Minister-in-Charge directed that as the norms were fixed by AICTE the Government cannot change those norms and, therefore, the mistake be rectified, and the Bihar Public

Service Commission be informed accordingly. The Commission should also be informed that there should be no bar of age for Government servants. The requisition sent earlier may be modified accordingly. It may be noticed that in meantime the Commission had made its recommendation on 21.11.1995. The Special Secretary observed on 11.12.1995 that the advertisement issued by the Respondent Commission that the aforesaid two conditions relating to prescription of age for Government servants and deletion of "Note" were illegal, and steps have to be taken to render ineffective the two letters earlier issued, meaning thereby, letters (Annexures-9 and 10) by which the Respondent-Commission was informed that the Government had taken a decision in these two matters. Since the objections received soon after the issuance of the advertisement could not be disposed of immediately, and for this the Petitioner in C.W.J.C, No. 10895 of 1996 is said to be partly responsible, instructions could not be issued earlier to the Bihar Public Service Commission to issue a corrigendum correcting the advertisement issued earlier. In these circumstances, by letter dated 12.12.1995 sent by the Secretary of the Department to the Respondent-Commission, the Commission was informed that the Department was considering the issue relating to age. and that the Commission should not act on Letter No. 1587 and 1591 dated 20th June 1994. The Special Secretary felt that the advice of the Department of Personnel and Administrative Reforms was necessary. Unfortunately, the Department of Personnel" and Administrative Reforms returned the file without any comment. It was in these circumstances, that after full discussion of the matter a decision was taken at the level of the Minister on 19.7.1996 that a fresh requisition be sent by the Department to Bihar Public Service Commission in the light of AICTE norms, since the recommendations made by the Bihar Public Service Commission were based on defective advertisement. It was in these circumstances that the impugned letter was issued on 22.7.1996 making a fresh requisition and requesting the Bihar Public Service Commission to issue another Advertisement incorporating the conditions mentioned in the requisition.

18. It appears from a perusal of the material placed before the court that the Department was considering both the matters relating to prescription of age for government servants and deletion of the "Note" from the AICTE norms. It is not as if after receipt of the recommendation of the Bihar Public Service Commission for the first time these matters were raked up. the Commission made its recommendation on 21st November 1996 but even in the month of December 1996 the high officials of the department perhaps unaware of the fact that the recommendation had been sent by the Commission, had expressed their views in the file that the Bihar, Public Service Commission should be asked to stay its hands since the matter was being reconsidered by the Government. It can not be said that the view taken by the Government is vitiated by malice. Indeed there are strong reasons to support the view taken by the Government. AICTE norms had been approved by the Government and, therefore, before deletion of any part of the norms a Government decision was necessary. It was rightly pointed

cut that the matter should have been placed before the Chief Minister, if not the council of Ministers, because the AICTE norms had been approved in its entirety and any change therein related to change of policy. Moreover, admittedly the deletion of Note was not in relation to the qualification prescribed by the AICTE for the post of Principal. No doubt, in the norms prescribed by the AICTE against the post of Principal it is stated "same as that of Professor". This only means that the qualification and experience prescribed for the post of Principal was the same as that of the Professor. The qualification was prescribed by reference and not by separately mentioning the qualifications against the post of Principal. The AICTE could well have repeated the same qualification for the post of Principal. In that event even if "Note" was deleted in it, application to the post of Professor, it would not be deemed to have, been deleted for the post of Principal. The deletion of the "Note", therefore, was only in regard to the qualification and experience prescribed for the post of Professor and not for the post of Principal. The reasoning as contained in the letter (Annexure-D) is that since the "Note" was deleted in the case of Professor, and since the same qualification had been prescribed for the post of Principal as well. In my view, the reasoning is not correct, and if the "Note" had to be deleted even in the case of Principal, the order should, have clearly said so. There is, therefore, considerable force in the contention of the State of Bihar that the "Note" was wrongly deleted and did not find place in the first advertisement issued by the Respondent-Commission.

19. I have noticed these facts only with a view to show that the matter was under consideration of the Government and even at about the time when the Commission was about to make its recommendation many objections had been received and there was a thinking in the Department that the Respondent Commission should be requested to hold its hands so that in the meantime the concerned Department, such as the Department of Personnel and Administrative Reforms may be consulted in the light of the objections received. Unfortunately, the Commission sent its recommendation even before the objections could be disposed of. There is nothing on record to show that the decision taken by the State Government to readvertise the post is vitiated by malice either in law or in fact. There is sufficient material on record to suggest that the view taken by the State Government is justified having regard to the facts of the case, and certainly it is not vitiated on account of the fact that it proceeds on non-est ground. It is not necessary for the disposal of this writ petition to hold that the view of the Government is the only view that can be taken on the basis of the record. What is significant is to notice that the view taken by the State Government is a possible reasonable view of the matter having regard to the facts of the case and, therefore the decision of the Government as incorporated in the impugned letter (An-nexure-1) requiring the Bihar Public Service Commission to readvertise the post is neither unreasonable nor arbitrary, nor is it illegal for any other reason.

20. I may here notice that in the counter affidavit a plea has been raised that the Petitioner was not found qualified for appointment in a judgment of this Court

affirmed in appeal. In my view, the question as to whether the Petitioner in C.W.J.C. No. 10895 of 1996 is or is not eligible for appointment is beyond the scope of this writ petition, because the recommendation of the Commission has not been accepted on the ground that the advertisement pursuant to which the selection was held, was itself defective. It is therefore, not necessary for this Court to go into the question as to whether the Petitioner was eligible for appointment to the post of Director/Principal, Government Engineering College. I, therefore, find no merit in any of the submissions urged on behalf of the Petitioners. These writ petitions are, therefore, dismissed as devoid of merit.