
(2023) 07 PAT CK 0068

In the Patna High Court

Case No : Civil Review No. 191 Of 2021 In Civil Writ Jurisdiction Case No. 19755 Of 2021

Dr. Avinash Kumar Jha

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 26-07-2023

Acts Referred:

Citation : (2023) 07 PAT CK 0068

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Avinash Kumar, Krishna Chandra, Sanjit Kumar Singh, Rajni Kant Jha

Final Decision : Dismissed

Judgement

1. Heard Mr. Avinash Kumar, learned Advocate for the petitioner, Mr. Rajni Kant Jha for the BPSC and Mr. Sanjit Kumar Singh for the State.
2. The petitioner seeks review of the order dated 02.12.2021 on the ground that the case was decided on a wrong representation of facts even when valid points were incorporated in paragraph-1 of the writ petition as also in the prayer portion thereof.
3. The order sought to be revised depicts that the petitioner had sought a waiver of the minimum requisite qualification for him for the reason of his hailing from economically backward class.
4. The prayer, on face of it, was not found to be tenable and therefore, the writ petition was dismissed.
5. Mr. Avinash has drawn the attention of this Court to the prayers made in the writ petition (C.W.J.C. No. 19755 of 2021) which is as follows:
 - i. For, issuance of a writ in the nature of certiorari for quashing the latter notice dated 16.11.2021, issued by the Joint Secretary Cum Examination controller, Bihar Public Service Commission, Patna (Respondent no.-7), whereby and where

under the respondent no.-7, has rejected the application of the petitioner for appointment on the post of associate professor of chemistry in the engineering College merely on the ground that he has no Experience in pay level-10 unavailability of certain proof for assistant Professor, Pay level-10, no research paper in SCI/AICTE/UGC approved list of Journals and ultimately he has debarred the petitioner for appearing in the interview which is going to be held on 02-12-2021.

ii. For, issuance of a writ in the nature of Mandamus directing and commanding to the respondent no.-5 and 6 to allow the petitioner to be appear in the interview scheduled to be held on 02.12.2021, and further during pendency of the writ petition the process of interview which is going to be held on 02.12.2021 may kindly be stayed for better adjudication of the case of the petitioner.

iii. For, any other appropriate writ/writs, direction/directions, order/orders, as this Hon'ble Court thinks fit and proper in the facts and circumstances of this case.

6. The prayers made by the writ petitioner therefore was only for setting aside the notice dated 16.11.2021 issued by the Joint Secretary-cum-Examination Controller, BPSC intimating him that his application was being rejected on the ground of his not crossing the requisite educational qualification barrier in terms of the advertisement as the petitioner was not found to be having any experience of Pay level-10 teaching. The second consequential prayer was for a mandamus to respondents no. 5 and 6 to allow him to appear in the interview which was scheduled to be held on 02.12.2021.

7. Against the aforementioned prayer, the argument advanced on behalf of the petitioner, as noted above, was that the qualification was too onerous for a person coming from economically and socially backward class.

8. Today, in the review jurisdiction, Mr. Avinash insists that the case be considered on the merits, especially with respect to the petitioner having requisite qualification but having wrongly been shut out from the process of consideration.

9. In the aforementioned context, the petitioner has referred to Clause 2.25 of the notification of All India Council for Technical Education, especially Sub-Clause-F thereof, which provides that the previous appointment must not be as Guest Faculty for any duration or ad hoc or against a leave vacancy for less than one year duration.

Ad hoc or temporary service of more than one year duration could be counted provided certain other conditions were fulfilled.

10. According to the BPSC, the experience of the petitioner for 12 years was against Guest Faculty and therefore no further condition was to be satisfied as any appointment or experience against a Guest Faculty position was not to be counted as an experience towards the eligibility of any candidate.

11. There is no gainsaying that such minimum requisite qualification could have been challenged as it does not make any sense but the case of the petitioner was premised on something else viz. accepting the condition under which he had applied but seeking a waiver in his favour for the reason of his falling in economically and socially backward class.

12. This Court is afraid, this issue cannot be decided in a review jurisdiction especially when the only prayer of the petitioner was to direct for waiver of such requisite qualification for him.

13. The argument of the petitioner that merely because of the nomenclature of Guest Faculty, his experience ought not to be discounted, is not worthy of acceptance in the forum of review. Otherwise also, Sub-Clause-F of Clause 2.25 of the notification referred to above makes the teaching experience against a Guest Faculty fall in a different class than the experience of teaching against ad hoc or leave vacancy. For teaching experience against ad hoc vacancy or leave vacancy for more than one year, a candidate could be considered provided the period of service was for more than a year and such appointment was on the recommendation of a duly constituted Selection Committee and that the incumbent was selected for the permanent post in continuation to the ad hoc or temporary service.

14. Three other conditions, which is not necessary to be recounted here, are also required to be satisfied before considering any incumbent to be eligible for participating in the process.

15. This has been stated only for the reason of testing whether the petitioner had made out a case in the first instance vide the writ petition filed by him for giving any consideration over the unreasonableness of such classification of experience.

16. The issue can be agitated by the petitioner, if so desired.

17. However, this cannot be the subject matter of consideration in a review jurisdiction when the prayer of the petitioner was absolutely different.

18. Finding no merit in this review petition, the same is dismissed but without any order as to costs.