

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 4494 of 2020

-
-
1. Piyush Kamal S/o Sri Ashok Kumar Permanent resident of Village and P.O.- Sujapur, P.S.- Barari, District- Katihar, Presently studying in 5th Year at Chanakya National Law University, Nyaya Nagar Mithapur, Patna, P.S.- Jakkanpur, District- Patna- 800001.
 2. Himanshu Gupta S/o Sri Ashok Kumar Gupta Permanent resident of Village and P.O.- Noorsarai, P.S.- Noorsarai, District- Nalanda, Presently studying in 5th Year at Chanakya National Law University, Nyaya Nagar Mithapur, Patna, P.S.- Jakkanpur, District- Patna, present residing at -103, L.J. Road, Champdani (M), Hooghly, Baidyabati, West Bengal- 712222.
 3. Amresh Kumar S/o Sri Sitaram Singh Permanent resident of Village -Hajipur, P.O.- Pipra Devas, P.S.- Barauni, District- Begusarai, Presently studying in 5th Year at Chanakya National Law University, Nyaya Nagar Mithapur, Patna, P.S.- Jakkanpur, District- Patna- 800001.
 4. Manish Kumar S/o Sri Dayanand Hridayanand Permanent resident of Village Jasauli, P.O.- Pachrukhi, District- Siwan, Presently studying in 5th Year at Chanakya National Law University, Nyaya Nagar Mithapur, Patna, P.S.- Jakkanpur, District- Patna- 800001.

... .. Petitioner/s

Versus

1. The State of Bihar Through The Additional Chief Secretary, Home Department Government of Bihar, Patna.
2. The Additional Chief Secretary, Home Department Government of Bihar, Patna, Old Secretariat Patna.
3. The Bihar Public Service Commission Through The Chairman, 15, Jawaharlal Nehru Marg, Bailey Road, Patna.
4. The Chairman Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna.
5. The Examination Controller Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna.
6. The Principal Secretary General Administrative Department, Govt. of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : M/s Piyush KamalHimanshu Gupta, Manish Kr,
Amresh Kr (In Person)
Mr Ganesh Khanna, Advocate
For the S t a t e : Mr Md Nadim Seraj, GP V
For the Commission : M/s Ashok Kr Choudhary, Akshansh Ankit,
Advocates



CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 06-03-2020

Heard the petitioners in person as well as the learned State Counsel. Learned counsel for the Bihar Public Service Commission (for brevity, *the Commission*) has also made submissions.

2 The petitioners are final year students of the Chanakya Law University, Patna. They are in the 05th year and to appear in the final examination scheduled to be held from 20.04.2020 for which results are to be declared on 15.05.2020.

3 They are aggrieved by an Advertisement brought out by the Respondent-Commission in respect of the selection process for appointment of Assistant Prosecution Officer. The requisite qualification in the said Advertisement is the Law Graduate.

4 The petitioners submit that having regard to the schedule of the selection process, it is obvious that they would obtain the requisite qualification before the appointment process is complete. The Advertisement, however, requires the qualification at the time of submission of Online application forms. On account of such stipulation, they stand excluded in the selection process.

5 It is the submission of the petitioners that the Bihar Prosecution Manual, 2003 does not contain any such stipulation



and, as such, the Authorities should not create a bar against the petitioners that the requisite qualification was required to be submitted at the time of Online application.

6 They have submitted that Clause 34 of the Bihar Prosecution Manual, 2003 provides the minimum qualification as a Graduate of Law for the purpose of “appointment”. The qualification, as per the Rule, is not a pre-requisite for “application”.

7 This Court would consider it useful to reproduce Clause 34 of the Bihar Prosecution Manual, 2003 which reads as follows:

“34. नियुक्ति के लिए उम्मीदवार की न्यूनतम शैक्षणिक योग्यता विधि स्नातक की वह डिग्री होगी जो अधिवक्ता के रूप में न्यायालय में प्रैक्टिस करने के लिये निबंधन हेतु अनिवार्य है।”

8 The other submission is that the Rule is silent as to the date on which the requisite qualification is to be possessed by the candidates. In such circumstances, the Commission could not impose a bar by inserting Note (4) requiring the candidates to submit their qualifications/testimonials in respect of the requisite qualification at the time of making Online application.

9 Learned counsel for the Commission as well as the learned State Counsel have made submissions in this respect. It is their case that the Bihar Prosecution Manual, 2003 does not



prescribe the stage at which the requisite qualification is required to be possessed/acquired. The Rule, admittedly, is silent in this regard as it is not even the case of the petitioners that the Bihar Prosecution Manual 2003 prescribes as to which stage of the selection process, the candidates are required to acquire or possess the requisite qualification.

10 In such circumstance, wherein Rule is silent, the law is well settled. Reliance is placed on the decision of the Apex Court in the case of Bhupinderpal Singh & Others -Versus- State of Punjab & Others, (2000) 5 Supreme Court Cases 262, later followed in the case of Rakesh Kumar Sharma -Versus- State (NCT of Delhi) & Others, (2013) 11 Supreme Court Cases 58. Learned counsels have placed specific reliance on paragraphs 13 and 14 of the judgment in the case of Bhupinderpal Singh (supra) and paragraph 11 of the judgment in the case of Rakesh Kumar Sharma (supra).

11 Referring to various earlier pronouncements in this regard, the Apex Court in the case of Bhupinderpal Singh (supra) has held that the cut off date on which the eligibility requirement is required to be satisfied by the candidate is either the date appointed by the relevant Service Rules, and if there be no cut off date appointed by the Rules, the same may be appointed for this



purpose in the Advertisement calling for applications. In the instant case, the Advertisement issued by the Commission clearly prescribes at Note (4) that the candidates are required to possess their testimonials in support of requisite qualifications issued prior to 06.03.2020 being the last date for making applications failing which the candidate shall be cancelled.

12 In the case of *Rakesh Kumar Sharma (supra)*, the Apex Court has clearly stated the settled legal proposition that selection process commences on the date when applications are invited and that only the person eligible on the last date of submission of applications has a right to be considered against vacancies provided he fulfills the requisite qualifications. Since, there is no provision to the contrary in the Bihar Prosecution Manual 2003, the petitioners cannot claim that prescription in the Advertisement requiring candidates to have the requisite qualification prior to last date of submission of forms is in any way unsustainable.

13 Here also, the Rule does not prescribe on what date the candidates are required to possess/acquire the requisite qualification. The Commission, in the Advertisement, has specified that the testimonials/certificates in support of the qualification are required to be possessed before the last date of



submission of Online application, i e, on 06.03.2020. Such a prescription, in view of the settled legal position, cannot be faulted in any manner.

14 The petitioners have no enforceable claim as it is the admitted position that they have yet to obtain their qualification as Law Graduates.

15 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.03.2020
Transmission Date	NA

