

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 10601 of 2023

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1. Vinayak Kumar S/o Mahadeo Singh, resident of Ward No. 5, P.O. and P.S. -Lakho, District-Begusarai, Bihar.
2. Krishna Kumar, S/O Uday Mandal, resident of Binda Singh Gali, P.O. and P.S. - Sultanganj, District - Bhagalpur, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land Reforms and Revenue Department, Government of Bihar, Patna.
2. The Principal Secretary, Land Reforms and Revenue Department, Government of Bihar, Patna.
3. The Under Secretary, Land Reforms and Revenue Department, Government of Bihar, Patna.
4. The Director, Land Records and Survey, Land Reforms and Revenue Department, Government of Bihar, Patna.
5. The Bihar Combined Entrance Competitive Examination Board (BCECE) through its Chairman, Patna, Bihar.

... ... Respondent/s

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- A. Constitution of India – Article 309 — Bihar Special Survey Contractual Employment Payment Rules, 2019 – Selection Process – Minimum Qualification- Variance- in Advertisement – Contrary to - Statutory Rules – Void and Illegal - Minimum Qualification in Statute – Prevails.** (*Referred to: - Ashish Kumar Vs. State of Uttar Pradesh & Others (2018) 3 SCC 55, Para-27), (Para-5,6)*)
- B. Service Jurisprudence – Settled Principle – Conflict between Advertisement and Service Regulation – Later Prevail** (*Referred to:- Employees’ State Insurance Corporation Vs. Union of India & Others (2022) 11 SCC 392); (Para-7)*)
- C. Question of Enforcement – Courts bound to ignore stipulation beyond the Statutory Prescription - Universities / Institutions – recognized by UGC – do not require AICTE Approval.** (*Referred to :- Bharathidasan University & Anr. Vs. All India Council for Technical Education & Others (2001) 8 SCC 676), (Para-7) ; (CWJC No. 6379 of 2020; Suraj Kumar Verma Vs. The State of Bihar & Ors.) ; D.B. Civil Writ Petition No. 277 of 2021 Union of India & Anr. Vs. Atul Khare).*)

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The Bihar Combined Entrance Competitive Examination Board (BCECE) through its Chairman, Patna, Bihar.

... .. Respondent/s

Appearance:

For the Petitioner/s

:

Mr. Mrigank Mauli, Sr. Advocate
Mr. Samir Kumar, Advocate
Mr. Ajit Kumar, Advocate
Mr. Saurauh Singh, Advocate

For the State

:

Mr. Sajid Salim Khan (SC-25)

For the B.C.E.C.E.B.

:

Mr. Prasoon Sinha, Advocate
Mr. Amarnath Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 23-01-2024

The present writ petition has been filed for setting aside the advertisement bearing Advertisement No. BCECEB/Rev/ DLRS-2023/01 dated 11.04.2023 issued by the Nodal Officer, Land



Reforms and Revenue Department, Government of Bihar, Patna, by which applications have been invited for the purposes of making recruitment on the posts of Special Survey Assistant Settlement Officer, Special Survey Kanoongo, Special Survey Amin and Special Survey Clerk.

2. The brief facts of the case, according to the petitioners, are that the Department of Revenue and Land Reforms, Government of Bihar, Patna vide resolution dated 10.11.2018 had issued a scheme for making appointments on the aforesaid posts on contractual basis and in clause-4 thereof the minimum qualification has been prescribed. As far as the present case is concerned, since the petitioner no. 1 is vying for the post of Special Survey Kanoongo while the petitioner no. 2 for the post of Special Survey Amin, this Court would limit its consideration from the perspective of these two posts only.

3. In the aforesaid resolution dt. 10.11.2018, the minimum qualification required to be possessed by a candidate for being appointed on the post of



Special Survey Kanoongo is diploma in Civil Engineering along with minimum two years' experience while that for the post of Special Survey Amin is diploma in Civil Engineering. The Department of Revenue and Land Reforms, Government of Bihar had then notified the Bihar Special Survey Contractual Employee Payment Rules, 2019, vide Notification dated 27.02.2019 and the minimum qualification prescribed therein for the post of Special Survey Kanoongo and Special Survey Amin is Diploma in Civil Engineering plus minimum two years' experience and Diploma in Civil Engineering respectively. The said rules were amended vide Notification dated 20.12.2022, however, the minimum educational qualifications remained the same. Thereafter, the advertisement in question was issued on 11.04.2023, by the Revenue and Land Reforms Department, Government of Bihar, Patna, however, in the said advertisement the minimum qualification has been changed and for the post of Special Survey Kanoongo, the minimum qualification prescribed is



three years diploma in Civil Engineering from an institution registered with the State Board of Technical Education (hereinafter referred to as the 'SBTE') of the concerned State and recognized by the AICTE. Similarly, the minimum qualification prescribed for the post of Special Survey Amin is three years diploma in Civil Engineering from an institution registered with the SBTE of the concerned State and recognized by the AICTE.

4. Though, the petitioner no. 1 is stated to have not applied for being appointed on the post of Special Survey Kanoongo, in pursuance to the aforesaid advertisement dated 11.04.2023, however, it is the submission of the learned senior counsel for the petitioners that since the institution from where the petitioners have obtained diploma in Civil Engineering is not recognized by AICTE, although the same is recognized by UGC, the Petitioner No. 1, being not eligible, had not applied, nonetheless, though the petitioner no. 2 had applied for the post of Special Survey Amin, however, his candidature has not been considered



at the time of counseling and instead the petitioner No. 2 has been asked in writing to produce proof of the fact that the institution from where he has obtained diploma in Civil Engineering is having recognition from AICTE.

5. The learned senior counsel for the petitioners has further submitted that it is a well settled law that the minimum qualifications prescribed in an advertisement, for the purposes of conducting the selection process, cannot be contrary to those prescribed in the statute/rules. It is thus contended that in the present case the aforesaid advertisement in question i.e. the one dated 11.04.2023, issued by the BCECEB for making appointments on various posts including that of Special Survey Kanoongo and Special Survey Amin, prescribes the minimum qualifications for the said two posts as three years Diploma in Civil Engineering from an institution registered with the SBTE of the concerned State and recognized by the AICTE, however, the said prescription is contrary to the minimum eligibility qualification stipulated in



the Bihar Special Survey Contractual Employment Payment Rules, 2019 (herein after referred to as the 'Rules, 2019'), as amended vide Notification dt. 20.12.2022, which is illegal and contrary to the well settled law, more so for the reason that the aforesaid Rules, 2019 are statutory rules, framed under proviso to Article 309 of the Constitution of India.

6. The Ld. senior counsel for the petitioners has, with regard to the aforesaid aspect of the matter, relied on a judgment rendered by the Hon'ble Apex Court in the case of **Ashish Kumar vs. State of Uttar Pradesh & Others**, reported in **(2018) 3 SCC 55**, wherein the Hon'ble Apex Court has held that when there is variance in the advertisement and the statutory rules, it is the statutory rules which takes precedence. In this regard, it would be gainful to reproduce paragraph 27 of the said judgment rendered in the case of **Ashish Kumar** (supra) herein below:-

"27. Any part of the advertisement which is contrary to the statutory rules has to give



*way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence. In this context, reference is made in the judgment of this Court in *Mali Mazhar Sultan v. U.P. Public Service Commission*, Para 21 of the judgment lays down the above proposition which is to the following effect: (SCC p. 512)*

"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn



upon the interpretation of the Rules."

7. The learned senior counsel for the petitioners has further referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Employees' State Insurance Corporation vs. Union of India & others***, reported in **(2022) 11 SCC 392** to contend that the Hon'ble Apex Court has held that it is a settled principle of service jurisprudence that in the event of a conflict between statement in an advertisement and service regulations, the latter shall prevail. The learned senior counsel for the petitioners has also relied on a judgment rendered by the Hon'ble Apex Court in the case of ***Bharathidasan University and Another vs. All India Council for Technical Education & Others***, reported in **(2001) 8 SCC 676** to contend that the University/Institution approved by the UGC does not require AICTE approval.

8. As far as the petitioners are concerned, the petitioner no. 1 has obtained diploma from Sarvepalli Radhakrishnan University, Bhopal while the petitioner no. 2 has obtained diploma from



Galgotias University, Uttar Pradesh and both the Universities are recognized by the UGC. In this connection, the learned senior counsel for the petitioners has also relied on a judgment dated 23.06.2021 rendered by a coordinate Bench of this Court in **CWJC No. 6379 of 2020 (Suraj Kumar Verma vs. The State of Bihar & Ors.)** & other analogous cases. The learned senior counsel for the petitioners has next relied on a judgment rendered by the learned Division Bench of the High Court of Judicature for Rajasthan Bench at Jaipur dated 30.01.2023 passed in **D.B. Civil Writ Petition No. 227 of 2021 (Union of India & Anr. vs. Atul Khare)**. Thus, it is submitted that any part of the advertisement which is contrary to the statutory rules, has to give way to the statutory prescription.

9. *Per contra*, the learned counsel for the respondent-State Shri Sajid Salim Khan has submitted, by referring to the counter affidavit filed in the present case, that neither the advertisement has been annexed in the main writ petition nor the details of the institutions/universities from where



they have obtained diplomas have been mentioned in the writ petition and there is nothing on record to substantiate the claim of the petitioners regarding non-acceptance/rejection of their application forms. On the contrary, it is submitted that upon enquiry, it has been found that the petitioner no. 1 is working as Special Survey Amin on contract basis on the basis of him having obtained Diploma in Civil Engineering from Sarvepalli Radhakrishnan University, Bhopal, a fact which he has suppressed. It is also submitted that such writ petitions where the petitioners do not approach the Court with clean hands are required to be thrown out at the threshold. It is also submitted that an advertisement was earlier issued in the year 2019 and appointments have also been made, whereafter advertisement was again issued in the year 2022, however, during the process of selection, the Rules, 2019 were amended vide Notification dated 20.12.2022, hence the said advertisement was cancelled. Thereafter, the present advertisement i.e. the one dated 11.04.2023 has been issued



inviting applications for the aforesaid posts including that of Special Survey Kanoongo and Special Survey Amin and the minimum eligibility qualification for the said two posts has been prescribed as three years Diploma in Civil Engineering from an institution registered with the SBTE of the concerned State and recognized by the AICTE. It is also submitted that the advertisement dated 11.04.2023 has been issued in terms of the Rules, 2019 as amended vide Notification dated 20.12.2022. Lastly, it is submitted that the eligibility criteria mentioned in the aforesaid advertisement dt. 11.04.2023 is in consonance with the requirement of institutions being recognized, as stipulated in the rules and the advertisement, thus the Advertisement dated 11.04.2023 is not contrary to the judgments rendered by the Hon'ble Apex Court, as alleged by the writ petitioners. Thus, it is submitted that the writ petition is bereft of any merit and fit to be dismissed.

10. I have heard the learned counsel for the parties and gone through the materials on record. It



is not in dispute that the Rules, 2019, promulgated under proviso to Article 309 of the Constitution of India, as amended vide notification dated 20.12.2022, stipulates the minimum educational qualification for the post of Special Survey Kanoongo as Diploma in Civil Engineering plus minimum two years' experience while that for Special Survey Amin as Diploma in Civil Engineering, however, contrary to the same, the advertisement dated 11.04.2023 has prescribed the minimum eligibility criteria for the post of Special Survey Kanoongo as three years Diploma in Civil Engineering from an institution registered with the SBTE of the concerned State and recognized by the AICTE plus minimum two years' experience whereas for the post of Special Survey Amin, the same has been prescribed as three years diploma in Civil Engineering from an institution registered by the SBTE of the concerned State and recognized by the AICTE. Thus, the limited issue which arises for consideration in the present case, as can be culled out from the records, is as to whether the minimum



qualifications prescribed in the advertisement dated 11.4.2023, issued by the BCECEB, for making appointments on the posts of Special Survey Kanoongo and Special Survey Amin, can be contrary to those prescribed in the Bihar Special Survey Contractual Employment Payment Rules, 2019, as amended vide notification dated 20.12.2022, more so, considering the fact that the aforesaid Rules, 2019 are statutory rules, framed under proviso to Article 309 of the Constitution of India.

11. The answer to the aforesaid issue, which arises for consideration in the present case, is very simple as has already been set at rest by the Hon'ble Supreme Court in the case of **Ashish Kumar** (supra), wherein it has been held that any part of the advertisement which is contrary to the statutory rules, has to give way to the statutory prescription. Considering the law laid down by the Hon'ble Supreme Court in the case of **Ashish Kumar** (supra) as also in the case of **Employees' State Insurance Corporation** (supra), this Court



deems it fit and proper to hold that the minimum qualifications prescribed in the advertisement dated 11.04.2023, for the posts of Special Survey Kanoongo and Special Survey Amin, to the extent the same are contrary to those prescribed in the Rules, 2019, as amended vide notification dated 20.12.2022, shall be deemed to be void and the minimum qualifications stipulated in the statutory prescription shall prevail.

12. At this juncture it would suffice to state that since the petitioners possess three-year Diploma in Civil Engineering from Universities recognized by the UGC, there is no need of such institute/University being recognized by the AICTE, in view of the law settled by the Hon'ble Apex Court in the case of ***Bharathidasan University & Anr.*** (supra), wherein the Hon'ble Apex Court has held that those universities/institutions which are recognized by UGC do not require AICTE approval.

13. It may be relevant to point out here that by an earlier order of this Court dated 16.01.2024, while this Court had framed the issue involved in



the present writ petition and had explicitly detailed therein the law laid down by the Hon'ble Apex Court with regard to the same, this Court had granted time to the Ld. counsel for the respondent-State, on his insistence, to seek instructions from the respondents as to whether by way of an exception, the candidature of the petitioners can be entertained in terms of the aforesaid advertisement dated 11.04.2023, but the learned counsel for the respondent-State, on instructions, submits that the candidature of the petitioners can only be entertained if this Court so directs. In such view of the matter, this Court has gone ahead with the hearing of the present case and is delivering the present judgment.

14. Having regard to the facts and circumstances of the case and for the foregoing reasons, this Court, though deems it fit and proper to direct the respondents to entertain the candidature of the petitioners for the posts of Special Survey Kanoongo and Special Survey Amin respectively, however, restrains itself from quashing the entire



advertisement dated 11.04.2023, for the reason that firstly the selection process is at an advanced stage as also the counseling has already been held, hence undue hardship shall be caused to the candidates and secondly, taking into account the law laid down by the Hon'ble Apex Court, in the case of ***Bharathidasan University*** (supra) to the effect that when the question of enforcement arises, the Courts are bound to ignore those stipulations which are shown to be beyond the statutory prescription, this Court has allowed the challenge of the petitioners, made to a limited extent, individually, i.e. to the extent of the minimum qualifications prescribed in the Advertisement dated 11.04.2023 being contrary to the Rules, 2019, as amended vide Notification dated 20.12.2022, as far as the posts of Special Survey Kanoongo and Special Survey Amin are concerned.

Thus, considering the fact that the minimum qualifications prescribed in the advertisement pertaining to the post of Special Survey Kanoongo and Special Survey Amin is contrary to those specified in the Rules, 2019, as amended vide



Notification dated 20.12.2022, this Court would observe that the candidature of the petitioners shall be considered afresh under the aforesaid advertisement dated 11.04.2023, but as per the minimum qualifications prescribed in the Rules, 2019, as amended vide Notification dated 20.12.2022.

15. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.03.2024
Transmission Date	N/A

