

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2172 of 2020

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1. Ratnakar Dubey, S/o Ravi Prakash Dhar Dubey, R/o Gautam Vihar Vistar, HIG-III, Plot No. 71, P.O.-Siddharth Enclave, P.S.-Ramgadh Tal, Distt.-Gorakhpur (Uttar Pradesh).
2. Shaina Goyal @ Shaina, D/o Tek Chand, R/o D-113, Tagore Garden, P.O. and P.S.-Bhatinda, Distt.-Bhatinda (Punjab).
3. Siddharth Sharma @ Siddharth, S/o Uma Shankar Sharma, R/o Sessions House, District Civil Court, P.O. and P.S.-Kasganj, Distt.-Kasganj (Uttar Pradesh).
4. Sanjay Kumar Mishra, S/o Bal Ram Mishra, R/o P.O. and P.S.-Chattarpur, Distt.-New Delhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Bihar Public Service Commission through its Chairman, 15 Jawaharlal Nehru Marg, Bailey Road, P.O. and P.S.-Old Secretariat, Distt.-Patna.
4. Chairman, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, P.O. and P.S.-Old Secretariat, Distt.-Patna.
5. Secretary, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, P.O. and P.S.-Old Secretariat, Distt.-Patna.
6. Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, P.O. and P.S.-Old Secretariat, Distt.-Patna.
7. Hon'ble High Court of Judicature at Patna, through the Learned Registrar General, Patna High Court, Bailey Road, P.O.-Patna High Court, P.S.-Kotwali, Distt.-Patna.
8. The Learned Registrar General, Hon'ble High Court of Judicature at Patna, Patna High Court, Bailey Road, P.O.-Patna High Court, P.S.-Kotwali, Distt.-Patna.
9. Sudha Rani R/o VPO Juglan, Hisar, State- Haryana, Pincode- 125001.
10. Ashish Kumar Pandey R/o Vill and P.O.- English Thana, Mirwa, Dist-Siwan, State- Bihar, Pincode- 841239.
11. Dinesh Mani Tripathi R/o Vill- Saray Bhogi, PO- Saray Bhogi, Dist-Jaunpur, State- Uttar Pradesh, Pincode- 222201.
12. Amit Kumar Singh R/o Vill- Behind Police Hospital, Tarakpur Road, Paramapur, Mirzapur, State- Uttar Pradesh, Pincode- 231001.
13. Khushboo Anand C/o Upendra Prasad, Vill- Asha Nagar (South), Holding No. 507, PO- Soh Sarai, Thana- Soh Sarai, Dist- Nalanda, State- Bihar, Pincode- 803118.
14. Ajay Kumar R/o Vill- Barkamor, Post- Bahauna, P.S.- Sasaram, Dist-



Rohtas, State- Bihar, Pincode- 821315.

15. Aditya Kumar Sharma R/o Vill Bhola Tola English, Dist- Lakhisarai, State- Bihar, Pincode- 811311.
16. Avichal Gyanesh C/o Shree Suresh Prasad, Thana Chowk, Sidhighat, New Town Police Station, Dist- Khagaria, State- Bihar, Pincode- 851204.
17. Varsha Kumari R/o Vill- Mungraaura, Post- Jamalpur, Dist- Munger, State- Bihar, Pincode- 811214.
18. Rakesh Ranjan R/o Vill- Chaman Bigha, PO- Karauna, PS- Jehanabad, Dist- Jehanabad, State- Bihar, Pincode- 804417.
19. Anurag Gaurav C/o Late Dilli Chand Prasad, Kishan Colony, Phase-2, Anisabad, Dist- Patna, State- Bihar, Pincode- 800002.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravindra Kumar Shukla, Adv.
For the BPSC	:	Mr. Lalit Kishore, Sr. Adv. Mr. Satyabir Bharti, Adv.
For the PHC	:	Mr. Piyush Lal, Adv.
For the private respondent:	:	Mr. Y.V. Giri, Sr. Adv. Mr. Pranav Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 05-05-2021

Heard Mr. Ravindra Kumar Shukla, learned counsel for the petitioner, Mr. Lalit Kishore, learned Senior Counsel assisted by Mr. Satyabir Bharti, learned counsel for the Bihar Public Service Commission, Mr. Piyush Lal, learned counsel for the Patna High Court and Mr. Y.V. Giri, learned Senior Counsel assisted by Mr. Pranav Kumar, learned counsel for the private respondents.

The petitioners have filed the instant writ application for the following reliefs :-



- “(i) *For issuance of a Writ of Certiorari for quashing the final result of the 30th Bihar Judicial Services Competitive Examination declared on 29.11.2019 issued by Joint Secretary-cum-Examination Controller pursuant to advertisement no. 06/2018 dated 23.08.2018 for appointment to Civil Judge (Junior Division) to the extent to which the candidature of the petitioners have been cancelled arbitrarily by the commission for non-production of some original documents at the time of interview despite the excellent performance of the petitioners in the entire selection process.*
- (ii) *For issuance of order/direction/Writ of Mandamus or any other appropriate Writs to direct the respondent commission to immediately allow and process the candidature of the petitioners who had submitted all requisite documents showing their eligibility for appointment to the post of Civil Judge (Junior Division) and thereafter they were allowed to appear in the interview and thereafter their medical was also conducted.*
- (iii) *For issuance or order/direction or writ of Mandamus or any other appropriate writs directing the respondent authority to release the final marks of the petitioners before further appointment process takes place.*
- (iv) *For issuance of order/direction or Writ of Mandamus or any other appropriate Writs directing the respondent authority that if the petitioners qualify for the final list of candidates in the 30th Bihar Judicial Services Competitive Examination, declare them successful and include them in the final merit list or in an addendum list of successful candidates.*
- (v) *For issuance of order/direction or Writ of Mandamus or any other appropriate writs directing the respondent commission to prepare and publish the updated/revised result of the 30th Bihar Judicial Services Competitive Examination after considering the candidature of the petitioners since, in sheer violation of the Principle of Natural Justice, the candidature of the petitioners have been cancelled by the Commission unilaterally and arbitrarily without*



affording any opportunity to the petitioners to clarify any of the objections on the basis of which their candidature was cancelled by the Commission.

- (vi) For issuance of order/direction or appropriate writ for directing the respondent authority to keep 03 post of Civil Judge (Junior Division) vacant during the pendency of the present writ application and further for restraining the commission from making recommendation either in unreserved category or reserved category until disposal of the present writ application.*
- (vii) This Hon'ble Court is further prayed to adjudicate and hold that the action of the respondent authority withholding the result and cancelling the candidature of the petitioners is highly arbitrary, illegal, cavalier and contrary to the principles of justice and fair play.*
- (viii) Any other appropriate writ/writs be issued, order/orders be passed, direction/directions be given in the facts and circumstances of this case for which the petitioner may be found entitled."*

The case of the petitioners in brief is that the respondent Bihar Public Service Commission (hereinafter refer to as 'the Commission') came out with Advertisement no. 6 of 2018 for holding the 30th Bihar Judicial Services Competitive Examination for filling up 349 vacant posts of Civil Judge (Junior Division). All the petitioners appeared in the preliminary examination conducted by the Commission in two parts on 27.11.2018 and 28.11.2018. Having cleared the preliminary examination, the petitioners appeared in the main examination conducted between 7.6.2019 and 12.6.2019. 1080 candidates were declared successful in the result published on 5.10.2019. The petitioners participated in the



interview as per programme published by the Commission and the result of the interview was declared by the Commission on 29.11.2019, however, the candidature of the petitioners were cancelled as they were unable to produce the original copies of some of the documents at the time of interview.

It is submitted by learned counsel for the petitioners that the petitioner no. 1 not having qualified, he is not pressing the instant application so far as he is concerned. With respect to petitioner nos. 2, 3 and 4, it is submitted that the petitioner no 2 was allotted Roll no. 105828. He produced all the documents in original except for the character certificate and letter issued by the Bar Council of India. Petitioner no. 3 who was allotted Roll no. 114020 was unable to produce the character certificate and the original letter of the Bar Council of India. The character certificate was not issued by the AMITY University on the ground that the petitioner had passed the examination two years earlier. However he produced the caste certificate issued by the Magistrate 1st class before the Commission, but the same was not accepted. So far as the petitioner no. 4 is concerned, he could not produce the original NOC (No Objection Certificate) since there was a strike in the Delhi High Court. It is the case of the petitioners that on publication of the result of the Main (Written) Examination all the petitioners were called for interview.



The documents were verified and for the original documents that the petitioners were not able to produce, the Commission verbally gave them time to produce the same at a later date. However, without giving them any notice, on publication of the final result on 29.11.2019 it transpired that the candidature of all the petitioners were cancelled as they were unable to produce the original copies of some of the documents at the time of interview. It is further submitted that the petitioners have been discriminated from some other candidates bearing Roll nos. 113832 and 124824 who also did not submit the documents in original at the time of interview but were declared successful in the final merit list and were given additional time to produce the same. It is finally submitted that even Clause 8(i) of the advertisement clearly stipulates that the candidates may be asked to produce the original certificate/ documents either at the time of interview or at any other time. Thus the Commission having verbally granted time to the petitioners to produce the original documents at a later stage, their candidature should not have been cancelled and thus the instant writ application for the prayer made herein above.

Mr. Lalit Kishore, learned Senior Counsel assisted by Mr Satyabir Bharti, learned Counsel appearing for the Commission took the Court through various clauses of Advertisement no. 6 of 2018 to submit that from perusal of Clauses 8, 9 and 10 it would be



clear that the candidates had to download the filled up application form and had to retain two printed copies thereof. At the time of interview or on demand by the Commission at any stage, the candidates were required to produce hard copies of the same as also the original of the documents/certificates. It was further submitted that Clause 10 clearly provided that at the time of interview the applicant/candidate would mandatorily be required to produce the original of all the mark sheets and certificates and in case the same was not done, the Commission would be at liberty to take a decision with respect to such candidates. It has been submitted that there is no ambiguity in the relevant clauses of the advertisement. Further Clause 3 of the interview programme dated 15.10.2019 (Annexure A to the counter affidavit of BPSC) clearly provided that the candidate must bring the original certificate for verification as stated in the advertisement and interview letter, including the character certificate issued by the College/University where the candidate last studied. In case any candidate did not produce the original certificates on the date of interview, no further time would be given for the same and the Commission would be free to take appropriate decision with respect to eligibility of such candidates. Clause 7 of the said interview programme contained in letter dated 15.10.2019 provided that the candidature of the candidate being called for interview was fully provisional and mere participation in



the interview did not confirm the candidature of the candidate. It was submitted that from the pleadings in the writ application itself it would be evident that the writ petitioners themselves had categorically stated and accepted that the petitioner nos. 2, 3 and 4 had not produced the original documents/certificates at the time of interview. Thus, their candidature had correctly been cancelled by the Commission in the final result on 29.11.2019. Learned Senior Counsel in support of his contention has relied on the judgments in the case of *Director of Settlements AP and Ors. vs M.R. Appa Roy and Anr.* [(2002) 4 SCC 638], *Bedanga Talukdar vs Saifudaullah Khan* [(2011) 12 SCC 85] and *State of Odisha and Anr. vs Anup Kumar Senapati and Anr.* [(2019) 19 SCC 626].

Mr. Piyush Lal, learned counsel appearing for the Patna High Court, in addition to the submissions made by learned Senior Counsel appearing for the Commission, submitted that the process of appointment on 349 vacant posts of Civil Judge (Junior Division) was taken up by the Commission through Advertisement no. 6 of 2018 as per the Bihar Civil Services (Judicial Branch) Recruitment Rules, 1955 (herein after referred to as 'the Rules'). It was submitted that the provisions of the Rules and the terms of the advertisement being clear and there being no ambiguity in the same, in view of the nature of employment, individual notices were not required. With respect to petitioner nos. 2 and 3 it was submitted



that not only did they fail to produce their original character certificate, neither any document has been brought on record in the writ application nor any compelling circumstance has been pointed out as to why the documents were not produced. With respect to petitioner no.2, it has been submitted that the character certificate which has been brought on record is dated 24.10.2018 and thus there can be no explanation with the petitioner no.2 as to why, the original of the said certificate was not produced by him at the time of interview in October, 2019. With respect to petitioner no.3, it has been submitted that a certificate of Amity University has been brought on record, which is of a date after that of the date of interview. So far as petitioner no.4, not producing NOC (No Objection Certificate) because of a strike in the Delhi High Court is concerned, it has been submitted that the NOC (No Objection Certificate) was to be obtained from the employer, which in the case of petitioner no.4 is the Government of NCT of Delhi and thus the strike in Delhi High Court is not a justified explanation for non-production of the NOC. Mr. Piyush Lal, in support of his contention relied on a judgment in the case of *Municipal Corporation of Greater Bombay and Ors vs. Dr. Sushil V Patkar and Ors.* [1991 (Suppl. II) SCC 432] and in the case of *Bedanga Talukdar vs. Saifudaullah Khan* [(2011) 12 SCC 85].



Mr. Y.V. Giri, learned Senior Counsel assisted by Mr. Pranav Kumar, learned counsel appearing for the private respondents, in addition to the submissions made on behalf of the Commission as also the Patna High Court submitted that so far as the private respondents are concerned, no relaxation in any manner has been given to them by the Commission in the process of selection and as such, they should not have been made party respondents. It has been submitted that the terms of advertisement are clear that the original certificates has to be produced by the applicant at the time of interview or at any other time as demanded by the Commission and the petitioner nos. 2, 3 and 4 admittedly not having produced their original certificates, the Commission has rightly rejected their candidature. Learned Senior Counsel in support of his contention that Article 14 of the Constitution of India does not envisage negative quality, placed reliance on the judgments in the case of *State of U.P & Ors vs. Raj Kumar Sharma & Ors. [(2006) 3 SCC 330]*, *Basawaraj and Anr vs. Special Land Acquisition Officer [(2013) 14 SCC 81]* and *P. Singaravelan and Ors. vs. District Collector, Tiruppur and D.T & Ors [(2020) 3 SCC 133]*.

Heard learned counsel for the parties and perused the materials on record.



At the outset, learned counsel for the petitioners has submitted that the petitioner no.1 not having qualified, he is not pressing this application so far as he is concerned but is confining the instant application with respect to petitioner nos.2, 3 and 4.

The Commission came out with the Advertisement no.6 of 2018 for holding the 30th Bihar Judicial Service Competitive Examination as per the Bihar Civil Services (Judicial Branch) (Recruitment) Rules, 1955 for filling up 349 vacant posts of Civil Judge (Junior Division). The petitioner nos. 1 to 4 belonging to the general category applied and were allotted Roll nos. 110784, 105828, 114020 and 109002 respectively. Having cleared their preliminary as also their main examination they were called for and appeared in the interview. In the final result of the interview declared on 29.11.2019 the candidature of the petitioners along with others were rejected for the reason that contrary to the condition in the advertisement/interview letter, the relevant marksheet/character certificate/ No Objection Certificate etc. were not produced in original for verification at the time of their interview.

The contention of the petitioners is that on having been called for interview, they made inquiry and were informed by the Commission that additional time would be provided to them to



produce the documents. It is the case of the petitioners that similar time had been provided to other candidates whose details/roll numbers have been given by them in the supplementary affidavit. Further Clause 8(i) of the advertisement clearly mentions that the candidates may be asked to produce the hard copy of the certificates/documents either at the time of interview or at any other time. No corrigendum having been issued to the advertisement to alter this clause and time having been granted to other similarly situated candidates, the petitioners has been treated with hostile discrimination and as such the order cancelling the candidature of the petitioner nos. 2, 3 and 4 are bad and fit to be set aside.

This Court has the opportunity to deal with all the contentions raised by the petitioners herein, in the case of *C.W.J.C. No.24282 of 2019 (Aarav Jain versus The Bihar Public Service Commission & Ors.)* which has been dismissed by order dated 4.5.2021. Both the cases arise out of the Commission coming out with Advertisement no. 6 of 2018 for appointment on 349 vacant posts of Civil Judge (Junior Division). As in the instant case, the petitioner in the case of Aarav Jain (supra) had also not produced his original character certificate for verification at the time of his interview, and thus his candidature was also



cancelled by the same order dated 29.11.2019 (Annexure-12) as the petitioners herein. Thus, similar issue arising for consideration, this Court had the opportunity to go in detail in the terms of advertisement and the contentions raised by the parties. Relevant part of the said judgment dated 4.5.2021 is being quoted herein below for ready reference:

“18. It may be mentioned here that in exercise of powers conferred under Article 234 of the Constitution of India, the Governor of Bihar after consultation with the High Court of Judicature at Patna and the Bihar Public Service Commission was pleased to frame the Bihar Civil Service (Judicial Branch) Recruitment Rules, 1955 (hereinafter referred to as ‘the Rules’ in short). The selection process for appointment on the post of Civil Judge, Junior Division was started by the Commission as per the said Rules. Rule 7(b) provides that a candidate must satisfy the Commission that his character is such as to qualify him for appointment to the service. Further, Rule 9 provides that a candidate may be required to produce the original certificates and other documents before the Commission at the time of the viva voce test.

19. Further relevant parts of Clause 7(ii), Clause 8 (i), 9, 10 and 11 of the Advertisement no. 6 of 2018 are being quoted herein below for ready reference.

“7 (ii) उपर्युक्त विज्ञापन के अन्तर्गत ऑनलाइन आवेदन भरने से संबंधित आवश्यक (विस्तृत) निर्देश इस विज्ञापन के साथ संलग्न है।

अभ्यर्थी ऑनलाइन आवेदन भरने के पूर्व उक्त दिशा निर्देशों का भली भाँति अध्ययन कर लेंगे तथा ऑनलाइन आवेदन भरने के क्रम में सभी सूचनाएँ सही-सही



एवं सुस्पष्ट अंकित करेंगे ।
 ऑनलाइन आवेदन भरने हेतु
 आवश्यक (विस्तृत) निर्देश का
 अक्षरशः अनुपालन नहीं करने पर
 एवं ऑनलाइन आवेदन भरने के
 क्रम में अभ्यर्थी द्वारा की गयी
 प्रविष्टि में किसी प्रकार की त्रुटि के
 लिए आयोग जिम्मेवार नहीं होगा ।
 इस संबंध में किसी प्रकार के
 सुधार/परिवर्तन हेतु अभ्यावेदन पर
 विचार नहीं किया जाएगा ।

ऑनलाइन आवेदन में भरी
 गयी सूचनाओं को मूल प्रमाण
 पत्र/अंक पत्रों से मिलान करने के
 क्रम में किसी भी प्रकार की त्रुटि
 पाये जाने पर उम्मीदवारी रद्द कर
 दी जाएगी ।

8. महत्वपूर्ण निर्देश :-

(i) अंतिम रूप से भरे गए ऑनलाइन
 आवेदन को सबमिट करने के बाद
 अभ्यर्थी उसी समय पुनः Login कर
 डैशबोर्ड पर उपलब्ध "Download
 Filled Application Section" से भरा
 हुआ आवेदन डाउनलोड कर उसकी दो
 प्रति निश्चित रूप से प्रिंट करेंगे ।
 विज्ञापन से संबंधित वर्णित सभी
 प्रमाण पत्र/कागजात, परीक्षा शुल्क
 भुगतान की बैंक रसीद की प्रति अवश्य
 सुरक्षित रखेंगे । आयोग द्वारा
 साक्षात्कार के समय या किसी भी
 समय मांगे जाने पर उम्मीदवार को
 उक्त हार्ड कॉपी एवं सभी संबंधित
 प्रमाण-पत्र निश्चित रूप से प्रस्तुत
 करना होगा ।

9. योग्यता संबंधी प्रमाण-पत्र वही
 मान्य होंगे, जिनका उल्लेख
 उम्मीदवार ने अपने मूल आवेदन-पत्र
 में किया है । योग्यता से संबंधित



प्रमाण-पत्र के निर्गत होने की तिथि, आवेदन की निर्धारित अंतिम तिथि के पूर्व का होना आवश्यक है।

10. आवेदन प्रपत्र में वर्णित सभी प्रमाण-पत्र, अंक-पत्र साक्षात्कार के समय मूल रूप से प्रस्तुत करना अनिवार्य होगा। उक्त निर्देश का अनुपालन नहीं करने वाले अभ्यर्थियों की अर्हता के संबंध में निर्णय लेने हेतु आयोग स्वतंत्र रहेगा।

11. आवेदक यह सुनिश्चित करेंगे कि सभी वांछित प्रमाण-पत्र मूल रूप में उनके पास आवेदन भरते समय उपलब्ध हैं।"

20. *From perusal of the terms of the clauses of the advertisement quoted herein above it would appear that Clause 7 has provided that if on comparison with the original certificate/mark sheet, the information provided in the online examination is not found to be correct, the candidature of the candidate will be cancelled. Further Clause 8(i) provided that after the candidate has submitted his online application, he should download the same from the website from the section marked "Download Filed Application Section" and thereafter keep two printed copies of the same along with all documents and money receipt. It provided that on being asked by the Commission for the same at the time of interview or any other time, the applicant would produce the hard copy and all connected certificates. Clause 9 of the advertisement provided that only those certificates will be accepted by the Commission which have been mentioned by the applicant in his original application form and which have been issued on a date prior to the last date of filling-up of the application. Clause 10 provided that at the time of interview/viva voce, the applicant would mandatorily be required to produce all the certificates as also mark sheet which have been mentioned by him in his application form. In case the same is not done by the applicant, the Commission would be at liberty to take a decision with respect to his candidature. Clause 11 provides*



that the applicant shall ensure that original of all the certificates are available with the applicant at the time of filling-up of the form.

21. Thus, from perusal of the relevant clauses of the advertisement mentioned herein above, it is clear that there is no ambiguity in the same. The applicants were required to have in their possession the certificates as also mark sheet, both in original, at the time of filling-up of the form and all these certificates and mark sheet were to be of a date prior to the last date of filling-up of the application form. It has further been provided that the applicant were required to produce the original certificate and or mark sheet at the time of interview or as and when required by the Commission.

22. So far as the instant case is concerned, from perusal of a copy of the application form of the petitioner, a copy of which has been brought on record as Annexure E to the counter affidavit of the Commission, it would transpire that the last page of the same, just below the petitioners signature contains the list of 10 enclosures. At serial no. 5 is the character certificate enclosed by the petitioner bearing certificate no. 916 issued on 29.8.2018. With respect to production of the said character certificate, the petitioner has categorically stated in the writ application that the original character certificate issued by the Campus Law Centre was submitted with the Bar Council of Delhi and therefore the original copy of the same could not be produced on the date of interview.

23. Clause 9 of the advertisement in clear terms mentions that only those certificates which have been mentioned by the applicant in the original application form would be acceptable. Thus the petitioner having mentioned certificate no. 916 issued on 29.8.2018, issued by the Professor Incharge, Campus Law Centre, University of Delhi in his original application, and a copy of the which has been brought on record at page 53 as Annexure B-3 to the writ application, the petitioner was mandatorily required to produce the original of the said certificate at the time of interview.

24. The terms of the advertisement as discussed herein above being very clear that the



candidate not only should be in possession of the certificates on the date of filling-up of the online application form but would be mandatorily required, as per Clause 10, to produce the same at the time of interview, the petitioner having accepted on affidavit in paragraph no. 20 of the writ application in clear terms that he could not produce the original certificate on the date of interview, in the opinion of the Court, the Commission committed no wrong in rejecting the candidature of the petitioner on the ground of non-production/verification of the character certificate on the date of interview. The Court does not find any error or illegality in the decision/order of the Commission.

25. In support of his contention the petitioner has relied on the judgment in the case of Parvaiz Ahmad Parry (supra) and more particularly paragraph 24 thereof. In paragraph 24 of the said judgment the Hon'ble Apex Court had observed that if there was any ambiguity or vagueness in prescribing the qualification in the advertisement, then the same should have been clarified by the authority concerned in the advertisement itself. In case the same was not clarified then the benefit should have been given to the candidate rather than to the respondents. Paragraph 24 of the said judgment is being quoted herein below for ready reference :

“24. In our considered view, firstly, if there was any ambiguity or vagueness noticed in prescribing the qualification in the advertisement, then it should have been clarified by the authority concerned in the advertisement itself. Secondly, if it was not clarified, then benefit should have been given to the candidate rather than to the respondents. Thirdly, even assuming that there was no ambiguity or/and any vagueness yet we find that the appellant was admittedly having B.Sc. degree with Forestry as one of the major subjects in his graduation and further he was also having Masters degree in Forestry, i.e., M.Sc.(Forestry). In the light of



these facts, we are of the view that the appellant was possessed of the prescribed qualification to apply for the post in question and his application could not have been rejected treating him to be an ineligible candidate for not possessing prescribed qualification.”

26. *The decision in the case of Parvaiz Ahmad Parry (supra) is of no assistance to the petitioner herein. So far as the instant case is concerned, besides there being no ambiguity or vagueness in the advertisement, the petitioner himself on affidavit accepted that he could not comply with the terms of the advertisement.*

27. *The petitioner further relied on the decision in the case of General Manager, South Central Railway, Secunderabad (supra), more particularly paragraph 21 of the said judgment, which is being quoted herein below for ready reference:*

“21. The ratio of this Court's decision in Padam Singh Jhina's case, Civil Appeal No. 405 of 1967, D/-14-8-1967 (SC) (supra) is not applicable to the facts of the instant case. Jhina's contention was that he had been mala fide reduced in the list of seniority, from the 5th to the 7th place and that one Prem Sagar had been placed above him in contravention of the Rules. The validity or vires of the Rules was not in question. All the persons whose placement in the seniority list was controverted were not impleaded, and as such, had no opportunity of replying to the case set up by Jhina, and, in the absence of persons directly affected, it was not possible for the Court to adjudicate the matter. The ratio of Jhina's case does not help the appellant. The cases relevant for our purpose are [B. Gopalaiah v. Government of Andhra Pradesh](#), AIR 1969 Andh Pra 204; [J. S. Sachdev v. Reserve Bank of India](#), New



Delhi, New ILR (1973) 2 Delhi 392 and Mohan Chandra Joshi v. Union of India, Civil Writ No. 550 of 1970 (Delhi). We approve of the rule enunciated on this point in those cases.”

28. Neither the decision in the case of General Manager, South Central Railway, Secunderabad (supra) nor paragraph no. 21 of the same quoted hereinabove are of any assistance to the petitioner in the instant case.

29. The next contention of the petitioner is that he should also have been given opportunity to produce the original character certificate as had been given to others. With respect to this contention, it is stated that the Hon'ble Apex Court in the case of Bedanga Talukdar (supra) has held that selection process has to be conducted strictly in accordance with the stipulated selection procedure. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Even if the power of relaxation is provided in the Rules, it must still be mentioned in the advertisement. No such power of relaxation in the Rules nor in the advertisement has been pointed out by learned counsel for the petitioner. Paragraph no. 29 of the judgment in the case of Bedanga Talukdar (supra) is being quoted herein below for ready reference:

“29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with [Article 14](#) of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is



mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.”

30. So far as the last contention of the petitioner with respect to violation of the Article 14 of the Constitution of India by the respondent authority is concerned, it may be stated here that on discussing the various clauses/terms of the advertisement herein above, the Court has come to the conclusion that in order to raise the point of discrimination and violation of Article 14 of the Constitution of India the petitioner has first to establish his legal right. The petitioner not having submitted his original certificate, which he accepts on affidavit and which is in clear violation of the terms of the agreement, he cannot pray for grant of relief on the ground of violation of Articles 14 and 16 of the Constitution. It would be relevant to refer to the judgment in the case of Director of Settlement A.P and Ors v. M.R. Aparao and Anr. [(2002) 4 SCC 638], relevant portion of paragraph 17 of which his



being quoted herein below for ready reference :

“17.....in order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition.....”

31. Further in the case of Basawaraj (supra) the Hon’ble Apex Court held that Article 14 of the Constitution does not envisage negative equality and is not made to perpetuate illegality or fraud even by extending the wrong decisions made in other cases. Paragraph no. 8 of the said judgment is quoted herein below for ready reference :

“8. It is a settled legal proposition that [Article 14](#) of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order



has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, [Article 14](#) cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: Chandigarh Adm. v. Jagjit Singh, Anand Buttons Ltd. v. State of Haryana, [K.K. Bhalla v. State of M.P.](#) and [Fuljit Kaur v. State of Punjab.](#)”

32. Thus, in view of the law laid down by the Hon'ble Apex Court in the case of Basawaraj (supra), even if some persons have been given the opportunity to produce their documents, which cannot be said to be in accordance with the provisions of the terms of the advertisement, the same would be of no help to the case of the petitioner herein. The Court finds no merit in this contention also of the petitioner and the same is rejected.

33. Having heard learned counsel for the parties and in view of the facts and circumstances as discussed herein above, the Court finds no merit in the writ application and the same is dismissed. There shall be no order as to costs.”

So far as the instant case is concerned, the case of the petitioners stand on a similar footing to that of Aarav Jain. In the instant case the petitioner nos. 2 and 3 did not produce the



original character certificate and BCI letter and the petitioner no. 4 did not produce the original NOC. The advertisement in clear terms mentioned that the candidates had to be in possession of and had to produce the certificates in original, which had been mentioned in the application form, at the time of interview. Thus the petitioners were mandatorily required to produce the original certificate at the time of interview.

This Court after dealing in detail with the contentions raised by the petitioner in the case of Aarav Jain (supra) concluded that in terms of the advertisement, the candidate was not only required to be in possession of the certificates on the date of filling up of the on-line application form but as per clause 10 of the Advertisement was mandatorily required to produce the same at the time of interview. The petitioner having admitted that he could not produce the original certificate on the date of interview, this Court held that the Commission committed no wrong in rejecting the candidature of the petitioner.

The petitioners in the instant case also have categorically admitted in paragraph nos. 14, 15 and 16 of the writ application that they could not produce all the original certificates/documents at the time of interview. Thus in the opinion of this Court the case of the petitioners stand on a similar



footing and is fully covered by the decision in the case of Aarav Jain (supra). So far as the other contentions of the petitioners with respect to the terms of advertisement, grant of opportunity to some others, violation of Art 14 of Constitution and hostile discrimination against the petitioners are concerned, the same have been dealt with and answered against the petitioner in the case of Aarav Jain (supra). Thus, the Court finds no illegality in the decision of the Commission cancelling the candidature of the petitioners.

There being no merit in the writ application, the same is dismissed. However there shall be no order as to costs.

(Partha Sartyh, J)

(Shivaji Pandey, J)

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