

(2022) 09 PAT CK 0039

Patna High Court**Case No:** Letters Patent Appeal No. 224 Of 2022 In Civil Writ Jurisdiction Case No. 3881 Of 2022

Rahul Kumar

APPELLANT

Vs

Bihar Public Service Commission

RESPONDENT

Date of Decision: Sept. 29, 2022**Acts Referred:**

- Constitution Of India, 1950 - Article 14, 16

Hon'ble Judges: Ashwani Kumar Singh, J; Shailendra Singh, J**Bench:** Division Bench**Advocate:** Harsh Singh, Sanjay Pandey**Final Decision:** Allowed

Judgement

1. The present Letters Patent Appeal has been preferred by the appellants against the judgment dated 18.04.2022 passed by the learned single Judge

in C.W.J.C. No. 3881 of 2022 whereby he has dismissed the writ petition.

2. Mr. Harsh Singh, learned counsel for the appellants contended that the appellants having passed the final examination held in the year 2018 had

been admitted to the degree of Bachelor of Engineering in Construction Engineering from Jadavpur University, Kolkata. On 08.03.2019, an

Advertisement was published by the Bihar Public Service Commission (for short the "BPSC") inviting recruitment for the posts of Assistant

Engineer (Civil) in different departments of the Government of Bihar. In terms of clause 3 of the Advertisement, a candidate was required to possess

a degree in Civil Engineering from the Institute/University approved by the AICTE or approved by the UGC. The AICTE, New Delhi vide its

notification dated 28.04.2017 published All India Council for Technical Education (Major/Care Branch of Engineering/Technology and their

relevant/appropriate course leading to degree in Engineering/Technology 2017) for recruitment to teaching position wherein Construction Engineering

was shown as a corresponding course and as a relevant/appropriate nomenclature of undergraduate degree in Civil Engineering. The AICTE vide

subsequent notification clarified that earlier notification dated 28.04.2017 was also applicable to other Government posts and jobs. Hence, in pursuance

of the Advertisement No. 1 of 2019, the appellants submitted their online application form within stipulated period for the post of Assistant Engineer.

On 16.02.2022 the BPSC after scrutiny of applications published list of ineligible candidates for the Advertisement whose degree/institution/Branch

were not found to be as per the requirement in the advertisement and the appellants were shocked to find their names and registration numbers

mentioned in the said list at SI. No.53 and 87 respectively. The appellants immediately approached the respondent-BPSC and they were declared

ineligible as their degree was in Construction Engineering whereas the eligibility requirement under the Advertisement was of degree in Civil

Engineering.

3. Mr. Singh, learned counsel for the appellants submitted that though the appellants preferred representation before the BPSC, the BPSC did not act

upon their representations and, on 03.03.2022, the schedule for examination of Advertisement No. 1 of 2019 was published. Under such circumstance,

a writ petition was filed before the Court, but the same has been dismissed by the learned single Judge vide order dated 18.04.2022 on the ground that

the examination had already been conducted on 12.03.2022 and 13.03.2022. He contended that the learned single Judge did not appreciate the

contention advanced on behalf of the appellants that they had taken all reasonable steps within their reach for early listing of the case but they could

not succeed in getting the matter listed. He further contended that the rejection of the candidature of the appellants in a competitive examination for a

public post amounted to infringement of appellants fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. He contended

that even if the examination had been held, the prayer made on behalf of the appellants for issuance of an appropriate writ declaring that their degree in Construction Engineering is equivalent to and an approved nomenclature of the degree in Civil Engineering ought to have been adjudicated, as non adjudication of the said issue would deprive the appellants from appearing in future competitive examinations also.

4. Responding to the contention advanced on behalf of the appellants, Mr. Sanjay Pandey, learned counsel appearing for the BPSC submitted that

there is no error in the order passed by the learned single Judge. He contended that the learned single Judge rightly dismissed the writ petition as the

appellants failed to show their interest between 07.03.2022 to 11.03.2022 to get their application listed and heard. He further contended that the prayer

of the appellants for conducting separate examination was totally misconceived and, thus, the learned single Judge rightly held in his judgment dated

18.04.2022 that conducting separate examination would be impracticable for the reason that for the two candidates, BPSC will have to set the

examination papers and further hold other processes up to the stage of declaring their result. However, he conceded that so far as the relief prayed

for by the appellants in the writ petition for declaring their degree in Construction Engineering is equivalent to and an approved nomenclature of the

degree in Civil Engineering is concerned, the same could have been adjudicated by the learned single judge.

5. We have heard learned counsel for the parties and carefully perused the records.

6. In the writ petition, the appellants had prayed for the following reliefs:

“ (i) For issuance of writ(s) order(s) direction(s) in nature of certiorari for quashing the list of ineligible candidates published by Bihar

Public Service Commission (hereinafter referred to as the Commission) With respect to Advertisement Number 01/2019 for the post of

Assistant Engineer (Civil) in different departments of Government of Bihar (hereinafter referred to as the advertisement), in so far as, it

pertains to the petitioners, whose names and registration numbers have been shown at serial numbers 53 and 87 respectively therein on the

22 02 ground that the Petitioners' degrees are not as per the requirement in the advertisement.

(ii). For issuance of an appropriate writ, order or direction declaring that the Petitioners' degree in Construction Engineering is equivalent

to and an approved nomenclature of the degree in Civil Engineering on the basis of AICTE notifications dated 28.04.2017 and 06.10.2021.

(iii) For issuance of Writ(s) order(s) direction(s) in nature of Mandamus (ii) directing the Respondent Commission to consider the candida

ture of the Petitioners in light of AICTE notifications dated 28.04.2017 and 06.10.2021 and allow the petitioners to participate in the

examination for the Advertisement Number 01/2019 for the post of Assistant Engineer (Civil) in different departments of Government of

Bihar, which is scheduled to be held on 12.03.2022 and 13.03.2022. Alternatively, for issuance of a writ of mandamus directing the

respondent Commission to consider the candidature of the Petitioners in light of AICTE notifications dated 28.04.2017 and 06.10.2021 and

to conduct and hold a separate examination for the petitioners with respect to the Advertisement Number 01/2019 for the post of Assistant

Engineer (Civil) in different departments or Government of Bihar post of the Assistant Engineer (Civil) in case the petitioners are not

accommodated in the examinations scheduled for 12.03.2022 and 13.03.2022.

(iv) Any other writ(s) order(s) direction (s) for which the petitioners are found to be entitled.â€

7. It is not disputed that the examinations relating to the Advertisement No. 1 of 2019 were conducted as scheduled by the BPSC on 12.03.2022 and

13.03.2022. It is also not disputed that BPSC after scrutiny of applications, published a list of ineligible candidates for the Advertisement on 16.02.2022

in which the appellants registration numbers were included.

8. Under such circumstance, we are of the opinion, that the learned single Judge rightly declined the prayer made on behalf of the appellants for

conducting separate examination for them. However, we find substance in the submission of the learned counsel for the appellants that even though

the examinations had been held, the issue relating to issuance of an appropriate writ declaring the appellants degree in Construction Engineering to be

equivalent to and an approved nomenclature of the degree in Civil Engineering should have been adjudicated.

9. Since, the issue which has been incorporated in para-1(ii) of the writ petition had not become infructuous due to the reason that the examinations had already been held and the non adjudication of the said issue may affect the right of the appellants to participate in future examinations, we allow the appeal in part and remand the matter back to the learned single Judge with a request to decide the issues raised by the appellants for the relief prayed for in para-1(ii) of the writ petition after hearing the parties. The dismissal of the writ petition to that extent is set aside.

10. We, however, make it clear that the other reliefs prayed for by the appellants in the writ petition were rightly not allowed by the learned single Judge and to that extent, we do not find any reason to interfere with the judgment passed by the learned single Judge.