

**(2011) 03 PAT CK 0087****Patna High Court****Case No:** CWJC No. 408 of 2011

Rajiv Ranjan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision:** March 17, 2011**Hon'ble Judges:** Ajay Kr. Tripathi, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

Ajay Kr. Tripathi, J.

Petitioner's application for selection on the post of Assistant Professor in an Engineering College in terms of the response to Annexure-1 (the advertisement) has been rejected. The reason for rejection communicated in Annexure-3 is that the petitioner does not have the requisite experience for consideration for appointment on the post. Since the petitioner was not satisfied with the communication contained in Annexure-3, he filed a detailed representation before the respondent Bihar Public Service Commission (hereinafter referred to as the Commission). That too was rejected by a cryptic order as would be evident from perusal of Annexure-4. As the petitioner did not understand the true reason for rejection of his case for consideration, he decided to file this writ application seeking a direction on the respondent Commission to consider his case for appointment as an Assistant Professor and for quashing Annexure-3, if not Annexure-4.

2. Submission of the Learned Counsel for the petitioner is that he does have the requisite experience and he fulfills the requirements laid down by the Commission as details of requirements are readily available as Annexure-1 which was issued on 7.3.2009. The details of the academic qualification and the experience had been furnished by the petitioner which included his teaching even in the part time capacity in what is known as Lalit Narain Mishra College of Business Management. It all adds upto 5 years experience which was required for appointment on the post of

Assistant Professor.

3. A bare reading of Annexure-3 or Annexure-4 actually does not make a person wiser as to what was exactly the reason or the ground where the petitioner lacked experience. It is only now after the counter affidavit has been filed and matter explained in greater detail that it has emerged that all told the petitioner had working experience as a Lecturer only for four years and two months and the minimum requirement was five years. Stand of the Commission is that the working experience furnished by the petitioner as a Lecturer in Lalit Narayan Mishra College of Business Management has been taken into consideration and no serious objection as such has been raised by the respondents on that aspect of his experience. However, it is a part time lecturership which the petitioner had under Muzaffarpur Institute of Technology, Muzaffarpur from 1.1.2008 till 24.7.2009 which is the subject matter of dispute. Stand in so many words of the Commission is that the advertisement itself had clarified that experience as a part time lecturer would not be taken into consideration to add up for the minimum eligibility i.e. five years. However, it may be considered for granting exemption in age. All told, the decision not to consider the application of the petitioner is in the above stated background.

4. Learned Counsel for the petitioner thereafter submits that it is already well settled in a catena of decisions not only of the Hon'ble Supreme Court but even some decisions of the High Court as well, some of them being in the case of Narendra Singh Vs. State of Bihar and Others, and Sharmila Kumari vs. Bihar Public Service Commission and Others reported in 1995(1) PLJR 275, which have laid down the principle that once advertisement has been issued and the terms and conditions therein have been indicated, no changes can be made as to the requirement subsequently. Petitioner's case is that in the present case similar kind of thing has been done. This submission has been made on the basis of Annexure-C which has come to be annexed with the counter affidavit filed on behalf of the Commission which is dated 19.10.2009. This communication of the Department of Science and Technology addressed to the Commission indicates that no person working in a part time capacity or on contractual basis will be given the benefit of experience as a Lecturer to enable him to add up to the total length of experience he had in that capacity. Since Annexure-C is a subsequent communication, it amounts to changing the rule of the game after the initial advertisement dated 7.3.2009 and the decision of the respondents not to process the application of the petitioner should be struck down and a direction is required to be given for consideration.

5. There is some difficulty in accepting the proposition which has been urged at the Bar not because there is any dispute with regard to the proposition as such but applicability of the said proposition in the set of facts of the present writ application.

6. A reading of the advertisement would show that it had been clarified on the basis of an earlier communication made by the Department of Science & Technology that persons working in part time capacity or on contract basis cannot claim the benefit

of experience for that period. The benefit can be extended only for the purpose of granting exemption on the upper age. If that insertion in the advertisement is part and parcel of the advertisement, merely because a clarificatory communication has been made by the Department of Science & Technology in terms of Annexure-C to the Commission, it cannot be, by any yardstick, treated to be a communication changing the rules of the game or the terms and conditions of the advertisement.

7. The eligibility of the petitioner not being there and since he cannot claim the benefit of experience as a part time Lecturer under Muzaffarpur Institute of Technology, Muzaffarpur, all told the period of experience of the petitioner adds upto only four years and two months which is surely short by another ten months as the minimum requirement was five years. If that is the ground on which the application of the petitioner was rejected, the same cannot be termed to be arbitrary exercise on behalf of the Commission. There is no infirmity in their decision as the petitioner does not fulfill the minimum requirement of experience before he could be considered for appointment on the post. This writ application, therefore, has no merit. It is dismissed.