

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1971 of 2021

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Mamta Kumari D/o Banarasi Praad Gupta R/o Qr. No.C-18, Jagannath, Bhawan, Professors Colony, P.O. Gannipur, P.S. Kazi Mohammadpur, Dist-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Department of Education, Government of Education, Government of Bihar Vikash Bhawan, New Secretariat, Patna.
2. The Additional Chief Secretary, Department of Education Government of Bihar Vikash Bhawan, New Secretary, Patna.
3. The Chairman, Bihar Public Service Commission, through the Chairman, BPSC, Jawaharlal Nehru Marg (Baily Road) Patna
4. The Chairman, PSC, Jawaharlal Nehru Marg (Baily Road) Patna
5. Joint Secretary-Cum-Examination Controller Bihar Public Service Commission Jawaharlal Nehru Marg (Baily Road) Patna
6. The National Council for Teachers Education through Regional Director, Eastern Regional Committee, Bhuvaneshwar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Brisketu Sharan Pandey, Adv.
For the Respondent/s	:	Mr. Lalit Kishore (Ag)
For BPSC	:	Mr. Sanjay Pandey, Adv.
		Mr. Nishant Kumar Jha, Adv.
For NCTE	:	Mr. Sunil Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 20-08-2024

Heard learned counsel for the petitioner and learned
counsels for the respondents.

2. By filing the present writ application, the petitioner has
prayed for the following reliefs:

*I) For issuance of a writ/writs, order/orders
and thereby issuing writ of certiorari and
thereby quashing result dated 04.07.2020
(issued by the Respondent Commission) to the
extent the candidature of the petitioner has*



been cancelled and her qualification has not been considered to be in the terms of the advertisement.

II) For issuance of a writ of Mandamus directing the concerned respondents to consider the candidature of the petitioner and declare her result after treating her qualification to be a valid qualification in terms with the advertisement.

III) For declaring the petitioner as a successful candidate for the purpose of recruitments of Lecturer (Physical Education) to the Government Teachers Training College in terms of Advertisement No. 03/2016 dated 03.05.2016

IV) For issuance of a writ/writs, order/orders including the writ of mandamus and thereby directing the respondents to modify the results dated 04.07.2020 to the extent to include the name of the petitioner in the name of the successful candidates.

V) For issuance of a writ/writs, order/orders including the writ of certiorari and thereby quashing the letters dated 26.06.2020 (after directing the respondents to bring on record the same) issued by the Education Department whereby and whereunder the qualifications of the petitioner i.e. MA(P.Ed) were not considered equivalent to the degree of M.P. Ed.



VI) For issuance of an writ/writs, order/orders including the writ of mandamus and thereby giving consequential directions to the respondents to consider the petitioner at par with other successful candidates and issue appointment letter and all the other consequential benefits.

VII) For holding that the petitioner has the requisite qualification to be appointed on the post of Lecturer (Physical Education) to the Government Teachers Training College in terms of Advertisement No. 03/2016 dated 03.05.2016

VIII) For holding that the Respondents erred in rejecting the candidature of the petitioner on the grounds that the petitioner holds a degree of MA (P.Ed) and not the degree of M.P.Ed.

IX) For holding that once the eligibility of the petitioner was considered on the basis of a set of facts and materials, then it cannot be rejected afterwards.

X) For holding that the respondents cannot keep the requirement of the degree of MP.Ed as mandatory requirement ignoring the fact that the degree is not offered in any institution in the State of Bihar.

XI) For issuance of any other order/orders which may deem fit under the facts and circumstances of the case.



3. The fact of the case, in brief, is that the respondent Commission vide Advertisement No. 03/2016 dated 03.05.2016 invited application for selection to the 26 post of lecturers for subject in Physical Education at various Training Colleges in Bihar. Petitioner being eligible had offered her candidature for the post of Lecturer (Physical Education) to the Government Teachers Training College in terms of the aforesaid advertisement. As the petitioner was fulfilling all the eligibility criteria as required, her candidature was accepted and she was allowed to participate in the selection process. A list of eligible candidates to participate in the recruitment process was issued. The name of the petitioner was appearing in the aforesaid list at Sl. No. 45 and she was allotted Roll No. 300045.

4. The selection process comprised of objective test, which was conducted on 26.08.2018. The petitioner participated in the same and got successful in the written examination, which is also evident from Annexure-P/3. Thereafter, she was asked to appear on 23.06.2020 for document verification and Interview. Her document(s) and certificate demonstrating her qualification and eligibility were found in order and she was allowed to participate in the interview.

5. The final result against Advertisement No. 03/2016 was



published on 04.07.2020, in which 26 candidates have been declared successful, but the roll number of the petitioner did not appear in the list of successful candidates. Her Roll No. 300045 has illegally been kept out of final result by cancelling her candidature in terms of Education Department, Bihar Letter No. 164 dated 26.06.2020, according to which her MA(P.ED.) degree, has not been construed to be in terms of the prescribed qualification in the Advertisement No. 03/2016.

6. Learned counsel for the petitioner submits that the petitioner has a qualification of M.A. (Physical Education), which is a degree approved by the UGC, but she has been denied selection and her candidature has been cancelled solely on the ground that she does not possess the qualification of M.P.Ed.

7. It is further submitted that in the whole of Bihar, there is no such institution imparting such qualification (M.P.Ed) in terms of the abovementioned advertisement published by the Respondents.

8. It is further submitted that in the case of ***Santosh Dagar v. Govt. Of N.C.T. Of Delhi & Others*** in Civil Writ **Petition No. 6208/2003**, the Hon'ble Delhi High Court has observed based on evidences that the nomenclature of M.A.



(P.ED) has been changed to M.P.Ed. and it is in fact equivalent to each other.

9. In the case of ***Parvaiz Ahmad Parry vs. State of Jammu and Kashmir and ors. (2015)17 SCC 709***, the Hon'ble Supreme Court has rightly held that:

"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."

10. Recently, the Hon'ble Supreme Court in **Civil Appeal No. 2850 of 2020 (*Anand Yadav and Ors. Vs. The State of Uttar Pradesh & Ors.*)** in judgment dated 12.10.2020 has held that the qualification of M.A. (Education) and M.Ed. are equivalent and can be accepted as valid qualification when either of the aforesaid qualifications are prescribed as eligibility in advertisement.

11. Learned counsel for the petitioner further submits that the petitioner was the only female candidate in her category (Backward Class), who was in the zone of selection for the



required post and she has the qualification for the required post. The qualification of the petitioner is a valid qualification of MA(Physical Education) issued by the recognized University, which is recognized by the UGC. The concerned qualification is also recognized by NCTE and as such the same is recognized qualification in terms of NCTE circulars for appointment as Physical Training Lecturers.

12. The petitioner has also represented her matter before the respondent Authority by way of written representation for redressal of her grievance, but no action was taken till date.

13. Learned counsel for the BPSC has filed counter affidavit and supplementary counter affidavit in the present case stating therein that the candidature of the petitioner was rejected due to the fact that her degree, i.e., Master of Arts (Physical Education) from the Global Open University, Nagaland is not in terms with the eligibility criteria mentioned in the Advertisement No. 03/2016. The required essential qualification for the said post was Master Degree (M.P.Ed.) in Physical Education with minimum 55% marks according to the requisition of the Department of Education and as published in the said Advertisement. There is no mention in the said Advertisement that the candidate may have the degree



equivalent of M.P.Ed. is eligible. The Education Department, Govt. of Bihar vide its letter no. 164 dated 26.06.2020 (Annexure-D of counter affidavit) made it clear that the degree of the petitioner, i.e., Master of Arts (Physical Education) from Global Open University, Nagaland is not in accordance with the eligibility criteria mentioned in the Advertisement and regarding degree equivalence, there is no provision in the said Advertisement. Therefore, the Commission has rightly cancelled the candidature of the petitioner.

14. Learned counsel for respondent no.2 has filed a counter-affidavit stating therein that the Education Department, Government of Bihar examined the matter in details, which includes examination of syllabus prescribed by the NCTE and the syllabus of the concerned universities and informed BPSC vide letter no.164 dated 26.06.2020 that the qualification of the petitioner is not as per the qualification required in the advertisement and there is no mention of equivalence of degrees in the advertisement.

15. Learned counsel for respondent no. 6 has also filed a counter-affidavit stating therein that the petitioner's qualification of M.A.(P.Ed.) is not as per the advertisement qualification of M.P.Ed. It is further stated that neither there is



any provision in NCTE Act, Rules and Regulations to determine the equivalence of any course/programme with a Teacher Education Programme stipulated under the NCTE Regulations nor there is any documents in this regard.

16. Per contra, learned counsel for the petitioner has filed rejoinder to the counter-affidavits filed on behalf of the BPSC and respondent no.2 stating therein that the case of the petitioner is similar/squarely covered with the **Civil Appeal No. 2850 of 2020** filed before the Apex Court. The Apex court in Civil Appeal No. 2850 of 2020 has decided on similar matter. The issue involved in the aforesaid civil appeal was whether Master in Arts (Education) and Master in Education is equivalent or not. The Apex Court has held in the aforesaid civil appeal that both the degree are same. Operative part of the judgment dated 12.10.2020 are as under:

“36. We may note that, sometimes, without looking into the real ratio decidendi, a judgment is followed as a precedent. This is what appears to have happened in the impugned order. There are even some other judgments of the High Courts, which in turn were then sought to be relied upon to canvas a proposition that there is a widespread acceptance of M.Ed. not



being equivalent to M.A. (Education). That they are two different degrees is obvious; this is even recognised by the NCTE while emphasising the subtle distinction between the two degrees as one being a master's degree but not a professional degree, while the other being a professional degree. If the two degrees are identical, there is no question of equivalence. The issue of equivalence only arises when there are two different degrees and what is to be decided whether for certain purposes they can be treated as equivalent. This is exactly what has happened as a result of the respective expert committees set up by respondent Nos. 2 & 5. The employer, i.e., respondent No. 2, had accepted the recommendation of the expert committee. The UGC has also taken a stand that insofar as the two degrees are concerned, both are post graduate degrees, and the equivalence authority being respondent No.5 has also opined on the basis of an expert committee, that the two can be treated as equivalent for the post of Assistant Professor in Education. Thus, it is neither for the contesting party i.e.,



respondent No.3, nor for this Court to sit as a court of appeal over the decision of the experts. We may also note that respondent No.3 has in fact been selected in the 2014 selection process as per the final list released on 22.5.2018,

37. We are. thus, of the view that the impugned judgment is not sustainable and has to be set aside and the challenge to the corrigendum dated 11.07.2016 is repelled. The result having already been computed and awaiting declaration should now be declared forthwith so that persons looking for employment, as per the requisite eligibility criteria, can be employed, and so that the students have the benefit of education from the persons so employed."

17. Having heard the submissions advanced on behalf of the parties and on perusal of record, it appears that the candidature of the petitioner was rejected due to the fact that her degree, i.e., Master of Arts (Physical Education) from the Global Open University, Nagaland is not in terms with the eligibility criteria mentioned in the Advertisement No. 03/2016. The required essential qualification for the said post was Master



Degree (M.P.Ed.) in Physical Education with minimum 55% marks according to the requisition of the Department of Education and as published in the said Advertisement and there is no mention in the said Advertisement that the candidate may have the degree equivalent to M.P.Ed. to be eligible.

18. In such view of the matter, I am of the considered opinion that the judgment of the Apex Court passed in *Anand Yadav and Ors V/s. State of Uttar Pradesh and Ors. (supra)*, upon which the learned counsel for the petitioner has relied, is not applicable in the present case at hand, as the selection process is over and no any expert committee submitted its report that Master of Arts (Physical Education) is equivalent to Master in Physical Education (M.P.Ed.).

19. In the aforesaid background, I do not find any merit in the present writ application. Accordingly, this writ application stands dismissed.

(Anjani Kumar Sharan, J)

divyanshi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2024
Transmission Date	NA

