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Adv No  
25/97  
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CWJC Nos. 1504 of 2002, 2388, 2389 of 2000  
2302 and 8801 of 2001

In the matter of applications under Article  
226 of the Constitution of India

Mamta Kumari & anr. .... Petitioners  
(In CWJC No. 1504/2002)  
Umesh Pandey .... Petitioner  
(In CWJC No. 2388/2000)  
Smt. Mamta Kumar .... Petitioner  
(In CWJC No. 2389/2000)  
Dilip Kr. Choudhary .... Petitioner  
(In CWJC No. 2302/2001)  
Janardan Pd. Mahto & anr... Petitioners  
(In CWJC No. 8801/2001)

Versus

The State of Bihar & ors.... Respondents.

For petitioners : M/S Ganesh Pd. Singh &  
Sunil Kumar Singh  
(In CWJC 2389/2000, 2388 & 1504  
of 2002)  
: M/S (Dr.) S.N.Jha, Satyendra Kr.Jha,  
Asim Jha (In CWJC 8801/2001)  
: M/S Uday Bhanu Roy & Anant Kumar  
(In CWJC No. 2302/2001)

For State : Mr. Sunjay Singh, SC 9

For the BPSC : M/S Rajendra Prasad Singh,  
Rajeev Kr. Singh,  
(In CWJC 2389/2000, 8801/2001,  
2388 & 1504 of 2002)  
: M/S D.K.Sinha & Anil Kumar Singh No.  
(In CWJC No. 2302/2001)

For Private Resp. : Mr. Ganesh Pd. Singh  
(In CWJC No. 8801/2001)  
: M/S (Dr.) S.N.Jha, Asim Jha &  
Satyendra kr. Jha  
(In CWJC Nos. 2389/2000 & 1504/2002)  
: M/S K.D.Singh & L.B. Singh  
(In CWJC No. 2388/2002)  
: Mr. Rajnikant Jha  
(In CWJC No. 2302/2001)

P R E S E N T

THE HON'BLE MR. JUSTICE SACHCHIDANAND JHA

S.N.Jha, J.

These writ petitions are off-shoots of  
CWJC No. 9555 of 1998 (Vijay Prasad and another  
Vs. State of Bihar) and analogous cases. The  
dispute relates to appointment of lecturers in

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Government Polytechnics and Mining Institutes under the Science and Technology Department of the Government of Bihar.

2. Before setting out the factual background it may briefly be mentioned that CWJC No. 9555 of 1998 and analogous cases were filed for quashing the final result of selection for the post of lecturer in Government Polytechnics and Mining Institutes in the State of Bihar. By judgement and order dated 14.12.99 this Court held that selection of part-time lecturers who did not appear or pass the written (screening) test was not in accordance with law and accordingly asked the Bihar Public Service Commission to delete the names of such part time lecturers from the merit list/panel - to be replaced by candidates in order of merit. Pursuant to the said order, on 23.2.2000 the impugned result dated 17.8.99 was cancelled in part and a fresh result was published. CWJC No. 2388/2000 by Umesh Pandey, CWJC No. 2389/2000 by Mamta Kumari and CWJC No. 2302 by Dilip Kumar Choudhary are directed against the said result/notice dated 23.2.2000. Mamta Kumari and Umesh Pandey meanwhile had also filed LPA No. 476/2000 against the judgement and order dated 14.12.99 in CWJC No. 9555/98 and analogous. On 13.11.2001 the LPA was disposed of with an observation that they could file a fresh writ petition or a petition for review of the judgement. Accordingly they filed CWJC No. 1504/2002. In the

meantime the successful candidates vide result/notice dated 23.2.2000 (supra) also approached this Court in CWJC No. 8801/2001 seeking direction for their appointment on the basis of the revised result. All these cases involving the same dispute were made analogous and taken up for hearing together. CWJC No. 1504/2000 was argued as the leading case.

3. At this stage the background in which the dispute has arisen may briefly be stated as follows. In November, 1990 the Bihar Public Service Commission (in short the Commission) published an advertisement, being Advt. No. 75/90 for appointment of lecturers in civil Engineering in the Government Polytechnics and Mining Institutes. In terms of the advertisement, the candidates were required to possess First Class Graduate Degree in the subject and a 'pass' at the GATE or equivalent examination. It was made clear that depending on the number of applications the Commission could hold screening test for selecting candidates for the interview. On 28.8.94 a corrigendum was published deleting the requirement of passing the GATE or equivalent examination. On 28.7.95 another advertisement being Advt. No. 32/95 was published for appointment of lecturers in Physics in the Polytechnics and Mining Institutes. In the meantime, writ petitions had been filed on behalf of part-time lecturers working in the Polytechnics, being CWJC No. 6751/91 and

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analogous, challenging proposed recruitment of lecturers and seeking regularisation of their services, and other reliefs. The petitions were dismissed on 28.6.95. While negating the claim of the part time lecturers for their regularisation as full time lecturers and payment of emoluments on 'equal pay for equal work' basis, this Court directed the respondents to immediately take steps to fill up the sanctioned posts within six months. The unsuccessful candidates moved the Supreme Court in SLP (civil) No. 20904/95 and analogous. On 19.2.96 the Supreme Court declined to interfere with the judgement and order of this Court but gave certain concession to them. I shall refer to the said order of the Supreme Court later in this judgement. Continuing with the narration of events, on 17.10.97 the Commission notified its decision to hold screening test as number of candidates was far in excess of the available vacancies. As per the notified programme, screening test was held on 9.11.97 and result thereof was published on 8.1.98. On 12.1.98 the successful candidates were issued call letters for interview on 22.1.98. However, the proposed interview was postponed. Instead, on 22.2.98 a corrigendum was published allowing the part-time lecturers working in different Polytechnics to submit their applications for appointment on the post of lecturer in subjects advertised by Advt. Nos. 75/90, 10/95, 32/95 and 38/95. The

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corrigendum stated that this was being done in the light of the order of the Supreme Court dated 19.2.96 in SLP (C) No. 20904/95. On receipt of applications pursuant to the said corrigendum, the Commission issued fresh interview letters. Those who submitted fresh applications pursuant to the corrigendum and were also successful in the screening test were issued two interview letters bearing two different roll numbers with respect to the interview on different dates - one on the basis of screening test and the other on the basis of experience as part time lecturers. After completing the process of interview, on 12.10.98 the Commission published the final result giving rise to CWJC No. 9555/98 and analogous cases referred to above.

4. The main contention of the petitioners in those cases was that candidates who had failed in the written/screening test could not be selected, for screening test was part of the selection process and having failed at such test they could not be selected on the basis of only interview. The Commission took the stand that the screening test was not a part of selection process, which really began after the screening. Further, in terms of the order of the Supreme Court, the part-time lecturers were entitled to participate in the recruitment process and have their cases considered on the basis of only work experience as part-time lecturers. Thus the fact that some of

them did not appear or pass the screening test was immaterial and the Commission therefore did not commit any error in selecting them on the basis of interview alone.

5. The stand of the Commission was rejected by this Court. The Court held that 'recruitment' is a comprehensive term - beginning with the making of advertisement and culminating in actual appointment of successful candidates. The Court noticed that as a matter of fact, in the very first advertisement it had been made clear that depending on the number of candidates vis-a-vis the vacancies, the Commission would be at liberty to hold screening test for selecting the candidates for interview. As regards the stand of the Commission that selection process began after the screening was over, the Court observed that holding preliminary test for the purpose of shortlisting the candidates for the final test is permissible in law, and if the Commission's stand were to be accepted, "it would amount to not considering the cases of such candidates who were not called for the main test - which could be written and oral or only oral, as in the present case - vitiating the entire recruitment process". The Court thus held that holding of screening test has to be considered as part of the recruitment process. This Court then referred to the order of the Supreme Court dated 19.2.96 and observed that certain concessions, namely, relaxation of age bar and

weightage on the basis of work experience were allowed to part-time lecturers but without interfering with the judgement of this Court or pending selection process. Thus, in terms of the Supreme Court's order, part-time lecturers could claim the benefit of their past experience but the requirement to appear at the test was not dispensed with. Such of the candidates who did not appear at the written/screening test or having appeared failed thereat, could not be selected for appointment.

5. While issuing the direction to delete the names of such part time lecturers who did not appear or pass the written/screening test, the Court observed that it was conscious of the fact that the finding was likely to visit the concerned part-time lecturers with adverse consequences, and accordingly clarified that if as a result of such finding, the selection/recommendation of any part time lecturers is to be withdrawn, the Commission would be well advised to give notice to them before taking such action. It may be mentioned here that the Commission at the first instance cancelled the result of the concerned part-time lecturers against which one of them, Mandira Chatterjee moved the Jharkhand High Court in CWJC No. 1993/2000(R) which was allowed on the ground that result had been cancelled without opportunity of hearing. The Commission thereafter gave notice to the concerned persons and

cancelled the result vide notice dated 23.2.2000 giving rise to CWJC nos. 2388/2000, 2389/2000 and 2302/2001, as indicated above. While the first two cases relate to physics subject, the third one relates to Civil Engineering.

6. Shri Ganesh Prasad Singh, learned counsel for the petitioners in CWJC Nos. 1504/2002 and 2389/2000 (hereinafter referred to as review petitioners for the sake of convenience) fairly stated that he would not question correctness of the finding recorded in the impugned judgement in CWJC No. 9555/98 and analogous to the effect that the written/screening test was part of the selection process. He however, submitted that no written/screening test was required in the case of part time lecturers as the number of applicants was very small. As a matter of fact, subjecting the part-time lecturers to the same test as to general candidates from open market would amount to putting them to a position of disadvantage as it would be unreasonable to treat them at par in the matter of selection for appointment on a particular post. According to the counsel they constitute a different class and treating two dis-similar groups at par would amount to discrimination and violation of Article 14 of the Constitution. Reliance was placed on State of Bihar Vs. Bihar Rajya Sahkari Prabandhak Seva Sangh (1998) 3 SCC 218. On the point of reasonable classification reference was ~~also~~ made to In Re the Special Courts Bill, 1978,



AIR 1979 SC 478, Reserve Bank of India Vs. C.N.Sahasranaman, AIR 1986 SC 1830, and Venkateshwara Theatre V. State of Andhra Pradesh, AIR 1993 SC 1947. Counsel also submitted that selection is permissible on the basis of interview alone. There being no mandate of any law with respect to selection for the post of lecturer in Polytechnics that such selection should be made on the basis of written test also, if the Commission in its wisdom decided to call the part time lecturers who were only 27 in number, for interview, the action of the Commission cannot be said to be arbitrary. Nor the decision could be challenged except on grounds of bias or mala fide. It was also submitted that the written/screening test held on 9.11.97 lost its relevance after the Commission issued call letters to part time lecturers for their selection on the basis of the interview. In any view the petitioners of CWJC No. 9555/98 and analogous never objected to participation of part time lecturers at the interview and they could not therefore be permitted to challenge the method after being declared unsuccessful. Reliance in this regard was placed on Union of India Vs. N.Chandrasekharan, (1998) 3 SCC 694.

7. On behalf of the successful candidates <sup>under</sup> result dated 23.2.2000 being petitioners in CWJC No. 8801/2001 and respondents in CWJC No. 1504/2002, Dr. Sada Nand Jha

submitted that by reason of the order of the Supreme Court dated 19.2.96 (supra) the part-time lecturers were obliged to appear at the selection test. The finding of this Court in the connected cases that the written/screening test was part of the selection process not challenged in the present proceeding, such of the part-time lecturers who did not appear, or having appeared failed, at the written/screening test, have no case to plead. It was submitted that CWJC No. 1504/2002 is basically for review of the earlier judgement but there being no error in the judgement, the same does not warrant any correction or modification. As regards non-impleadment of the concerned part-time lecturers in the earlier cases, it was submitted that the cases were not filed against individual selectees; they were filed challenging the methodology of selection. It was open to this Court to record finding on the point and ask the Commission to take follow up steps. Reliance was placed on the observations in para 36 of the judgement in A. Janardhana Vs. Union of India (1983) 3 SCC 301 = AIR 1983 SC 769.

8. Before considering the merit of the submissions of the counsel for the parties, it would be apt to quote, in extenso, the order of the Supreme Court dated 19.2.96 in SLP(Civil) No. 20904/94 and analogous which reads as under :-

" We have heard the learned senior counsel appearing for the petitioners as well as Shri B.B.Singh, the learned

counsel appearing for the State. We do not find any ground to interfere with the impugned judgements of the High Court in so far it holds that the petitioners cannot seek regularisation on the post of lecturers held by them but the petitioners can appear at the stage of regular selection for appointment on the said posts. While upholding the said direction of the High Court, we however, direct that if any of such persons is found to have crossed the maximum age prescribed for such regular selection, the State Govt. and the Bihar Public Service Commission shall make one time relaxation in favour of such person so as to enable him to be considered for such selection. It is also directed that while making such selection, the concerned authority may take into account the experience as part time lecturers of the persons who applies for such consideration. The SLPs. are disposed of accordingly."

(emphasis added)

9. It may be recalled that the SLPs. had arisen from judgement and order of this Court by which the claim of part-time lecturers for regularisation of their services had been rejected with a direction to the respondents to immediately take steps to fill up the sanctioned post within a period of six months. The import of the order of the Supreme Court has to be appreciated in the context of the said judgement of this Court.

10. From a plain reading of the Supreme Court's order it would appear that it can be broadly divided in two parts. In the first part, referring to the impugned judgement of this Court, the Supreme Court observed that it did not find any ground to interfere with the judgement "in so far as it holds that the petitioners cannot seek

regularisation on the post of lecturers but the petitioners can appear at the stage of regular selection". In the second part, while upholding the said direction the Supreme Court directed the concerned authority to give one time age relaxation in favour of such persons who had crossed the maximum age limit and, further, to take into account their experience as part time lecturers. What I wish to convey is that this Court had already permitted the petitioners i.e. part-time lecturers to appear at the stage of regular selection. What the Supreme Court did was, firstly, that such of the part-time lecturers who had already crossed upper age limit were allowed one time age relaxation so that they could be considered for selection, and, secondly, that their work experience was to be 'taken into consideration'. However, these benefits were available only to those who appeared at the 'regular selection'. It is to be noticed that the order first refers to "regular selection" for appointment on the post of lecturer - while referring to the judgement of this Court, and then mentions the words "such regular selection" or "such selection" or "such consideration" at least four times as if to emphasise and clarify that the benefit of age relaxation or the work experience was to be allowed to only those who appeared at the regular selection. It is to be kept in mind that the selection process was already underway and it

cannot be said that depending on the number of candidates, written/screening test was likely to be held for shortlisting of candidates for the purpose of interview. It is relevant to mention here that the corrigendum dated 22.2.98 permitting part-time lecturers to submit applications in the light of the above said order of the Supreme Court also clearly mentioned that other conditions would remain the same as in the main advertisement.

11. It is no doubt true that in the absence of any rule or circular etc. selection for a post can be made on the basis of interview alone and therefore, theoretically, it was permissible for the Commission to make selection on the basis of interview alone. However, the Commission did hold a written/screening test for shortlisting of the candidates which was held by this Court as part of the selection process. I have already referred to the relevant findings recorded in the earlier judgement and it is not necessary to mention them again for the simple reason that correctness of the finding has not been challenged on behalf of the review petitioners, as noted above. If this written/screening test was part of selection process, a question would arise as to whether there could be two modes of selection. As seen above, the Supreme Court merely gave part time lecturers certain concessions but those concessions could be availed of only if they appeared at the 'regular selection'. While the process of regular selection

was underway. they could not be allowed to gatecrash into the process and make to the final without successfully completing the preliminary. As observed in the earlier judgement, after the Supreme Court passed the order dated 19.2.96, the Commission should have acted promptly and issued the corrigendum which was eventually issued on 22.2.98, prior to publishing the programme of the written/screening test on 17.1.97. If the Supreme Court did not interfere with the pending selection process, and merely allowed the part-time lecturers certain advantages or concessions at the stage of 'regular Selection', I have grave doubts if selection could be made of such part-time lecturers who did not appear at the written/ screening test or had appeared but failed. It is relevant to mention here that out of two petitioners in CWJC No. 1504/2002, petitioner no. 1 Mamta Kumari did not appear at the written/screening test while petitioner no. 2 Umesh Pandey appeared but failed.

12. It was submitted on behalf of the petitioners that weightage can be given to candidates in different forms and the Commission was obliged to indicate as to how and in what form 'weightage' was given to the part-time lecturers as per direction of the Supreme Court. The submission appears to be attractive but cannot be accepted, once it is held that the written/screening test was part of selection process and thus, those who either did not appear or having appeared failed at

such test could not be selected. The question of "taking into account" - to use the exact words of the Supreme Court - of the work experience could arise only if the concerned petitioners had successfully competed at the written/screening test.

13. Heavy reliance was placed on State of Bihar Vs. Bihar Rajya Sahkarita Prabandhak Seva Sangh (supra). That was a case of absorption of Paid Managers in the Co-operative Department. Their claim was that they were appointed in the year 1973 and similarly situated persons had been absorbed pursuant to Court's orders. By an interim order the Supreme Court made certain suggestions and the State Government was directed to give its response. The State Government communicated its acceptance of the suggestions. Disposing of the case the Supreme Court directed that certain posts may be set apart for being filled up by the respondents i.e. Paid Managers for whom separate recruitment test/examination may be held. In this connection the Court observed that they cannot be asked to take the same examination meant for fresh candidates for entering the government service. The Court directed that question paper(s) for the eligible respondents must be prepared bearing in mind the conditions of the respondents such as age, past service etc. After taking such examination the eligible respondents may be absorbed subject to

reasonable conditions as to their past service, seniority and pension.

14. It would thus appear that the observations were made in a different context. Nevertheless, even de hors to the context, there cannot be two opinions that it would be unreasonable and arbitrary to subject those who are in service for several years to the same recruitment test as is meant for the 'freshers'. However, it is to be noted, even in the aforesaid case, the Supreme Court did not dispense with the requirement of the selection test, the Court merely directed that they be asked different questions bearing in mind their age, past service etc. The decision, therefore, is not of much help to the review petitioners especially in view of the order of the Supreme Court dated 19.2.96 which obliged part time lecturers to appear at the regular selection. Only then they could be given the benefit of their work experience.

15. Another aspect of the case is that in terms of the judgement of this Court the post was to be filled on the basis of regular selection for which steps had already been taken and that is why the Court fixed a period of six months for completing the process. While upholding the judgement the Supreme Court gave certain concessions. Any selection without appearing at the impending written/screening test would virtually amount to regularising the services of



the part time lecturers even though the relief was denied to them by this Court with which the Supreme Court did not interfere.

16. The decisions in Re the Special Courts Bill, 1978, Reserve Bank of India Vs. C.N.Sahasranaman(supra) and Venkateshwara Theatre V. State of Andhra Pradesh(supra) were rendered on the point of reasonable classification. It is true that part time lecturers constitute a different class and therefore it was permissible to give them different treatment. The question for consideration in this case however is whether in view of the order of the Supreme Court they can claim any right to exclusive consideration without appearing at the written/screening test held for regular selection. The rights of the review petitioners, if any, emanate from the order of the Supreme Court. They had already lost before this Court. They cannot be allowed any benefit beyond the order of the Supreme Court and they cannot place their case on a higher footing.

17. The submission that having allowed part-time lecturers to appear at the interview, the petitioners of CWJC No. 1555/98 and analogous cases could not later challenge their selection looks attractive at first sight but in the facts and circumstances has no substance. The principle laid down in Union of India Vs. N.Chandrasekharan (Supra) pressed into service on behalf of the review petitioners can be applied

when the selection procedure is made known to the candidates before selection. That was a case of selection on the basis of written test followed by interview by a Departmental Promotion Committee. The candidates were awarded marks for the written test, interview and confidential reports in the ratio of 50, 30 and 20 per cent respectively. This was challenged by the unsuccessful candidates. The Court found that the candidates were made aware of the procedure for promotion before they sat for the written test and appeared before the Committee and accordingly, held that having participated in the selection process, the unsuccessful candidates could not challenge the procedure. In the instant case, there is nothing on the record to show that the candidates who had appeared at the written/screening test knew that selection was proposed to be made only on the basis of interview. The corrigendum merely permitted the part-time lecturers to submit applications, but the fact that two call letters would be issued - including those who had either not appeared at such test or having appeared had failed - could not be known to them. In the circumstances, they were not estopped from challenging the selection of such part-time lecturers who had either not appeared, or having appeared had failed, at the written/screening test. The contention of the counsel for the review petitioners is accordingly rejected.

18. Regarding the contention as to

impleadment of such part-time lecturers in CWJC No. 9555/98 and analogous cases, on behalf of the respondents attention was drawn to observations in the case of A. Janardhana Vs. Union of India and it may be useful to refer to the same (at page 625-26 of SCC) as under:-

"However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual."

What was under challenge in CWJC No. 9555/98 and analogous cases was the action of the Commission as being contrary to the order of the Supreme Court. No relief was sought against individual selectees. No relief was granted against such of the part-time lecturers who had successfully competed at the written/screening test.

19. For reasons stated above, I find myself unable to grant any relief to the review petitioners. CWJC No. 1504/2002 is accordingly dismissed. The result/notice dated 23.2.2000, impugned in CWJC Nos. 2388 and 2389 of 2000 being follow-up of the judgement and order of this Court.

in CWJC No. 9555/98 and analogous cases, must also be dismissed for the same reasons. CWJC No. 8801/2001 however, is allowed. The respondents are directed to give effect to the result published under the notice dated 23.2.2000 within one month of receipt/production of copy of this order.

*Sd/- Sachchidanand Jha, J*

Patna High Court  
Dated 21<sup>st</sup> October 2003  
NAFR/ S.Pandey.

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*Ramesh Kumar Singh*  
For Joint Registrar (J) 24-1-2004  
Patna High Court  
Authorized U/S 76 Act 1 of 1950

*Abhishek*  
*24/11/2004*

*Jr*  
*8/99/9024*