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Adv No - 8/2001

lect - Ayurvedic Medical College

Serial of Order
Date of Order

ORDER WITH SIGNATURE

Office notes as to action
(if any) taken on order.

IN THE HIGH COURT OF JUDICATURE AT PATNA
C.W.J.C. No. 1847 of 2003
Shailendra Kumar Bibhuti & anr Vs. The State of Bihar & Or

For the Petitioner : Mr. Anil Kr. Tiwary, Adv.
For the State : Mr. P.K.Singh, JC to SC-II
For the respondent Commission : Mr. Nresh Dixit, Adv.

2.4.2004.

Heard learned counsel for the parties.

The advertisement No.8 of 2001 for filling the post of Lecturer in Government Ayurvedic Medical College was issued. According to the said advertisement seven posts were to be filled in the curriculum of Anatomy. Two posts were reserved for Scheduled Caste, one post for Scheduled Tribe, one for Extreme Backward Class, one for Backward Class and two were kept open for general category. In response to the advertisement the petitioners, both of whom belonged to Backward Class submitted their candidature. In stead of declaring the results the Bihar Public Service Commission issued yet another advertisement contained in Annexure-14 inviting candidature of the competent persons for the very same post. The same reservations was also shown in the said advertisement.

The petitioners being aggrieved by the conduct of BPSO have come to this Court inter alia submitting that the Commission was not entitled under the law to readvertise the



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		<p style="text-align: center;">2</p> <p>vacancies. According to the petitioners if only few persons have submitted their candidature then the Commission was obliged to consider their candidature, declare their results and if they were found suitable, issue a direction that they passed and was required to submit its recommendations to the State Government in favour of the candidates.</p> <p>Learned counsel for the respondents submits that as against the seven posts only two candidates submitted their candidature, the Public Service Commission thought that it would be in the fitness of the things that the posts are readvertised and again the candidates are ^{again} called for. It is submitted by the counsel for the respondents that the action of the Commission is bonafide and as the petitioners have again applied this Court should not interfere in the matter.</p> <p>The question for consideration is that whether without declaring the results of the candidates who had submitted their candidature in response to the first advertisement or without cancelling the first advertisement could the Commission proceed to readvertise the post? At this stage it would be necessary to note that it is not the say of the Public Service</p>	

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		<p>Commission that the State requested them to cancel the first advertisement and issue the second advertisement. When this Court asked the learned counsel for the State that what is the say of the State Government, learned counsel simply said that the matter is between Public Service Commission and the petitioners.</p> <p>The Public Service Commission has to advertise the post in accordance with the directions of the State Government or any other employer who under the law is required to fill the vacancies through and on the recommendations of the Public Service Commission. If the employer is not aggrieved by submission of the candidature then the authority who has to conduct the examinations can not cancel the examinations nor without cancelling the examinations or advertisement, readvertise the post. In the present matter the State Government did not direct the BPSC to cancel the first advertisement and readvertise the post. Even before the Court they do not say that in the given set of the circumstances the State was not agreeable to the submission of the candidature. The action of the Public Service Commission may be bonafide one but a bonafide act if runs contrary to the law or the legal mandates then the bonafides are not substitute</p>	

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AFR Pawan/-		<p>in place of the legal requirements. The action of the respondents in advertising the seven posts under Annexure-14 is per se illegal. Annexure-14 deserves to and is hereby quashed. The respondent Public Service Commission is hereby directed to consider the cases of the petitioners, declare their results and make the recommendations to the State Government in accordance with law. The Bihar Public Service Commission shall take follow up action within four months from today. It is, however, made clear that the State shall be free to make further request to the Commission for advertising the balance five posts.</p>	Ed. R. S. Garg, J.

CERTIFIED TO BE TRUE PHOTO COPY.

Ramesh Kumar Singh
21-4-2004

Authorised U/S 75 Act 1 of 1978

Masud Khan
21/4/2004

JS

9/2/9/2004