



## BIHAR VIKAS MISSION

(Under Cabinet Secretariat Department, Government of Bihar)

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### Office Order

In the Civil Writ Jurisdiction Case No. 3928 of 2022, it has been ordered by the Hon'ble High Court Patna that – **"The Concerned authority is hereby directed to finalize the provisional list of eligible candidates for the post of Legal officer after due consideration of petitioner's objection. If it is not finalized, the same may be finalized within a period of two months from the date of receipt of this order."**

Objections raised by the petitioner, Shri Abhay Kumar in the above referred Civil Writ petition are as follows:

- **Para 2(i) and Para 12 of the petition** – Not considering the case of the petitioner on the basis of not having the LL.B. degree from any of the National Law Universities of India manifestly demonstrate the highhandedness and arbitrariness on the part of concerned respondent authorities under Bihar Vikas Mission.
- **Para 2(ii) and Para 14 of the petition** – Prescription that the law graduates from National Law Universities of India will be considered against the post of Legal Officer has no nexus with the objects sought to be achieved by the said prescription and this is in direct violation of article 14 of the Constitution of India.
- **Para 2(iii) and Para 13 of the petition** – Not considering the case of the petitioner is arbitrary and irrational and is not founded on the intelligible differentia and it negates the equality clause enshrined in the Constitution of India.
- **Para 2(iv) and Para 17 of the petition** – Not considering the case of the petitioner for interview shows the non-application of mind by the respondent authorities while prescribing the essential qualification clause under the advertisement that only a law graduate from National Law Universities of India could apply for the post of Legal Officer which shows absence of any reasoning by the concerned respondent authorities.
- **Para 2(v) and Para 18 of the petition** – that equality of rights is one of the fundamental pillars on which edifice of rule of law rests and as such, the concerned respondent authorities have to be fair by prescribing any qualification or rule which culminates into class legislation.

In compliance of the above mentioned order of Hon'ble High Court Patna, objections of the petitioner has been minutely examined. Relevant facts related to the matter and a point-wise response and clarification to the objection raised by the petitioner are as follows:

1. That as per the Rules and Regulation of Bihar Vikas Mission as stated in its Memorandum of Association mandates that for the Implementation of programmes

of Bihar Vikas Mission in mission mode and achievements of targets in stipulated time frame, the departments and field formations will require the services of specialised units to provide assistance in programme management, technical assistance, monitoring mechanism, process simplification and implementation as well as innovative solutions. For this a Project Management Unit will be established in the Mission. Services of domain experts, professionals and other personnel will be taken in this Project Management Unit.

2. From the above mandate provided in Memorandum of Association of Bihar Vikas Mission, it is clear that the BVM is involved in specialized recruitment of experts and professionals as per the specific requirements of the Mission and for assistance of various Departments and Districts under Government of Bihar and as such the Mission has accordingly finalized the Job Descriptions including the eligibility criteria as best suited for its requirements. It is unambiguously clear from above facts that the recruitment being done by BVM is not of routine nature.
3. Bihar Vikas Mission had selected an agency to design and implement organisation structure and HR processes required to achieve the stated goals and objectives of the Bihar Vikas Mission. Job Description along with the qualification and experience required for all the positions of Bihar Vikas Mission including that of Legal Officer has been designed by globally reputed Human Resource Consultancy Agency Hay Group, which was selected through prescribed process and the Job Description is duly approved by the Executive Committee and Governing Body of Bihar Vikas Mission in its meetings.
4. It is pertinent to mention that Bihar Vikas Mission has empanelled professional hiring agencies through prescribed process for conducting the recruitment for its various positions. Positions are awarded to empanelled agencies on the basis of lowest financial quotation. The authorized hiring agency then widely publicizes the positions in leading national and local dailies and on online job portals as well as sources candidates through head hunting in accordance with the terms and conditions of its agreement with the Mission. Job Description and Marking Criteria for the positions are provided to the agency by BVM and same is published by the agency on its online portal. The agency then invites applications and is required to screen candidates as per the criteria laid down in Job Description and Marking Scheme. In the present case also, the agency has screened applications adhering to the guidelines laid down in Job Description for the position. Many candidates have been found qualified on the same criteria as evident from the list of provisionally eligible candidates published by the hiring agency.
5. It is further clarified that as per the recruitment process of Bihar Vikas Mission, the hiring agency scrutinizes all applications received from candidates on the parameters as defined in the Job Description and Marking Criteria for the position. The candidates who meet the specified essential criteria are listed in the "Provisional list of eligible candidates" whereas the candidates who do not meet the specified essential criteria are listed as "Ineligible candidates". The hiring agency then invites grievance from applicants and after redressal of grievances publishes "Initial List of shortlisted candidates". From the "Initial List of Shortlisted Candidates", candidates in requisite ratio (minimum 1:3) are further checked by the professionals of Bihar Vikas Mission

and observations are shared with the hiring agency. After redressal of observation shared by BVM, final list of candidates recommended for interview is finalized by the hiring agency.

6. As per the above-mentioned process, it is clear that the provisional list of eligible candidate and list of ineligible candidates is published by the agency only after completing scrutiny and evaluation of applications on required parameters. Since the petitioner Shri Abhay Kumar did not meet the essential educational qualification, therefore his candidature was rejected by the hiring agency and was not included in the provisional list of eligible candidates. The petitioner also availed the opportunity of raising grievance provided by the hiring agency after publication of the provisional list of eligible candidate and list of ineligible candidates. In response to the grievance raised by the petitioner, the hiring agency has clarified that – “As per required qualification criteria from Bihar Vikas Mission, LL.B. from any national law university of India is mandatory. Hence grievance rejected”. From the above mentioned facts it is evident that candidature of the candidate has been finally rejected following the due process and there is no scope of consideration of his candidature as an eligible candidate. Also after redressal of grievances received from candidates on both the lists, the “Initial List of Shortlisted Candidates” has been published by the hiring agency wherein the lists have been finalized in terms of evaluation of eligibility of candidates who have applied for the position.
7. Shri Abhay Kumar, the petitioner, has submitted his application on the online portal of the authorized agency and was very much aware of the terms & conditions laid down in the advertisement but he did not raise any objection during the application process and has chosen to raise objection and file petition before the Hon'ble Court only after his candidature has been rejected by the hiring agency.
  - i. It is a well settled proposition of law that once a candidate has participated in selection process, s/he cannot challenge the methodology or terms & conditions of the selection process or advertisement after he is declared unsuccessful or the candidature is rejected as has been held in various judgments of the Hon'ble Supreme Court of India, notably the judgement of the Hon'ble Supreme Court in Civil Appeal No. 8345-8346 of 2009 disposed of on 13/09/2017.
8. It is worthwhile to mention that the same criteria and procedure for selection of Legal Officer had been followed in the past also whereby in phase-IV of the recruitment process of Bihar Vikas Mission, Legal Officers were selected from LL.B. graduates from prestigious National Law Universities spreading across all over India after taking into account the qualification and experience and their performance in interview. Eligible shortlisted candidates were interviewed by an independent Interview Panel. The interview panel for the position of Legal Officer in Phase-IV was chaired by the Secretary of the Law Department, Government of Bihar and eminent professors from the field of law participated as subject matter expert in the interview panel. The present advertisement has been issued in continuance of earlier selection process just to fill up the residual Five (5) vacancies arising out of attrition. Thus, Bihar Vikas Mission has followed the same mode & manner / norms / terms & conditions in phase-VII of recruitment as already adopted in the phase-IV of the recruitment process. Since

the recruitment for Phase-VII is already under process, therefore there is no scope of incorporating any change in the essential criteria of the Job Description in mid-way.

- i. It is well established in law that the criteria for selection cannot be altered after the process has commenced and has been upheld in various judgements by Hon'ble Supreme Court of India and various other High Courts.
  - ii. In the judgements dated 20-11-2001 pronounced by the Hon'ble Supreme Court of India in Appeal (Civil) 1492 of 2000, it has been noted by the Hon'ble Court that – “It has been repeatedly held by this court that the rules of the game meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.”
  - iii. In the judgement dated 05-12-2020 pronounced by Hon'ble High Court of Madhya Pradesh in Writ Petition 18536-2020, it has been noted by the Hon'ble court that – “In view of the well-established position that it is not for the Court to read into or assume and thereby include certain qualifications which have not been included in the Notification by the employer. Further the rules as referred to by the learned counsel for the respondents is pointed out to be a rule for promotion of officers. That apart, even if the qualification prescribed in the advertisement was contrary to the qualification provided under the recruitment rules, it would have been open for the candidate concerned to challenge the Notification alleging denial of opportunity. On the other hand, having taken note of the specific qualification prescribed in the notification it would not be open for a candidate to assume that the qualification possessed by such candidate is equivalent and thereby seek consideration for appointment nor will it even be open for the employer to change the requirements midstream during the ongoing selection process or accept any qualification other than the one notified since it would amount to denial of opportunity to those who possess the qualification but had not applied as it was not notified.”
9. During the phase-IV recruitment for position of Legal officer, an identical objection had arisen out of query from one of the applicants in which the Mission had sought legal opinion from Learned Senior Advocate-cum-Advocate General, Bihar who had opined that there is no legal infirmity in prescribing such minimum qualification (LL.B. from National Law Universities of India) for requirement on the post of Legal Officer. It was opined by Learned Senior Advocate-cum-Advocate General, Bihar that –

*“It is well settled that it is within the domain of the employer to prescribe the eligibility criteria for recruitment on any particular post. If the employer in the present case Mission, is of the view that Legal Officers should only be from amongst the pass out from the National Law Universities of India, in my opinion, there is no legal impediment for the Mission to prescribe such eligibility criteria. The Patna High Court has held in various decisions that laying down the eligibility criteria is well within the domain of the employer.*

*The application of law of equality is amongst the equals. Prescribing such qualification for recruitment on the post of Legal Officer, in my opinion, can't be said to be discriminatory.”*

10. In response to objections listed under Para 2(i) and Para 12 of the petition, it may be noted that the petitioner has not been considered eligible as the petitioner does not meet the essential qualification as mentioned in the Job Description for the post of Legal Officer.
11. In response to objections listed under Para 2(ii), 2(iii), 2(v), 13, 14 and 18 of the petition, it may be noted that the application of law of equality is amongst the equals. Therefore prescribing such qualification for recruitment on the post of Legal Officer, can't be said to be discriminatory and is not in violation of Article 14 of Constitution of India.
12. In response to objections listed under Para 2(iv) and Para 17 of the petition, it may be noted it is within the domain of the employer to prescribe the eligibility criteria for recruitment on any particular post and that there is no legal impediment for the Bihar Vikas Mission to prescribe such eligibility criteria.
  - i. Prescribing eligibility criteria for a post falls within exclusive domain of the executive / employer has been upheld in various judgements by Hon'ble Supreme Court of India and various other High Courts. The judgements dated 14-09-2012 pronounced by the Hon'ble Supreme Court of India in Civil Appeal No. 6468 of 2012 and the judgement dated 30-01-2017 by Hon'ble High Court Patna in Civil Writ Jurisdiction Case No. 9500 of 2015 are notable in this regard.

In light of the above facts, it is clear that the objections raised by the petitioner, Shri Abhay Kumar are non-tenable and are therefore dismissed.



19/4/2022  
(Sanjay Kumar)

