**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.7459 of 2020**

==========

Rajveer Kumar

... ... Petitioner/s

Versus

The State of Bihar

... ... Respondent/s

==========

with

**Civil Writ Jurisdiction Case No. 4028 of 2020**

==========

Binod Kumar

... ... Petitioner/s

Versus

The State of Bihar

... ... Respondent/s

==========

with

**Civil Writ Jurisdiction Case No. 13391 of 2021**

==========

Nirmal Kumar

... ... Petitioner/s

Versus

The State of Bihar

... ... Respondent/s

==========

with

**Civil Writ Jurisdiction Case No. 15752 of 2021**

==========

Rafique Quraishi

... ... Petitioner/s

Versus

The State of Bihar

... ... Respondent/s

==========

with

**Civil Writ Jurisdiction Case No. 16565 of 2021**

==========

Haidar Ansari

... ... Petitioner/s

Versus

The State of Bihar, through the Principal Secretary,

... ... Respondent/s

==========

**Appearance :**
(In Civil Writ Jurisdiction Case No. 7459 of 2020)
For the Petitioner/s : Mr. Chittaranjan Sinha, Sr. Advocate
For the Respondent/s : Mr. Rohitabh Das, AC to AAG 10
For BELTRON : Mr. Girijish Kumar, Advocate
(In Civil Writ Jurisdiction Case No. 4028 of 2020)
For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
: Mr. Pranav Kumar, Advocate
For the Respondent/s : Mr. P.K.Verma, AAG 3
: Mr. Suman Kumar Jha, AC to AAG 3
(In Civil Writ Jurisdiction Case No. 13391 of 2021)
For the Petitioner/s : Mr. Pranav Kumar, Advocate
For the Respondent/s : Mr. Manish Kumar, GP 4
(In Civil Writ Jurisdiction Case No. 15752 of 2021)
For the Petitioner/s : Mr. Nikhil Kumar Agrawal, Advocate
: Ms. Aditi Hansaria, Advocate
For the Respondent/s : Mr. Manish Kumar, GP 4
(In Civil Writ Jurisdiction Case No. 16565 of 2021)
For the Petitioner/s : Mr. Nikhil Kumar Agrawal, Advocate
: Ms. Aditi Hansaria
For the Respondent/s : Md. N. H. Khan, SC 1

==========

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**
**ORAL JUDGMENT**
**Date : 01-12-2021**

Heard learned counsel for the parties.

2. In the instant petition, respondents have notified to fill up the post of Executive Assistant pursuant to the advertisement dated 06.08.2018.

3. The petitioner restricts present bunch of petition only to Sasaram District. In respect of remaining petitions are concerned, they are other than Sasaram District stand disposed of reserving liberty to the concerned petitioner to file independent petition.

4. Petitioner has prayed for following relief/reliefs:

"(i) For setting aside the order dated 23.12.2019, contained in Memo No. 2341 issued by Bihar Administrative Reforms Mission Society, (General Administration Department) issued under the signature of Special Executive Officer Sri Satish Ranjan Sinha by which a decision has been taken to appoint the empanelled Executive Assistant from the panel which has been made in the various District of Bihar for only a short tenure of three months with a rider that they have to qualify the eligibility test taken by the BELTRON, which is not in consonance with the letter and spirit and the provisions of the advertisement taken out in the various Districts of Bihar including District of Madhubani, Gaya, Sheohar, East Champaran, Madhepura, Mungheyr, West Champaran, Begusarai etc., as well as it is in violation of the directions and the guidelines and recommendations made in Memo No. 436 dated 23.2.2019, issued by the office of Bihar Administrative Reforms Mission Society (General Administration Department) under the signature of the Additional Mission Director Dr. Pratima by which a decision was taken that the contractual appointment of the Executive Assistant by the Bihar Administrative Reforms Mission Society shall be made for 60 years or till the tenure of the scheme comes to end, whichever is earlier, so that there is no necessity of renewing the contract every year and further for allowing the Executive Assistant from the panel made in various districts including in the district of Madhubani by adhering to the terms and conditions of the Advertisement and the other dated 26.02.2019 Contained in Memo No. 436 issued by the General Administrative Department.

(ii) For a direction to the respondents to curb their arbitrary behavior in the matter of appointment/contractual appointment of Executive Assistant in the various District of Bihar whereby from the panel prepared pursuant to the common advertisement in the District of Madhubani, Sasaram, Patna etc., the services of some empanelled Executive Assistant have been taken till they are sixty years old whereas from the same panel other remaining candidates have been taken in service for only three months duration, that to with a rider that they have to qualify the eligibility exam taken by BELTRON which is in violation of the provisions of Article 14 and 16 of the Constitution of India.

(iii) For a direction to the respondent to not to involve BELTRON in the appointment/selection process of Executive Assistant pursuant to 2018 Advertisement taken out by the various District Establishment Branch in the State of Bihar

pursuant to the order passed by Bihar Administrative Reforms Mission Society General Administration Department as there was no whisper of involvement of BELTRON in the whole selection process.

(iv) For a direction to the respondents to abstain from a discriminatory practice of taking the services of some candidates from the same panel till they attain 60 years of age or till the duration of the Scheme and on one hand they take the services of remaining candidates for just three months with a rider they have to qualify the Eligibility exam through BELTRON.

(v) For any other relief/reliefs to which the petitioner may be found entitled to by this Hon'ble Court."

5. Pursuant to advertisement dated 06.08.2018, a panel was prepared on 02.03.2019. Further order of appointment was issued on 22.01.2020. During the intervening period from the date of preparation of panel dated 02.03.2019 and 22.01.2020, the date on which the petitioners were appointed, the official respondent issued a notification dated 23.12.2019 by which such of those persons were appointed on contract basis to the post Executive Assistant were required to pass certain prescribed proficiency test to be conducted by BELTRON. Feeling aggrieved by the prescription of proficiency test to be conducted by BELTRON dated 23.12.2019, the petitioners are presented this petition.

6. Learned counsel for the petitioner vehemently contended that selection and appointment to the post of Executive Assistant on contract basis was required to be adhered in terms of advertisement dated 06.08.2018. Once the panel is prepared on 02.03.2019, the respondent cannot prescribe further qualification

like passing in proficiency test to be conducted by the BELTRON in terms of 23.12.2019. Such additional prescription of qualification for the post of Executive Assistant on contract basis amounts to game changer.

7. *Per contra,* learned counsel for the respondents submitted that respondents have every power to prescribe education qualification before order of appointment was issued. In order to strengthen their status in the post of Executive Assistant proficiency test is required to be passed, therefore, the official respondents have taken a policy decision that such of those persons who were appointed to the post of Executive Assistant on contract basis were required to pass proficiency test to be conducted by BELTRON, therefore, there is no infirmity in the order dated 23.12.2019 in prescription of proficiency test to be conducted by the BELTRON to such of those appointees to the post of Executive Assistant on contract basis in the State.

8. Heard learned counsel for the respective parties.

9. Crux of the matter in the present petition is whether official respondent could add additional qualification for the purpose of selection and appointment to the post of Executive Assistant. Once the advertisement and process of selection was completed with reference to the advertisement dated 06.08.2018

and panel was prepared on 02.03.2019 and further order of appointment was issued on 22.01.2020 insofar as Sasaram District is concerned. No doubt Annexure A1 dated 23.12.2019, the official respondents have prescribed proficiency test for the purpose of appointment to the post of Executive Assistant on contract basis through BELTRON, the same was not reflected in the advertisement dated 06.08.2018. In other words, for the first time, passing of proficiency test to be conducted by BELTRON is incorporated on 23.12.2019 and it has only prospective effect and it has no retrospectivity to such of those recruitment which were held prior to 23.12.2019.

10. In the light of these facts and circumstances, the petitioners have made out a case so as to interfere with Annexure A 1 order dated 23.12.2019. Thus, insofar as petitioners selection and appointment to the post of Executive Assistant pursuant to the advertisement dated 06.08.2018 is concerned, the impugned order dated 23.12.2019, Annexure 1 relating to prescription of proficiency test to be conducted by BELTRON to the post of Executive Assistant on contract basis under the advertisement dated 06.08.2018 is not applicable. The official respondents cannot prescribe passing of proficiency test to be conducted by

BELTRON pursuant to the order dated 23.12.2019 insofar as petitioners are concerned. Accordingly, petition is allowed.

11. At this stage, learned counsel for the State relied on decision passed in CWJC 5823 of 2020 in which the impugned order was not interfered. This Court has not taken note of the fact that advertisement is dated 06.08.2018, panel was prepared on 02.03.2019 and a game changer like adding additional qualification insofar as passing of proficiency test to be conducted by BELTRON is dated 23.12.2019 and has no retrospective effect and it is only executive order. Executive orders would be always prospective in nature.

**(P. B. Bajanthri, J)**

GAURAV S./-

| | |
|---|---|
| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 07.12.2021 |
| **Transmission Date** | NA |