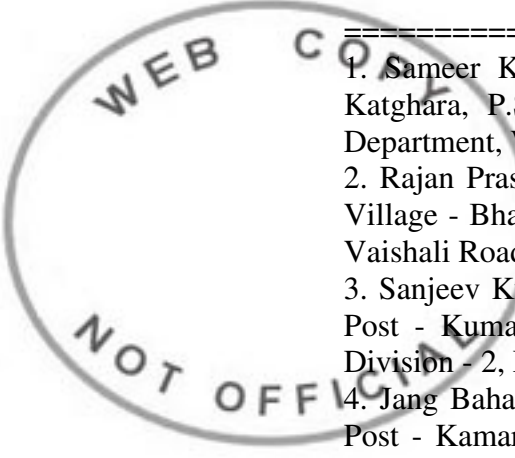


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16304 of 2016

- 
1. Sameer Kumar Singh son of Late Lalji Singh Resident of Village & Post Katghara, P.S. - Shadiabad, District - Ghazipur (UP) posted at Rural Works Department, Work Division, Ara.
 2. Rajan Prasad Choudhary son of Sri Yugeshwar Prasad Choudhary Resident of Village - Bhabhaul, Post - Dihari, P.S. - Pipra (Punpun), District - Patna posted at Vaishali Road Division, Hajipur, Road Construction Dept.
 3. Sanjeev Kumar son of Sri Mahadeo Pd. Yadav Resident of Village - Ramganj, Post - Kumarkhand, P.S. - Kumarkhand, District - Madhepura posted at Work Division - 2, Patna BRPNNL, Road Construction Dept.
 4. Jang Bahadur Singh S/o Late Ramyash Singh Resident of Village - Dhudhani, Post - Kamarpur, PS - Buxar (Muff), Dist - Buxar posted at Work Division - 1, Patna BRPNNL, Road Construction Dept.
 5. Ritesh Kumar son of Sri Pradeep Kumar Singh resident of Village Gosaldih, PS - Suryapura, Distt - Rohtas posted at Work Division - 2, Patna BRPNNL, Road Construction Dept.
 6. Niraj Kumar Singh son of Sri Ramdeo Singh Resident of Village - Bahadura, Post - Reotith, District - Gopalganj posted at Water Resource Dept., Planning & Monitoring Division, Patna.
 7. Abhishek Kumar son of late Sheo Kumar Singh Resident of R. No. - 16, Rajeev Nagar, Post - Kesarinagar, District - Patna posted at Building Construction Dept., South Bihar Circle, Patna.
 8. Sanjay Kumar son of Sri Ramchandra Prasad Resident of Village - Budhram Chak, Post - Pabhera, P.S. - Dhanarua, District - Patna posted at Rural Work Dept. Work Division, Sonapur.
 9. Akhileshwar Prasad son of Sri Bindeshwari Pd. Resident of Village & Post - Ketaki, P.S. - Deo, District - Aurangabad posted at Rural Work Dept. Work Division, Mohaniya.
 10. Devendra Kumar son of Sri Guneshwar Pd. Yadav Resident of Village & Post - Rajpur, P.S. - Pipra, District - Supaul posted at Rural Work Dept. work Division - Dumrao.
 11. Shailendra Kumar son of Sri Bhola Prasad Yadav Resident of Village & Post - Madhura, P.S. - Kishanpur, District - Supaul posted at Rural Work Dept. work Division, Bhabhua.
 12. Rajesh Prasad son of Sri Tarini Pandit Resident Indrapuri, PO - Keshrinagar, District - Patna posted at Rural Work Dept. Work Division, Bhagalpur.
 13. Rajiv Ranjan son of Sri Yogendra Prasad Singh Resident of Shiv Kutti, Budh Vihar Colony, Mahadeo Dal Mill Campus, Sikandarpur, PO - Mirzahat, District - Bhagalpur posted at Rural Work Dept. Work Division, Kahalgaon.
 14. Ranjeet Kumar Mandal son of Late Shital Prasad Mandal Resident of Village - Hanswar & Post - Nawabganj, P.S. - Manihari, District - Katihar, posted at Rural Work Dept. Work Division, Jehanabad.
 15. Radha Raman Singh son of Sri K.M. Singh Resident of Shivradhika Appt. Flat No. - 206, Post Office Road, Shashtrinagar, District - Patna - 24, posted at Rural Work Dept. Work Division, Barsoi.
 16. Sunil Kumar son of Sri Ram Singhasan Choudhary Resident of Village & Post - Kakila, P.S. - Jagdishpur, District - Bhojpur (Ara) posted at Rural Work Dept. Work Division, Katihar.
 17. Dharmendra Kumar son of Sri Ram Subhag Pandit Resident of Vishunpuri,

Anisabad, near Ambedkar Chouk, District - Patna - 2 posted at Saran Division, Chapra Water Resource Dept.

18. Bhola Prasad son of Sri Khaderan Prasad Resident of Village & Post - Daudnagar, District - Aurangabad posted at Water Resource Dept., Quality Control Division.

19. Bivash Kumar Gupta son of Sri Shivendra Pd. Sah Resident of Village & Post - Badluganj, P.S. - Ishipur, Barahat, District - Bhagalpur posted at Water Resource Dept., Ganga Sone Flood Protection Division, Digha.

20. Vivek Shukla S/o Sri Ravindranath Shukla Resident of A - 1/301, Kokil Campus, Road No. - 5C, North S.K. Puri, P.S. - Sri Krishnapuri, Distt. - Patna - 13, posted at P.H.E.D. Patna East, Patna.

21. Abdus Samad Naiyar S/o Late Ali Ahmad Yusufzaie resident of A - 41, Police Colony, P.O. Anisabad, PS - Gardanibagh, Distt - Patna posted at Public Health Engineering Dept. HQ Monitoring & Evaluation.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.

2. The Chief Secretary, Govt. of Bihar, Patna.

3. The Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.

4. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.

5. The Principal Secretary, Minor Water Resources Department, Govt. of Bihar, Patna.

6. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.

7. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.

8. The Principal Secretary, Building Construction Department, Govt. of Bihar, Patna.

9. The Principal Secretary, Planning and Development Department, Govt. of Bihar, Patna.

10. The Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.

11. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.

12. The Principal Secretary, Science and Technology Department, Govt. of Bihar, Patna.

13. The Director, Science and Technology Department, Govt. of Bihar, Patna.

14. The Bihar Public Service Commission through its Chairman, 15, Jawaharlal Nehru Marg, Bailey Road, Patna.

15. The Staff Selection Commission, through its Chairman, Veterinary College, Patna.

.... Respondents

=====

Appearance :

For the Petitioners	:	Mr. Y.V.Giri, Senior Advocate
		Mr. Nikhil Kumar Agrawal, Advocate
For the Respondent State:		Mr. P.N.Shahi, AAG-4
		Mr. Ashish Kumar Lal, AC to AAG-4
For the Respondent BPSC :		Mr. Sanjay Pandey, Advocate
For the Respondent SSC :		Mr. K.K.Upadhyay, Advocate
		Mr. C.B.Das, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 09-11-2016

After a detailed hearing having been given both to the counsel for the petitioners, the State of Bihar as well as the Bihar Public Service Commission, the core issue, which has been urged before the Court, is whether the so-called diploma/degree, which these petitioners have acquired from Institution of Civil Engineers (India), Ludhiana, is equivalent to the degree or qualification awarded by the Institution of Engineers (India).

2. Annexure-9 is the extract of Bihar P.W.D. Code. The relevant provision with regard to appointments is Rule 6, which is reproduced hereinbelow :

“6. A candidate shall.-

- (a) be of an age to be notified by the Government.
- (b) be of good character.
- (c) be of sound health, good physique and active habits and free from organic defects or bodily infirmity, and
- (d) (i) hold a degree in Civil Engineering from an Indian University or a diploma in Civil Engineering from an Indian Engineering College, or
(ii) be an Associate member of the Institution of Engineers; India or have passed Sections ‘A’ and ‘B’ of the Associate membership



Examination of the Institution of Engineers (India) or possesses any other educational qualifications recognized by the Institution of Engineers (India) as being equivalent to a pass in Sections 'A' and 'B' of the Associate membership Examination, or

(iii) hold a University degree or a diploma from a Civil Engineering College of the United Kingdom or be an Associate Member of the Institution of Civil Engineers.”

3. The contention of learned Senior Counsel for the petitioners is that so far as the present petitioners are concerned, there is overbearing material to ensure that they have equivalent qualification as Sections 'A' and 'B' of the Associate membership Examination of the Institution of Civil Engineers (India). There are various communications, which supports such a proposition and if there is a provision for equivalence in the P.W.D. Code itself, then there is obligation upon the State to accept the candidature of these petitioners for promotion.

4. Learned Additional Advocate General No.4 takes a stand that it is not for the Courts to declare or decide whether a degree or qualification in any manner is required to be declared to be equivalent or good enough for such appointment/promotion in terms of the advertisement. Attention of the Court has been drawn to the

decision of the Hon'ble Apex Court in the case of *State of Rajasthan and Others vs. Lata Arun*, reported in (2002) 6 SCC 252. Since emphasis is on paragraph 13, the same is reproduced hereinbelow :

“From the ratio of the decisions noted above, it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. **It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.**”

(Emphasis mine)

5. If that be so, then this Court will not venture to declare or to make a proclamation that the diploma/degree of these petitioners, obtained from Institution of Civil Engineers (India), should be treated as equivalent to the diploma/degree awarded by the Institution of Engineers (India).

6. Since the Hon'ble Apex Court has clearly laid down the law that leeway has to be given to an employer, therefore, the Court will not venture to do what the petitioners want.

7. The Court, however, is willing to permit the State Government to decide as a matter of policy whether they are willing

to grant the same status to these petitioners with regard to the diploma/degree which they had obtained from the Institution of Civil Engineers (India), Ludhiana.

8. A decision in this regard should be taken preferably within a period of eight weeks keeping in mind even the materials which have been brought on record through the writ application as well as the fact that this Court vide its order dated 03.10.2016 has observed that if any promotion is granted, it will be subject to the outcome of this writ application.

9. The Court, in the interest of justice, would also like to observe that it will be advisable to have a decision of the State on this issue before the respondents proceed with the exercise of grant of promotion, since it will have implications for these petitioners.

10. The writ application stands disposed of in terms of the above directions.

(Ajay Kumar Tripathi, J)

Pawan/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	10.11.2016
Transmission Date	N.A.