

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17093 of 2016

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1.Nishant Kumar (Roll No. 108728) son of Sri Prahlad Pandey, resident of village Tilka Manjhi, P.S. Tilka Manjhi, at and district Bhagalpur

2. Abhishek Kumar (Roll No. 105212), son of Tarak Nath Mahto resident of village-Bhagwanpur, P.O. Bhagalpur, P.S. Sadar District Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna.

2. The Bihar State Food and Civil Supply Corporation Limited, through its Managing Director, Daroga Roy Path, Patna.

3. Managing Director, Bihar State Food and Civil Supplies Corporation Daroga Rai Path, Patna.

4. The Nodle Officer, Bihar State Food and Civil Supply Corporation Ltd. Daroga Rai Path, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 17507 of 2016

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1. Pappu Kr. Pankaj S/o Gopal Prasad (Roll No. - 109391) resident of Village - Naser, P.O. - Gurua, P.S. - Gurua, Dist. - Gaya.

2. Ajaj Akhtar (Roll No. - 101333) S/o - Md. Fahim Akhtar At + P.O. - Basopatti, Dist. - Madhubani, Pin - 847225 (Course - MHRM).

3. Amit Kumar Upadhayay, (Roll No. - 114278) C/o Lakshmi Kant Upadhyay, Kailashpuri Naya Bajar, Buxar.

4. Alok Kumar S/o Pratap Narain (Roll No. 114699) resident of Mohalla - New Etwarpur, Lalu Path, P.O. - Kurthaul, Via - Punpun, District - Patna.

5. Sumit Prabhakar S/o Vinod Prasad (Roll No. 101223) resident of E - 16, Peoples Cooperative Colony, P.O. - Kankatbagh at & District - Patna.

6. Manoj Singh S/o Bindeshwari Singh (Roll No. 107641) resident of at Village - Deoria, P.O. - Pahleza, P.S. Dehri on Sone, District - Rohtas.

7. Md. Nazaruddin S/o Dil Mohammad (Roll No. 113316) resident of village Sandali, P.O. Barauli, P.S. - Barauli, Dist. - Gopalganj.

8. Shamshay Alam S/o Md. Idris, (Roll No. 113316) resident of village Sandali, P.O. Barauli, P.S. - Barauli, Dist. - Gopalganj.

9. Neelami Jaiswal S/o Ram Baboo Chaudhary (Roll No. - 100217) resident of Village - Rustampur Market, Dist. - Darbhanga.

10. Zeya Ahmed S/o Israr Alam (Roll No. 105460) resident of vill. - Gawandri Falkirana, P.O. - Ramchandrapur, P.S. - Thave, Dist. - Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna.

2. The Bihar State Food and Civil Supply Corporation Limited, through its Managing Director, Daroga Roy Path, Patna.

3. Managing Director, Bihar State Food and Civil Supplies Corporation Daroga Rai



Path, Patna.

4. The Nodle Officer, Bihar State Food and Civil Supply Corporation Ltd. Daroga Rai Path, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 17869 of 2016

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1. Kanchaneswar Srivastava (Roll No. 106389) Son of (Late) B.P. Srivastava, resident of in the house of (Late) Shivbachchan Lal, Street no. 10 A, Santoshi Maa Path, Mohalla Gaurakhani, At & P.O. Sasaram, District- Rohtas.

2. Rajan Kr. Giri (Roll no. 114032), Son of Sri Baliram Giri, resident of Village & P.O. Dindayalpur, P.S. G.B. Nagar, Tarwara, At & District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna.

2. The Bihar State Food and Civil Supplies Corporation Limited, through its Secretary, Daroga Roy Path, Patna.

3. Managing Director, Bihar State Food and Civil Supplies Corporation, Daroga Rai Path, Patna.

4. The Nodle officer, Bihar State Food and Civil Supplies Corporation Ltd. Daroga Rai Path, Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 17093 of 2016)

For the Petitioner/s : Mr. Mukul Sinha, Adv.
Mr. Rajesh Kumar, Adv.

For the Respondent/s : Mr. Sanjay Kr.Giri-GP9
Mr. Aditya Prakash Sahay, Adv.

(In CWJC No. 17507 of 2016)

For the Petitioner/s : Mr. Rajesh Kumar, Adv.

For the Respondent/s : Mr. Smt.Namrata Mishra, GA6
Mr. Aditya Prakash Sahay, Adv.

(In CWJC No. 17869 of 2016)

For the Petitioner/s : Mr. Rajesh Kumar, Adv.

For the Respondent/s : Mr. Sanjay Kr. Giri, GP9
Mr. Aditya Prakash Sahay, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-03-2017

The petitioners in this batch of writ petitions have a common grievance and pray for identical relief and that is; a command to the



authorities of the respondent-Corporation more particularly, the Managing Director, for giving appointment to the petitioner on the post of Assistant Manager.

Mr. Mukul Sinha learned counsel has appeared for the petitioners in this batch of writ petitions while the State is represented by the respective State counsel and the Corporation is represented by Mr. Aditya Prakash Sahay in all the cases.

Since the grievances raised in all the writ petition is identical hence the matters have been heard analogous and with the consent of the parties they are being disposed of at the stage of admission itself.

For the sake of convenience I shall be referring to the pleadings and annexure as occurring in C.W.J.C.No.17093 of 2016 unless clarified with specific reference to the other writ petitions.

Facts of the present case is in very narrow compass. An advertisement was issued by the respondent Corporation, a copy of which is present at Annexure-5 inviting applications from intending candidates for appointment on the post of Assistant Manager and Assistant Accountant. The advertisement present at Annexure-5 which is dated 13.8.2015 would reveal that the appointment process initiated was for filling up 407 post of Assistant Managers and 50 post of Assistant Accountant. The case at hand relates to appointment of Assistant Managers. Apart from other qualification mentioned in



the advertisement which the applicants had to fulfill, in so far as the educational qualification prescribed in the advertisement for the post of Assistant Manager is concerned, the applicants had to be possessed with an MBA/PGDBM qualification from any recognized University or an institution recognized by the All India Council for Technical Education (A.I.C.T.E. for the sake of brevity). It is not in dispute that all these petitioners figured in the selection list so prepared by the Corporation and since the Corporation was not satisfied on the qualification possessed by these petitioners, that they were put in a separate category. Annexure-16 to the supplementary affidavit which is a 5 Member Committee report on verification of the testimonials submitted by the applicants. In so far as the petitioners are concerned, their issue stands discussed at paragraph 3 at running page 126 of the proceedings in C.W.J.C.No.17093 of 2016 and it is mentioned that since these petitioners were holding certificates which were different to those of MBA/PGDBM hence a decision could be taken on the equivalence by the Committee. The matter did not progress and since others were being appointed, that the petitioner feeling aggrieved are before this Court.

Mr. Sinha learned counsel has referred to the advertisement to submit that while the advertisement at Annexure-5 simply refers to the MBA/PGDBM qualification from any recognized University or



any institution recognized by the A.I.C.T.E. as the qualification prescribed for the post of Assistant Manager but it is the respondent Corporation themselves who have deviated from this requirement, to relax it in the case of some others. According to learned counsel, once the Corporation has taken a decision to appoint any person having an MBA Degree or a Post Graduate Diploma in Business Management, then the nomenclature of the certificate would become irrelevant and what would be relevant is the management qualification possessed by the applicant. He submits that each of these petitioners are holding Management qualification from recognized University/Institution recognized by the A.I.C.T.E. but merely because the certificate issued by the institution/University does not read as MBA/PGDBM that they are not being considered for appointment. According to Mr. Sinha, the Corporation themselves in the case of several applicants has relaxed this requirement to appoint them but in so far as the petitioners are concerned, they are not willing to do so.

Learned counsel has taken this Court through the certificates obtained by the petitioners in this batch of writ petitions to submit that the petitioner No.1 in C.W.J.C.No.17093 of 2016 namely, Nishant Kumar has obtained a Diploma in Rural Management from the Institute of Rural Management, Anand which is a two years



diploma course and recognized by the A.I.C.T.E. He next refers to the certificate of the petitioner No.2 namely, Abhishek Kumar to submit that he has obtained a Post Graduate Diploma in Forestry Management from the Indian Institute of Forest Management which again is approved by the A.I.C.T.E.

He next refers to the petitioners in C.W.J.C.No.17507 of 2016 to submit that the petitioner Nos. 1 to 5 namely, Pappu Kumar Pankaj, Ajaj Akhtar, Amit Kumar Upadhayay, Alok Kumar, Sumit Prabhakar hold the qualification of Masters in Human Resources Management (MHRM) from L.N. Mishra Institute of Economic Development and Social Changes, Patna which is an autonomous institute under the Magadh University. He submits that the petitioner Nos. 6 to 8 namely, Manoj Singh, Md. Nazaruddin and Shamshay Alam are holders of Diploma of Personal Management and Industrial Relation, (P.M.I.R.) Patna University after undergoing two years course. It is submitted that petitioner No.9 namely Neelmani Jaiswal also holds a Master Degree in Personal Management and Industrial Relations (PMIR) from Alagappa University through distance mode. He submits that the petitioner No.10 namely Zeya Ahmed is a holder of Master of Finance and Control qualification (MFC) form the Patna University. The certificates/degrees of these petitioners have been enclosed at Annexure-1 series to the C.W.J.C.No.17507 of 2016.



Referring to the third writ petition bearing C.W.J.C.No.17869 of 2016 it is stated that the petitioner No.1, Kanchaneshwar Srivastava is holder of three years diploma course in Post Graduate Management Programme (PGMP) under distance learning programme from Institute of Management Technology, Ghaziabad and petitioner No.2 Rajan Kumar Giri is Post Graduate diploma holder in Business Administration through distance learning from Symbiosis Centre of Distance Learning, Pune. According to learned counsel both the institutes have been declared deemed Universities under Section 3 of the University Grants Commission Act 1956 and have been granted approval by the Commission for holding such programmes as manifest from Annexure-3 series to C.W.J.C.No.17869 of 2016.

Learned counsel proceeds to submit that each of these petitioners hold qualification of management albeit in different fields but their candidature was put on hold subject to verification of management degree as is manifest from Annexure-7 series and Annexure 16 at running page 122 and 126 to C.W.J.C.No.17093 of 2016. Mr. Sinha has next referred to the report placed on record vide Annexure-17 series to the supplementary affidavit and with reference to the applicants whose name appear at Serial Nos. 19, 26, 29, 40, 43 and 44 it is submitted that the Corporation has deviated from the



requirements to appoint persons whose certificates do not strictly match the qualification published in the advertisement. According to learned counsel whereas the specialization of these candidates are mentioned separately, in so far as the petitioners are concerned it forms part of the certificate granted. To explain learned counsel has submitted that whereas Md. Aftab Alam at serial No.33 having qualification PGDM i.e in Rural Marketing has been selected, the petitioner no.1 Nishant Kumar having a Post Graduate Diploma in Rural Management has been put on hold simply because the specialization is explained in the certificate granted itself. According to learned counsel this is an arbitrary discretion exercised and such objection cannot hold valid to deny an appointment to the applicants who substantially fulfill the qualification of holding a Management qualification. To explain the deviation made by the Corporation, learned counsel has handed over a chart which contains the name of the candidates who have been appointed as Assistant Manager. According to learned counsel although the qualification of these candidates do not match the qualification prescribed in the advertisement at Annexure-5 but they have selected and for the same reason, the petitioners are being denied the appointment. The example so given by the learned counsel in the chart runs as follows:



	Name of Candidates appointed	Qualification
1	Md. Aftab Alam (Roll-101407)	P.G.D.M.(Rural Marketings)
2	Anis Kumar (Roll No. 100205)	PGDM(Services)
3	Aditya Kumar Narayan (Roll 104598)	PGDM(Agri Business Management)
4	Kunal Kumar (Roll-102383)	PGDM (Marketing)
5	Yugal Kishore Mishra (Roll 101530)	PGDM(Agri Business & Plantation Management)
6	Sanjit Kumar (Roll no.-112902)	PGDM (Executive) it is 15 months Court unrecognized by AICTE (refer running page -127-128)
7	Mukesh Kumar (Roll No. 109023)	PGDBM (Distance mode and Lateral Entry)
8	Pankaj Kumar Bharti (Roll No. 114159)	PGDIM/PGDHRM (Post Graduate Diploma in Human Resource Management) from IGNOU(Distance Course of one year-not recognized by AICTE) Refer(Page-127-128 of C.W.J.C. No. 17093/2016
9	Amit Raj (Roll no. 106043)	MBA(Hospitality & Tourism Management)
10	Manoranjan Kumar Tripathi (Roll no. 111579)	MBA (Finance)
11	Navin Kumar (Roll no. 111761)	MBA (Industry integrated)
12	Ashok Kumar (Roll no. 105181)	Master of International Business
13	Jaishankar Dwiwedi (Roll no. 107319)	Master of Foreign Trade
14	Rajan Kumar (Roll no. 112272)	Master of Risk & Insurance Management
15	Pravin Kumar (Roll No. 107716)	Master of Finance and Control
16	Zeya Ahmad (Roll No. 105460)	Master of Finance and Control
17	Sumit Chakhiyar (Roll No. 109023)	Master of Business



		Economics
18	Mukesh Kumar (Roll No. 109023)	PGDBM (Lateral Entry) from Vidya Sagar University, West Bangal-distance mode
19	Pritam Singh (Roll no. 103289)	MBA (Punjab technical University) Punjab-distance mode
20	Vinay Kumar (Roll No. 103560)	MBA (Punjab technical University) Punjab-(Through distance mode)
21	Jitendra Kumar (Roll no. 102370)	MBA (Punjab technical University) Punjab-(Through distance mode)
22	Nazlee Hushain (Roll no. 107025)	MBA from Madhurai Kamraj University, Tamil Nadu-through Distance Mode
23	Vidya Nath Jha (Roll no. 111650)	MBA from Sikkhim Manipal University, Sikkim-through Distance Mode
24	Pankaj Kumar Bharti (Roll no. 114159)	PGDIM/PGDHRM Post Graduate Diploma in Human Resource Management-From IGNOU-(Through Distance Mode)
25	Md.Faizan Ahmed (Roll-105767)	P.G.P.M./MBA (through distance mode)
26	Hemant Pandey (Roll -106336)	PGDBA (replaced by PGDM Subsequently by the institute)
27	Manish Kumar (Roll-104653)	PGDBA (Certificate reissued as "PGDM" by the same Institute subsequently with retrospective effect)
28	Pankaj Kumar Bharti (Roll no, 114159)	PGDIM/PGDHRM (Post Graduate Diploma in Human Resource Management) from IGNOU-Distance Course of one year-not recognized by



		AICTE Refer-(Page-127-128 of C.W.J.C.No.17093/2016)
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It is thus the submission of learned counsel that an unwarranted classification has been made by the corporation and whereunder they have been issuing appointment orders as per their personal satisfaction without any rationale. The third submission made by Mr. Sinha is that the Corporation should go on the substance of the qualification and not the nomenclature of the certificate.

The argument of Mr. Sinha has been contested by Mr. Sahay to reiterate the stand taken in the counter affidavit filed in C.W.J.C.No.17093 of 2016 and which counter affidavit according to Mr. Sahay would govern the cases of other writ petitioners as well, although counter affidavits has been filed in other writ petitions, as well. Advancing the stand of the corporation it is argued by Mr. Sahay in reference to the Boards Resolution present at Annexure-C to the counter affidavit filed in C.W.J.C.No.17093 of 2016 particularly Agenda No.147.4 that the Board of the Corporation taking note of the issues raised before this court, has taken a decision that the appointments would be made as per the qualification prescribed in the advertisement. He submits that the Board has also taken note of the letter of the AICTE dated 1.7.2016, a copy of which



is enclosed at Annexure-B to the counter affidavit to submit that on the basis of recommendation of All India Board of Management Studies, the PGDBM course has been renamed as PGDM in year 2008. He submits that it is in this view of the matter that all those applicants who were possessing either MBA degree or PGDM diploma even if, with other specialization, have been considered for appointment. It is the argument of Mr. Sahay that since the petitioners do not possess either a MBA degree or a PGDM diploma qualification, they have been kept on hold. Mr. Sahay has next referred to the Gazette publication at Annexure-4 to C.W.J.C.No.17507 of 2016 to show that certain qualifications were restructured and in so far as the management subject is concerned, it finds mention at serial No. 37. In reference thereto he submits that since some of the qualifications referred to by learned counsel for the petitioner as being in deviation of the qualification prescribed in the advertisement, has since been restructured to match the qualifications desired, that those applicants have also been considered. Mr. Sahay has next referred to the Annexures- H/1 and H/2 to the counter affidavit in C.W.J.C. No. 17093 of 2016 to reiterate this position and to submit that it is following the gazette publication that Banaras Hindu University has renamed a number of courses accordingly by changing their nomenclature. The stand thus taken by Mr. Sahay on



behalf of the Corporation is that the qualification possessed by these petitioners do not match the qualification nor the nomenclature of the course have been changed in tune with the restructuring and thus the Corporation faces difficulty in extending the offer to the petitioners.

I have heard learned counsel for the parties and I have perused the records.

There is no dispute that the prerogative lies with the employer to select and appoint its employees. Law is well settled that it is the satisfaction of the employer as to the utility of the person whom he intends to employ which would govern any appointment. Law is also well settled that ordinarily courts do not interfere with the opinion of expert committee on qualification, eligibility of candidates or on issue of equivalence. These are administrative issues best left at discretion of the expert bodies.

What has been canvassed before this Court is that the Corporation cannot have a differential attitude and if it sticks to the Boards Resolution present at Annexure-C to the counter affidavit filed in C.W.J.C.No.17093 of 2016 then all such persons whose nomenclature of the course attended, is in deviation to the qualification prescribed, cannot be offered appointment and if the Corporation deviated therefrom then such deviation should be purposeful enough to consider all such cases who are on the same



footing. The stand taken by the Corporation is, that they have stuck to the qualification prescribed in the advertisement and even though some of the persons appointed have a different nomenclature, those courses have been restructured to come within the prescribed qualification.

For the purpose of satisfying themselves as regarding nomenclature of the courses attended by the applicant, the counsel for the Corporation has relied upon a communication of the Banaras Hindu University at Annexure-H/1 and Gazette publication dated 5.7.2014 at Annexure-H/2 in C.W.J.C. No. 17093 of 2016. In other words, a communication by the University as regarding the change in the nomenclature of the course and/or the restructuring Notification itself dated 5.7.2014 has been considered by the Corporation to satisfy themselves.

In so far as the case of the petitioners in this batch of writ petitions is concerned, the petitioner No.1 namely, Nishant Kumar in C.W.J.C.No.17093 of 2016 has obtained his diploma in Rural Management, Anand from the Institute of Rural Management and the nomenclature of the course is the Post Graduate Diploma in Rural Management. Just as the Corporation has relied upon the communication of the Banaras Hindu University at Annexure-H/1 to satisfy themselves on the nomenclature, in so far as the petitioner



No.1, Nishant Kumar is concerned, the Association of the Indian Universities has certified the course attended by this petitioner as equivalent to MBA (Rural Management) as manifest from Item No.35 of Annexure-3/1 to C.W.J.C.No.17093 of 2016 as well as their letter dated 13.6.2015 present at Annexure-3/2.

In so far as the petitioner No.2 in C.W.J.C.No.17093 of 2016 Abhishek Kumar is concerned, he has obtained a management diploma from the Indian Institute of Forest Management at Bhopal which is a two year study programme.

In so far as the petitioners in C.W.J.C.No.17507 of 2016 is concerned, the petitioner Nos. 1 to 5 hold Master of Human Resources Management qualification from the L.N. Mishra Institute of Economic Development and Social Changes, Patna, an autonomous institute under the Magadh University. The Certificate issued by the Registrar, Magadh University at Annexure-2 to the said writ petition certifies the course as being equivalent to MBA degree of Magadh University.

Similarly the petitioner Nos. 6 to 8 are holders of Master Degree in Personal Management and Industrial Relation from the Magadh University and a certificate issued confirms that the same is a full time degree course from the University and has been certified as equivalent to MBA degree with specialization in Personal



Management and Industrial Relations as manifest from the certificate issued by the Head of the Department, Patna University present at running page 32 at Annexure-2 series of C.W.J.C.No.17507 of 2016.

Petitioner No.9 also holds a Master Degree in Personal Management and Industrial Relations from Alagappa University through distance mode and the certificate given by the Registrar of the University holds the degree equivalent to a MBA degree in Human Resources Management as confirmed from Annexure-2 series to the said writ petition at running page 30.

The petitioner No.10 is a holder of Master of Finance and Control from Patna University and this course has been certified as a Master in Business Administration as reflecting from the certificate of the Vice Chancellor present at Annexure-2 series at running page 31 of the said writ petition and relying on this certification, this petitioner has since been granted appointment.

In so far as the petitioners in C.W.J.C.No.17869 of 2016 is concerned, while the petitioner No.1, Kanchaneshwar Srivastava, has a degree in Post Graduate Programme in Management which is a two years course from the Institute of Management Technology, Ghaziabad, a centre for distance learning which is recognized as a deemed University by the University Grants Commission, the petitioner No.2 holds a Post Graduate Diploma in Business



Administration with Specialization in Finance from the Symbiosis Centre for Distance Learning, Pune. Annexure-3 to C.W.J.C.No.17869 of 2016 contains a list of courses recognized by the University Grants Commission and the name of the Institute of Management and Technology, Ghaziabad appears at Serial No.2 while the Symbiosis Centre for Distance Learning appears at Serial No.13. Annexure-4 is the letter of the University Grants Commission certifying the Degrees and Diploma's granted by these institutions. The certification of the qualification as being equivalent to MBA in so far as Kanchaneshwar Srivastava is concerned, is present at Annexure-5/1 of the said writ petition, while the petitioner No.2 has a diploma in Business Administration.

The discussion above in reference to the qualifications held by these petitioners confirm that these courses have been treated akin to a MBA degree or a Diploma in Business Management.

As I have already expressed since the respondent Corporation themselves have accepted the certification by the Banaras Hindu University as to the equivalence of a course on the basis of restructuring and have offered appointment on that post, the certification received by these petitioners through their University/Institution well deserves a consideration. In my opinion, it is the substance of a course which is to be a guiding factor for such



consideration even if there may be a variance in the nomenclature of the course but a mere difference in nomenclature, cannot be a foundation nor can form any basis for exclusion of a candidate from consideration rather it is the utility aspect of the matter and whether the course attended by the applicant satisfies the requirement of the post on which this applicants are to be appointed, which normally should be a guiding factor. The choice is entirely with the Corporation and since demonstrably they have deviated in the matter by opening up to the other qualification(s) as well which are at variance with the advertisement, either by referring to the restructuring order or the certification by the concerned University as relied upon by Mr. Sahay in reference to Annexure H/1 and H/2 to C.W.J.C.no17093 of 2016 as well as Annexure-4 to the second writ petition, a similar certification possessed by these petitioners obtained from the institutions attended by these petitioners, would also require a similar consideration before a final decision is taken by the Corporation on the issue.

As I have already indicated at the outset it is the discretion of the employer alone as to the utility of the person concerned based on the qualification possessed by him which has to be the determining factor and in my opinion the authorities of the Corporation need not get swayed by the nomenclature of the



qualification so long as the qualification possessed by any candidate satisfies their requirements.

In the circumstances so discussed I deem it proper to dispose of the writ petition with the direction to the Managing Director of the corporation to consider the case of these petitioners afresh and in the light of the observation made hereinabove and pass appropriate orders in accordance with law preferably within six weeks from the date of receipt/production of a copy of this order.

The writ petitions are disposed of accordingly.

(Jyoti Saran, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.04.2017
Transmission Date	NA

