

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9544 of 2016

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1. Pramod Kumar Pathak, son of late Radhakant Pathak, resident of village & Post Andhra, P.S. Adapur, District Motihari (East Champaran)
 2. Chandeshwar Thakur, son of late Ramjatan Thakur, resident of village & Post Basuhar, P.S. Punpun, District Patna
 3. Ramkumar Prasad, son of late Dinesh Prasad, resident of village Katharwa, Post Harnatad, P.S. Naurangea, District West Champaran, Bettiah
 4. Ram Pravesh Kumar, son of Sh. Bansi Ram, resident of village Sisauni, Post Mokama Ghat, P.S. Mokama, District Patna
 5. Vijay Prasad, son of Sh. Mewa Ram, resident of village Aunta, Post Mokama Ghat, P.S. Haridah, District Patna
 6. Brijnandan Prasad, son of Jagarnath Mahto, resident of village and Post Bansdih, P.S. Chandi (Tharthari), District Nalanda
 7. Rama Shankar Sharma, son of late Narayan Sharma, resident of village Bhabhasi, Post Dinhi, P.S. Chenari, District Rohtas
 8. Ranjit Ram, son of late Ram Chandra Ram, resident of village Sudiha, Post Parsa, P.S. Gauri Chak, District Patna
 9. Amleshwar Ram, son of Shivnandan Ram, resident of Izra, Post Izra, P.S. Sangrampur, District Motihari (East Champaran)

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Police), Government of Bihar, Patna
2. The Principal Secretary, Department of General Administration, Government of Bihar, Patna
3. The Director General of Police, Government of Bihar, Patna
4. The Inspector General of Police (HQ), Bihar, Patna
5. The Inspector General of Police, (Bazat/ Appeal/ Welfare), Bihar, Patna
6. The Deputy Inspector General of Police, Central Range, Patna
7. The District Magistrate, Patna
8. The Senior Superintendent of Police, Patna
9. Pramod Mishra, son of late Balbhadra Mishra, resident of village Kewri, Post Tajpur, P.S. Khijar Sarai, District Gaya

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Adv.
For the Respondent/s : Mr. Kumar Alok, SC-7
Mr. Raj Kumar Singh, AC to SC-7
For respondent no.9 : Mr. R.S.Ganguli, Adv.
Mr. Dharmendra Kumar Srivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-05-2017

Heard Mr. Manoj Kumar, learned counsel appearing for the



petitioners, Mr. Kumar Alok, learned counsel appearing for the State and the learned counsel for the private respondent.

The petitioners are aggrieved and pray for quashing of the decision taken by the Departmental Promotion Committee dated 21.3.2016, whereby the petitioners have been denied promotion from Class IV to Class III in the light of the stipulations present in the Bihar Collectorate Clerical Cadre (Appointment and Service Condition) Rules, 2011 (hereinafter referred to as 'the Rules'), inter alia, on grounds that they did not possess basic qualification for appointment to Class III.

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

While it is contention of the learned counsel for the petitioners relying upon Rule 8 of 'the Rules' that the stipulation present in the said Rule merely requires a Class IV staff to be a matriculate when applied in case of promotion and whereafter it is simply on the basis of seniority that a Class IV employee is to be granted promotion to Class III, this contention has been contested by the learned State Counsel relying upon the amendments that have been introduced to 'the Rules' in the year 2013, whereby and whereunder the basic qualification for appointment to the post of a Clerk has been amended and enhanced to Intermediate qualification



with knowledge of computer application. Admittedly the petitioners are non-Intermediate and perhaps do not even possess knowledge of computer application. It is on this ground that the promotion has been denied.

Mr. Manoj Kumar, learned counsel for the petitioners, has relied very heavily on the previous round of litigation arising from C.W.J.C.No. 3873/2014 to submit that while in the previous round of litigation the only obstacle in the case of the petitioners was lack of vacancy and the stand taken by the respondents before this Court was that as and when vacancy would arise that these petitioners would be granted promotion, which is also supported by the counter affidavit filed in the said proceedings, a copy of which is present at Annexure '8' to the writ petition but when occasion did arise, the petitioners have been denied promotion by failing them on issue of qualification. A copy of the order passed by this Court in the previous round of litigation is present at Annexure 7 and the decision of the Departmental Promotion Committee put to challenge is impugned at Annexure 9.

In between some similarly placed Class IV employees in the Police Department have been granted promotion, copies of which were placed on record vide Annexures 11 and 14 and when the State was directed to clarify as to the discrimination that they have returned



with the second supplementary counter affidavit explaining the situation. It is informed that on guidelines being sought from the General Administration Department, it was clarified that until any incumbent would possess the basic qualification required for appointment to the post of Clerk, they cannot be admitted to such promotion. Statement to such effect is present at paragraphs 13 and 14 to the second supplementary counter affidavit.

It is also mentioned that vide letter dated 13.4.2017 advisory has been issued to cancel all promotions granted to non-intermediate Class IV employees. 'The Rules' relied upon are present at Annexure 1 and while Rule 5, inter alia, prescribes 85% of the post to be filled up by way of appointment, 15% of the post in the cadre is to be filled up by promotion.

It is not in dispute that at the relevant time the qualification prescribed for appointment to the post of Clerk was Matriculation and which the petitioners possessed. The qualification have subsequently been enhanced vide notification dated 2.9.2013, a copy of which is present at Annexure 3/A to the counter affidavit of respondent no.9, whereby the qualification for appointment to the post of Clerk was enhanced to Intermediate or equivalent with knowledge of computer operation and computer typing. The second amendment took place on 20.5.2014 vide notification No. 6566 also present at Annexure 3/A at



running page 92, whereby the prescription for filling up of the post by way of promotion contained a stipulation that the incumbent should possess the basic qualification for appointment to the post.

Now even when these amendments were incorporated in the Rules, an anomaly did exist in Rule 8 which prescribed for promotion and continued to prescribe Matriculate qualification for Group 'D' employees. It is this anomaly existing in the Rules which has given a cause of action to the petitioners to submit that even while the qualification may have been amended for the purpose of direct recruitment but in so far as the promotional avenue is concerned, the qualification yet continues to be Matriculate with no requirement of knowledge of computer application.

Perhaps mechanically applying 'the Rule' the answer would have been gone in favour of the petitioners but then this Court cannot shut its eyes to the amendments that have been incorporated in 'the Rules' more particularly to Rules 5 and 6 and which has to be read alongside Rule 8 for giving a purposeful construction. An interpretation of a Rule which would render any other provision otiose of the Statute has to be avoided while giving a purposeful construction. In the present case, applying Rule 8 on its literal construction would render Rules 5 and 6 otiose. Rule 6 as it stands, clearly prescribes that **15% post in the cadre would be filled up by**



promotion from Group 'D' employees possessing basic qualification which basic qualification stands enhanced to 'Intermediate' by amendment of Rule 5 vide notification dated 2.9.2013 present at Annexure 3/A at running page 91. It is by giving a harmonious application to Rules 5, 6 and 8 that the Department has also recalled promotion given to Group 'D' employees, who were non-Intermediate and did not have knowledge of computer application. In fact it is keeping in view of the qualification required that the private respondent stands promoted.

In view of the legal position so discussed, I am not persuaded to interfere with the decision taken by the Departmental Promotion Committee to refuse promotion to the petitioners on grounds of lacking in basic qualification.

The writ petition is dismissed accordingly.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.05.2017
Transmission Date	NA

