

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2026 of 2011

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1. Amodh Kumar Singh S/O Triveni Singh R/O Vill.- Rangpur, P.P +P.S.- Patahi, Distt.- East Champaran
 2. Smt. Swarnlata Kumari W/O Rajesh Kumar R/O Vill.- Patahi, P.O. + P.S.- Patahi, Distt.- East Champaran
 3. Babita Devi W/O Krishna Kumar Yadav R/O Vill.- Gonahi, P.O +P.S.- Patahi, Distt.- East Champaran

.... Petitioners

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Panchayat Raj Govt. Of Bihar, Patna
3. The Secretary Department Of Panchayat Raj Govt. Of Bihar, Patna
4. The District Magistrate, East Champaran At Motihari
5. The Sub-Divisional Officer Pakridyal District East Champaran At Motihari
6. The Block Development Officer, Pakridyal District East Champaran At Motihari
7. Sarpanch Gram Kutchahary Padumker At _ P.S.- Padumker, P.S.- Pathai, Distt.- East Champaran
8. Sarpanch Gram Kutchahary Pathai East At + P.S.- Pathai, Distt.- East Champaran
9. Sarpanch Gram Kutchhary Gonahi At + P.O.- Jardaha, P.S.- Pathai, Distt.- East Champaran
10. Bikram Kumar Singh S/O Jagendra Singh R/O Vill.- + P.O.- Jardaha, P.S.- Pathai, Distt.- East Champaran
11. Sweta Kumari W/O Atul Kumar R/O Vill. + P.O.- Pathai, P.S.- Pathai, Distt.- East Champaran
12. Smt. Bandana Kumair W/O Ram Singar Singh R/O Vill.- + P.O.- Gonahi, P.S.- Pathai, Distt.- East Champaran

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Pd. Singh, Sr. Advocate
For the Respondent No.10 to 12:		Mr. Manoj Kr. Singh, Advocate
For the State	:	Mrs. Ratna Kumari, A.C. to AAG-2

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 17-01-2018

Heard learned senior counsel for the petitioners
and learned counsel representing the State as well as learned
counsel for the respondent nos. 10, 11 & 12.

2. The petitioners are aggrieved by the order
dated 24.12.2010 passed in Misc. Appeal No. 56/2009, Misc.



No. 57/2009 and Misc. Appeal No. 58/2009 which were filed by respondent nos. 10, 11 and 12 respectively and have been allowed by the Collector, East Champaran, Motihari, holding that the appointment of respondent nos. 10, 11 and 12 on the post of Secretary, Gram Kutchahary in Patahi Block were rightly done in accordance with rules and the interference with the said appointments by the Sub-Divisional Officer, Pakridayal, East Champaran, Motihari was not just and proper.

3. It is not in dispute that pursuant to an advertisement issued in the year 2007, respondent nos. 10, 11 and 12 who had their matriculation certificate from the Bihar School Examination Board (in short the “BSEB”) submitted their applications and were selected. It is also a matter of record that the Government of Bihar, in exercise of its power under Section 94(1) read with Section 146 of the Bihar Panchayati Raj Act, 2006 (Bihar Act No. 6, 2006) published Rule known as Bihar Gram Kutchahary Secretary (employment, conditions of service and duties) Rules, 2007 (hereinafter referred to as the “Rules 2007”). Rule 5 of the rules provides the eligibility, according to which, the candidate for the post of Secretary, Gram Kutchahary should have minimum educational qualification of matriculation. This Rule



nowhere talks of any equivalent qualification.

4. The petitioners are the candidates who have passed *Pravesika* examination from Bihar Sanskrit Shiksha Board called '*Madhyama*'. They claimed that their qualification of '*Madhyama*' has to be treated as equivalent to matriculation, and therefore, they having obtained better marks than respondent nos. 10, 11 and 12 should have found place in the merit list above to these respondents.

5. Learned senior counsel for the petitioners relied upon an order dated 31.01.2008 passed by a co-ordinate Bench of this Court in CWJC No. 13905/2007 (*Santosh Kumar Pandey Vs. State of Bihar and others*) wherein a plea that '*Madhyama*' was equivalent to matriculation was taken based on a government instruction dated 11.01.1999. In view of the government instruction dated 11.01.1999, a co-ordinate Bench of this Court held that '*Madhyama*' is equivalent to 'matriculation', and, therefore, the respondent-State was directed to consider the case of the petitioner in the said case for appointment in accordance with the seniority.

6. Learned counsel for the petitioners submit that in view of the order dated 31.01.2008 passed by a co-ordinate Bench of this Court, the State Government came out with an



order vide Memo No. 518 dated 02.03.2009, as contained in Annexure-4 to the writ application for compliance of the order passed by Hon'ble Court in different writ applications. Vide order No. 96 dated 05.07.2010 (Annexure-2), direction was issued that in compliance of the court orders in cases of writ petitioners of those cases, the previous appointment has to be cancelled and these petitioners are to be considered for appointment.

7. On the other hand, learned counsel representing the respondent nos. 10, 11 and 12 would submit that the Rule 2007 has been framed by the State Government in exercise of its statutory power and therefore it is a subordinate piece of legislation which has got a force of law. Learned counsel submits that, in terms of Rule 5, the only eligibility prescribed for appointment on the post of Secretary, Gram Kutchahary is that he should be at least a matriculate. The Rule nowhere prescribes any equivalent qualification as eligibility for the purpose of selection on the post of Secretary, Gram Kutchahary.

8. Learned counsel therefore submits that in fact the issue involved in the present case is not as to whether the Madhyama certificate is equivalent to matriculation certificate



or not. According to him such a question would have arisen only when Rule would prescribe a qualification in terms saying matriculation or equivalent to that. He would further submit that, in fact, before the co-ordinate Bench of this Court in CWJC No. 13905/2007, which was disposed of on 31.01.2008, the Rule 2007 was not placed and there was no argument on behalf of the State that if the Rule does not prescribe for an equivalent qualification being an eligibility criteria for the purpose of making application, the question, whether Madhyama is equivalent to matriculation, has no relevance at all. He would further submit that what was not placed before the co-ordinate Bench of this Court and not canvassed before the said Bench cannot be treated to have been considered and answered by the Bench, and therefore, the order dated 31.01.2008 as contained in Annexure-3 to the writ application is clearly distinguishable.

9. Learned counsel representing the State supports the contention of learned counsel representing the respondent nos. 10, 11 and 12 and submits that the appointment of the respondents by virtue of their matriculation qualification cannot be taken in violation of the Rule 2007. It is submitted that the Rule 2007 is crystal clear and what has



not provided in the Rule cannot be brought into existence by way of an argument or judicial wisdom.

10. I have heard learned counsel for the parties and perused the records. The respondent nos. 10, 11 and 12 having obtained their matriculation certification from BSEB applied for their selection as Secretary, Gram Kutchahary under Patahi Block, these petitioners claimed that they had passed their *Pravesika* examination and have got their '*Madhyama*' certificate which is equivalent to the matriculation certificate of the respondent nos. 10, 11 and 12. The case of the petitioners is that by order dated 31.01.2008 passed in CWJC No. 13905/2007, a co-ordinate Bench of this Court has already held that in terms of the government policy dated 11.01.1999, qualification of '*Madhyama*' is equivalent to matriculation, and therefore, by not considering their cases for appointment, the State respondents have erred and wrongly appointed respondent nos. 10, 11 and 12. On a careful reading of the order dated 31.01.2008 passed in CWJC No. 13905/2007, it would appear that, in the said case, the Rules 2007 was not placed before the learned co-ordinate Bench. The Bench was not informed that Rule 5 does not provide for equivalent qualification as an eligibility criterion. The real



controversy was not addressed before his Lordship in the said case. The said judgment in CWJC No. 13905/2007 is therefore clearly distinguishable.

11. In the present case, the appointment of respondent nos. 10, 11 and 12 were done much before the order dated 31.01.2008 was passed by this Court. Moreover, in the opinion of this Court, the real controversy is not whether the '*Madhyama*' certificate obtained by the petitioners be treated equal to the matriculation certificate of these respondents or not, the issue in controversy is whether the Rule 2007 or the advertisement which was published inviting application from the eligible candidates for their selection as Secretary in the Gram Kutchahary be read by adding or inserting the word 'equivalent' thereto, because it is an admitted position that neither the Rule 2007 nor the advertisement published for selection of the Secretary of the Gram Kutchahary anywhere provided for an eligibility condition with 'equivalent' thereto. What was provided in the Rule and/or the advertisement cannot be added or subtracted or in any other manner amended by reading something which is not there.

12. The judicial wisdom does not permit so, and,



therefore, this Court would come to a conclusion that in terms of the Rule 2007 as also the advertisement, if the respondent nos. 10, 11 and 12 were only eligible for consideration being matriculate these petitioners cannot have any grievance muchless any legal right to claim a place in the merit list.

13. This Writ Application has no merit. It is dismissed, accordingly.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CA V DATE	NA
Uploading Date	23.01.2018
Transmission Date	NA

