

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.695 of 2018**

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Praveen Kumar Son of late Baleshwar Thakur Resident of Quarter No. E-22, Koshi Colony, Behat, Darbhanga, P.S. Kabirchak, District- Darbhanga.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.

2. The Chief Engineer, Sinchai Srijan, Water Resources Department, Darbhanga.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Alok Kumar Sinha, Senior Advocate  
Mr. Bhola Kumar, Advocate  
Mr. Ashish Sinha, Advocate

For the Respondent/s : Mr. Vikash Kumar - SC11  
Mr. Sri Ram Krishna, AC to SC11

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 13-09-2018**

Heard the parties.

In the present writ petition, the petitioner is challenging the order dated 01.07.2017 which was communicated to him on 28.08.2017 (Annexure-3) by which the petitioner has been refused to grant the benefit of promotion on the post of Head Clerk.

Ground has been taken that the petitioner is holding the qualification of matriculation when the requisite qualification for the post of Correspondence Clerk is Intermediate.

The petitioner has been appointed on the death of his father on compassionate ground on the post of Head Clerk as Class III post at Balmiki Nagar in the Gandak Project.

The service condition is governed by the Rules and Regulations



applicable to the employees of State of Bihar. At the time of entry in the service of Class III post, the minimum qualification was matriculation which the petitioner was possessing at the relevant time.

In the year 2014, the Government has come out with a Rule known as Bihar Water Resources Department Field Clerical Cadre (Recruitment and Condition of Service) Rules, 2014, wherein for the post of Clerk the minimum qualification has been fixed as Intermediate. The claim of the petitioner for promotion has been rejected on the ground that he does not possess the Intermediate qualification, which is minimum qualification for the post of Correspondence Clerk.

The Rule which has been made does not have retrospective effect but it has been made prospective. That Rule will be applicable to those persons who have entered into the service in the clerical cadre on or after the enforcement of the Rule. It cannot be applied to those persons who were already in service and at that time of entry he was holding the minimum qualification of Matriculation. In any amendment making the minimum qualification as higher qualification will not affect to those who are already in service, only future appointment will be based upon qualification fixed under the Rule, otherwise it will lead to anomaly. Till 2014 it was matriculation and by new Rule qualification has been fixed Intermediate and after sometimes the Government may enhance the minimum qualification



as B.A. or M.A.

In such circumstances, it will create piquant situation for those who have entered into service earlier and as such to avoid such anomalous situation and their right will remain protected for consideration for promotion or any other benefits connected with the post, will be treated to be applicable prospectively.

In such view of matter, the decision of the department to refuse to consider the case of promotion of the petitioner on the plea of educational qualification is not sustainable as same is against the law. Hence, the impugned order dated 01.07.2017 passed against the petitioner refusing to consider his promotion is set aside and this Court directs to the concerned Authority to consider the case of the petitioner for grant of promotion taking into account the fact that petitioner has requisite qualification. The concerned Authority will take a decision within a period of six months from the date of receipt/production of a copy of this order.

With the aforesaid observations and directions this writ petition is allowed.

**(Shivaji Pandey, J)**

Vinay/Sunny

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| AFR/NAFR          | NAFR      |
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