

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1910 of 2015

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1. Rajju Mandal Son of Late Maheshwar Mandal Resident of Indra Colony, Mohalla - Alalpatti, P.O- DMCH, P.S- Bahadurpur, At + District Darbhanga.
 2. Hema kumari Thakur Wife of Birendra Thakur Resident of Mohalla - Suvankarpur, P.O- Suvankarpur, P.S- Sadar, At + District - Darbhanga.
 3. Rama Nand Mandal Son of Late Mahendra Mandal Resident of Village + P.O - Majhgama, P.S- Keuti , District - Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Department of Education, Govt. of Bihar, New Secretariat, Patna.
2. Regional Deputy Director of Education, Darbhanga Division, Darbhanga, At - Laherisaraï, District - Darbhanga.
3. District Education Officer, Darbhanga, At- Laherisaraï, District - Darbhanga.
4. District Programme Officer, Establishment, Darbhanga. At- Laherisaraï, District - Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rabindra Nath Kanth, Advocate

For the Respondent/s : Mr. Manoj Kumar, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 02-07-2018

Heard learned counsel for the petitioner and the respondent State.

2. The petitioner has approached this Court by filing the instant writ petition for a direction upon the respondents to consider his case for promotion in Group C posts as the petitioner is a member of Group D posts and is possessing the requisite qualifications in terms of Rule 8 (1) of the Bihar Collectorate Clerical Cadre (Recruitment and Conditions of Service) Rules, 2011 (hereinafter referred to as the '2011 Rules'). Since the petitioner is possessing requisite qualification i.e. matriculation he is entitled for promotion in



the 15 percent quota to be filled up by promotion.

3. The 2011 Rules has been amended twice. Once by Bihar Collectorate Clerical Cadre (Recruitment and Conditions of Service) (Amendment) Rules 2013 (hereinafter referred to as ‘the Amendment Rules 2013’) and thereafter by Bihar Collectorate Clerical Cadre (Recruitment and Conditions of Service) (Amendment) Rules 2014 (hereinafter referred to as ‘the amendment Rules 2014’).

4. It is submitted by the counsel for the petitioner that the amendment Rules 2013 would not apply in respect of the promotion from Group D to Group C. He submits that the amendment only affects requisite qualification for direct appointment.

5. Regarding amendment Rules 2014 It is submitted by the counsel for the petitioner that the expression “without examination” implies that the promotion against the 15 % posts are to be filled up by the seniority from Group D on the basis of qualifications prescribed in Rule 8 of 2011 Rules.

6. The relevant provisions of 2011 Rules are being reproduced herein below for better appreciation.

“5. Recruitment. – (1) 85% posts of L.D.C shall be filled up through direct recruitment and 15% posts shall be filled up from amongst the eligible Group “D” employees having matriculation qualification. Of the 85% posts for direct recruitment, 10% shall be reserved for the appointment on compassionate ground.

(2) All recruitments shall be made to the grade of Lower Division Clerk on the



recommendation of the Commission.

(3) The appointing authority shall calculate the vacancies on the basis of 1st April every year and shall send the requisition to the Commission by the 30th April.

(4) The Commission shall advertise the vacancies and after selection of successful candidates on the basis of competitive examination shall recommend the name of the candidates in order of merit to the appointing authorities concerned. The validity of the merit list shall be one year w.e.f. the date of receipt of recommendation.

(5) The appointing authority after due scrutiny shall appoint the candidate on probation for two years.

6. Qualification – (1) The minimum educational qualification shall be matriculation or equivalent, with knowledge of computer operation and computer typing.

(2) Minimum age for recruitment shall be eighteen years and maximum age shall be the same as determined by the State Government (General Administration Department) from time to time.

(8) Recruitment through promotion – (1) The appointing authority shall prepare the gradation list of matriculate Group “D” staff.

(2) The promotion shall be made according to seniority on recommendation of the Departmental Promotion Committee.”

7. The petitioner’s submissions is that since Rule 8 specifically provides that ‘the appointing authority shall prepare the gradation list of matriculate Group “D” staff’ for consideration of promotion in Group C, the petitioner was entitled for consideration



since he is a matriculate.

8. It is his submission that the qualifications prescribed for those to be appointed by way of direct recruitment was different than that required for promotion from the persons who are serving in Group D. Rule 6 of 2011 Rules provides higher qualification of Matriculation with knowledge of computer operation and computer typing for the purpose of direct recruitment.

9. Referring to notification dated 02.09.2013 whereby the 2011 Rules have been amended, it is submitted that the amendment in qualifications was made prescribing higher requisite qualification only in respect of the requirements under Rule 6 (1) of the 2011 Rules which applies only to direct recruitment. He thus submits that all along there has been a differential treatment and higher qualifications of Intermediate (10+2) with knowledge of computer operation/typing was the qualifications prescribed for those claiming direct recruitment. This submission is with reference to the amendment of 2011 Rules under notification dated 02.09.2013 issued by the General Administration Department bearing memo number 14227 which is Annexure F to the counter affidavit filed by the State which reads as follows:

- “3. उक्त नियमावली, 2011 का नियम- 6 (i) को निम्नलिखित द्वारा प्रतिस्थापित किया जाएगा
(i) न्यूनतम शैक्षणिक अर्हता कम्प्यूटर संचालन एवं कम्प्यूटर टंकण ज्ञान के साथ इन्टरमीडिएट (10+2) उत्तीर्ण अथवा समकक्ष होगी।
4. उक्त नियमावली, 2011 के नियम - 13(2) के क्रमांक (क)



मे शब्द 'उप विकास आयुक्त' शब्द जिला पदाधिकारी द्वारा प्रतिस्थापित किये जाएंगे।”

10. Learned counsel for the State, on the other hand, submits that the issue now stands clarified in view of the amendment Rules 2014 which reads as follows:

“2. Sub-Rule (1) of Rule-5 of the Rule, 2011 shall be substituted by the following.- (1) 85% post of LDC shall be filled up by direct recruitment and 15% post shall be filled up by seniority order from such Group “D” employee who have the qualifications for the appointment in clerical post, without examination. 10% posts of the 85% posts of direct recruitment, shall be reserved for the appointment on compassionate ground.”

11. On going through the said amendment Rules 2014, it is quite obvious that the same provides that 15 % posts are to be filled up by seniority order from Group D employees who have the qualifications for appointment in clerical post. There is no difference in the requisite qualification for direct recruitment or for promotion to group C post. There is only a procedural difference, which is evident from the expression “....without examination”, which has been used in the 2014 Rules. The qualification for appointment in clerical posts which has been prescribed under Rule 6 (1) as amended under the 2013 Rules thus clearly applies in respect of those claiming



appointment to group C posts even by way of promotion. The amendment Rules 2014 therefore, clearly contemplates uniformity in the requisite qualifications for appointment on clerical post of Intermediate (10+2) with knowledge of computer operation and computer typing for direct recruitment to group C posts as well as for promotion to group C posts.

12. It is thereafter submitted that the said Rules has been uniformly applied by the Department in case of all the Group D persons who were considered for granting promotion under order dated 10.02.2017 (Annexure 27) issued by the Regional Deputy Director of Education, Darbhanga Division, Darbhanga whereby all the persons who were working in group D posts and who were having the requisite qualifications for direct appointment in clerical post only have been granted the benefit of promotion to group C posts. It is therefore, submitted that in light of the amendment Rules 2014 the promotion order dated 10.02.2017 is also in accordance with law.

13. The expression 'without examination' in the opinion of the Court has a different connotation then what is submitted by the petitioner. It refers to the process to which the amended qualifications as per the 2014 amendment Rules is to apply. The clear meaning of the amendment Rules 2014 is that even for promotion from group D to group C posts the same qualifications are to be applied which are required for recruitment.



14. This Court is satisfied with the submissions advanced on behalf of the State counsel. The amendment Rules 2014 makes it abundantly clear that even for the purposes for promotion to group C posts the employees are required to have same qualifications as required for direct appointment in clerical cadre.

15. The petitioner, admittedly are possessing qualification which they claim to be matriculation/equivalent. They did not possess the requisite qualification of intermediate (10+2) for claiming consideration for promotion to group C post. They are thus not entitled to consideration for promotion due to lack of requisite qualification.

16. In view of the considered opinion of this Court discussed herein above, this Court does not find any merit in the writ petition.

17. The same is dismissed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.09.2018
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