

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.135 of 2015

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Ram Prakash Sharma Son of Late Bhuneshwar Sharma, resident of Village Harari, P.S Marauna, District- Supaul, at Present posted and working as Peon at Nebalal Rajabati Sarbjanik High School, Sarauti, P.S- Gardanibagh, District-Madhubani

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Bihar Patna.
2. The Director, Secondary Education, New Secretariat , Government of Bihar Patna.
3. The District Magistrate, Madhubani
4. The District Education Officer , Madhubani.
5. Joint Secretary, Education Department, Bihar Patna.
6. The Headmaster, Bebalal Rajabati Sarbjanik High School, Sarauti, P.S.- Gardanibagh, District- Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kr. Sinha, Sr. Advocate with Mr. Prashant Kashyap, Advocate
For the State	:	Mr. S. K. Ranjan, AC to GP 17

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 20-11-2018

Heard learned counsel for the petitioner and State.

2. The petitioner has moved the Court for the following
reliefs:

*“ That the petitioner craves indulgence of this
Hon’ble Court for issuance of directions, orders
or writs in the nature of:-*

*(a) A mandamus commanding the respondents to
appoint the petitioner on the post of clerk
against 25% posts of Clerk reserved for the IVth
posts of Clerk reserved for extremely backward
no appointment has been made so far on the*



vacant post of clerk which is still vacant.

(b) For a direction upon the respondent to start selection process after ascertaining from their own level the numbers of vacant posts to be filled up from class IVth Grade.

(c) Any other writ or writs for granting any other relief or reliefs for which the petitioner is found entitled to by this Hon'ble Court, in the facts and circumstances of the present case."

3. The moot question in the present writ petition is whether the petitioner can claim by way of right his consideration for promotion to the post of Clerk against 25% of posts of Clerks reserved for such promotion from the 4th Grade and that too in the Extremely Backward Category. The undisputed factual position is that as per the requirement of law, for consideration for such promotion, a person has to have proficiency in computer typing and computer knowledge. The petitioner does not possess the same. Faced with the situation, the petitioner has filed Interlocutory Application No. 8064 of 2018 seeking amendment of his prayer based on the notification of the Government dated 20.05.2014 which has brought amendment in Sub Rule (1) of Rule 5 of The Bihar Collectorate Clerical Cadre (recruitment and conditions of services) Rules, 2011 (hereinafter referred to as the 'Rules'), which reads as under:

“ x x x x x



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.”

4. Learned counsel for the petitioner submitted that initially being entitled for exemption from such passing of the computer examination, he should have been considered and given promotion and moreso in view of him having superannuated and there being amendment in the Rules with effect from 20.05.2014, where there is provision for direct recruitment of 15 % posts on the basis of seniority. Learned counsel submitted that the petitioner fulfilling the criteria, without passing the examination, his case is required to be considered with retrospective effect and benefit given to him as he has superannuated pursuant to the coming into effect of the amendment. Learned counsel further submitted that the petitioner having been appointed on Class IV post does possess the qualification for appointment in the clerical post and in this view of the matter also, he has to be considered for recruitment on the post of L.D.C. within the



15% posts to be filled by seniority from Group-D employees without examination.

5. Learned counsel for the State submitted that the contention of the petitioner is misconceived for the reason that he had appeared on 02.09.2016 in the examination but failed to clear the same and he also does not have the knowledge of computer which is an essential requirement for consideration for promotion to the post of L.D.C. Learned counsel submitted that the amendment would also not come to the aid of the petitioner as he does not possess the qualification for promotion in clerical post without passing the examination as he does not have proficiency in computer typing or even computer knowledge. Further, it was submitted that the High Powered Committee headed by the District Education Officer, Madhubani on 10.09.2016 had rejected the prayer for such promotion on the ground of the petitioner having failed to clear the examination.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ petition. Initially, as per the previous Rules, it was mandatory for a person for being considered for promotion to the post of L.D.C. from Group-D to have knowledge of computer and proficiency in computer typing, which the petitioner does not possess. Even after having attempted to clear the



examination, he failed to do so. Thereafter, he has not applied for seeking exemption and, the requirement for exemption is for the person to apply for the same and that too it shall be effective only from the date on which the application was made, if at all the Competent Authority accepts such proposal and grants exemption, but not otherwise. In the present case, the application itself for exemption never being filed, there cannot be any question of the petitioner being given any benefit on account of reaching a particular age which entitles the person to apply and ask for exemption from passing the examination. Moreover, even if the amendment dated 20.05.2014 is considered, as has rightly been submitted by learned counsel for the State, the same is of no help to the petitioner inasmuch as, it applies only to “*such Group “D” employee who have the qualifications for the appointment in clerical post*” who can be considered for promotion without examination. At the cost of repetition, the Rules specifying the qualification of having computer knowledge and proficiency in computer typing, which the petitioner does not possess, such amendment is not at all applicable in the case of the petitioner. At this juncture, the Court would only refer to a document purportedly written by the In-charge Headmaster of the +2 N.R.S. High School, Sarauti in the district of Madhubani dated 09.06.2016 in which one of the enclosures is mentioned as Certificate In Computer Operation at



serial number 10. However, there being only a bald reference to the same, without the petitioner himself at any point of time putting such a case before the authority that he already knows computer operation or producing any evidence to such effect, the said letter cannot be given any importance. Furthermore, the petitioner having superannuated on 31.08.2018, for all practical purposes nothing remains in the writ petition.

7. For the reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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