

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18472 of 2018

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1. Yushvir Raj, son of Sri Ram Briksh Yadav, resident of Village- Buniyad Bigha, P.O.- Sharwan Bazar, P.S.- Barachatti, District- Gaya.
 2. Dinesh Kumar Ram, son of Hari Ram, resident of Village- Khopira, P.S.- Agiawan, District- Bhojpur.
 3. Dilip Kumar, son of Ram Udgar Yadav, resident of Village- Suhath, P.S. Bahera, District- Darbhanga.
 4. Nandlal Kumar Choudhary alias Nandlal Kumar, Son of Lakshman Chaudhry, resident of Village- Purvi Unta, Jehanabad, P.O. & P.S.- Jehanabad, District- Jehanabad.

... .. Petitioners

Versus

1. The State of Bihar.
2. The Principal Secretary, Panchayati Raj Department, Govt. of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate Mr. Awadhesh Kumar, Advocate
For the Respondent/s	:	Mr. Ajay- GA-5

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 26-11-2018

Heard learned counsel for the petitioners and
learned counsel for the State.

2. In the present case, the petitioners are challenging the notification and the process of selection to the post of Technical Assistant and made a prayer for quashing the notice dated 03.08.2018, published by the Panchayati Raj Department, whereby only Diploma in Civil Engineering candidates have been allowed to participate in the selection process for the post



of Technical Assistant. Further made a prayer that the authority should be directed to allow the degree-holders in Civil Engineering to participate in the selection process for the post of Technical Assistant pursuant to the notice dated 03.08.2018 published by the Panchayati Raj Department.

3. By amendment petition being Interlocutory Application No. 7839 of 2018, prayer has been made to set aside Clause-5(ii) of the advertisement dated 03.08.2018, whereby it has been provided that merit list would be prepared on the basis of marks obtained in Diploma, in Civil Engineering and further 40% seats have been reserved for such candidates, who have obtained the Diploma in Civil Engineering from the Government Polytechnic Institution of Bihar.

4. The petitioners are graduate degree holders in Civil Engineering. The petitioner no.1 is holding the degree in Civil Engineering from Bansal Institute of Science and Technology for the sessions 2012-16. Petitioner no.2 has obtained the degree in Civil Engineer from Ram Mukh Institute of Engineering and Technology, Khora Bhura under Kurushetra University, Kurushetra. Petitioner no.3 has obtained the degree in Civil Engineering from Amara Institute of Engineering and Technology, Guntur, Andhra Pradesh in the academic Session



2013-17 and petitioner no.4 has obtained degree in Civil Engineering from S.R.P.C. Anna University, Chennai. The Panchayati Raj Department, Government of Bihar, published an advertisement on 03.08.2018 for 2096 posts of Technical Assistants on contractual basis, for which the minimum qualification has been prescribed as Diploma in Civil Engineering from recognized Polytechnic Institute. In the advertisement, it has been mentioned that 40% posts would remain reserved for students who have passed from the Government Polytechnic Institute in the State of Bihar. Total posts have been mentioned as 2096. This notification has been issued in order to implement the 7 point programme formulated by the Chief Minister of Bihar. The appointment was on contract basis and in Clause- 8, it has been mentioned that those who are appointed on contract basis will not have any right to claim same benefit at par with the Government employees nor their claim for regularization of service will be entertained. Later on, the Government by its Resolution dated 25.07.2018 outlined the manner and method for selection on contract basis to the post of Technical Assistant. In clause-5, the minimum qualification has been fixed as Diploma in Civil Engineering. It has further been provided that online application will be entertained and the



merit list will be prepared on the basis of marks obtained in Diploma in Civil Engineering and 40% posts would remain reserved for the students who have passed out from the Government Institute situated in the State of Bihar.

5. In the present petition, the grievance has been raised that in a calculated manner the posts have been reserved for Diploma holder candidates and has also submitted that Diploma in Civil Engineering should be treated to be minimum qualification and the persons holding higher qualification i.e. B.Tech. degree in Civil Engineering be also treated to be higher qualification and be allowed to participate in the selection, as Bachelor Degree in Civil Engineering is higher qualification, as because the petitioners are holding the higher qualification cannot be basis for exclusion for consideration to the post of Technical Assistant and the action of the respondents in not providing any option in the portal for the person holding the qualification of Graduation in Civil Engineering is unreasonable, arbitrary and illegal. Further submitted that the action of the respondents also bad in law as in Clause-5 of the advertisement, it has wrongly been provided that the merit list would be prepared on the basis of marks obtained in Diploma in Civil Engineering rather the marks obtained in the Graduation in



Civil Engineering be also considered as appropriate qualification for consideration to the post of Technical Assistant.

6. The State has filed its counter affidavit, wherein it has been stated that the post of Technical Assistant is meant for those who are holding the qualification of Diploma in Civil Engineering as it is a minimum qualification for consideration to the post of Technical Assistant. The persons having higher qualification must possess the degree of Diploma in Civil Engineering to become the eligible for the post of Technical Assistant. The qualification of Diploma in Civil Engineering is only accepted irrespective of any other higher degree. The policy decision by way of resolution, in this regard, has been taken by the Cabinet by Resolution no.4046 dated 25.07.2018 and in Clause-5 it has been mentioned that the merit list is to be prepared on the basis of marks obtained in Diploma in Civil Engineering. It has further been stated that the qualification for the post of Junior Engineer in the State of Bihar is Diploma in Civil Engineering, which is evident from the notification no.3950 dated 07.11.2017 issued by the Water Resources Department.

7. Having considered the rival contentions of the parties, in this case two issues are involved for consideration



whether the person who is holding Bachelor Degree in Civil Engineering has illegally been deprived for consideration to the post of Technical Assistant and whether the manner prescribed for preparation of merit list is proper or justified, which requires interference by this Court.

8. The fixation of qualification for any post lies within the domain of the executives or the employer, unless the fixation of qualification so arbitrary no reasonable person would form such an opinion, only in that circumstance, the Courts will have a jurisdiction to examine and interfere with the qualification fixed by the employer. The Court cannot act as an appellate authority while exercising the power under the judicial review and it is not the job of the Court to substitute what it thinks to be more appropriate than of the selecting authority has decided as desirable. The Court has no jurisdiction to re-writing the rules or qualification for selection fixed by the employer or the executive authority, which is impermissible while exercising the power of judicial review.

9. The aforesaid principle has been enunciated in the case of *Rajya Sabha Secretariat and Others vs. Subhash Baloda and Others* reported in (2013) 5 SCC 169. It will be relevant to quote paragraph no.26 of the said judgment, which is



as follows:-

“26. Having noted this factual and legal scenario, in our view there was nothing wrong in the method applied by the appellants in the selection of the Security Assistants Grade II. There was no discrimination whatsoever among the candidates called for the interview, nor any departure from the advertised requirements. One can always say that some other method would have been a better method, but it is not the job of the court to substitute what it thinks to be appropriate for that which the selecting authority has decided as desirable. While taking care of the rights of the candidates, the court cannot lose sight of the requirements specified by the selecting authority. What the High Court has proposed in the impugned orders amounts to rewriting the rules for selection, which was clearly impermissible while exercising the power of judicial review.”

10. In the present case also the minimum qualification for the post of Technical Assistant has been fixed as Diploma in Civil Engineering and the preparation of merit list will be on the basis of marks obtained in Diploma in Civil Engineering and those who secured higher marks will find his place in the selected candidates list and qualification and percentage of marks obtained in the Diploma in Civil Engineering is the basis for preparation of select list of candidates. The manner and method of the selection is predominately lies with the State or



the employer as they are the best persons to know the nature of job to be performed and corresponding qualification suitable to the job. Of course, a person holding higher qualification cannot be basis for exclusion but at the same time, the manner the merit list would be prepared cannot be over turned or tinkered while exercising the power under judicial review.

11. Learned counsel for the petitioners have placed reliance two judgments; first *State of Orrisa and Anr. vs. N.N. Swamy and Ors.* reported in *AIR 1977 1237*. However, the same does not apply to the facts of the present case as while taking over the services of the teaching staff of Khallikote College it was stipulated readers who were drawing a salary of Rs.600/- or more per month on the date of take-over, were recommended to the Public Service Commission for the determination of their suitability for appointment as Readers. The Court has held that generally the private institution does not pay the salary at par with the employees of the Government College, the quantum of salary cannot be a basis for exclusion of their candidature for their absorption. In the present case, a quite different issue has been raised, nothing to do with the issue raised in that case.

12. Another judgment cited by learned counsel for the



petitioner rendered in the case of *State of Mysore and Anr. vs. P. Narasing Rao* reported in *AIR 1968 page- 349*, which also does not apply in the present case as there the issue was raised regarding fixation of pay as per the qualification acquired by them on the post of tracers, as there were two classes, tracers i.e. the person who is matriculate tracer, having higher scale and non-matriculate tracer having lower scale and the Court did not find any anomaly or abnormality in fixation of higher pay scale for those who were holding the higher qualification. So, this issue has nothing to do with the issue raised in the present case. In the present case only the issue of consideration with the process of selection fixed by the State has been raised, as per the notification only minimum qualification is Diploma in Civil Engineering and does not provide exclusion of the higher qualification, but preparation of the merit list is the basis of marks obtained in the Diploma in Civil Engineering and the qualification of Graduation in Civil Engineering does not find place for preparation of the merit list. These are the policy matters and this Court does not find that it is so arbitrary, unreasonable of such nature that no reasonable person will form such an opinion in prescribing such qualification in the matter of recruitment to the post of Technical Assistant as stated herein-



above. This Court in exercise of judicial review cannot act as an appellate authority and form a different opinion that there would be better method and manner for selection to the post of Technical Assistant as the State is the best authority and expert to know which will be best qualification to the post of Technical Assistant.

13. For the foregoing reasons, this Court does not find any merit in this writ petition. Accordingly, the same is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
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