

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.4091 of 2016

Abhay Kumar Pandey Son of Sri Radha Mohan Pandey Resident Of Town-
Bhagalpur, Mohalla- C.S. Nagar, Aliganj, District- Bhagalpur

... .. Petitioner/s

Versus

1. The Union Of India and Ors
2. The General Manager Personal Eastern Railway, Fairly Place, Kolkata-1
Named Sri G.C. Agrawal
3. The Senior Division personnel Office, Eastern Railway, Malda Division,
Malda Named Sri P.C. Tuddu
4. The Divisional Manager, Malda Division, Eastern Railway named Sri
Rabindra Kumar Gupta

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar Gupta
For the Opposite Party/s : Mr.Anil Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 23-01-2019

Heard learned counsel for the petitioner.

2. This application has been filed by the petitioner for
modification of the order dated 17.06.2014 passed in MJC No.
4932 of 2013 by which the application for initiation of contempt
proceeding against the respondents was rejected.

3. While rejecting the MJC No. 4932 of 2013, this
Court had recorded the submissions made by the learned counsel
for the petitioner as under:-



“Learned advocate Mr. Anirban Kundu, appears for the petitioner. He concedes that till the date of the order, the petitioner had not acquired the qualification of graduation and he was not eligible for Commercial Apprenticeship. He also concedes that since the date the petitioner has acquired required qualification, Railway has not called for the applications for Commercial Apprenticeship.”

4. Learned counsel appearing for the petitioner submitted that the counsel, who appeared in MJC No. 4932 of 2013, could not make correct submission before the Court. He submitted that the contempt application bearing MJC No. 4932 of 2013 was rejected by this Court on 17.06.2014 due to the aforesaid erroneous submission of the counsel for the petitioner. He pleaded that the petitioner is graduate since 1988.

5. MJC No. 4932 of 2013 was filed for initiation of contempt proceeding against the respondent on the ground of willful disobedience of the order dated 18th of February, 2013 made by this Court in CWJC No. 10850 of 2012.

6. On perusal of the record of CWJC No. 10850 of 2012, we find that the said writ petition was filed for quashing the order of the Central Administrative Tribunal, Patna Bench dated 17th of March, 2010 passed in OA No. 477 of 2007. In its order



dated 17th of March, 2010, the Tribunal had observed in paragraph 6 as under:-

“Without commenting any further of this aspect, we find that even the applicant has admitted that as on the date of consideration of this application, his qualification in the service register was entered only as Isc., and his qualification of graduation from Bhagalpur University was never brought on official record. Since the subject matter of his behaving taken the 2006 examination is not inconsideration before us, we are not in a position to comment as to under what circumstances, he was allowed to take the examination in 2006. Here, in the instant case, the notification at Annexure-A/1 page 10 enclosing proforma at page 11 clearly indicates that the educational qualification of the applicant employee should be verified as per his service record. Therefore, if the authorities have verified the academic qualification of the applicant as per his service register, and finding that qualification to be only I.Sc., they have denied the applicant a chance to appear at the said examination, he cannot now claim shelter behind a questionable record of his higher educational qualification, which was never disclosed to the authorities earlier, and was not brought on record in his service book, after producing the originals, for verification by the authorities concerned.



7. In CWJC No. 10850 of 2012 when the argument was advanced before the Court, the respondents had taken a plea that the petitioner had never made any attempt to obtain graduation certificate and, hence, his case could not be considered for such post. The said argument of the respondents was not disputed by the petitioner. It would appear from the order dated 18.02.2013 passed in CWJC No. 10850 of 2012 that in this background while disposing of the writ petition, the Court observed as under:-

“The argument of the learned counsel for the respondent is that he has never made any attempt to obtain graduate qualification, in absence of which his case could not be considered for such post.

Under the above circumstances, we are of the opinion, it would suffice, if a direction is given to the authority to consider the case of the petitioner from the date he obtained graduate qualification and such consideration should be as per rules. This Court orders accordingly.”

8. We further find that after disposal of MJC No. 4932 of 2013, the petitioner filed another application for initiation of contempt proceeding vide MJC No. 1502 of 2015 before this Court. Even in that MJC application, the petitioner did not take a plea that any erroneous submission was made by the counsel for



the petitioner in MJC No. 4932 of 2013. The said MJC was dismissed as withdrawn vide order dated 26.10.2016.

9. After lapse of more than two years from the date of disposal of MJC No. 4932 of 2013, the instant application has been filed on 02.12.2016 by the petitioner seeking modification in the order dated 17.06.2014 passed in MJC No. 4932 of 2013 regarding the submissions made by the learned counsel for the petitioner.

10. Learned counsel for the petitioner has failed to satisfy us as to why no modification application was filed immediately after disposal of the MJC No. 4932 of 2013. He has also failed to satisfy us why no pleading was made in MJC No. 1502 of 2015 regarding any erroneous submission made by the counsel conducting the case. In the aforesaid background of the fact, we are of the considered opinion that the instant application is nothing but an abuse of the process of the Court. No case for modification of the order is made out. We must also observe that Mr. Anirban Kundu, learned counsel, who had appeared on behalf of the petitioner in MJC No. 4932 of 2013, is a practicing advocate of this Court. He has not come forward to say that any erroneous submission was made by him while conducting the case. Merely due to change of counsel, at such a belated stage, such plea cannot



be allowed that the previous counsel had made erroneous submission before the Court.

11. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

(Chakradhari Sharan Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	NA
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