

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6735 of 2019

1. Triloki Nath Dubey Son of Dinbandhu Dubey Resident of Village- Ainio, P.O.- Nandlalbad (Saidanpur) P.S.- Gauri Chak, District- Patna- 803201. at present posted as Junior Engineer, Block- Rosera, District- Samastipur.
2. Rahul Kumar S/o Upendra Prasad Chaurasiya Resident of Village and Post- Prataptand, P.S.- Bhagwanpur, District- Vaishali, Pin Code- 844123, at present posted as Junior Engineer, Block- Bidupur, District- Vaishali.
3. Awaneesh Kumar Son of Ramdhyan Rai Resident of Village- Adarsh Nagar, behind Society house hall Mahadeva, Siwan Post- Siwan. P.S.- O.P. Mahadeva, District- Siwan- 841226. at present posted as Junior Engineer, Block- Lakri Nabiganj, District- Siwan.
4. Sonam Kumar S/o Shashi Bhushan Prasad Singh Resident of Village- Gomti, Post- Titidha, P.S.- Raja Paker, District- Vaishali- 844502. at present posted as Junior Engineer, Block- Vaishali, District- Vaishali.
5. Abhimanyu Kumar S/o Shashi Bhushan Sharma Resident of Village- Kailitand, Post- Shatha, P.S.- Bhagwanpur, District- Vaishali- 844123. at present posted as Junior Engineer, Block- Lalganj, Vaishali.
6. Md. Shabbir Alam S/o Md. Mansoor Alam Residing at Bank Colony, Khetari Mohalla, Ara, District- Bhojpur- 802301. at present posted as Junior Engineer, Block- Chaugai, District- Buxar.
7. Manish Ranjan S/o Rajan Dhari Singh Residing at Ram Shyam Apartment, Flat No.304, Ashok Nagar, Road No.-11, Kankarbagh, Patna- 800020. at present posted as Junior Engineer, Block- Bithan, District- Samastipur.
8. Sachin Kumar Sanju S/o Birendra Kumar Mishra Residing at Mundrik Bhawan, Shivpuri, Road No.-1, Post- Shastri Nagar, P.S.- Shastri Nagar, Patna- 800023. at present posted as Junior Engineer, Block- Mahishi, District- Saharsa.
9. Govind Kumar Gaurav S/o Vishundeo Prasad Bhagat Resident of Village- Amha, Post- Amha, P.S.- Supaul, District- Supaul, at present posted as Junior Engineer, Block- Sonbarsa, District- Saharsa.
10. Milton Kumar Milton S/o Laxman Prasad Yadav Resident of Village Post- Khajuri, P.S.- Sour Bazar, District- Saharsa at present posted as Junior Engineer, Block- Banma Itahari, District- Saharsa.
11. Rajesh Ranjan S/o Sita Ram Mandal Resident of Village- Rajpur, Post- Rajpur, P.S.- Pipra, District- Supaul. at present posted as Junior Engineer, Block- Patarghat, District- Saharsa.
12. Madhur Kumar S/o Laxmi Prasad Singh Resident of Village- Maharas, Post- Sarbela, P.S.- Salkhuwa, District- Saharsa, at present posted as Junior Engineer, Block- Nauhatta, District- Saharsa.
13. Brajesh Kumar S/o Kumar Kishor Yadav Resident at Surmaha, Post- Kishanpur, P.S.- Sour Bazar, District- Saharsa, at present posted as Junior Engineer, Block- Salkhua, District- Saharsa.
14. Mukesh Kumar Mukund S/o Dadan Singh Resident at- Maharas, Post- Sarbela, P.S.- Salkhua, District- Saharsa, at present posted as Junior



Engineer, Block- Kahra, District- Saharsa.

15. Praveen Kumar S/o Surendra Yadav Resident of Village- Khajuraha, Post-Khajuraha, P.S.- Sonbarsa, District- Saharsa, at present posted as Junior Engineer, Block- Mahishi, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Chairman Bihar Technical Service Commission, 19 Hording Road, Patna.
3. The Secretary Bihar Technical Service Commission, 19 Hording Road, Patna.
4. The Deputy Secretary Bihar Technical Service Commission, 19 Hording Road, Patna.
5. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 3483 of 2020

=====

1. Manoranjan Kumar Ray Son of Sri Ghanshyam Ray, Resident of Village- Chetan Chapra, Police Station- Baniapur, District- Saran at Chapra.
2. Lalu Kumar, Son of Lalan Prasad Yadav, Resident of Village- Amdiharee, Police Station- Rani Talab Kanpa, District- Patna.
3. Amish Raj, Son of Suresh Prasad, Resident of Village- Wazirpur, Police Station- Bikram, District- Patna.
4. Niranjan Kumar, Son of Sohan Mahto, Resident of Badi Pahari, Police Station- Agamkuan, District- Patna.
5. Gautam Kumar, Son of Subedar Rai, Resident of Village- Rampur Ammi, Police Station- Dighwara, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Bihar Technical Service Commission, 19 Harding Road, Patna Bihar through its Secretary.
4. The Bihar Technical Service Commission, 19 Harding Road, Patna, Bihar through its Deputy Secretary

... .. Respondent/s

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 6735 of 2019)



For the Petitioner/s : Mr. Uday Bhan Singh, Advocate
For the Technical Commission : Mr. Nikesh Kumar, Advocate
(In Civil Writ Jurisdiction Case No. 3483 of 2020)
For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rajesh Kumar, Advocate
For the Technical Commission : Mr. Nikesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 14-02-2020

Heard learned counsel for the parties.

2. Both the writ applications arise out of the same advertisement No. 01/2019 issued by the Bihar Technical Service Commission (hereinafter referred to as the 'Commission') inviting applications for appointments against various posts of Junior Engineer in various departments of the State Government and since they involve identical issues, both of them have been heard together and are being disposed of by present common judgment and order.

3. Dispute which has been raised in the present proceedings is only in respect of the essential educational/technical qualification as disclosed in the advertisement. The advertisement requires diploma or an equivalent qualification as the requisite educational qualification. The petitioners admittedly do not possess Diploma qualification. They, however, possess the qualification of Degree in Engineering which qualification is admittedly higher than Diploma qualification. The petitioners claim that possession of higher



qualification of Degree in Engineering presupposes that they possess Diploma qualification, which is an inferior qualification than qualification of Degree in Engineering. It is accordingly their case that they should be treated to be eligible for the posts advertised through the said advertisement No. 01/2019.

4. It is the petitioners' case that earlier, selections were made for appointment as Junior Engineers in various departments on contractual basis, in which the petitioners, who held degree qualification, had participated and were selected. They discharged their functions and duties as Junior Engineers on contractual basis for several years and now when the departments of the State Government are going to make regular appointments, the petitioners are being arbitrarily denied on irrational ground of lack of essential educational qualification.

5. A counter affidavit has been filed on behalf of the Commission resisting the claim of the petitioners of being eligible in terms of qualification on the ground that they possess higher qualification. The Commission has relied on the statutory Rules framed by the Government of Bihar under Article 309 of the Constitution of India which regulate recruitment in Subordinate Engineering Service cadres.



6. Let it be noted that this is not in dispute that the posts which have been advertised, are under Subordinate Engineering Service cadre of various departments of the State of Bihar.

7. Reliance has been placed on behalf of the Respondents on a Division Bench decision of this Court rendered on 18.12.2018 passed in LPA No. 1416 of 2018 [*Bihar State Power (Holding) Company Ltd. Vs. Md. Asif Hussain and others*] to contend that acquisition of qualification of degree in Engineering cannot presuppose acquisition of diploma in Engineering qualification. Similar stand has been taken on behalf of the State Government of Bihar.

8. I have heard Mr. Ramakant Sharma, learned Sr. counsel appearing on behalf of the petitioners of CWJC No. 3483 of 2020 and Mr. Uday Bhan Singh, learned counsel representing the petitioners of CWJC No. 6735 of 2019. Mr. Nikesh Kumar, learned counsel has represented the Bihar Technical Service Commission and Mr. Shiv Shankar Prasad, learned SC-8, the State of Bihar.

9. Mr. Ramakant Sharma, learned senior counsel has placed reliance on following Supreme Court's decision to booster his contention:-



- (i) (2010) 15 SCC 596 (Jyoti K.K. and others Vs. Kerala Public Service Commission and others)
- (ii) (2019) 2 SCC 404 (Zahoor Ahmad Rather & Ors. Vs. Seikh Imtiyaz Ahmad & Ors.)

10. He has drawn my attention to certain interim orders passed by this Court in CWJC No. 7656 of 2019 and in the present case (CWJC No. 6735 of 2019) to contend that persons holding higher qualification of degree in Engineering have been provisionally allowed to apply against the said advertisement, subject to final outcome of the said case.

11. Though, the matters were listed in today's list almost at the bottom, they have been taken up on priority basis on the requests made by learned counsel appearing on behalf of the petitioners with the consent of learned counsel representing the respondents.

12. Mr. Nikesh Kumar, learned counsel appearing on behalf of the Commission has submitted that since the advertisement has been issued strictly in terms of the statutory provision which lays down the minimum requisite educational qualification for appointment to the post in question, the terms of advertisement cannot be questioned and there is no legal infirmity in the said advertisement in the absence of any challenge to the



statutory provisions itself. He has argued that the ratio laid down by the Division Bench of this Court in case of ***Power Holding Company*** (supra) applies with full force in the present cases and that the said Division Bench decision has not been interfered with by the Supreme Court. A copy of the order dated 22.01.2019 passed in said SLP (C) No. 1187 of 2019 has been brought on record by way of Annexure-C to the counter affidavit. He has also placed reliance on a coordinate Bench decision of this Court rendered on 18.09.2019 in ***CWJC No. 18218 of 2019 (Amlesh Kumar & Anr. Vs. The State of Bihar and others and other analogous cases)*** to submit that following decision in case of ***Bihar State Power (Holding) Company Ltd.*** (supra), this Court has refused to accept B.Sc. in Nursing qualification to be a valid qualification for the post of Basic Grade posts under Bihar Nurse Cadre Rules, 2019, for which 'pass in JNM training course' was prescribed under the Rules as requisite qualification.

13. Before dealing with the rival contentions made on behalf of the parties as noted above, it would be apt to take note of the relevant provisions under the Rules which prescribe qualification and procedure of selection for appointment to the posts in Subordinate Engineering cadre in different departments. In my opinion, Rule 9 (1) and Rule 10 of the Bihar Water Resources



Department Sub-ordinate Engineering (Civil) Cadre Recruitment Rules go at the core of the issue involved in the present case and are, therefore, being reproduced hereinbelow:-

“9. Qualifications – (1) Qualifications for appointment in this cadre shall be as follows:-

(i) A candidate must be a citizen of India except the special order of the Government.

(ii) For the subordinate Engineering Cadre, diploma or equivalent qualification holder in civil engineering.

(iii) Technical qualification/eligibilities for selection:-

(a) Diploma or Equivalent qualification in Civil Engineering issued by the institutes recognized by AICTE, which has obtained recognition from the State Technical Board or

(b) Non-Distance Mode Diploma in Civil Engineering or equivalent qualification issued by Deemed University under UGC ACT.

10. Procedure of selection:- (1) Selection to the posts of basic category of this cadre i.e. (Junior Engineer (Civil) shall be made by the Commission on the basis of percentage of marks obtained in Diploma or equivalent qualification as well as Interview (viva voce). Such candidates having experience of working on the post of Junior



Engineer (Civil) on contract basis under the Government of Bihar or in any undertaking/body/corporation/entity/Authority/autonomous body under the Government of Bihar, who fulfill the qualifications of the recruitment in this cadre, shall be given preference by giving additional marks according to sub rule (2) of this Rule.”

(Underlining for emphasis)

14. It is not in dispute that similar provisions are there for Junior Engineers (Mechanical and Civil) in other departments of the State Government. Evidently, Clause (iii) of sub Rule (1) of Rule 9 prescribes the technical qualification/eligibilities for selection as is manifest on plain reading of the said provision. It lays down that Diploma or equivalent qualification in Engineering issued by institutes recognized by AICTE which have obtained the recognition from State Technical Board, shall be the eligibility and therefore essential technical qualification which candidate must possess for appointment to the posts in question. Rule 10(1) in most uncertain terms states that selection to the post of basic category of the cadre i.e. Junior Engineer shall be made by the Commission on the basis of marks obtained in Diploma or equivalent qualification. The Rule further provides the basis for preparation of merit list. It is easily noticeable that though,



weightage can be given in accordance with the Rules for working experience on contractual basis subject to maximum of 25 marks. A candidate's merit is to be adjudged on the basis of marks scored by him in Diploma examination, against 75 full marks. Rule 10(2), of the Rules which prescribes the procedure for preparation of merit list does not refer to award of any marks on the basis of higher qualification. Marks can be awarded for the purpose of preparation of merit list in terms of Rule 10 (2) on the basis of percentage of marks obtained in Diploma or equivalent qualification only and not otherwise.

15. Paragraphs-7 and 8 of the Supreme Court's decision in case of ***Jyoti K.K. and others Vs. Kerala Public Service Commission and others*** reported in (2010) 15 SCC 596, reliance on which has been placed by learned senior counsel on behalf of the petitioner, read thus:-

“7. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant Rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the Rule to the effect that such of those higher



qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same Faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far.

8. Under the relevant Rules, for the post of Assistant Engineer, degree in Electrical Engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of Sub-Engineer. In that view of the matter the qualification of degree in Electrical Engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post.”

16. The said decision has been adequately dealt with by the Division Bench of this Court in case of **Power Holding Company** (supra).



17. The Supreme Court in case of ***Jyoti K.K.*** (supra) had the occasion to deal with the Kerala State and Subordinate Services Rules, 1956, clause (10) (a) (ii) whereof prescribed that notwithstanding anything contained in the said Rules or in the special Rules, the qualifications recognized by the Executive Orders or Standing Orders by the Government as equivalent to the qualification specified for a post in special Rules and such of those higher qualifications which presuppose acquisition of lower qualification prescribe for the post shall also be sufficient for the post. The same read as under:-

“..... such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post”

(emphasis supplied)

18. In the present case, apparently there is no such provision in the Rules regulating subordinate Engineering Service in the State of Bihar. The Rules prescribe a particular qualification and such qualifications which are equivalent to the qualification prescribed as the eligibility condition for appointment to the posts in the cadre.

19. The decision in case of ***Zahoor Ahmad Rather & Ors. Vs. Seikh Imtiyaz Ahmad & Ors.*** reported in ***(2019) 2 SCC***



404 has, as a matter of fact, distinguished the Supreme Court's decision in case of **K.K. Jyoti** (supra) and has held in paragraphs 26 and 27 as follows:-

“26. The decision in Jyoti K.K. turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy.



Judicial review must tread warily. That is why the decision in Jyoti K.K. must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti K.K. turned”.

20. This Court in case of ***Amlesh Kumar Vs. State of Bihar*** (supra) has also taken the view that an employer is the best person to decide as to what should be the requisite qualification for appointment against posts and unless the qualification so prescribed by an authority, which is ‘State’ within the meaning of Article 12 of the Constitution of India is shown to be arbitrary having no nexus with the posts to which appointments are to be made, this Court exercising power of judicial review is not required to interfere.

21. In view of the discussions as above, I do not find any merit in the contention on behalf of the petitioners that they hold the eligibility condition for appointment as Junior Engineers in accordance with the statutory Rules which prescribe essential qualification for recruitment and appointment to the said posts.

22. These applications are, accordingly, dismissed.



- 23. The interim orders, if any, stand vacated.
- 24. There shall be no orders as to cost.

(Chakradhari Sharan Singh, J.)

S.Ali/-

AFR/NAFR	
CAV DATE	
Uploading Date	24/02/2020
Transmission Date	

