

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9748 of 2020

1. Nishant Kumar son of Jitendra Kumar Singh resident of Lalmati Kunj, Behind Annpurna Apartment, Vijay Nagar, Bailey Road, P.O. and P.S. Rukunpura, District- Patna.
2. Prakash Kumar Singh son of Jai Kumar Singh resident of Village- Mausiya, P.O.- Baghari, P.S.- Ramgarh, District- Bhabhua, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Transport Department, Vishveshwariya Bhawan, Bailey Road, Patna.
2. The Joint Secretary, Transport Department, Vishveshwariya Bhawan, Bailey Road, Patna.
3. The Bihar Public Service Commission, Bailey Road, Patna.
4. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
5. The Joint Secretary-cum- Controller Examination, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate.
	:	Mr. Pranav Kumar, Advocate
	:	Mr. Shrishti Singh, Advocate
For the Respondent/s	:	Mr. Ajay Kumar Rastogi, AAG 10
	:	Mr. Sushil Kumar Singh, AC to AAG 10
For the B.P.S.C.	:	Mr. Rajni Kant Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 23-11-2021

Heard the parties.

2. In the instant petition, petitioners have prayed for the following relief/reliefs:

“i. To issue an appropriate writ(s)/ order(s)/ direction(s) in the nature of mandamus commanding the Respondents to clarify that in terms of clause 3 educational



qualification/criteria of the advertisement no. 06/2020, the diploma holder in Mechanical Engineering/ Automobile Engineering is the minimum qualification including Degree in Mechanical Engineering/Automobile Engineering and the applicants with the Degree certificate in Mechanical Engineering/ Automobile Engineering is also eligible to participate in the selection process for the appointment on the post of Motor Vehicle Inspector. (MVI).

ii. To issue an appropriate writ(s)/ order(s)/ direction (s) in the nature of Mandamus commanding the Respondents to accept the application from the candidates possessing the degree in Mechanical Engineering/ Automobile Engineering.

iii. To issue an appropriate writ(s)/ order(s)/ direction(s) in the nature of Mandamus commanding the Respondents to come out with fresh advertisement after amending the clause 3 educational qualification / criteria of the advertisement allowing the candidates possessing the degree in Mechanical Engineering/ Automobile Engineering to participate in the selection process.

iv. To any other relief(s) that the Petitioner is entitled to in the facts and circumstances of the case.”

3. The petitioners intend to participate in the process of selection and appointment to the post of Motor Vehicle Inspector pursuant to the advertisement issued by the respondent-Commission. The petitioners are qualified bachelor of Technical Engineering degree. In terms of cadre and recruitment Rule of the aforesaid post petitioners are ineligible as they do not possess minimum eligibility qualification and they possess higher qualification and they were seeking the Rule to be clarified that in the absence of prescribed qualification this court must read the Engineer graduates are eligible. The eligibility criteria for direct recruitment in the cadre of Motor Vehicle Inspector as on the date of advertisement is as under:



“Substitution of Rule 5 of the said The Bihar Transport (Technical) Cadre Rules, 2003 – Rule-5 of the said. The Rules, 2003 shall be substituted by the following:- “(5) Eligibility- The Minimum eligibility criterion for candidate for direct recruitment in the cadre on the post of motor vehicles inspector shall be the following :-

(I) 10th standard pass from any recognized Board; and

(ii) a Diploma in Automobile Engineering (three year course);

or

a Diploma in Mechanical Engineering (three year course), awarded by any institution recognized by the Central Government or State Government; and

(iii) holding a driving license authorizing to drive motor cycle with gear and light motor vehicles.”

4. Senior counsel for the petitioners submitted that eligibility criteria mentioned in Rule 5 of the Bihar Transport (Technical) Cadre Rules 2003 (amended *vide* amendment Rules, 2019) is substitution of Rule 5 to the original Rules. The aforesaid eligibility is in respect of minimum eligibility criteria for candidate for direct recruitment to the post of Motor Vehicle Inspector. Since petitioners are holders of degree in B.Tech, they are eligible to be participated in the process of selection and appointment to the post of Motor Vehicle Inspector even though degree qualification is not stipulated in the aforesaid Rule relating to eligibility, since they possess higher qualification than the minimum qualification and B.Tech qualification is deemed to be minimum qualification. In support of



the aforesaid contention learned counsel for the petitioner cited the following decisions i.e. ***Jyoti K.K. and Others vs. Kerala Public Service Commission and Others 2010 (15) SCC 596, Paragraph 9*** and ***Puneet Sharma and Others etc. vs. Himachal Pradesh State Electricity Board Limited and Another - Civil Appeal No. (S) 1318-1322 of 2021*** decided on 07.04.2021, Paragraphs 3, 29 and 30. It is vehemently submitted that the aforesaid provision for eligibility to the post of Motor Vehicle Inspector is required to be taken note of for the purpose of minimum eligibility. In other words candidate who is possessing higher qualification than the minimum qualification is eligible for participation in the process of selection and appointment to the post of Motor Vehicle Inspector in the light of the aforesaid decisions of the Apex Court.

5. Learned counsel for the respondent Commission submitted that advertisement is in terms of the Bihar State Transport (Technical) Cadre Amendment Rules, 2019), therefore, there is no infirmity in the advertisement as it is in terms of amendment Rules 2019. Since the petitioners do not possess the diploma in Automobile Engineering (Three years course) or a diploma in Mechanical Engineering (Three years course) awarded by any institution recognized by the Central Government or State Government, they are not entitled to participate in the process of selection and appointment to the post of Motor Vehicle Inspector, since petitioners



do not possess minimum prescribed qualification, Rule cannot be read as claimed by the petitioners. The cited decisions do not assist petitioners case in view of statutory provision like amended Rules 2019 in respect of Motor Vehicle Inspector's post in the State of Bihar.

6. Heard the learned counsel for the respective parties. Crux of the matter in the present petition is whether petitioners are entitled to participate in the process of selection and appointment to the post of Motor Vehicle Inspector or not? Further this Court could re-write the minimum qualification prescribed for the post of Motor Vehicle Inspector in the Amended Rules, 2019, while incorporating or reading that Graduate Engineers qualification? Undisputedly the petitioners do not fulfill the minimum eligibility criteria namely Diploma in Automobile Engineering or Diploma in Mechanical Engineering (Three years course). They possess qualification of B.Tech degree. Merely they have higher qualification of a degree in engineering and they do not possess minimum eligibility qualification, in the result they are not eligible to participate in the process of selection and appointment to the post of Motor Vehicle Inspector in the State of Bihar in terms of amended Rules, 2019 as Rules, 2019 do not stipulate one of the minimum qualification as degree in engineering like B.Tech degree. The cited decisions on behalf of the petitioners do not assist for the reasons that one has to



go by the relevant statutory rule governing the post before application of judicial pronouncements.

7. Perusal of the aforesaid statutory Rule in particularly Rule 5 with reference to amended Rules 2019 minimum prescribed qualification persons are entitled to participate in the process of selection and appointment like Diploma in Automobile Engineering or Diploma in Mechanical Engineering (three years course). Apex Court in the case of ***Nair Service Society Vs. T. Beermasthan and others reported in (2009) 5 SCC 545*** in Para 48 it is held as under:

“Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

8. In the light of the Apex Court decision weightage is to be given to statutory rule governing the post. In the present case amended Rules 2019 has not stipulated qualification of B.Tech degree as minimum eligibility criteria. Therefore judicial review is not permissible in so far as incorporating any words in a statute or Rule unless and until there is serious ambiguity in the statute. Apex Court held that Court's are not empowered to tinker the statutory Rule or reading the statutory rule in a different manner when there is no ambiguity in the statute or Rules.



9. In the case of *Union of India vs. Harjeet Singh Sandhu reported in (2001) 5 SCC 593* it is observed that the Courts are warned that they are not entitled to usurp legislative function under the disguise of interpretation and that they must avoid the danger of an a *priori* determination of the meaning of a provision based on their own preconcieved notions of ideological structure or scheme into which the provision to be interpreted is some how fitted. Further, in *Duport Steels Ltd. vs. Sirs, (1980) 1 All ER 529* in which it is observed that caution is all the more necessary in dealing with a legislation enacted to give effect to policies that are subject of bitter public and parliamentary controversy, for in controversial matters there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable; it is the Parliament's opinion in these matters that is paramount. This only means that Judges cannot interpret statutes in the light of their views as to policy; but they can adopt a purposive interpretation if they can find in the statute read as a whole or in the material to which they are permitted by law to refer as aids to interpretation and expression of Parliament's purpose or policy. So there is no usurpation of function or danger when the purpose or object of statute is derived from legitimate sources and the words are given an interpretation which they can reasonably bear to effectuate that purpose or object. LORD PORTER in respect of "A right construction of the act" expressed



that “can only be attained if its whole scope and object together with an analysis of its wording and the circumstances in which it is enacted are taken into consideration.”

10. Recently Apex Court held that power of judicial review cannot be invoked to decide equivalence of prescribed qualifications with any other qualification. *Devendra Bhaskar vs State of Haryana LL 2021 SC 680 – Case No. 7031/2021 decided on 24/11/2021*. Thus cited decisions on behalf of the petitioners are hereby distinguished and citations are not applicable to the present case.

11. In the light of these facts and circumstances, the petitioners have not made out a case to clarify the minimum qualification for the post of Motor Vehicle Inspector prescribed under Rule 5 of Amended Rules, 2019 to read the minimum qualification Degree in Engineering like B.Tech.

12. Accordingly, petition stands dismissed. No order as to costs.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.12.2021
Transmission Date	NA

