

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13317 of 2017

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1. Sanjay Pandey, Son of Babulal Pandey Resident of Village - Saipur, Jai Chhapra, P.S. - Sishwan, District - Siwan, Bihar.
 2. Shailesh Kumar Singh son of Ram Bachan Singh Resident of Village - Panchina, Naya Mohammadpur, P.S. - Koilwar, District - Bhojpur, Bihar.
- Petitioner/s

Versus

1. The State Of Bihar
 2. The Chairman, Central Selection Board Constable Recruitment I.A.S. Colony, Jawahar Lal Nehru Marg,
 3. The Secretary, Central Selection Board Constable Recruitment, I.A.S. Colony, Jawahar Lal Nehru Mar
 4. The Commissioner, Department of Excise, Govt. of Bihar, Patna.
- Respondent/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Singh
For the Respondent/s : Mr.Sanjay Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

5 12-07-2021 Heard learned counsel for the petitioners, State and

Mr. Sanjay Pandey for the Central Selection Board.

Counsel for the petitioners would submit that the petitioners applied for the post of Excise Constable pursuant to advertisement No. 1/2015 dated 16.7.2015.

The petitioners are ex-army men. They applied for appointment on the post of Excise Constable quota earmarked for Ex-army man. The petitioners have been rendered ineligible by the respondents on the ground that certificate of the petitioners is not equivalent to minimum qualification prescribed for the post of constable as published in the advertisement and prescribed by the requisitioning Department.



Learned counsel for the petitioners, with reference to the rejoinder to the counter affidavit- Annexures-9 and 10, contended that the certificates obtained by the petitioners are equivalent to intermediate and the advertisement do recognize intermediate and equivalent as essential eligibility condition and therefore, ouster of the petitioners from the zone of consideration is illegal and arbitrary.

Mr. Sanjay Pandey, learned counsel appearing for the Central Selection Board would submit that the selection process initiated vide advertisement No. 1/2015 is complete and there is no vacancy available for consideration of the case of the petitioners. He further submits that the documents which have been enclosed by the petitioners by way of rejoinder to the counter affidavit are of 2017 whereas the selection process has commenced in 2015 and therefore, the clarification issued in 2017 will not help the petitioners as the clarification will operate from prospective date and not retrospective date.

With due respect, the Court is unable to subscribe the view expressed by learned counsel for the Selection Board as the clarification is always relatable to the date of issuance of such certificates. Clarification is essential where some doubt is raised about the authenticity of certificates. In the instant case



since the authenticity of the petitioners certificates was doubted and with reference to another candidate it has been clarified by the Union of India/ Armed Forces that the certificate is equivalent to qualification of intermediate.

In support of his contention, Mr. Pandey relief upon the judgment of the Apex Court in the case of **Prakash Chandra Mina and others Vs. The State of Rajasthan and others: (2015) 8 SCC 484**, paras-8 and 10 of which are quoted below for ready reference:-

"8.Having heard the parties, we have also perused the written submissions filed on behalf of some of them and have perused the judgment of the learned Single Judge and the impugned judgment of the Division Bench. In our considered view, the issue noticed at the outset must be decided on the basis of settled law noticed by learned Single Bench that recruitment process must be completed as per terms and conditions in the advertisement and as per rules existing when the recruitment process began. In the present case, the Division Bench has gone to great lengths in examining the issue whether B.P.Ed and D.P.Ed. qualifications are equivalent or superiors to C.P.Ed. qualification but such exercise cannot help the cause of the respondents who had the



option either to cancel the recruitment process if there existed good reasons for the same or to complete it as per terms of advertisement and as per rules. They chose to continue with the recruitment process and hence they cannot be permitted to depart from the qualification laid down in the advertisement as well as in the rules which were suitably amended only later in 2011. In such a situation, factual justifications cannot change the legal position that respondents acted against law and against the terms of advertisement in treating such applicants successful for appointment to the post of PTI Gr.III who held other qualifications but not the qualification of C.P.Ed. Such candidates had not even submitted separate OMR application form for appointment to the post of PTI Gr.III which was essential as per the terms of advertisement.

10. For the aforesaid reasons, in our view the Division Bench erred in interfering with the judgment of the learned Single Judge who had correctly allowed the writ petitions filed against the result declared by the Commission on the basis of the State Government's Letter dated 6.1.2010. The impugned judgment under appeal is, therefore, set aside and the judgment and order of the learned single Judge is restored.



That should be complied forthwith. The appeals are accordingly allowed but without any order as to costs."

Mr. Pandey further relied upon the judgment of the Apex Court reported in **(2009) 1 SCC 610**, para-15 and **(2002) 6 SCC 252**, para-13.

On careful consideration of the judgments cited by Mr. Pandey, the Court is of the considered view that the judgments are inapplicable to the facts of this case for the reasons that here is the case of

(i) clarification of the degree

(ii) the advertisement refers to intermediate qualification and equivalent which does not clarify equivalence and does not exclude the certificates obtained by the petitioners in the advertisement or in the requisition before initiating the process.

(iii) these two petitioners are ex-army men.

They have rendered valuable service as army men and they deserve sympathetic consideration in the matter of employment as ex-army men.

In view of the above, the Court is of the considered view that equivalence of the certificate in terms of Annexures-9 and 10 is required to be considered by the



respondents not on the formula of applicability from the date of clarification but from the date of issuance of certificates as clarification is always relatable to the date of issuance of certificate and it shall never apply from the date of clarification. However, submission of Mr. Pandey is relevant to the extent that if the selection process has come to an end and there is no vacancy, in that situation, no relief can be granted to the petitioner in this case.

In the aforesaid circumstances, the writ petition is disposed of with the direction to the Central Selection Board to consider the case of the petitioners, if vacancy exists against the post advertised vide advertisement No. 1/2015. In the event there is no vacancy, the respondents will take appropriate decision in the light of Annexures-9 and 10 in connection with future vacancy and consider the candidature of the petitioners and alike in case of future vacancy.

With the aforesaid, the writ petition stands disposed of.

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(Anil Kumar Upadhyay, J)

