

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22674 of 2019

1. Abhay Kumar (Male) (Aged about 32 years), Son of Sri Rajaram Paswan, Resident of Village and Post Munjahara, P.S. Goh, District Aurangabad.
2. Raj Kumar Suman, (Male) (Aged about 40 years), son of Sukhdeo Suman, Resident of Sonudih, Town + Village Sonudih, P.S. Goradih, Dist. Bhagalpur.
3. Satyendra Kumar, (Male) (Aged about 35 years), Son of Prabhu Nath Singh, Resident of Village + Post Katra, P.S. Bheldi, Dist. Saran.
4. Sunita Kumari, (Female) (Aged about 52 years), W/o Indu Kumar, Resident of Muzaffra, Bardih, P.S. Islampur, Dist. Nalanda.
5. Deepak Kumar (Male) (Aged about 33 years), Son of Mahabir Prasad, Resident of Mohalla Ram Krishnapuri, Masumganj, P.O. and P.S. Bhagwan Bazar, Dist. Saran.
6. Nimish Kumar Nishta, (Male) (Aged about 27 years), Son of Ravi Kumar, Resident of Village Gokhulpur, P.O. Satang, P.S. Chandi, Dist. Nalanda.
7. Vijay Kumar, (Male) (Aged about 31 years), Son of Baleshwar Singh, Resident of Pansalwa, P.S. Beldaur, Dist. Bhagaria.
8. Mukesh Kumar, (Male) (Aged about 34 years), Son of Ram Binay Singh, Resident of Village Sadhpur, P.O. Sadhpur, P.S. Garkha, Dist. Saran.
9. Trilok Kumar, (Male) (Aged about 35 years), son of Jayram Vishwakarma, Resident of Kurjee Balupur, P.O. Sadaquat Ashram, P.S. Digha, Dist. Patna.
10. Santosh Kumar Suman, (Male) (Aged about 31 years), Son of Bhupendra Prasad Yadav, Resident of Village Navtoliya, P.O. Maheshua, P.S. Madhepura, Dist. Madhepura.
11. Rajesh Kumar Baitha, (Male) (Aged about 39 years), Son of Sri Brijmohan Baitha, Resident of Village Chandpur, P.O. Jalalpur, P.S. Tarwara, Dist. Siwan.
12. Mani Bhushan Kumar, (Male) (Aged about 33 years), Son of Nagendra Sah, Resident of Village Baluhan, P.O. Sohilarampur, P.S. Hathauri, Dist. Muzaffarpur.
13. Amarendra Kumar, (Male) (Aged about 33 years), son of Jageshwar Pandit, Resident of Village Gokhulpur, Anchal Chandi, Dist. Nalanda.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. The Bihar Staff Selection Commission, Patna through its Secretary, Patna.
3. The Chairman, Bihar Staff Selection Commission, Patna.
4. The Secretary, Bihar Staff Selection Commission, Patna.

... .. Respondents



Appearance :

For the Petitioners	:	Md. S. D. Sanjay, Sr. Advocate Mrs. Priya Gupta, Mr. Mohit Agrawal, Advocates
For the State	:	Mr. Ajay Behari Sinha (GA8)
For BSS Commission	:	Mr. Arbind Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

7 05-04-2021 Heard learned senior counsel appearing on behalf of the petitioners; learned counsel appearing on behalf of the State as well as learned counsel appearing on behalf of the Bihar State Staff Selection Commission.

The issue raised in the present writ application is no more res integra and identical issue was decided by a coordinate Bench of this Court in CWJC No. 4504 of 2018 (*Priya Ranjan Kumar & anr. Vs. The State of Bihar & others*) vide oral judgment dated 25.09.2018.

In order to maintain consistency, the present writ application is disposed of in identical terms in the light of the oral judgment dated 25.09.2018 passed in CWJC No. 4504 of 2018 (*Priya Ranjan Kumar & anr. Vs. The State of Bihar & others*). For ready reference, the judgment dated 25.09.2019 passed in CWJC No. 4504 of 2018 is quoted hereinbelow:-

“Heard the parties.

In the present writ petition, the petitioners have claimed that they have wrongly been not allowed to participate in the counseling meant for appointment to the post of X-ray Technician for that they do have requisite



qualification and further prayed that they are entitled to 10 marks for the qualification holding of B.Sc. and M.Sc.

An advertisement has been published for the appointment of 215 posts of X-ray Technician. Both the petitioners are Diploma Holder in Radiology and petitioner no.1 has acquired qualification of B.Sc. (Hons.) in Physics and petitioner no.2 is Degree Holder of B.Sc. (Hons.) in Zoology.

As per terms of the advertisement they have applied for the posts though the petitioner no.1 is M.Sc. but he has not disclosed such qualification in the application and on that account he has been deprived from counseling.

Counter affidavit discloses that the petitioners cannot be called for interview on the score that the petitioners do not have benchmark of marks as they cannot be given 10 marks for the qualification of B.Sc. in Physics and Zoology respectively.

Learned counsel for the petitioners submits that as per terms of the advertisement and as per Rule 6 of Bihar X-ray Technician Cadre Rules, 2014 (hereinafter referred to as the 'Rules') the minimum qualification is Intermediate in Physics, Chemistry, Biology with English and have passed Diploma in Medical Radiography from a Government recognized institution. Rule 7 of the Rules prescribes in what manner the marks will be given under the different heading of qualification, for Intermediate 25 marks, for higher degree (B.Sc./M.Sc.) 10 marks, for Diploma in Medical Radiography course examination 25 marks for experience in Government Hospitals of State of Bihar 25 marks. Only hitch for refusing the petitioner for being called for counseling that 10 marks which the petitioners are claiming cannot be added as they are not holding the qualification of B.Sc. and M.Sc. in Radiology, only those persons having qualification with B.Sc. and M.Sc. in Radiology in the same stream can only be given 10 marks and further said that other



similar issue came for consideration about the status of qualification of B.Sc. and M.Sc. in different subjects submitted only the degree of B.Sc. and M.Sc. on the same stream can be recognized and 10 marks can be given and simple graduate degree will not attract 10 marks and placed reliance on the judgment passed by this Court in C.W.J.C. No. 11092 of 2016 followed by the letter written by Special Executive Officer dated 07.12.2017 to the Secretary, Bihar Staff Selection Board wherein it has been explained the person having qualification of B.Sc. and M.Sc. in Medical Radiography will be the valid degree but the persons holding qualification of B.Sc. and M.Sc. subject in Radiology Degree will not be proper qualification, but in the present case the consideration is that the Rule 6 and 7 does not mention that the person will be granted 10 marks only those who are B.Sc. and M.Sc. Degree in same stream whereas it has been specifically mentioned that B.Sc. (Hons.) and M.Sc. (Hons.) will be entitled to 10 marks when the provision of the prescribed Rule are clear in its words, in such circumstances, in terms of the interpretation of the statute any addition and subtraction is amount to doing the violence of the statutory provision which is not permissible and it will also be apparent that in the course of Intermediate, there is no specific instructions mentioned that particular stream which is simple Intermediate with Physics, Chemistry, Biology and English has been mentioned as the minimum qualification for allowing [the (sic)] them to participate in the counseling.

In such circumstances, it is very difficult to subscribe and accept the submission of the respondent that the petitioners who are holding qualification of B.Sc. and M.Sc. will be deprived of 10 marks and their decision to refuse the same is completely contrary to the statutory provision, letter written by the Department to Staff Selection Commission will not override the statutory provision, whereas from the statutory



provision it is very much clear that the person who is holding the qualification of B.Sc. and M.Sc. will also be entitled to participate in interview.

In such view of the matter, this Court directs the respondent to add the 10 marks to the petitioners and hold the special interview for the petitioners.

With the aforesaid observations and directions, this writ petition is allowed.”

(Anil Kumar Upadhyay, J)

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