

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4610 of 2021

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Bal Govind, Son of Late Dhan Dhanbad Mahto, Trolleyman under Senior
Section Engineer (Works) East Central Railway, Dhanbad.

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, District-Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District-Vaishali (Bihar).
3. The Divisional Railway Manager, East Central Railway, Dhanbad.
4. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad.
5. The Senior Divisional Engineer (Co-ordination), East Central Railway, Dhanbad.
6. The Senior Divisional Financial Manager, East Central Railway, Dhanbad.
7. The Senior Section Engineer (Works), East Central Railway, Dhanbad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar, Advocate
For the Respondent/s	:	Mr. Awadhesh Pandey, Sr. CGC
		Mr. Manoj Kumar Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 04-07-2022

In the instant petition, petitioner has assailed the order dated 27.11.2019 passed in O.A. No. 050/00296 of 2014 passed by the Central Administrative Tribunal, Patna Bench Patna.

Petitioner's father late Dhan Dhanbad Mahto was Trolleyman. He was appointed and retired from service while holding the post of Trolleyman under Senior Section



Engineer (Works), East Central Railway, Dhanbad. Respondents-Railway Authority issued a scheme of appointment. Subject of the scheme issued on 13.10.2010 is relating to notification for calling option for retirement and appointment of ward under Largess Scheme. Item No. B of the notification relates to Civil Engineering Department in which Sub-clause II relates to Trolleyman. The scheme provides for appointment of ward if he/she fulfills certain criteria which has been laid down in the scheme dated 13.10.2010. We are concerned with the educational qualification for ward which is at Item No. 4 (page 51) which reads as under:

“4. Educational Qualification for Ward:

(i) For categories mentioned in Para-1(A), (B), (C) and (D)- Class 8th pass from recognised Educational institution.

(ii) For 1(E)- Matric +ITI.”

Petitioner's qualification is Madhyama. He does not possess pass in 8th Standard from a recognized educational institution in terms of education qualification for ward (clause 4(i) of the notification). In not considering the petitioner's claim for appointment in terms of the scheme dated 13.10.2010, petitioner filed original application before the tribunal. Tribunal rejected the petitioner's claim. Thus, the



petitioner has presented this petition. Petitioner's father retired in the month of March, 2014 whereas new scheme was introduced in the month of September, 2018. Now the question for consideration is whether 2010 scheme is applicable or 2018. Undisputedly, claim of the petitioner is prior to introduction of new scheme in the year 2018. Therefore, 2010 scheme is required to be invoked for the purpose of consideration of petitioner's case for appointment. The petitioner could not apprise the authorities/tribunal or this Court in pointing out that Madhyama education qualification acquired by the petitioner is equivalent to Class 8th passed from a recognized institution. Therefore, one has to draw inference that petitioner does not possess educational qualification of Class 8th passed from a recognized educational institution. The petitioner's contention is that Madhyama education qualification is required to be taken into consideration for the purpose of appointment in terms of scheme dated 13.10.2010. Scheme 13.10.2010 prescribes education qualification for ward to be passed 8th standard from a recognized educational institution. Therefore, authorities/ Courts cannot re-write the educational qualification in the scheme dated 13.10.10, so as to equate educational qualification of Madhyama to that of pass in 8th standard from a recognized institution.



Apex Court in the case of *Nair Service Society Vs. Dr. T. Beermasthan & Ors.* reported in (2009) 5 SCC 545 at para 48 held as under:

“48. 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.”

This Court in the case of *Nishant Kumar & Anr. Vs. State of Bihar & Ors.* reported in 2022(2) BLJ 292 dealt with the relevant statute or rules which is required to be taken into consideration for the purpose of eligibility criteria. Further, this Court in the case of *Apurva Kumari Vs. State of Bihar* reported in 2022(1) PLJR 508 at para 3 held as under:

“3. Learned counsel for the petitioner submitted that as on 12.04.2017, petitioner had completed three years course and it is to be equivalent to the Diploma in engineering, the same cannot be appreciated, since Court cannot re-legislate statute. Apex Court in the case of Madras Bar Association vs. Union of India and Others, WP (Civil) No. 502 of 2021, it is



held that Court should not re-write statute. In the light of these circumstances, petitioner has not made out a case. Accordingly, writ petition stands dismissed.”

Since the petitioner does not fulfill the education qualification of Class 8th passed from a recognized educational institution rightly authorities and tribunal has rejected the petitioner’s claim for appointment in terms of scheme dated 13.10.2010. Hence, the present petition stands dismissed while affirming the order of the tribunal dated 27.11.2019.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

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CAV DATE	
Uploading Date	13.07.2022
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