

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8978 of 2020

1. The Bihar Motor Vehicles Technical Officers Association through its President namely Rakesh Ranjan
2. Rakesh Ranjan Son of Late Bachoo Lal Choudhary Resident of H.No.-69, Chaudhary Bhawan, C.D.A. Colony North L.B.S. Nagar, Police Station-Shastrinagar, District-Patna.
3. Santosh Kumar Singh Son of Late Sundar Prasad Singh Resident of Village-Rasulpur, Police Station-Ekangar Sarai, District-Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Transport, Govt. of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
5. The Commissioner, Department of Transport, Govt. of Bihar, Patna.
6. The Chairman, Bihar Police Sub-Ordinate Service Commission, Patna.
7. The Secretary, Bihar Police Sub-Ordinate Service Commission, Patna.
8. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
9. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Bindhyachal Singh, Sr. Advocate Ms. Smriti Singh, Advocate Mr. Vipin Kumar Singh, Advocate
For the Respondent/s	:	Mr. Sarvesh Kumar Singh AAG-13 Mr. Rohitabh Das (AC to AAG-13)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 18-10-2022

Heard learned counsel for the parties.

Petitioners have prayed for the following reliefs:-

- 1) That the instant writ application is being filed on behalf of the petitioners invoking the writ jurisdiction before this Hon'ble Court for seeking the following relief (s):
 - i) For declaring the provisions of "Bihar Transport Service Rules, 2020" (hereinafter referred to as Rules only) ultra-virus to the provisions of Central Motor Vehicle Acts and Rules.
 - ii) For issuance of writ in the nature of mandamus for any other appropriate writ, order or direction for restraining the respondents from appointing and deputing Non-Technical Officers on the Technical Post in utter violation of section 213 of the Central Motor Vehicle Act.
 - iii) For issuance of writ in the nature of certiorari for quashing of the Advertisement No. 02 of 2019 for appointment of the post of Enforcement Sub-

Inspector/Additional District Transport Officer by the Bihar Police, Sub-Ordinate Services Commission (hereinafter referred to BPSSC only) being inconsistent with the provisions of Central Motor Vehicles Acts and Rules and also to quash the part of the advertisement published by the Bihar Public Service Commission for appointment on different post including the post of Additional District Transport Officer and be further pleased to stay the operation of the aforesaid advertisement.

- iv) For holding the advertisement no. 02/2019 for the post of Enforcement Sub Inspectors/Additional District Transport Officer in the Transport Department is illegal and unsustainable being violative of the statutory provisions stipulated in section 213 of the Motor Vehicle Act, 1988, 215 (C) (2) (B) of the Motor Vehicle Amendment Act, 2019 and notification of the MORTH dated 08.03.2019.
- v) For restraining the respondent authority from making appointment on the post of Enforcement Sub

Inspectors/Additional District Transport Officer in the Transport Department in pursuance of advertisement no. 02/2019 till pendency of the writ application.

vi) For issuance of any other appropriate writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.

Petitioner No. 1 is an association, namely, the Bihar Motor Vehicles Technical Officers Associations, affiliated to All India Federation of Motor Vehicle Department, Technical Executive Officers Association, Registration No. S-628/87-88 dated 19.12.1987 and Petitioner no. 2 is President of the Association.

Writ petition has been filed for declaring the provisions of Bihar Transport Service Rules, 2020 as ultra virus to the provisions of Central Motor Vehicle Act and Rules and for restraining the respondents from appointing and deputing non-technical officer on the technical post.

It is submitted on behalf of petitioners that an

advertisement No. 2 of 2019 was issued by BPSC for appointment on the post of Enforcement Sub-inspector (ESI) and Additional District Transport Officer whereby the essential educational qualification has been prescribed as graduation from any recognized University or equivalent degree instead of prescribed statutory qualification under the Motor Vehicle Act and Rules framed thereunder.

The eligibility condition for appointment on the above referred post in Transport Department, Govt. of Bihar is in utter disregard of section 213 of the Motor Vehicles Act, 1988 and the Motor Vehicles Amendment Act, 2019 and notification of the Ministry of Road Transport and Highways, Govt. of India dated 08.03.2019.

It is further submitted that in utter disregard and in contravention of Motor Vehicle Act and the Rules, the Govt of Bihar, Patna, framed Bihar Transport Service Rules-2020, which was published in the Official Gazettee on 03.02.2020.

The nature of duty assigned to the post of DTO/ADTO/ESI is such that the technical qualification is a mandatory requirement for the same and one cannot be permitted to discharge this important duty and function in absence of such technical qualification. It is stated that State

Govt. has no power to prescribe the qualification for the appointment in the Transport department much less the minimum qualification.

It is further submitted that lateral entry of the officers of Bihar Administrative Service in the Transport Cadre is neither permissible nor legal as the same is violative of the Motor Vehicles Act. A simple graduate is not a qualified and competent person to perform the duties on a post which is of technical nature.

It is stated that the technical qualifications have already been prescribed by the Central Govt. under Section 213(4) for the lower management level and it has further been stated that there is no requirement for prescribing technical qualification for middle management level.

The eligibility for officers to be appointed in the Transport Department requires a technical qualification and lowering the same to the level of a simple graduation is not only contrary to the provisions of Central Motor Vehicle Acts and Rules but is also contrary to the minutes of the meeting of the Supreme Court Committee on road safety held on 12.07.2019.

It is submitted that the central Government is the competent authority to prescribe the minimum qualification for

appointment of Motor Vehicle Officers and the State Govt. is not bestowed with any such power. This view has also been affirmed by the Hon'ble Supreme Court in the case of S. Satyapal Reddy Vs. Govt. of A.P. reported in 1994 (4) SCC 391.

It is submitted on behalf of the respondent-State that the Central Government had fixed the minimum qualifications for the Motor Vehicle Inspectors as per the provisions contained under Section-213(4) of the Motor Vehicles Act, 1988 and further amendment has been made in this regard vide notification no. 1215 (E) dated 08.03.2019 (Annexure-1 to the writ petition) which is applicable for Motor Vehicle Inspectors only and accordingly on the basis of notifications issued by the Central Government, the Bihar State Transport (Technical) Cadre Rules, 2003 has been amended vide notification no. 6302 dated 08.08.2019.

Relevant part of Section-213 of the Motor Vehicles Act, 1988 reads as follows:-

“213. Appointment of motor vehicles officers.—(1) The State Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

(2) Every such officer shall be deemed to be a public

servant within the meaning of the Indian Penal Code (45 of 1860).

(3) The State Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them, and the conditions governing the exercise of such powers.

(4) The Central Government may, having regard to the objects of the Act, by notification in the Official Gazette, prescribe the minimum qualifications which the said officers or any class thereof shall possess for being appointed as such.

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In exercise of power conferred by section 213(4) of the Motor Vehicles Act, the Central Government has prescribed the minimum qualification of the Motor Vehicle Inspectors vide notification of Government of India, in Ministry of Road, Transport & Highway published in official gazettee vide no. S.O. 443(E) dated 12.06.1989, which reads as follows:-

Under Section 213(4)

Minimum qualifications for Inspector and Assistant Inspector of Motor Vehicles

“In exercise of power conferred by sub-section 213 of the Motor Vehicle Act, 1988 (59 of 1988), the Central Government prescribes that the minimum qualification for the class of officers consisting of the category of Inspector of Motor Vehicles or Assistant Inspector of Motor Vehicles (by whatever names called) shall be as under:-

Qualification:-

1) Minimum general educational qualification of a pass in X standard; and

2) a Diploma in Automobile Engineering (3 Years course) or a diploma in Mechanical Engineering awarded by the State Board of Technical Education (3 years course); and

3) working experience of at least one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles fitted with petrol and diesel engine; and

4) must hold a driving licence authorising him to drive motorcycle, heavy goods vehicles and heavy passenger motor vehicles.

2. Nothing contained in the notification shall apply to an officer appointed to such post before the first day of July, 1989 and to an officer appointed to discharge function of a non-technical nature.

3. This notification shall come into force on the first day of July, 1989.

Thereafter the aforesaid notification was amended vide notification of the Ministry of Road Transport and Highways bearing no. S.O. 1215(E) dated 08.03.2019 and heading of qualification has been substituted as follows;

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

(ii) a diploma in Automobile Engineering (three years 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.”

It is submitted that the minimum qualifications which motor vehicle department officers or any class thereof shall be required to possess for appointment on post as referred in Sub-section (4) of Section-213, and thereafter, Central Government has issued notification under Section-213(4) of the Motor Vehicle Act, according to which the Central Government has prescribed minimum qualification for appointment to the post of Motor Vehicle Inspectors only, which is a technical post and said notification does not prescribe any qualification for any other post including non technical post, as such, submission of the petitioners that qualification as prescribed for Motor Vehicle Inspector is applicable to all other post of the Transport

Department is misconceived and ill-founded.

That apart from technical nature of work there are other works of non technical nature performed by the Transport Department. The technical nature of work i.e. fitness of vehicle, inspection of vehicles, driving test, etc., are conducted by the Motor Vehicle Inspectors (Bihar State Transport (Technical) Cadre Rules, 2003), who are technically qualified having Diploma/Degree in Automobile Engineering.

The non-technical works include enforcement of laws, road safety measures, office management and administration, and for said purpose of enforcement, the State Government has framed a separate cadre of Enforcement Sub-Inspectors (Bihar Transport (Enforcement Wing) Cadre Rules, 2003, for which eligibility is Graduate.

Earlier, there was no separate cadre of the District Transport Officers/Additional District Transport Officers and same were filled by the Officers from Bihar Administrative Service, as such, for proper administration and management of the Transport Department, the Bihar Transport Service Rules, 2020 have been framed and 50 per cent of posts are to be filled by promotion from the cadre of Motor Vehicle Inspectors (Bihar State Transport (Technical) Cadre Rules, 2003) and Motor

Vehicle Enforcement Wing (Bihar Transport (Enforcement Wing) Cadre Rules, 2003 and 50 per cent of the post are to be filled by Direct Recruitment in which educational qualification is graduate.

Earlier, there was no promotional avenues for Motor Vehicle Inspectors but after framing of Bihar State Transport Service Rules, 2020, the State Government has provided promotional avenues to Motor Vehicle Inspectors on the gazetted post of Additional District Transport Officer/ District Transport Officer/Joint Transport Commissioner/Additional Transport Commissioner. As such, there cannot be any reason for the petitioners' association to be aggrieved by framing of Bihar State Transport Service Rules, 2020.

No provisions of Bihar State Transport Service Rules, 2020 are in conflict or in contravention of Central Motor Vehicles Act, 1988 and Rules framed thereunder.

50 per cent of the post in the Transport Department, Government of Bihar is to be filled by Direct Recruitment in which eligibility is graduate and 50 per cent of the post to be filled up by way of promotion of Motor Vehicle Inspectors (Bihar State Transport (Technical) Cadre Rules, 2003) and from Enforcement Officer from Bihar Transport (Enforcement) Cadre

Rules, 2003 in ratio of 60 per cent and 40 per cent.

Having heard learned counsel for the parties, this Court is of the view that contention of petitioners that in the notification issued by Central Government, mandatory qualification for appointment in the Transport Department is diploma/degree in automobile engineering is misconceived. Central Government has issued notification prescribing minimum qualification as diploma / degree in automobile engineering only for the post of Motor Vehicle Inspectors, which is technical in nature. In the same notification, it has been clarified that this qualification does not cover non-technical post under Transport Department. Earlier, persons appointed as Motor Vehicle Inspectors in the Bihar State Transport (Technical) Cadre Rules, 2003 had no promotional avenues but after framing of Bihar Transport Service Cadre Rules, 2020, provision has been made for promotion of Motor Vehicles Inspectors on gazetted post of Additional District Transport Officer/ District Transport Officer/Joint Transport Commissioner/Additional Transport Commissioner.

Nature of the post whether it is technical or non-technical and qualifications prescribed for appointment on such post in the Transport Department lies exclusively within the

domain of executive.

The resolution by the Committee send to the Government is advisory in nature and it is for the State to take final decision on basis of such recommendations and such recommendations do not confer any enforceable right in favour of petitioners.

There is no merit in this writ petition and is, accordingly, dismissed.

(S. Kumar, J)

I agree.

(Sanjay Karol, CJ)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	18.08.2022
Uploading Date	19.10.2022
Transmission Date	NA