

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11261 of 2022

1. Mukesh Kumar Son of Ram Bilas Mahto Resident of Village and P.O.- Daulatpur, P.S.- Khodawanpur, District- Begusarai.
2. Md. Ashique Son of Abdush Shankar Resident of Village- Gorgama, P.O. and P.S.- Phulparas, District- Madhubani.
3. Dhananjay Kumar Singh Resident of Village- Sirsa Khemkaran, P.O.- Saray Box, P.S.- Bheldi, District- Saran.
4. Ravi Kumar Son of Lal Babu Gupta Resident of Village- Bhawanipur Zirat Motihari, P.O. and P.S.- Motihari, District- East Champaran.
5. Shivjyoti Kumar Son of Anup Kumar Resident of Village- Barah, P.O.- Barah, P.S.- Harnaut, District- Nalanda.
6. Pankaj Kumar Tiwari Son of Prayag Tiwari Resident of Village- Sunderpur Barja, P.O.- Sunderpur Barja, P.S.- Bihiya, District- Bhojpur.
7. Manish Kumar Resident of Village- Pura, P.O. and P.S.- Wazirganj, District- Gaya.
8. Vikas Vardhan Son of Dasrath Prasad Resident of Village- Anandpur, P.O.- Pawai, P.S.- Suragjraha, District- Lakhisarai.
9. Sonu Kumar Sinha Son of Parmanand Sinha Resident of Village- Langhaura, P.O.- Poari, P.S.- Harnaut, District- Nalanda.
10. Prince Raj Son of Baban Paswan Resident of Village-Baher, P.O.- Nasej, P.S.- Kudra, District- Kaimur (Bhabhua).
11. Vivek Kumar Son of Tejnarayan Mahto Resident of Village- Marhia, P.O.- Singhwahini, P.S.- Teraria, District- Sitamarhi.
12. Nishikant Kumar Son of Biranjan Prasad Singh Resident of Village- Adarsh Bihar Colony, Road No. 2, P.O.- B.V. College, P.S.-Ruparpur, District- Patna.
13. Narendra Kumar Son of Shiv Shankar Singh Resident of Village- Saboura, P.O.- B.O.R., P.S.- Begusarai, District- Begusarai.
14. Ranjan Kumar Son of Awadesh Singh Resident of Village- Bihta, P.O.- Alipur, P.S.- Salimpur, District- Patna.
15. Pankaj Kumar Sah Son of Laxmi Sah Resident of Village- Mahnar Road, Railway Station Chamraha, P.S.- Mahnar, District- Vaishali.
16. Avinash Kumar Mehta Son of Bisheshwar Mahto Resident of Village- Fakirna, , P.O.- Motipur, P.S.- Karjain Bazar, District- Supaul.
17. Md. Ejaz Shamim Son of Md. Shamim Uddin Resident of Village- Patna City, P.O.- Jhauganj, P.S.- Khajekalan, District- Patna.
18. Shashi Shekhar Son of Chandra Kishor Prasad Resident of Professor Colony, Chakia, P.S.- Chakia, P.O.- Bara Chakia, District- East Champaran.
19. Kunal Kumar Singh Son of Ramesh Kumar Singh Resident of Village- Taraiya, P.O. and P.S.- Taraiya, District- Saran (Chhapra).
20. Ajit Singh Son of Rajendra Singh Resident of Village- Bhikhpur, P.O.- Bhikhpur, P.S.- Andar, District- Siwan.
21. Vinit Kumar Singh Son of Late Janam Singh Resident of Village- Chikanuta,



P.O. and P.S.- Hajipur, District- Vaishali.

22. Indrajeet Patel Son of Ramesh Kumar Singh Resident of Village- Sasaram, P.O. and P.S.- Sasaram, District- Rohtas.
23. Ritesh Singh Chandel Son of Umesh Singh Resident of J.P. Chowk, Siwan, P.O.- Siwan Town, P.S.- Siwan, District- Siwan.
24. Kumar Ravi Shankar Son of Kamleshwar Rai Resident of Village- Tarwa, P.O.- Hathua, P.S.- Mirganj, District- Gopalganj.
25. Kumar Rohit Son of Virendra Singh Resident of Village- Gopalpur, P.O. and P.S.- Sherghati, District- Gaya.
26. Utwal Kant Son of Vijay Kumar Singh Resident of Rawaich, P.O. and P.S.- Bakhtiyarpur, District- Patna.
27. Navneet Kumar Son of Ram Chandra Prasad Rajak Resident of Village- Jamalpur Gogri, P.O. and P.S.- Jamalpur Gogri, District- Khagaria.
28. Rajnish Kumar Son of Narayan Bhagat Resident of Village- Chakur, P.O.- Chhitrou, P.S.- Matihani, District- Begusarai.
29. Ajeet Kumar Son of Rajendra Prasad Yadav Resident of Village- Tuniahi Uttarwari, P.O. and P.S.- Tuniahi Uttarwari, District- Madhepura.
30. Vikash Kumar Singh Son of Jai Prakash Narayan Singh Resident of Village- Tedhamor, P.O.- Chilauni, P.S.- Pratapganj, District- Supaul.
31. Shivendra Kumar Son of Bateshwar Kamat Resident of Village- Laxminiya, P.O.- Maholia, P.S.- Triveniganj, District- Supaul.
32. Jagdish Chandra Mishra Son of Mahesh Chandra Mishra Resident of Village- Kothiwan Nagar, Muradabad, P.S.- Muradabad Kotwali, District- Muradabad.
33. Binod Kumar Yadav Son of Bhikari Prasad Yadav Resident of Village- Pauni, P.S.- Ghanghyam, District- Darbhanga.
34. Rakesh Kumar Tiwari Son of Akhilesh Kumar Tiwari Resident of Village- Ramgarh, P.S.- Ramgarh, District- Ramgarh.
35. Nitesh Kumar Son of Upnesh Chaudhary Resident of Village- Khajaul, P.O.- Wajitpur, P.S.- Vaishali, District- Vaishali.
36. Abhishek Kumar Singh Son of Kumar Shesh Nath Resident of Village- Habib Nagar, P.O.- Habibi Nagar, P.S.- Husainganj, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in Chief, Rural Works Department, Government of Bihar, 5th Floor, Visheshwaraiya Bhawan, Bailey Road, Patna- 800001.
4. The Chief Engineer (CE-4, Head Quarter), Rural Works Department, Government of Bihar, Patna.
5. The Superintending Engineer, (Quality Monitoring Cell), Rural Works



Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Mr. Sumit Kumar, Jha, Advocate Ms. Riya Giri, Advocate
For the Respondent/s	:	Mr. Kameshwar Prasad Gupta (GP-10) Mr. Satya Vrat AC to GP-10

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 18-05-2023

In the instant petition, petitioners have prayed for the following relief(s):-

“1. I. To issue writ/order or direction in the nature of Certiorari for quashing the condition of the Advertisement / expression of interest-cum-request for proposal for selection of service providing agency to supply technical manpower (independent engineer) for quality monitoring issued by the Rural Works Department, Government of Bihar dated 30.03.2022 by which in terms of clause 5 of Terms of Reference, GATE Score has been made mandatory as a qualification criteria for post of independent engineer and also the work experience has been removed/excluded as an qualification criteria. (Annexure-8 - Page 53).

ii. To hold and declare that the Respondent Rural Works Department being the tendering authority cannot introduce the eligibility criteria of GATE Score to be made mandatory and exclude the experience criteria for selection of independent engineer by the impugned advertisement contrary to the qualification criteria prescribed in terms of the relevant rules.

iii. To hold and declare that the introduction of requirement of GATE Score as mandatory for selection as independent engineer for the first time in the advertisement itself by the Rural Works Department is wholly without jurisdiction and violative of Article 14 of the Constitution



of India.

iv. To hold and declare that the persons having graduate in Civil Engineering like the petitioners are qualified for selection to the post of independent engineer in terms of the relevant rules and thus eligible for participation in selection of independent engineer pursuant to the expression of interest cum request for proposal dated 30.03.2022 without any requirement of GATE score.

V. To alternatively direct the respondent to retender the advertisement in question after without the requirement of GATE Score being mandatory as including the condition of work experience in terms of the Rules which was follows before.

vi. To direct the respondents to give preference to the petitioners in the selection process of independent engineer pursuant to the RFP dated 30.03.2022 or subsequent tenders who are continuously discharging their duties as independent engineer pursuant to the appointment on the basis of earlier tenders since 2017 itself having experience in the field / similar work of more than 5 to 7 years.

vii. During the pendency of the writ application to pass interim / ex-parte interim order staying the advertisement dated 30.03.2022 and/or preventing the Respondents from making final appointment of independent engineer pursuant to the RFP dated 30.03.2022 and/or keeping the number of posts/seats vacant for the petitioners and not to fill-up the entire post and/or permit the petitioner to participate in the said selection process subject to outcome of the present Writ Application and/or any other interim relief as this Hon'ble Court may feel appropriate.

viii. To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

2. Short question for consideration is whether GATE examination is one of the prescribed qualification for the post of Independent Engineer or not.



3. Perusal of the prescribed examination for the post of Independent Engineer in terms of Quality Monitoring Sale – Guidelines and Rural Works Department, Govt. of Bihar is as under:-

“2nd Tier Quality Control Mechanism Independent Engineers:-

An independent Engineer shall be deployed for 2 PIU's for overall quality check on field. These Independent Engineers shall be engaged by the Department on outsourcing basis through service agency. They will conduct required tests and submit reports to Quality Monitoring Cell. Other responsibilities include:

- He shall be responsible for reviewing the entire Project implementation activities of the Contractor.
- He shall ensure execution of works on site as per specification and standards and agreement; continuously interact with the Quality Monitoring Cell.
- He shall interact with the personnel's of the contractor to ensure that all the construction related activities are occurring as per the schedule.
- He shall review and prepare reports as per format on inspection of Road/ bridge. Review of emergency response



arrangements needs special attention.

- He shall undertake Project site visits and shall guide, supervise, coordinate and monitor the work.

Required Educational Qualification and Expertise as Quality Assurance Specialist will be as follows:

Position	Professional Experience	Educational Qualification	Specific Expertise and Task
Independent Engineer	Minimum 3 years of Experience as supervision consultant/key personnel in road project comprising supervision and quality Assurance, out of which 2 years should be in the area of rural road/Highway s	Graduate in Civil Engineering	At least 2 years experiences in a reputed Highway/rural roads supervision consultancy firm as independent Engineer/ Quality Assurance Engineer. He should be well versed with testing process of highway materials & Procurement

4. In the light of professional experience, educational qualification and specific expertise and task is concerned, it is evident that there is no prescription of passing in GATE examination. In the absence of amendment of the aforementioned professional experience or educational



qualification insofar as prescription of passing in GATE examination, insisting for passing GATE examination by means of any executive order or a circular is incorrect. In other words, executive instruction cannot override the relevant Rules/Guidelines governing the post of Independent Engineers.

5. In view of these facts and circumstances, the petitioner has made out a case, accordingly impugned advertisement dated 30.03.2022 stands set aside. The concerned authority is hereby directed to renotify the post in terms of guidelines cited (supra), at the earliest.

6. At this stage, learned counsel for the petitioner submitted that as on this day, the petitioner is holder of the post of Independent Engineer and he has been denied salary, if it is so, he is permitted to submit a detailed representation. The concerned authority shall examine the petitioner's representation and decide the same at the earliest.

7. At this stage, learned counsel for the respondent submitted that the present petition cannot be entertained in the light of Apex Court's decision rendered in the case of *Maharashtra Public Service Commission through its Secretary vs. Sandeep Shriram Warade* passed in *Civil Appeal No(s). 4597 of 2019 arising out of SLP (Civil) No(s). 8494 of*



2018 decided on 03.05.2019 para-10. The cited decision is not attracted in the present case for the reasons that rightly or wrongly, the post of Independent Engineer is by a set of guidelines/Rules. As long as the guidelines or Rules are not modified insofar as incorporating additional qualification of passing in GATE examination, the same cannot be accepted. 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.”

8. In the light of Apex Court’s decision cited (supra), the decision cited on behalf of the respondent is distinguishable. Accordingly, it is distinguished.

(P. B. Bajanthri, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.06.2023.
Transmission Date	NA

