

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3283 of 2022

Sumant Kumar Son of Sri Yogendra Pandey Resident of Village- Hasulahi,
P.O. and P.S.- Kopa, District- Saran at Chapra, At present residing Building
No. 13, SBI Colony, Khagri Road, Takiyapar, P.O. and P.S.- Danapur,
District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industry, Govt. of Bihar, Patna.
3. The Bihar Public Service Commission, through its Secretary, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
4. The Chairman, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
5. The Secretary, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
6. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 14024 of 2021

1. Chunnu Kumar Son of Sri Ram Ladu Saw Resident of village - Molahimpur, P.S. - Bihta, District- Patna.
2. Anup Ranjan Son of Sri Jitendra Narayan 21 Harnichak, Near Santosh Cable Operator, Anishabad, P.S. - Phulwari, District- Patna.
3. Saomya Rani D/o Sri Om Prakash, Ward No. 10, behind Post Office - Masudbigha, P.S. - Barh, District- Patna.
4. Rajeev Kunwar Singh @ Rajeev Son of Birendra Singh Resident of village - Jamui, P.S. - Karha, District- Mau (U.P.)
5. Vikash Kumar Mishra Son of Sri Naresh Chandra Mishra Resident of village and P.S. Tarauni, District- Darbhanga.

... .. Petitioner/s

Versus

1. The Bihar Public Service Commission through its Secretary, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
2. The Chairman, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
3. The Secretary, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
4. The Joint Secretary cum- Examination Controller, Bihar Public Service



Commission, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.

5. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
6. The Principal Secretary, Industry Department, Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 3283 of 2022)

For the Petitioner/s	:	Mr. Ranjan Kumar Sharma
For the Respondent/s	:	Mr. P.K. Shahi, AG
		Mr. Vikash Kumar, Advocate
		Mr. Zakir Haider, Advocate

(In Civil Writ Jurisdiction Case No. 14024 of 2021)

For the Petitioner/s	:	Mrs. Ritika Rani, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, AG
		Mr. Vikash Kumar, Advocate
		Mr. Zakir Haider, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-02-2024

The challenge in the writ petitions is to the amendment made to the Bihar Industries Service Cadre Rules, 1987. The petitioners are commerce graduates, who are aggrieved with the Bihar Industry Service Cadre (Amendment) Rule 2013. The petitioners are aggrieved by the fact that graduation in commerce is taken away as one of the qualifications for the purpose of appointment to the initial rung of the cadre.

2. As per the Cadre Rules of 1987, eligibility as prescribed in Rule 8 for appointment to the initial rung of the cadre is to be determined in accordance with Rule 54 of the Bihar



Service Code, 1952, and qualifications prescribed in Schedule-II to the Rules. Schedule-II to the Rules provide for recruitment to the entry point, being the initial rung of the cadre, from second class graduates in any branch of engineering or technology, degree in arts with economics, mathematics or statistics, degree in commerce/ chartered accountant/ cost accountant and degree in science, sericulture or business management. The amended Rules of 2013 took away the commerce degree from the list of qualifications. It has to be immediately noticed that a Cost Accountant or a Chartered Accountant were still eligible to apply under the amended eligibility criteria.

3. Prescription of essential qualification for appointment to a post is within the exclusive domain of the employer, here the State. If the employer thought it fit to remove a graduate degree in commerce from the essential requirement; unless, it is shown to be malafide, arbitrary, illegal or manifestly wrong there can be no interference caused by Courts of law. The learned counsel for the petitioner urged the ground of legitimate expectation; which we are unable to countenance. No student joining for a commerce degree would do so on the aspiration to be recruited to the Bihar Industries Service.

4. Then, faced with the said situation, the learned counsel for the petitioner submits that there is no gazette



notification issued as is required. The learned Advocate General alertly points out from the amended rule, as produced at Annexure-3, from the last page, wherein the recital speak of the same being notified for publication. The learned counsel for the petitioner then would insist for the production for such a notification. At that point we queried with the learned counsel as to whether, any such ground was taken in the writ petition; which was accepted to be not having been taken. When pleadings are not there, there is no requirement to controvert the same by production of proof of notification, especially when the publication was proposed, as seen from the document produced by the petitioners themselves. If such notification was not issued, they should have taken a specific plea.

5. We find absolutely no reason to entertain the writ petitions on the grounds stated and dismiss the same.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.03.2024.
Transmission Date	

