

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.312 of 2022
In
Civil Writ Jurisdiction Case No.9748 of 2020

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Nishant Kumar son of Jitendra Kumar Singh resident of Lalmati Kunj,
Behind Annpurna Apartment, Vijay Nagar, Bailey Road, P.O. and P.S.
Rukunpura, District-Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Vishveshwariya Bhawan, Bailey Road, Patna.
2. The Joint Secretary, Transport Department Vishveshwariya Bhawan, Bailey Road, Patna
3. The Bihar Public Service Commission, Bailey Road, Patna.
4. The Secretary, Bihar Public Service Commission, Bailey Road, Patna
5. The Joint Secretary-cum-Controller Examination, Bihar Public Service Commission, Bailey Road, Patna.
6. Prakash Kumar Singh son of Jai Kumar Singh resident of village- Mausiya, P.O.- Baghari, P.S.- Ramgarh, District- Bhabhua, Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Pranav Kumar, Advocate Ms. Shristi Sinha, Advocate
For the State	:	Mr. Sarvesh Kumar Singh, AAG-13 Mr. Rajat Kumar Tiwary, AC to AAG-13
For the BPSC	:	Mr. Rajni Kant Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-07-2024

The appeal assails the judgment of the learned Single Judge which declined a direction to consider the Engineering Graduates for the post of Motor Vehicle Inspectors. The qualification prescribed was a 10th Standard pass from a recognized Board and a three year Diploma in Automobile Engineering or Mechanical Engineering. The appellant contended that a Graduate degree in



Engineering is a higher qualification and hence he would also be entitled to be considered, especially when the eligibility criteria as per the Bihar Transport (Technical) Cadre Rules 2003 speaks of the minimum qualification of a Diploma, which takes in the higher qualification.

2. The learned Single Judge framed two questions; as to whether the Graduate petitioners were entitled to be selected and appointed as Motor Vehicle Inspectors and whether this Court could re-write the minimum qualification prescribed by the amended Rules of 2019 and incorporate or read in the Graduate Engineers qualification. The learned Single Judge found that admittedly the petitioners do not have the qualification of Diploma. The decisions cited were found to be only based on the relevant statutory rule. *Nair Service Society v. T. Beermasthan and others; (2009) 5 SCC 545* was relied on to find that by way of judicial review there can be no incorporation of words in statute or rule until there is serious ambiguity. The Courts were held to have no power to tinker with the statutory rule or usurp the legislative function under the disguise of interpretation, as has been held in *Union of India v. Harjeet Singh Sandhu; (2001) 5 SCC 593*. The learned Single Judge also found that there can be no equivalence of qualifications relying on the judgment of the Hon'ble Supreme Court in *Devendra Bhaskar v. State of Haryana: LL 2021 SC 680*. The writ petition was dismissed.

3. Learned Senior Counsel Shri Y.V. Giri specifically



relied on *Jyoti K.K. and Others v. Kerala Public Service Commission and Others; (2010) 15 SCC 596* and *Puneet Sharma and Others v. Himachal Pradesh State Electricity Board Limited and Another; (2021) 16 SCC 340*. In both the above cases though the qualification prescribed was of Diploma, the Hon'ble Supreme Court had permitted Engineering Graduates also to apply and be considered for the post. The Graduate qualification in Engineering is definitely a higher qualification than a Diploma in Engineering, is the compelling contention raised by the appellant.

4. The learned Government Advocate, on the other hand, cautioned this Court from interfering with the statutory rule. There can be no equivalence of qualification and by way of an interpretation there can be no incorporation of a higher qualification, is the contention. Learned Government Advocate also relied on a Constitution Bench judgment in *Mohammad Shujat Ali and others v. Union of India and others; (1975) 3 SCC 76*.

5. We have looked at *Puneet Sharma* (supra) which has considered the various decisions on the point including *Jyoti K.K.* (supra). We have to immediately notice the opening statement of the decision in *Puneet Sharma* ..“As is evident, this issue is not novel and has an almost endemic tendency requiring judicial attention, albeit in myriad and diverse context” (*sic* Paragraph 2). This gives sufficient indication that merely because Graduation is a higher qualification than Diploma, it cannot be imported into every case



without looking at the rule and the context in which the qualifications are framed.

6. The learned Judges while referring to ***Jyoti K.K.*** (supra) specifically referred to Rule 10(a)(ii) of the Kerala Public Service Commission Rules which indicates reckoning of not only qualifications recognized by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the special rules, but also such other higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post. In ***Jyoti K.K.***(supra) the selection was to the post of Sub-Engineers (Electrical), the promotion post of which was Assistant Engineer, for which the relevant rules prescribed degree in Engineering or other equivalent qualification recognized or prescribed, as the eligible qualification. It was held that in a higher post where a direct recruitment has to be held, a qualification is prescribed, it gives an indication that it is a higher qualification than what is prescribed for the lower post. There, the higher post was Assistant Engineer and the lower post was the Sub-Engineer.

7. A number of judgments were referred to by the learned Judges in ***Puneet Sharma*** (supra) wherein the higher qualification was reckoned and not reckoned. In so far as the prescription of TTC qualification, it was held in ***P.M. Latha v. State of Kerala; (2003) 3 SCC 541*** that it is a training imparted to teach small children in primary classes and B.Ed. Degrees cannot be held to be a higher



qualification. Likewise in *State of Punjab v. Anita; (2015) 2 SCC 170* Post Graduate qualification with B.Ed. was held to be ineligible for appointment as Teachers requiring the minimum qualification of two years Junior Basic Teachers Training. *Zahoor Ahmad Rather v. Imtiyaz Ahmad; (2019) 2 SCC 404* prescribed the qualification of Matric with ITI in the relevant trade for Technician -III and Diplomates were found to be not entitled. *Zahoor Ahmad Rather* (supra) had considered the earlier cited decisions and distinguished *Jyoti K.K.* (supra) which turned on the provisions of Rule 10(a)(ii), which we referred to earlier.

8. We have to specifically extract Paragraph 39 of *Puneet Sharma* (supra) which is as below:-

“39. The considerations which weighed with this Court in the previous decisions i.e. P.M. Latha¹⁴, Yogesh Kumar¹⁵, Anita¹¹ were quite different from the facts of this case. This Court's conclusions that the prescription of a specific qualification, excluding what is generally regarded as a higher qualification can apply to certain categories of posts. Thus, in Latha¹⁴ and Yogesh Kumar¹⁵ as well as Anita¹¹ those possessing degrees or post-graduation or BEd degrees, were not considered eligible for the post of primary or junior teacher. In similar manner, for "Technician III" or lower post, the equivalent qualification for the post of Junior Engineer i.e. diploma-holders were deemed to have been excluded, in Zahoor Ahmad Rather¹⁰. This Court is cognizant of the fact that in Anita¹¹ as well as Zahoor¹⁰ the stipulation in Jyoti⁹ which enabled consideration of candidates with higher qualifications was deemed to be a distinguishing ground. No such stipulation exists in the HPSEB Rules. Yet, of material significance is the fact that the higher post of Assistant Engineer (next in hierarchy to Junior Engineer) has nearly 2/3rds (64%) promotional quota. Amongst these



individuals, those who held degrees before appointment as Junior Engineers are entitled for consideration in a separate and distinct sub-quota, provided they function as a Junior Engineer continuously for a prescribed period. This salient aspect cannot be overlooked; it only shows the intent of the rule-makers not to exclude the degree-holders from consideration for the lower post of Junior Engineers.”

9. In **Puneet Sharma** (supra) what weighed with the Court was that as in **Jyoti K.K.** (supra) in the higher post of Assistant Engineer, which was the promotional post of J.E. those who held Graduate degree before appointment as JEs were entitled for consideration and a separate sub-quota was provided subject only to their functioning as JE continuously for the prescribed period. This was found to indicate the intention of the law-makers not to exclude the degree holders from consideration for the lower post of Junior Engineers. Besides, the rules were amended on 03.06.2020 declaring that candidates with higher qualification were also eligible for appointment. It was held that though the rules were enforced prospectively, it was clarificatory in nature and apply to the instant proceedings.

10. We cannot but notice that there is no such distinguishing factors as available in **Puneet Sharma** (supra) and **Jyoti K.K.** (supra) in the present case. The trite principle is as laid down in **P.M. Latha, Anita and Zahoor Ahmad Rather** (all supra) and it is on the peculiar factual circumstance and the rule position that **Jyoti K.K.** and **Puneet Sharma** (both supra) held otherwise. In



the present case, neither is there a statutory rule nor is there a promotional post which is entitled to Graduate Engineers as demonstrated by the appellant. It is also to be noticed that the acquisition of a Diploma is not a necessity for obtaining a Graduate degree and even a person passing the Secondary School can get admission directly to the Graduate Stream of Engineering.

11. We also rely on *Zonal Manager, Bank of India, Zonal Office, Kochi and others v. Aarya K. Babu and another; (2019) 8 SCC 587* which deprecated the practice of the Courts permitting candidates who do not have the qualification prescribed to appear and be considered for selection; contrary to the prescription in the rule and the notification calling for applications.

12. We find absolutely no reason to interfere with the judgment of the learned Single Judge and dismiss the appeal.

13. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

Harish Kumar, J: I agree.

(Harish Kumar, J)

P.K.P./-

AFR/NAFR	
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