

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.241 of 2022

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Rishi Kumar, Son of Tarkeshwar Mandal, Resident of Village- Balarpur, Post-
Kunauni, Police Station- Banka, District- Banka, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna. Water Resource Dept.
2. The Principal Secretary, Department of Irrigation, Water Resource Dept., Old Secretariat, Patna.
3. The Additional Secretary (Management) Irrigation Resources Department, Govt. of Bihar, Patna.
4. The Director Minor Irrigation, New Secretariat, Patna.
5. The Chairman Bihar Technical Service Commission, Patna.
6. The Superintending Engineer Office of Engineers, Minor Irrigation, Circle, Patna.
7. The Executive Engineer Office of Engineers, Minor Irrigation, Division, Ara.
8. The Union of India
9. The Principal Secretary, Ministry of Human Resources Development Department (Higher Education), Govt. of India, New Delhi.
10. Chairman All India Council for Technical Education a Statutory Body of Govt. of India, Nelsan Mandela Marg, Basant Kunj, New Delhi- 110070.
11. The Secretary The Institute of Civil Engineers (India) (A govt. of India Recognized Degree Level Institution), 309-310, Suncity Trade Tower, Sector-21, Gurgram, Haryana- 122016.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Radha Mohan Pandey, Advocate
For the State	:	Mr. Deepak Sahay, AC to AAG-4
For the AICTE	:	Ms. Archana, Advocate
For the BTSC	:	Mr. Nikesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 03-12-2024

Heard the parties.

2. The petitioner is aggrieved with the decision of the

Bihar Technical Service Commission (hereinafter refereed to as



‘the Commission’) which was duly uploaded on the website of the Commission on 16.06.2021 to the extent by which the candidature of the petitioner came to be rejected.

3. The brief facts of the case are that the petitioner having completed his Matriculation, passed Part-I and Part-II of Technician Engineering Membership Examination (T.E.M.E.) in Civil Engineering equivalent to Diploma in Civil Engineering held in the year 2010; from the Institution of Civil Engineer (India) and finally passed the T.E.M.E. on 26.08.2010 by securing 570 marks out of 900 marks. The copies of the certificates have been placed on record as Annexure-1 series.

4. Having qualification of the Diploma in Civil Engineering, the petitioner was selected as Junior Engineer (Civil) on contract basis in the Minor Irrigation Department along with other candidates vide Memo No. 7647 dated 28.12.2011. Pursuant thereto, the petitioner has joined his service as Junior Engineer (Civil) in Minor Irrigation Department, Ara on 04.02.2012 and since then he has been rendering his services. While he was working on the aforesaid post, in the meantime, the Commission came out with an Advertisement No. 01 of 2019 for the appointment of Junior Engineers under the Civil, Mechanical and Electrical. The



petitioner on being found eligible, applied for the post of Junior Engineer (Civil) through online on 01.04.2019. The copy of the advertisement has also been placed on record as Annexure-4 to this writ petition.

5. Suffice it to observe that for the purposes of appointment to the post of Junior Engineer (Civil), the eligibility criteria was also mentioned therein that for the subordinate engineering cadre, the candidate must required to have the Diploma in Civil/Mechanical Engineering or equivalent qualification holder. For Technical qualifications/eligibilities for selection:- (a) Diploma in Civil/Mechanical Engineering issued by the institutes recognized by AICTE, or equivalent qualification which has obtained recognition from the State Technical Board or (b) Non-Distance Mode Diploma in Civil/Mechanical Engineering or equivalent qualification issued by Deemed University under, UGC Act.

6. The petitioner having qualification of Diploma Civil Engineering, furnished his personal details including educational qualification with work experience of five years ten months as a Junior Engineer (Civil) in Minor Irrigation Department, Government of Bihar. Besides the afore-noted educational qualification certificates, the petitioner has also



submitted disability certificate and the OBC certificate.

7. The petitioner along with other candidates were called in counselling which was duly held on 18.12.2020. After the process of counselling being completed, the final result was uploaded on the website on 16.06.2021. It is to the utter shock and surprise to the petitioner that the column derived percentage point, the petitioner has been awarded 0 marks. The column marks of works experience, the petitioner has again been awarded 0 marks and this way total combined point is shown to be 0. It has been shown that the educational qualification of the petitioner is not in accordance with Clause 2 of the advertisement; the educational institution of the petitioner is not recognized from AICTE; not passed the Diploma through Non-Distance mode from a Deemed University.

8. Assailing the impugned order whereby the candidature of the petitioner has been rejected, the petitioner has drawn the attention of this Court to Annexures-13, 14 and 15 to the writ petition and contended that the Institution in question, namely, Institution of Civil Engineers (India), from where the petitioner has obtained the Diploma certificate, the same is duly recognized by the AICTE and MHRD. With reference to Annexure-13, it is further contended that All India Council for



Teachers Education (for short 'the AICTE') has also issued a public notice clarifying the position that the Council in its 52nd Emergent Meeting held on 03.08.2017 decided to recognize equivalence for all purposes, including higher education and employment to technical courses conducted by various Professional Bodies/Institutions, which were duly recognized by the MHRD with permanent recognition upto 31.05.2013. The Gazette Notification issued by the Ministry of Human Resources Development, Department of Higher Education dated 06.11.2007 has also been placed on record which is the part of Annexure-14 and submission has been made that the Institution in question has been duly recognized by the MHRD.

9. On the strength of the aforesaid public notice and the Gazette Notification, learned counsel for the petitioner contended that once the Diploma in Civil Engineering from an Indian Engineering College is recognized by the MHRD, can the candidature of the petitioner be rejected on the ground of the certificate of Diploma of the petitioner being not recognized. It is also contended that the Water Resources Department, Government of Bihar, in its Notification No. 858 dated 25.05.2017 has sought all the academic qualification of the Diploma Civil Engineers from same institute for their promotion



i.e. Institution of Civil Engineers (India) Ludhiana. Thus, the respondent(s) cannot be allowed to take inconsistent view in two examinations. The petitioner has also rendered his services for more than six years as Junior Engineer (Civil) in Minor Irrigation Department, Division, Ara, on the basis of same academic qualification and thus, in such circumstances, also the respondent cannot deprive and rob of the petitioner to accord the marks for experience and to consider the same for appointment in terms of the advertisement issued by the Commission.

10. Attention of this Court has also been drawn on Annexure-19 to the writ petition issued under the signature of the Chief Secretary as contained in Memo No. 2260 dated 09.03.2017, whereby the Chief Secretary has also accepted the factum of recognition of the Institution in question up to 31.05.2013.

11. After narrating the aforesaid facts, learned counsel for the petitioner next contended that issue with regard to the appointment of the Junior Engineer and Others were litigated and finally taken before the Hon'ble Supreme Court in the case of **Shashi Bhushan Prasad Singh v. The State of Bihar and Others [S.L.P. (Civil) No. 7257 of 2023]**. The Apex Court considering every aspects of the matter in its penultimate



paragraph no. 29 has ruled that the fresh select list shall also include as far as possible those meritorious candidate who were otherwise eligible but were declared ineligible solely on account of the 2017 amendment to the Rules i.e., on account of their institute not being recognized by the AICTE, and all similarly placed successful candidates.

12. The petitioner while summarizing his submissions, has finally contended that the claim of the petitioner for inclusion of his name for appointment by the Commission is covered under the mandate of the Apex Court.

13. On the other hand, learned counsel for the Commission, while countering the afore-noted submissions has submitted that since the qualification of the petitioner has never been given recognition by the Government and, as such, in no circumstances, the candidature of the petitioner can be considered. It is further contended that irrespective of the fact of issuance of the letter at the level of the Chief Secretary, which was issued way back in the year 2017, albeit when the Bihar Technical Service Commissioner Selection Procedure (Amendment) Rule, 2018 came into force; that has not been taken care of and as such the Commission is bound to follow the prescriptions of the Amended Rule, 2018, which does not



validate the certificate issued by the Institution. It is also the contention of the learned counsel for the State that since the petitioner has not assailed the prescriptions of the Amended Rule, 2018, on the basis of which the claim of the petitioner has not found favour; no relief could be granted to him. Reliance has also been placed on a decision of this Court in the case of **Chitranjan Kumar and Others v. The State of Bihar and Others [C.W.J.C. No. 8704 of 201]**, wherein the learned Court having taken note of the prescriptions of the advertisement in question in its penultimate paragraph has held that “*Rules 2015 do not provide for equivalency. Therefore, in the absence of any Government Order equated Diploma in Civil Engineering to that of Diploma in Rural Engineering, petitioners are not entitled to relief sought in the present petition.*”

14. On the basis of the aforesaid decision of this Court, learned counsel for the Commission submitted that the petitioner has not made out a case for interference.

15. This Court has given anxious consideration to the submissions made by the learned counsel for the respective parties and also perused the materials available on record.

16. Having gone through the affidavit filed on behalf of the respondent no.10 representing the AICTE, this Court



finds that the Ministries Office Memorandum (OM) No. 11-15/2011-AR (TS.III) dated 06.12.2012, wherein the recognition granted to all such Professional Bodies/Institutions including Institution of Civil Engineers (India), Ludhiana, Punjab, who were awarding Associate Membership Certificate to the candidates has been withdrawn for the purpose of equivalence for all purposes including higher education and employment beyond 31.05.2013. Thus, the students who were enrolled with the Institution with permanent recognition up to 31.05.2013, in no stretch of imagination, would be eligible for consideration in accordance with the Office Memorandum in force. The AICTE also endorsed the decision of the MHRD in 52nd Emergent Meeting held on 03.08.2017, decided to recognize equivalence for all purposes, including higher education and employment to technical courses conducted by various Professional Bodies/Institutions, which were duly recognized by the MHRD with permanent recognition up-to 31.05.2013. The petitioner had passed the Technician Membership Examination, Part-I and Part-II, equivalent to Diploma from the Institution in question and on verification of his qualification, the Water Resources Department selected the petitioner as Junior Engineer (Civil) on contractual basis.



17. It is worth noticing, the petitioner had acquired the Diploma certificate in August, 2010, thus, in the light of the aforesaid Circular(s) and the decision taken by the MHRD, duly endorsed by AICTE, there is no hesitation to affirm that the Diploma certificate obtained from the Institution in question is valid, as the same is much prior to the cut-off date of 31.05.2013.

18. Furthermore, the Notification dated 06.11.2007 issued by the MHRD also demonstrates that on the recommendation of the High Level Committee for recognition of educational qualification, the Department of Higher Education recognized Section A and B of Associate Membership course, equivalent to Degree and Part-I and Part-II of Technician Engineers (T) equivalent to Diploma in Civil Engineering conducted by the institute in question.

19. The counter affidavit filed by the respondent no.9, representing the MHRD, also demonstrates that subsequently vide letter dated 10.07.2012, it was only decided that further renewal will not be granted by the Ministry in the matter of recognition of aforesaid courses, which was conducted by the Institution in question. The Institution was advised to follow the National Vocational Educational Qualification Framework route.



However, said letter was modified vide order dated 06.12.2012 and it has been made clear that the students enrolled with such Institutions having permanent recognition up-to 31.05.2013 were considered eligible in accordance with the Ministry's Communication/Order in force pertaining to their course for equivalence in Central Government jobs.

20. The stand of the MHRD also fortified the contention of the petitioner in relation to his eligibility qualification for the purposes of selection in terms of Advertisement No. 01/19 by the Commission.

21. Now, coming to the contention of learned counsel for the Commission and his heavy reliance on the decision of this Court in **Chitranjan Kumar** (supra), the matter relates to the Diploma or equivalent qualification in Civil Engineering, wherein the Court held that "*in absence of any Government Order equated Diploma in Civil Engineering to that of Diploma in Rural Engineering, petitioners are not entitled to relief sought in the present petition.*", the effect of such order stands water down once the issue has been taken before the Hon'ble Supreme Court in **Shashi Bhushan Prasad Singh** (supra), wherein the Hon'ble Supreme Court vide its decision dated 04.10.2024, in its penultimate paragraph no. 29 has been



mandated as follows:

“29. Therefore, in light of the aforementioned position, the State action of scrapping the entire selection process is not permissible. In view of the peculiar circumstances of this case, particularly the prolonged pendency leading to huge number of vacant posts that hinder the Government’s functioning, this Court finds it appropriate for the State/BTSC to proceed with the Fresh Select List submitted in compliance with the order dated 19.04.2022 in CWJC No. 7312/2021 which has attained finality, as also taking into consideration as far as possible, the interest of the candidates who were found successful. Hence, the Fresh Select List must be appropriately revised in the following manner:

- (i) The Fresh Select List be prepared in view of order dated 19.04.2022 passed by the High Court in CWJC No. 7312/2021.
- (ii) The Fresh Select List shall also include as far as possible those meritorious candidates who were otherwise eligible but were declared ineligible solely on account of the 2017 amendment to the Rules i.e., on account of their institute not being recognised by the AICTE, and all similarly placed successful candidates.
- (iii) The BTSC is directed to prepare the Revised Select List within 3 months of this



Order and the State Government is directed to act upon the Revised Select List submitted by the Commission within a period of 30 days thereafter.”

22. The identical issue as has been raised before this Court, was also one of the subject matters for consideration and the learned Court having taken note of the stand of the AICTE, has finally directed to include meritorious candidates who were otherwise eligible but were declared ineligible solely on account of the 2017 amendment to the Rules i.e., on account of their institute not being recognized by the AICTE, and all similarly placed successful candidates.

23. Once, the issue has already been set at rest as afore-noted, now any plea taken by the respondents with respect to the certificate of the petitioner not issued by the recognized institution or the institution having no approval of the AICTE, is wholly unsustainable.

24. This Court is also not oblivious of the fact that the Water Resources Department, Government of Bihar, in its Notification No. 858 dated 25.05.2017 has given recognition to all the academic qualification of the Diploma Civil Engineers from same institute for their promotion and, in fact, on the basis of the qualification of the petitioner, obtained from the



Institution in question, the petitioner was selected as Junior Engineer (Civil) on contract basis in the Minor Irrigation Department along with other candidates.

25. The contention of the respondent-Commission to the extent that there is no prescription in the Amended Rule, 2018 giving equivalence of the Institution, also does not find force in view of the decision of the Hon'ble Supreme Court rendered in **Shashi Bhushan Prasad Singh** (supra), as this point has never been raised by the Commission before the Apex Court, which led to passing of the afore-noted specific direction to include meritorious candidates who were otherwise eligible but were declared ineligible solely on account of the 2017 amendment to the Rules i.e., on account of their institute not being recognized by the AICTE. Now, any such kind of similar pleas based upon Amended Rule, 2018, in the opinion of this Court, would be nothing but an attempt to overreach the decision of the Hon'ble Supreme Court.

26. In view of the aforesaid discussions, this Court is of the opinion that rejection of the candidature of the petitioner by the Commission on account of his educational qualification is not as per the Clause 2 of the Advertisement No. 01/19, is unsustainable and as such, it is hereby set aside.



27. The Commission is directed to accept the candidature of the petitioner by treating his educational qualification as par with Clause 2 of the Advertisement No. 01/19 and accordingly declare his result by treating his candidature valid, if he is otherwise fit.

28. The writ petition stands disposed off with the aforesaid direction.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10-12-2024
Transmission Date	

