

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1289 of 2019

In
Civil Writ Jurisdiction Case No.4954 of 2019

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Akash Kumar Son of Ashok Prasad Resident of Village and P.O. and P.S.-
Sarmera, District- Nalanda (Bihar).

... .. Appellant/s

Versus

1. The Bihar State Power Holding Company Limited and Anr. Vidyut Bhawan,
Bailey Road, Patna.
2. The General Manager (HR and Admn.) Bihar State Power (Holding)
Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. Pankaj Kumar Jaiswal Son of Jagdish Prasad Jaiswal Resident of Village-
Mahmadpur Bhav, P.S.- Pratapgarh, District- Pratapgarh (U.P.).
4. Priyanka Kumari D/o Ashok Prasad Resident of Village- Bhandaridah, P.S.-
Bermo, District- Bokaro (Jharkhand).
5. Indrajit Kumar Son of Kamata Resident of Village- Govindpur, P.S.-
Sarmera, P.O.- Baruane, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Brisketu Sharan Pandey, Advocate
For the Respondent/s : Mr.Vinay Kirti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 19-07-2024

Appellant has assailed the order of the learned
Single Judge dated 29.08.2019 passed in C.W.J.C. No. 4954 of
2019.

2. Appellant was a candidate for recruitment to
the post of Assistant Operator / Junior Line Man / Switch Board
Operator II – Technician Grade IV in Bihar State Power Holding
Company Ltd. The appellant’s candidature was not considered



for want of qualification prescribed for the post. Learned Single Judge has taken note of the fact that appellant do not fulfill the requisite qualification stipulated against the post in particularly technical qualification. Technical qualification is as under:-

“Technical Qualification:- Must have ITI Certificate in Electrician Trade from any institution recognized by National Council for Vocational Training, New Delhi (NCVT)/State Council for Vocational Training (SCVT)”.

On the other hand, appellant has qualification of National Apprenticeship certificate, this certificate is in pursuant to National Council of vocational training conducted by the Government of India. Appellant has undergone National Apprenticeship under the Electrician Trade.

3. Learned counsel for the appellant heavily relied on number of communications of the Government of India like communication dated 26.08.1999 [Annexure-P7, P9 dated 15.01.2018, 06.07.2010, 11.06.2010 read with the certificate at Annexure P6 series (part of the writ petition)] to contend Appellant's certificate is an higher qualification than the prescribed qualification for the post.

4. The overall argument of the appellant's counsel is that certificate issued by the Government of India



issued in the month of October, 2014 vide Annexure - P6 and it should be treated as equivalent to that of ITI certificate in Electrician trade from any institution recognized by National council for vocational training, New Delhi/ State Council for vocational training (SCVT). It is submitted that internal communications of the Government of India to various authorities to the extent that National Apprenticeship certificate is a qualification higher than the ITI certificate prescribed for the post under Technical qualification head.

5. The aforementioned submission is not acceptable to this Court for the reasons that method of recruitment to the post of Assistant Operator / Junior Lineman/ Switch Board Operator II – Technician Grade IV in Bihar State Power Holding Company Ltd. (cited supra). It is to be noted that against the technical qualification there is no clause relating to that any equivalent qualification. In the absence of such words incorporated in the relevant rules or Executive order governing the post and the same cannot be interpreted while adding words in the technical qualification head so as to draw inference that whatever the National Apprenticeship certificate possessed by the appellant is higher than the ITI certificate. In fact, there is no clause in the technical qualification to the extent that even



higher qualified persons would be eligible to participate in the process of selection and appointment.

6. The cited documents of Government of India (supra) cannot be taken into consideration for the reasons that Hon'ble Supreme Court in the Case of ***Nair Service Society vs. Dr. T. Beermasthan***, reported in **(2009) 5 SCC 545** in para 48 and it is 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.”

7. Identical issue was the subject matter of C.W.J.C. No. 9748 of 2020 (Nishant Kumar vs State of Bihar) and it was dismissed in the light of the aforementioned decision and other decision. Division Bench of this Court affirmed the order of the learned Single Judge on 03.07.2024 in L.P.A. No. 312 of 2022.

8. In the light of the aforementioned analysis of the present matter, appellant has not made out a case so as to



interfere with the order of the learned Single Judge dated 29.08.2019 passed in C.W.J.C. No. 4954 of 2019.

9. With the above observation, the present C.W.J.C. No. 4954 of 2019 stands disposed of.

10. Learned counsel for the appellant relied on decision of this Court dated 03.04.2019 passed in C.W.J.C. No. 5009 of 2019 (learned Single Judge order). Learned Single Judge has not taken note of the fact that there is no clause relating to equivalent qualification to ITI certificate has been incorporated in the rules of recruitment or Executive Order governing the post in the absence of same court cannot incorporate words in statutory rules or Executive Order in so far as prescription of qualification is concerned Hon'ble Supreme Court in the case of ***P.U. Joshi and Ors. Vs. Accountant General, Ahmedabad and Ors.***, reported in ***(2003) 2 SCC 632*** and ***Union of India and Ors. Vs. Pushpa Rani and Ors.*** reported in ***(2008) 9 SCC 242*** held that prescription of qualification for any post or any service condition, it is domain of the State and not the Court. In the case of ***U.O.I. Vs Harjeet Singh Sandhu*** reported in ***(2001) 5 SCC 593*** it is observed that the Courts are warned that they are not entitle to usurp legislative function under the guise of interpretation. Similar



view was in the case of Duports Steel Ltd. Vs Sirs, (1980) 1 ALL ER 529.

11.Taking note of these judicial pronouncements, the appellant has not made out a case, so as to grant any kind of reliefs. L.P.A. No. 1289 of 2019 stands rejected.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
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