

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7714 of 2023

1. Appu Kumar S/o Bahadur Choudhary, Village-Sahjanand Saraswati Path, West Patel Nagar, Near West P.T.C. Colony, P.O.-Shashtri Nagar, P.S.-Shashtri Nagar, District-Patna (Bihar).
2. Manohar Kumar, S/o Jailal Paswan, Adress-Fakira Tower Flat No. 609 B/Block, Bibiganj, P.s.-Sadar, P.O.-Bhagwanpur, District-Muzaffarpur (Bihar).
3. Amit Kumar, S/o Deoraj Rajak, Village-Hasanpur Bagar, P.O.-Hasanpur Bagar, P.S.-Nawakothi, District-Begusarai (Bihar).
4. Sachin Kumar Sanju, S/o Birendra Kumar Mishra, R/o Village-Shivpuri, P.S.-Shastrinagar, P.O.-Shastrinagar, District-Patna, Bihar.
5. Rajesh Kumar, S/o Jaynarayan Sah, Village-Harpur, P.O.-Bhulli, P.S. Piprahi, District-Sheohar (Bihar).
6. Roshan Kumar, S/o Tilakdhari Biswas, Village-Raj Nagar Line Bazar, P.O.-Purnia East, P.S. Khazanchi Hat, District-Purnia (Bihar).
7. Rishi Ranjan, S/o Prawesh Kumar Saha, Village Ward No. 10, Bahadurganj, P.O.-Bahadurganj, P.S. Bahadurganj, District-Kishanganj (Bihar).
8. Aman Kumar Bharti, S/o Uday Kumar Mandal, Adress-R/o Village-Jounia, P.s. Pranpur, P.O.-Bastaul, District-Katihar (Bihar).
9. Vijay Kumar Bhaskar, S/o Mohan Sahani, Village Semra Urf Chak Sirikanth, P.O.-Srikant, P.S.-Piar, Distirct-Muzaffarpur (Bihar).
10. Manish Ranjan, S/o Rajan Dhari Singh, Residing at Ram Shyam Apartment, Flat no. 304, Ashok Nagar, Road NO.11, Kankarbagh, P.s.-Kankarbagh, District-Patna (Bihar).
11. Rewati Raman, S/o Ashok Kumar Roy, R/o Village-Madhura North, Ward No. -08, P.S.-Narpatganj, P.O.-Narpatganj, District-Araria (Bihar).
12. Maharaja Vikramaditya S/o Jay Prakash Narayan Singh, R/o Village-Amber, P.S.-Biharsharif, P.O.-Biharsharif, District Nalanda (Bihar).
13. Md. Imtiyaj Alam, S/o Abdul Majid, R/o Village-Madhura South, P.S.-Narpatganj, P.O.-Narpatganj, District-Araria (Bihar).
14. Sujeet Kumar Mehta, S/o Bidyanand Mehta, R/o Village-Simraha, P.S.-Simraha, P.O.-Simraha, District-Araria (Bihar).
15. Kumar Saurabh, S/o Kamleshwar Prasad Das, R/o Village-Forbesganj, P.S.-Forbesganj, P.O.-Forbesganj, District-Araria (Bihar).
16. Vir Bahadur Singh, S/o Janardhan Prasad Singh, R/o Village-Kachari Road, P.S.-Biharsharif, P.O.-Biharsharif, District-Nalanda (Bihar).
17. Rahul Kumar Yadav, S/o Shiv Prasad Yadav, R/o Village-Barmasia, P.S. and P.O.-Barmasia, District-Katihar (Bihar).
18. Swami Dev Prasad Kanchan, S/o Ram Prasad, R/o Village-Binda, P.S.-Handia, P.O.-Asepur, District-Prayagraj (Uttar Pradesh).
19. Anil Kumar Gautam, Late Rajendra Prasad, R/o Chिताipur, P.S.-Lanka, P.O. Lanka, District-Varanasi (Uttar Pradesh).



20. Anand Kumar, S/o Sunil Kumar, R/o Village-Jattichak, P.S.-Masaurhi, P.O. Masaurhi, District-Patna (Bihar).
21. Amit Kumar, S/o Birendra Kumar, R/o Village-Kumharar, PS-Agamkuan, P.O.-H.P. Colony, District-Patna (Bihar).
22. Md. Tanwir Alam, S/o Md. Ilyas Ansari, R/o Village-Sapta, P.S.-Rahika, P.O.-Sapta, District-Madhubani (Bihar).
23. Ravi Kumar, S/o Subhash Prasad, Village-Near K.B. Jha College Katihar, P.S.-Katihar, P.O. Katihar, District Katihar (Bihar).
24. Almas Tasuar, S/o Ehtasham Uddin, R/o village-Aliganj, P.S. Chandauti, P.O.-Karimganj, District-Gaya (Bihar).
25. Nityanand S/o Radheshyam Choudhary, R/o Village-Gandhinagar, P.S.-Aurangabadh, P.O.-Aurangabad, District Aurangabad (Bihar).
26. Alok Anand S/o Dhirendra Prasad, R/o Village Babhanbigha, P.s.-Barbigha, P.O.-Barbigha, District-Sheikhpura (Bihar).
27. Remekwal Yadav, S/o Satyendra Yadav, R/o Village Bagha Kusmar, P.S.-Khutauna, P.O.-Bagha Kushmar, District-Madhubani (Bihar).
28. Ashish Yadav, S/o Sanjeev Kumar Yadav, R/o Village-Firozabad, P.S.-Firozabad, P.O.-Shikohabad, District-Firozabad (Uttar Pradesh).
29. Radhe Shyam Sah, S/o Vishnu Deo Sah, R/o Village-Kajra, P.S.-Mirganj, P.O.-Eangpura, District-Purnea (Bihar).
30. Satish Kumar, S/o Ram Naresh Prasad, R/o Village-Jitu Bigha, P.S. Ghosi, P.O. Bandhuganj, District Jehanabad (Bihar).
31. Raja Patel Son of Surendra Chaudhary, Resident of New Bypass, Bridge, Chini Mill, P.s. Buxar, District Buxar (Bihar).
32. Raju Kumar, S/o Nageshwar Chaudhary, R/o Vilage-Saraiya, P.S. Bakhatiyarpur, P.O.-Sirsi, District-Patna (Bihar).
33. Ratnesh Kumar Chaubey, S/o Ram Pradhan Chaubey, R/o Village-Robertsganj, P.S.-Robetsganj, P.O.-Robetsganj, District-Sonebhadra (Uttar Pradesh).
34. Kaushlendra Kumar, S/o Kapil Deo Prasad, Village-Sonwarsha, P.S.-Warsaliganj, P.O.-Chakway, District-Nawada, Pin-805130 (Bihar).
35. Shashi Kumar Yadav, S/o Satya Narayan Yadav, R/o Village Jatahi, P.S.-Khutauna, P.O.-Tengrar, District-Madhubani (Bihar).
36. Ehteram Ahmad Karimi, S/o Ishtiyaque Ahmad, Village-Millat Colony Ward-11 Near Gurudwara, P.O.-Madhubani, P.S.-Madhubani, District-Madhubani (Bihar).
37. Rohit Jha, S/o Bharat Bhushan Jha, R/o Village-Narayanpur, P.S.-Bhawanipur, District-Bhagalpur (Bihar).
38. Hem Narayan Chaudhary, S/o Jay Narayan Chaudhary, R/o village Karahiya, P.S.-Rajnagar, P.O. -Balha, District-Madhubani (Bihar).
39. Md. Iftekar Alam, S/o Sajmmuddin, Village-Mahimachak, P.O.-Channo, P.s. Rasalpur, District-Bhagalpur (Bihar).
40. Vivek Mishra, S/o Birendra Mishra, Village-Bhringichak, P.O.-Semariya, P.S.-Kateya, District-Gopalganj (Bihar).



41. Brajesh Kumar, S/o Kumar Kishor Yadav, Vill-Surmaha Durga Sthan, Ward No. 8, P.O.-Kishanpur, P.S. Sour Bazaar, District-Saharsa (Bihar).
42. Rahul Kumar, S/o Upendra Prasad Chaurasiya, Resident of Village and Post-Prataptand, P.S. Bhagwanpur, District-Vaishali (Bihar).
43. Rajesh Ranjan, S/o Sitaram mandal, Village-Rampur Ward No. 08, P.O.-Rajpur, P.S.-Pipra, District-Supaul (Bihar).
44. Madhur Kumar, S/o Laxmi Prasad Singh, Village-Maa Kalhyani Mandir Ward No. 03, P.O.-Sarabela, P.s. Salkhuwa, District-Saharsa (Bihar).
45. Govind Kumar Gaurav, S/o Vishundeo Prasad Bhagat, Resident of Village-Amha, Post-Amha, P.s.-Supaul, District Supaul (Bihar).
46. Rakesh Kumar Yadav, S/o Yogendra Yadav, Village-Gorari, P.O.-Shadiabad, P.S.-Shadiabad, District-Ghazipur (Uttar Pradesh)
47. Ravi Shankar Vikas, Son of Ram Narayan Yadav, Resident of Village-Kabrichak, P.S. Muffasil, District-Darbhanga Bihar.
48. Miltan Kumar Miltam, S/o Laxman Prasad Yadav, Village-Musharnia Ward No-01, P.O.-Khajuri, P.s. Sour Bazar, District Saharsa (Bihar).
49. Rahul Kumar Singh, Son of Brij Bihari Singh, Resident of Near Sita Chowk, Mohalla-Baghmali Gacchi, P.s. Haipur, District Vaishali (Bihar).
50. Subhramani, Son of Dinesh Singh, Resident of Niranjana Swami Apartment, Ara Garden Road, Manglam Vihar Colony, P.S.-B.V. College, District-Patna (Bihar).
51. Ram Awadh Singh, S/o Rohin Singh, R/o Village-Londa, P.O.-Adhaura, P.S. Lohra, District Kaimur (Bihar).
52. Sudhir Kumar, S/o Anil Prasad Chauhan, R/o village-Karahansi, P.S.-Natwar, P.O.-Kaharansi, District-Rohtas (Bihar).
53. Anjani Kumar Gunjan, S/o Subodh Kumar, R/o Village-10a/62 avc Yojna 3, P.S.-Jhusi, P.O.-Jhusi, District-Prayagraj (Uttar Pradesh).
54. Vinay Kumar Singh, S/o Yadubansh Singh, R/o Village-Bealundi, P.S. Mohania, P.O.-Bealundi, District Kaimur (Bihar).
55. Vikash Kumar, S/o Sunit Kumar Singh, Village-Jagdishpur, P.O. Surajgarha, P.S. Surajgarha, District-Lakhisarai (Bihar).
56. Praveen Kumar S/o Bhagirath Sharma, Village-R.B. Travels, K.S.S. College, P.O.-Lakhisarai, P.S. Lakhisarai District-Lakhisarai (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, General Administrative Department, Government of Bihar, Patna.
3. The Principal Secretary, Water Resources Department, Government of Bihar.
4. Bihar Polytechnic Association with its Office Situated at B Block, 103, Vidhyak Parishad, Daroga Prasad Rai, District- Patna through its General Secretary Ramesh Kumar, Son of Lala Roy, Resident of Dakshin Chak, P.O. and P.S. Athmalgola, District-Patna, Pin Code- 803211.
5. Prabhas Kumar, Son of Prabhu Kumar Pandit, Resident of Near Middil



School, Gohumani, District- Madhubani, Pin code- 852128.

6. Prashant Kumar, Son of Ram Prit Yadav, Resident of Rastriya Ganj, P.O. and P.S.- Phulwari Sharif, District- Patna, Pin Code- 801505.
7. Subodh Kumar, Son of Hari Narayan Yadav, Resident of Ward No. 8, Jaraila, Thalha, District- Supaul, Pin Code- 8520139.
8. Sumit Kumar, Son of Madho Mahto, Resident of Makuna Ward No. 29, District-Lakhisarai, Pin code- 811311.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8423 of 2023

1. Arvind Kumar Son of Ramnandan Prasad, Resident of Madan Chaudary Lodge, Near Shiv Mandir, P.S- Rampur, District - Gaya - 800023
2. Ritesh Kumar Mantu S/O-Narendra Tiwari, house No-55, Road No-6, Near Gandhi Murti, East Patel Nagar, Phulwari, PS- Shastri Nagar, Dist - patna 800023.
3. Uttam Singh Yadav S/O-Sidhnath SinghYadav, Mustafabad, Near A P Colony, Beside Janki Niwas, PS- Rampur, Dist- Gaya, Bihar-823001.
4. Nikhilesh Gaurav S/O-Neel Mani, kamaldah marg maharani colony, Shitla Mandir, Ilahi Bag, PS- By pass police station, Dist- Patna, Bihar- 80000.
5. Hemant Kumar S/O-Arvind Tiwari, Brahmchari Colony, Police Line, Rampur, Chiraiatanr, PS- Rampur, Dist- Gaya, Bihar-823001.
6. Gaurav Kumar S/O-Ajay Singh, Mahua, ward no-12, Arraha, PS Ghailadh, dist- Madhepura, Bihar-852121.
7. Rajiv Ranjan S/O-Shyam Sundar Prasad Modi, Khaira, PS- khaira, Dist- Jamui, Bihar- 811317.
8. Deepak Kumar S/O-Ramanand Prasad, Village-Bhatu Bigha, Post and Police PS.- Ben, dist- Nalanda, Bihar-803114.
9. Uttam Kumar S/O-Parmanand Prasad, Mera, Khanpura, PS - khrimore, dist - Patna, Bihar- 801110.
10. Avishek Kumar Parashar S/O-0m Prakash Mishra, Ward-28, Lohiyanagar, Panhans, PS - Lohiyanagar O.P, Dist- Begusarai, Bihar-851218.
11. Ravish Kumar S/O-Yugul Ram, Ward No-12, Matiyariya, Harnatanr, PS Naurangiya Dist- West Champaran, Bihar-845105.
12. Sumit Kumar S/O-Rajendra Prasad, Satsang Nagar, Ward No 12, Daudnagar, PS - Daudnagar, Dist -Aurangabad, Bihar-824143.
13. Ravi Adarsh S/O-Ravi Shankar, Add Behand Gramin Bank, Mahavir Nagar 70, Fit Road, Phulwari, PS Shastri Nagar dist - Patna, Anisabad, Bihar-800002.
14. Prabhanjan Kumar S/O-Ram Narayan Prasad, Village and Post- Kaila, PS - Nagarnausa, Dist - Nalanda, Bihar-803108.
15. Ravi Kumar Mandal S/O-Dilip Mandal, Dhiropatti, PS- Ashok paper mill, dist - Darbhanga, Bihar-847101.



16. Punit Kumar S/O-Bablu Sah, Ward No-12 N P Amarapur, Post and Police Station- Amarapur, PS - Amarapur, dist- Banka, Bihar-813101.

... .. Petitioner/s

Versus

1. The State of Bihar Chief Secretary, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Department, Govt. of Bihar, Patna.
3. The Additional Chief Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. The Additional Chief Secretary, Road Construction Department, Govt. of Bihar, Patna.
5. The Additional Chief Secretary, Building Construction Department, Govt. of Patna.
6. The Additional Chief Secretary, Rural Works Department, Govt. of Bihar, Patna.
7. The Additional Chief Secretary, Public Health and Engineering Department, Govt. of Bihar, Patna.
8. The Additional Chief Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
9. The Secretary, Technical Education Commission, Patna.
10. The Secretary, All India Council of Technical Education (AICTE).

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 7714 of 2023)

For the Petitioner/s	:	Mrs. Nivedita Nirvikar, Sr. Advocate Ms. Supragya, Advocate Mr. Arya Achint, Advocate Mrs. Shashi Priya, Advocate
For the State	:	Mr. P.K. Shahi, A.G.
For the Intervenors	:	Mr. Abhinav Srivastava, Sr. Advocate Ms. Shrishti Singh, Advocate Mr. Pranav Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 8423 of 2023)

For the Petitioner/s	:	Mrs. Nivedita Nirvikar, Sr. Advocate Mr. Kumar Prabhakar, Advocate Mr. Ranjeet Kumar, Advocate Mr. Shikhar Mani, Advocate Mr. Rishabh Gupta, Advocate Mr. Rajish Prakash, Advocate Ms. Lakshmi Kumari, Advocate Mr. Kanishk Kaustubh, Advocate
For the State	:	Mr. P.K. Shahi, A.G.
For the BTSC	:	Mr. Nilesh Kumar, Advocate

**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT**



(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 28-01-2025

1. The petitioners, all of whom have qualification of B.Tech (Civil) from Institutions recognized by All India Council For Technical Education (AICTE) have challenged the constitutionality of Rule 8(1)(ii) and (iii) of the Bihar Water Resource Department Subordinate Engineering (Civil) Cadre Recruitment Rules -2023 (to be referred to as “2023 rules” hereinafter) which has prescribed diploma or equivalent in Civil /Mechanical/Electrical engineering as the qualification for appointment to the post of Junior Engineer (Civil) on the ground of the same being arbitrary, irrational and unconstitutional.
2. The issues raised here are not new and have been discussed in many of the judgments of this Court as also of the Supreme Court.
3. To have a clear understanding of the nature of



challenge by the petitioners, it would, albeit, be necessary to briefly refer to the earlier rule in this regard.

4. The Bihar Water Resource Department Subordinate Engineering (Civil) Cadre Recruitment Rules, 2015 provided that for Junior Engineer (Civil), the qualification would be diploma or equivalent qualification holder in Civil Engineering. The technical qualification/eligibility for selection was (a) diploma or equivalent qualification in Civil Engineering issued by the institutes recognized by the AICTE which has obtained recognition from the State Technical Board or; (b) non distance mode diploma in Civil Engineering or equivalent qualification issued by the deemed University under the UGC Act.

5. Prior to the coming to this Rule, in the year 2014, Bihar Rural Development Society, Rural Development Department, Bihar, Patna had invited



applications for the post of Junior Engineer (Civil) on contractual basis stipulating that persons having degree/diploma from recognized Institutions would be eligible for the post of Junior Engineer (Civil). It was also stipulated in the aforementioned advertisement that for the post of Junior Engineer (Civil), persons having degree qualification would be granted twenty bonus marks.

6. Under the 2015 Rules, referred to above, a separate cadre of Junior Engineers was created under the administrative control of Water Resources Department. The 2015 Rules were amended and certain provisions related to technical qualification for selection as well as procedure for selection and preparation of merit list were changed vide Bihar Water Resources Department Subordinate Engineering (Civil) Cadre Recruitment (Amendment) Rules, 2017 (to be referred to as “2017 Rules” hereinafter). The amended rules of



2017 clearly stipulated that the technical qualification / eligibility for selection to the post of Junior Engineer (Civil) would be: (a) diploma holders in Civil Engineering from the institutes recognized by AICTE and also; (b) diploma in Civil Engineering by non-distance mode diploma from deemed University established under UGC Act, provided that their syllabus of diploma in Civil Engineering has been sanctioned by the UGC. The procedure for selection also was stipulated.

7. Under the aforementioned rules of 2017, an Advertisement No. 1 of 2019 dated 08.03.2019 was issued by Bihar Technical Service Commission, Patna, inviting applications for regular appointments to the post of Junior Engineer (Civil/Mechanical/Electrical) in different departments of the Govt. of Bihar. The technical qualification / eligibility was in accordance with the amended rules of 2017, namely, that only



candidates holding diploma in Civil Engineering from institutions recognized by AICTE /University would be eligible for the post of Junior Engineer (Civil). This technical qualification prescription prevented candidates possessing higher qualification like degree in Civil Engineering in the discipline to apply for and be considered for appointment. Those desirous candidates, having higher qualification of degree in Civil Engineering who were not permitted to apply against the said advertisement, challenged the advertisement as also the validity of the rule 2015 and the amended rule of 2017 vide CWJC No. 7761 of 2022.

8. During the pendency of the aforementioned writ petition, the rules of 2015 and amended rule of 2017 were repealed and new rule vide Bihar Subordinate Engineering (Civil/ Mechanical/ Electrical) Service Rules, 2023 was brought out.
9. The Advertisement no. 1/19 was withdraw. In



the aforesaid 2023 rules, the qualification for appointment in the cadre of Junior Engineer (Civil) has been fixed as (a) diploma holder in Civil, Mechanical and Electrical Engineering from the institutes recognized by AICTE through non-distance mode regular course or diploma holder of equivalent qualification (equivalent syllabus under the schedule title measure disciplines, their corresponding courses and relevant / appropriate branch of diploma in Engineering and Technology of approval process handbook issued by the AICTE in the relevant subject or diploma in Civil, Mechanical and Electrical Engineering or equivalent qualification through non-distance mode from a University or deemed University established under the UGC Act.

10. Rule -9 thereof provides the procedure for selection, naming Bihar Technical Service Commission as the body which would carry out the selection and recruitment process.



11. Before these rules were gazetted in exercise of the powers conferred under Article 309 of the Constitution of India, a high level committee had been held regarding framing of such rules wherein recommendations were made with respect to the eligibility criteria and the mode of selection in Subordinate Engineering Services. In the light of the aforementioned recommendations, the eligibility criteria with respect to qualification were incorporated in the draft rules. The draft rules were placed before the State Cabinet which had accorded its sanction, whereafter rules were duly notified and published in the gazette.

12. The petitioners have challenged the validity of such rules on the ground that the normal rule would be that the candidates with higher qualification ought to be deemed to be fulfilling the lesser qualification prescribed for the post, if the higher qualification is in the same channel/line.



13. Reading the technical qualification prescribed in the rules narrowly would lead to shutting out eligible candidates with higher degree of engineering in the same line as of diploma in Civil Engineering.

14. Fixing of such eligibility qualification, it was contended, was arbitrary, irrational and unconstitutional because it excludes from consideration for appointment such persons having higher degree in the same line of learning. Fixing of such eligibility criteria has no rationale or objective and is based on no intelligible differentia. Therefore, the prayer of the petitioners, in the alternative, is to read down the relevant provisions in rules of 2023 to mean and include that candidates holding degree qualification would also be eligible for the post of Junior Engineer (Civil) and allow them and others, similarly situated, to participate in any future appointments of Junior



Engineers as a degree-holder candidate and also provide weightage.

15. The basis for such contentions are that a degree in Civil Engineering is technically a higher qualification than a diploma; prescription of minimum qualification would not debar candidates possessing higher qualification in the discipline to apply and be considered; and there being no purpose behind such a sub-classification without any basis.

16. The contentions are sought to be fortified with reference to judgments of the Supreme Court in ***Jyoti K.K. & Ors. Vs. Kerala Public Service Commission; (2010) 15 SCC 596*** and ***Puneet Sharma and Others vs. Himachal Pradesh Electricity Board and Others; (2021) 16 SCC 340.***

17. In ***Jyoti K.K.*** (supra) while inviting applications for selection to the post of Sub-



Engineers Electrical in the Kerala State Electricity Board, the Kerala Public Service Commission had issued notification providing diploma in Electrical Engineering of a recognized institution after three years course of study as the qualification for the post. The B.Tech degree holders in Electrical Engineering and persons holding bachelor's degree in Electrical Engineering were ousted from the zone of consideration. The Kerala Public Service Commission had contended that graduates in engineering and persons possessing other qualification than what was prescribed in the advertisement could not have been taken as a higher qualification as those were not equivalent qualification prescribed for that post and the persons who possessed higher qualifications could only be considered in cases where they acquired such higher qualification after acquiring the prescribed qualification. However, a provision in the



Kerala State and Subordinate Services Rules 1956 provided that notwithstanding anything contained in the rules, higher qualifications which pre-supposes the acquisition of the lower qualification prescribed for the post would also be sufficient for the post. The Kerala High Court had rejected the contentions of the applicants but the Supreme Court had held that in the event of the Government holding the view that only diploma-holders should have applied for the post of Sub-Engineers but not all those who possessed higher qualification, either the rule in question should have excluded the candidates who possessed higher qualification or the position should have been made clear that degree-holders shall not be eligible to apply for such post. When that position is not clear but on the other hand, the rules do not disqualify *per se* the holders of the higher qualifications in the same faculty, it was clear that the rule was not understood in an appropriate



manner. The order of the Hon'ble High Court, therefore, was not sustained and it was found that persons with higher qualification also would be eligible. However, since the diploma holders had already been selected by the Kerala Public Service Commission, the Supreme Court chose not to disturb such appointments but directed the State to consider the case of eligible degree-holders against existing vacancies.

18. The aforesaid judgment appears to have been primarily based on a provision of the rules which provided that notwithstanding anything contained in any rules or special rules or qualifications recognized by executive orders or standing orders of the Govt. as equivalent to a qualification specified for a post in the special rules, such of those higher qualifications would pre-suppose the acquisition of the lower qualification prescribed for the post as that also shall be sufficient.



19. The petitioners contend that if at all the Govt. was of the view that only diploma holders would be eligible for the post, that should have been clarified in the rules itself, as a plain reading of the rules would mean normally that diploma in the concerned trade would be the minimum qualification which will not prohibit persons with higher qualification in the same channel of learning.

20. The other judgment referred to by the petitioners, namely, **Puneet Sharma** (supra) was also with respect to the appointment to the post of Junior Engineer (Electrical) by the Himachal Pradesh Electricity Board Ltd.

21. The Supreme Court in this instance was confronted with the issue whether a degree in Electrical Engineering /Electrical and Electronics Engineering is a technically higher qualification than a diploma in that discipline and whether degree-holders would be eligible for appointment to the



post of Junior Engineers (Electrical) under the relevant recruitment rules.

22. The minimum essential qualification provided for recruitment to the post of Junior Engineer (Electrical) there was matriculation with diploma in Electrical/ Electronics / Electronics and Communication/ Computer Science from the recognized Institutions /Board/ University duly recognized by the Central or State Govt.

23. The degree-holders in the discipline had also applied for the post but their final results were not declared. They had approached the High Court of Himachal Pradesh in writ proceedings claiming that since they possessed higher educational qualification than the prescribed minimum (and advertised) qualifications, they could not be denied consideration.

24. The diploma-holders had opposed that claim and had argued that the qualifications possessed by



the degree-holders was neither higher nor to be considered in view of the Recruitment Rules as also on the basis of the advertisement issued for the purpose by the Himachal Pradesh Staff Selection Commission.

25. On behalf of the degree-holders, it was contended that in the event of minimum qualification being prescribed without any bar preventing appointment of degree holders to the post, diploma had to be considered as only a minimum requirement, especially in view of the rules for appointment to higher promotional post of Assistant Engineers Electrical providing for 5% quota for those who possessed degree at the time of their appointment as Junior Engineer Electrical and 5% separately for those who would acquire the degree during their service as Junior Engineer Electrical after their conformation. The minimum qualification prescribed would definitely entitle an



employer to choose a person with higher qualification as “minimum” provides a cut-off filter for the same and does not debar recruitment of candidates having higher qualification.

26. The Himachal Pradesh State Electricity Board had supported the case of the degree-holders and had argued that the Rule in question ought to be interpreted and applied to permit degree-holders a chance at selection. Not doing so would amount to excluding better qualified persons and to rob the employer of the chance of choosing a better qualified candidate.

27. It was also contended on behalf of the State Electricity Board that it is the inherent right of the employer to seek out better qualified individuals for public appointment and equivalence of qualification is not a matter for the Courts to determine.

28. Thus, the decision of the High Court in



allowing the claim of the diploma-holders holding that a degree is a not better qualification than a diploma without any expert view was contrary to the settled law.

29. The Supreme Court while deciding the issue, referred to the judgment in ***P.M. Latha vs. State of Kerela, 2003 (3) SCC 541***. The issue in ***P.M. Latha*** (supra) was whether the prescribed and advertised qualification of Trained Teacher's Certificate (TTC) included persons who were having B-Ed degrees. The Supreme Court had held that B-Ed qualification could not be considered as a higher qualification than TTC and that the TTC qualification was given to teachers especially trained to teach small children of primary classes, whereas those with B-Ed were trained to impart education to students of higher classes.

30. Similar view was expressed in ***Yogesh***



Kumar vs. State (NCT of Delhi) 2003 (3) SCC 548.

31. The Supreme Court had also referred to ***Jyoti K.K.*** (supra) and had noted that the decision therein was based on a provision in the rule which clarified that those with higher qualification would be deemed to have acquired the lower qualification prescribed for the post and that would be sufficient for eligibility.
32. Another decision which was considered by the Supreme Court in this instance was ***State of Punjab vs. Anita; 2015 (2) SCC 170***. In that case also the minimum qualification prescribed for JBT teachers was two years Junior Basic Teachers Training. It was held that those with M.Sc, B.Ed and M.A qualifications were ineligible, looking at the nature of the job which was of teaching primary classes.



33. In all these cases, a distinction had been made with the facts in ***Jyoti*** (supra), as in ***Jyoti*** the Appointing Authority had the option of considering appointment of persons with higher qualifications.

34. The next case referred to in this judgment (Puneet Sharma) was ***Zahoor Ahmad Rather vs. Imtiyaz Ahmad, 2019 (2) SCC 404***. In that case, the post in question was Technician-III in the Power Development Department in the State of Jammu & Kashmir. The relevant stipulation regarding qualification was matriculation with ITI in the relevant trade. In that case, the appellants had held diploma in Electrical Engineering but they were disqualified. The Supreme Court adumbrated that while prescribing the qualifications for a post, the State as an employer bears in mind several features including the nature of the job; the aptitudes requisite for the official discharge of duties; the functionality of a qualification and the content of the



course of studies which leads up to the acquisition of qualification. The State is entrusted with the authority to assess the needs of the Public Services. Exigencies of administration falls within the domain of administrative decision-making. The State is perfectly entitled as a Public Employer to take into account social perspectives requiring creation of job opportunities across the societal structure, which would essentially fall in the domain of policy matters. Judicial review must tread warily.

35. It was in this context, that in ***Zahoor Ahmad Rather*** (supra), decision in ***Jyoti K.K.*** (supra) was understood especially in the context of a special statutory rule under which the holding of a higher qualification pre-supposed the acquisition of a lower qualification, which was considered to be sufficient for the post.

36. After having gone through all the afore-noted



judgments, the Supreme Court in ***Puneet Sharma and others*** (supra), referred to above, examined the Rules especially the sub-quotas for 5 percent of the candidates who would be diploma holders who would acquire degree qualification during service as Junior Engineers and 5 percent for those candidates, who would acquire degrees before joining as Junior Engineers.

37. It was thus, read that the rule making authority had in mind that degree holders too would compete for the position of Junior Engineers as individuals holding equivalent or higher qualification.

38. The Supreme Court noted that if such interpretation were not given, there would be no meaning in the 5 percent of sub-quota set apart for those who were degree holders before joining as Junior Engineers in terms of the extant Recruitment



Rules.

39. The Supreme Court also took note of the latest amendment in the concerned rules clarifying that even for the post of Junior Engineers, those individuals holding higher qualification would be eligible to compete. Though, the amending rules were brought into force prospectively but since they were only clarificatory, it was held that they would apply to the recruitment which was the subject matter of the controversy from before.

40. While saying so, the Supreme Court relied on ***Zile Singh vs. State of Haryana, 2004 (8) SCC 1; Vijay Vs. State of Maharashtra, 2006 (6) SCC 289*** and ***Manish Kumar vs. Union of India, 2021 (5) SCC 1.***

41. The proposition was summarized as follows:-

“Though it is a cardinal principle of Construction that statute operates



prospectively unless expressly or by necessarily intendment made retrospective (Nova Constitutio futuris formam imponere debet non praeteritis)”.

42. However, the presumption against retrospectivity of statute could be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil or benefit of community as a whole. Such presumption against retrospective operation is not applicable to declaratory statutes. If a new Act is to explain an earlier Act, it would be rendered nugatory unless construed retrospectively. Any clarificatory amendment will have retrospective effect unless the intendment is otherwise. Thus, the claim of the degree holders was allowed on account of distinguishing the case of **P.M. Latha, Yogesh Kumar and Anita** (supra) as also the amendment in the Rules brought in to clear all doubts and



controversies regarding the right of the employer to choose persons with higher qualification.

43. This does not necessarily mean that every higher qualification would subsume a lower qualification, if it is not clear that the higher qualification is in the same channel or line of learning.

44. Fortified with these reasons, the State as also the intervenors (diploma-holders) have canvassed that qualification of B-Tech/B.E. (Civil) from institutions recognized by AICTE is a Bachelor's degree which is awarded to the candidates who pursue Engineering Courses from institutions having recognition of the AICTE after passing the intermediate/ +2 Examination conducted by the concerned Board; whereas for qualification of diploma, the candidates pursue such course on the basis of their completing matriculation/10th



qualification and take admission in diploma courses of approved duration in accordance with the Regulations framed by the Regulatory Body including the AICTE and the concerned Government.

45. So far as the syllabus of B-Tech/B.E. is concerned, the same is completely different and distinct from that of diploma course offered in different disciplines of engineering and thus the qualification of B-Tech/B.E. cannot be considered to be in line with diploma qualification in any given discipline and it cannot be considered to be a higher qualification. Subsuming a qualification of diploma in absence of any basis to demonstrate that the nature of courses pursued in diploma are necessarily included in B-Tech, B.E. courses pursued by candidates possessing the qualification in B-Tech, B.E. and Civil Engineering, is not



permissible.

46. It was also argued that taking note of the nature of duties likely to be performed by Junior Engineers, the Competent Authority consciously decided to prescribe diploma alone in the concerned discipline to be a valid qualification for appointment against the posts of Junior Engineers. This classification has a rational basis for the necessary object to be served, *viz.*, the work requirement of Junior Engineers.

47. The State came up with another plea that there are large number of job opportunities for degree-holders including that of Assistant Engineers, which opportunity cannot be availed by diploma-holders. The opportunities of diploma holders remain confined to the opportunities of employment through direct recruitment to the post of Junior Engineers only and if the degree-holders



are also included, it would not remain a level playing field for diploma holders and that also when the course curriculum are absolutely different.

48. The State as well as the diploma-holders have also relied upon a Division Bench decision of this Court in ***L.P.A. No. 1416 of 2018***, wherein, it was held that a person possessing a qualification of masters in Electrical Engineering may subsume in it a degree of bachelor's in engineering being an in-line qualification, but the same cannot be necessarily concluded in respect of a diploma course in as much as a degree course is not an in-line higher qualification of diploma. For admission in an Engineering Degree Course, one has to undergo a different test as compared to for admission in a diploma course. Even the minimum qualifications for entry in the courses are different. No doubt a diploma course is a lesser qualification but with a different curriculum as compared to four years



degree course.

49. The afore-noted judgment in appeal was affirmed by the Supreme Court in ***Special Leave to Appeal (C) No. 1187 of 2019.***

50. Thus, to conclude:-

(a) the Rules in question are very specific with respect to the qualification prescribed for the post of Junior Engineer, which is diploma in Civil, Mechanical and Electrical Engineering;

(b) There is no rationale behind holding a degree in such discipline to be in-line/channel higher qualification which would subsume in itself the lesser qualification of diploma;

(c) The prescription of qualification for post is a matter of recruitment policy and the State as the employer is entitled to prescribe the qualifications as the condition of eligibility;

(d) It is no part of the role or function of



judicial review to expand upon the ambit of the prescribed qualifications;

(e) Equivalence of a qualification is also not a matter which could be determined in exercise of the power of judicial review, which squarely falls in the domain of the State/Recruiting Authority;

(f) It cannot be denied that while prescribing qualifications for a particular post, the employer may pitch in various factors especially dealing with functionality of the post as also the creation of the job opportunities across the societal structure;

(g) It was with a conscious intent in the mind that the qualification prescribed in the Rules was not preceded with word “minimum”, leaving the qualification of diploma to be the only qualification determining eligibility unless a higher qualification were in the same line/channel;

(h) For these reasons, the reference of the judgments in ***Jyoti K.K. and Puneet Sharma*** (supra) do not support the case of



the petitioners.

51. The challenge to the constitutionality of the Recruitment Rules of Bihar Water Resource Department Subordinate Engineering (Civil) Cadre Recruitment Rules, 2023 especially Rules 8 (I) (II) and (III) thereof, thus fails.

52. The writ petitions are dismissed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

sunilkumar/-
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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.01.2025
Transmission Date	NA

