

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18675 of 2021

Apurva Kumari Daughter of Ashok Kumar, Resident of Bajrang Tubewell Boring Opp. NMC, Kankarbagh P.S. Kankarbagh, District - Patna, Permanent Resident of Barah, P.O. and P.S.- Barah, District - Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary cum Principal Secretary, General Administration Department, Government of Bihar Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Bihar Public Service Commission, through its Secretary, 15th Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001.
4. The Secretary, Bihar Public Service Commission, 15th Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001.
5. The Chairman, Bihar Public Service Commission, 15th Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dipak Kumar
For the Respondent/s : Mr.P K Verma (Aag3)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 30-11-2021

In the instant petition, petitioner has prayed for the following relief:

“(i) Issuance of an order, direction or writ in the nature of Certiorari quashing final merit/select list dated 24.08.2021 whereby the BPSK has not recommended the candidature of the petitioner for the post of Assistant Engineer (Civil) of Advertisement No. 02/2017 pursuant to her appearing in the Interview.

(ii) Issuance of an order, direction or writ in the nature of Mandamus commanding the respondent authorities to act upon/call the petitioner for interview and recommend her name for the post of Assistant Engineer (Civil) of Advertisement No. 02/2017 if found within the consideration zone.



(iii) Issuance of an order, direction or writ in nature of Mandamus directing the respondent authorities to publish the result of the petitioner after interview.

(iv) Any other relief or reliefs as the petitioners may be found entitled to in the facts and circumstances of the case.”

Pursuant to the advertisement for the post of Assistant Engineer (Civil), the last date prescribed for submission of application is 12.04.2017. Undisputedly, petitioner was not fulfilling the prescribed education qualification of either Degree or Diploma as on 12.04.2017.

Learned counsel for the petitioner submitted that as on 12.04.2017, petitioner had completed three years course and it is to be equivalent to the Diploma in engineering, the same cannot be appreciated, since Court cannot re-legislate statute. Apex Court in the case of *Madras Bar Association vs. Union of India and Others WP (Civil) No. 502 of 2021*, It is held that Court should not re-write statute. In the light of these circumstances, petitioner has not made out a case. Accordingly, writ petition stands dismissed.

At this juncture, learned counsel for the petitioner further submitted that petitioner's application for the post of Assistant Engineer (Civil) was entertained and she was permitted to participate in the process of preliminary examination and she was allowed in final examination and she was also called for interview.



Therefore, the right has been created in her relating to eligibility to the post. The aforesaid information that petitioner has right merely on the ground that the petitioner's application should have been rejected at threshold cannot be accepted for the reason that at the time of preliminary examination and main examination since large number of candidates participated, the commission is not in a position to ascertain the eligibility. In all fairness the petitioner should not have made an application as she was not eligible and qualified to apply for the post. In fact, she has mislead the commission as if she is qualified for the post in terms of the relevant provision governing the post Assistant Engineer (Civil). Therefore, the aforesaid contention that the petitioner had a vested right with reference to permitting her to participate in the process of preliminary examination and main examination and further call for interview cannot be appreciated as petitioner has not approached the commission with the clean hands

Accordingly, aforesaid contentions stand rejected.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.12.2021
Transmission Date	NA

