

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3342 of 2022

1. Vinod Kumar Prasad S/o Rampravesh Prasad, R/o Near Talab, Ward 07, Hasanpurwa, Siwan, Bakerganj, Bihar-841286.
2. Amarendra Kumar, S/o Ramsinhasan Prasad, R/o Ward No. 22, Behind Mangal Seminary High School, Belbanwa, Motihari, East Champaran, Bihar-845401.
3. Tarni Prasad, S/o Late Ramanand Prasad, R/o Vill-Nimoeya, Po-Nimoeya, Ghora Sahan, East Champaran, Bihar-845301.
4. Prabhakar Chaudhary, S/o Ram Ayodhya Chaudhary, R/o Mathiya Zirat Subhash Nagar, Near Old Salai Factory, Motihari, East Champaran, Bihar-845401.
5. Jitendra Kumar, S/o Panchu Ram, R/o Chandmari Road, Devi Asthan gali, Kankarbag, Patna, Bihar-800020.
6. Surendra Kumar Nirala, S/o Sikandar Prasad Singh, R/o Samho dih, Akbarpur barari purani dih, ward No. 5, Akbarpur Barari, Begusarai, Mirzapur Banduar, Bihar-851129.
7. Dharmendra Jha, S/o Kapileshwar Jha, R/o Ahiyari Got, Ahiyari, Darbhanga, Bihar-847304.
8. Sushil Kumar Tiwari, S/o Late Sudama Tiwari R/o Village Rachhoul Post Pumadih, Madanpur, Aurangabad, Bihar 824108.
9. Tarkeshwar Pandey, S/o Shailendra Pandey, R/o 07, Sai Nagar, Sai Mandir, Road 4A, Gardanibagh, Exhibition Road, Patna, Bihar-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The State of Bihar through the Additional Chief Secretary, Prohibition, Excise and Registration Department, Government of Bihar.
3. The Excise Commissioner, Department of Prohibition, Excise and Registration Department, Government of Bihar, Patna.
4. The Joint Commissioner, Department of Prohibition, Excise and Registration Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar, Advocate
For the Respondent/s : Mr.P.K. Shahi, AG
Mr.Vikas Kumar, Advocate

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



Date : 04-03-2024

The writ petition is filed by Assistant Sub-Inspectors, Prohibition seeking interference to Rule 11(4) of the Bihar Subordinate Prohibition Service Rules, 2017 (for brevity 'Rules of 2017'). The challenge is insofar as, the extinguishing completely, the avenue of promotion to the post of Sub-Inspector; to non-graduate Assistant Sub-Inspectors.

2. The petitioners were appointed as Constable, Excise and were promoted to the post of Assistant Sub-Inspector, Excise and they have more than long years of service in the Excise Department. Prior to the introduction of the Rules of 2017, the Assistant Sub-Inspectors were considered for promotion on the basis of their suitability & seniority without any specification of minimum educational qualification. The Rules of 2017 abruptly changed the criteria and introduced graduation for promotions; which promotions were allotted quota of 25%.

3. The Bihar Subordinate Prohibition Service (Recruitment and Service Conditions) (Amendment) Rules, 2018 rechristened the Rules of 2017 as The Bihar Subordinate Prohibition Service Rules and further amended sub-rule (4) of Rule 4 making provision for 50% of total sanctioned strength of



Sub-Inspectors to be filled by direct recruitment and remaining 50% to be filled up by promotions from amongst Assistant Sub-Inspectors on seniority cum eligibility. The petitioners lament that since they are non-graduates their only avenue of promotion is shut for ever.

4. We heard learned counsel Shri Dhananjay Kumar for the petitioners and the learned Advocate General, Shri P.K. Shahi for the respondents.

5. Learned counsel for the petitioners contended that even now the Sub-Inspectors who are not graduates are promoted to the post of Inspectors. The Assistant Sub-Inspectors and the Sub-Inspectors more or less are engaged in the same duties. When the prescription of a minimum eligibility of graduation is not there for promotion from Sub-Inspectors to Inspectors, it is arbitrary to totally obliterate avenues of promotion for the Assistant Sub-Inspectors who have spent a long period in the police service.

6. The learned Advocate General, however, would submit that there were substantial amendments brought to the service rules in the Excise Department, especially in the context of the prohibition introduced in the State. The eligibility for recruitment of Sub-Inspectors was made at par with the



eligibility in the police manual. The non-graduate Sub-Inspectors is a dying cadre and hence, they are being considered for promotion to the post of Inspectors.

7. The learned counsel for the petitioners relied on ***Food Corporation of India v. Om Prakash Sharma - AIR 1998 SC 2682, Maharashtra Forest Guards and Foresters Union v. State of Maharashtra - AIR 2017 SC 5131*** and ***Chandan Banerjee v. Krishna Prosad Ghosh - AIR Online 2021 SC 748***.

8. In ***Food Corporation of India (supra)***, Category III employees were eligible for promotion within the Category, on completion of three years service without reference to the educational qualification. An amendment was incorporated enhancing the eligibility criteria of non-graduates to five years of service. Category III under the Regulations applicable, comprised of Assistant Grade I, Assistant Grade II, Assistant Grade III, Typists and Telephone Operators in the General Administration Cadre and the Godown Cadre. The minimum educational qualification for the Assistant Grade was graduation while it was matriculation for the other two posts. The promotions within the category were also based on the eligibility criterion of three years of service, which was altered by a circular making a differentiation at the time of first



promotion, between graduates and matriculates; enabling graduates to be promoted within three years and the matriculates only after completion of five years. The matter was agitated before many Courts across the country and in one of the High Courts, the Corporation even agreed to withdraw the amendments.

9. Before the Hon'ble Supreme Court, an affidavit was filed by the Corporation contending that treating the graduates and matriculates in the different posts of typists, telephone operators and Assistants Grade III equally, was not only incorrect, but also affected the efficiency of the ministerial staff to a great extent. The Hon'ble Supreme Court found that, but for the bland statement, there was nothing stated in the counter affidavit to validate the opinion that the Assistant Grade required a higher efficiency in discharging their duties which can only be expected from the graduates. The specific contention raised by the petitioners that the duties discharged by Assistant Grade I and Grade II could be discharged equally by graduates and non-graduates was not controverted. A number of decisions of the Hon'ble Supreme Court, wherein such discrimination was frowned upon and struck down were referred to.



10. *State of Jammu and Kashmir v. Triloki Nath Khosa; (1974) 1 SCC 19* was specifically noticed, wherein it was held that classification on the basis of educational qualifications, made with a view to achieving administrative efficiency, cannot be said to represent any fortuitous circumstance. The Constitution Bench also expressed a caution insofar as the Courts keeping in view the facts and circumstances of each case in order to judge the validity of a classification. The principle being applied, on the peculiar facts and circumstances of each case, was further emphasized in *Mohammad Shujat Ali v. Union of India; (1975) 3 SCC 76*, another Constitution Bench decision. The validity of a classification based on different educational qualifications was held to be not an inviolable rule. It was observed that '*life has relations not capable always of division into inflexible compartments*' (sic). We notice the aforesaid decisions only to emphasize that in appropriate cases, based on the facts and circumstances, the Hon'ble Supreme Court has upheld the classification based on educational qualifications.

11. *P. Murugesan v. State of Tamilnadu; (1993) 2 SCC 340*, noticing *Triloki Nath Kosha (supra)* held that even when direct recruits and promotees were integrated into a



common class, they could for purpose of promotion to the higher cadre be classified on the basis of educational qualifications. The ratio of 3:1 invoked between graduates and diploma holders was held to be perfectly valid, especially since they were for long treated differently in the matter of pay, designation and in the matter of promotion, despite their discharging almost identical functions and duties. Noticing the judgments as aforesaid, it was held that in the case of the ***Food Corporation (supra)***, there was nothing to justify the amendments introducing a classification between graduates and non-graduates and hence the amendment challenged therein was held to be unconstitutional.

12. ***Maharashtra Forest Guards and Foresters Union (supra)*** considered the restriction introduced on the basis of educational qualification for participating in a Limited Departmental Competitive Examination (for brevity 'LDCE'), for promotion. While the promotions were based on seniority as per the circle gradation list, subject to fitness and a minimum regular service, there was also a provision for an LDCE fast track promotions. The LDCE could be taken only by persons possessing a graduate degree from a statutory University. While noticing the well settled proposition that there can very well be



a classification based on educational qualification, in the case before the Hon'ble Supreme Court; wherein a class within a class was created, it was held to have violated the guarantee of equality.

13. ***T.R. Kothandaraman and others. v. Tamilnadu Water Supply and Drainage Board and others; (1994) 6 SCC 282***, summarized the legal position thus :

(1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case.

(2) Higher educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion.

(3) Restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable.

14. ***Chandan Banerjee (supra)*** looked at the prescription of separate conditions for diploma and degree holders of one cadre for supernumerary appointment to the higher cadre. ***Triloki Nath Khosa (supra)*** was adverted, to find a well-established principle that once direct recruits and promotees are integrated into a common pool, they cannot be



treated differently based on the source of recruitment. It was held that this does not imply that they cannot be classified on other reasonable grounds; for example, educational qualifications. It was found that the Municipal Corporation sought to digress from regular method in granting promotion and opted to introduce separate eligibility conditions, especially by reason of the post being supernumerary, depending on the number of eligible persons, without any anticipation of a fixed number of positions. The classification was upheld also because the Municipal Corporation had not completely restricted the promotional avenues of diploma holders and they too could aspire for advancement in their careers based on the more stringent experience prescribed.

15. Keeping the above principles in mind, we have looked at the classification made in the above case. We see that the petitioners who were appointed as Constables and promoted to the post of Assistant Sub-Inspectors had a further avenue of promotion to the post of Sub-Inspectors. There is no serious contest to the contention raised by the petitioners that the Assistant Sub-Inspectors and the Sub-Inspectors discharge almost identical functions and duties. More significantly, the State admits that non-graduate Sub-Inspectors are still promoted



to the post of Inspectors. Hence, there can be found no efficiency bar, only by reason of the graduate qualification having not been acquired, in promoting Assistant Sub-Inspectors to the post of Sub-Inspectors and then to the post of Inspectors. We have to specifically notice one of the reasons stated for upholding the classification in *Chandan Banerjee (supra)* which was that the promotional avenue was not completely extinguished by reason of the classification made.

16. Promotion is not a right vested on an employee and he can only, at best claim a consideration to the higher post as and when such consideration is carried out. Reduction in chances of promotion also has been held, not to be arbitrary or illegal, if it is done on a rational basis. However, in the present case, there is total extinguishment of the avenues for promotion, which was available till the date the amendment came in.

17. The State has only contended that prohibition was introduced and the eligibility of graduation prescribed for direct recruitment. The necessity to have a commonality of persons in the very same cadre was the ground urged to sustain the amendment. Admittedly, the said commonality is not maintained in the cadre in which the petitioners seek promotion to, and its higher cadre. The cadre of Sub-Inspectors still have



non-graduates, who were promoted from the post of Assistant Sub-Inspectors. The Non-graduate Sub-Inspectors also have an avenue of promotion to the post of Inspector; despite the cadre of Inspector, even in the year 2009, as is revealed from Annexure-1, the Bihar Excise Service (Recruitment and Service Conditions) Rules, 2009 had basic eligibility of a graduate degree, for direct recruitment. Insofar as promotion from the post of Sub-Inspector, Excise and direct recruitment, the eligibility was: (i) satisfactory service in the post of Sub-Inspector, Excise; (ii) passing of required departmental examination in accordance with the rules of Excise Superintendents and Inspectors; (iii) satisfactory character assessment, and (iv) seniority. The said post of Inspector, Prohibition has been removed from a gazetted post and now included as a non-gazetted post under the Rules of 2017.

18. Based on the reasoning in the above judgments, on the facts and circumstances of this case, we are of the opinion that the prescription under Rule 11(4) insofar as prescribing an educational qualification for promotion to the post of Excise Sub-Inspector from Assistant Sub-Inspector Excise, to be the same as it is prescribed for direct recruitment to the said post is arbitrary. We hence, set aside Rule 11(4) of



the Rules, also noticing the fact that as per Rule 11(1), promotions to the post of Inspector, Prohibition from the Sub-Inspectors, Prohibition is on the basis of seniority-cum-eligibility. We have not been shown any extenuating circumstance requiring a different yardstick to be applied for the purpose of promotion from Assistant Sub-Inspectors to Sub-Inspectors when even the further promotion post is not dependent on a graduate degree.

19. We set aside Rule 11(4) of the Rules of 2017 and mandate that the promotions from Assistant Sub-Inspectors to Sub-Inspectors in the quota available for such promotions, as per the rules, shall be made on the basis of seniority-cum-eligibility, which is the criteria for promotion to the next higher post.

20. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

Harish Kumar, J I agree

(Harish Kumar, J)

Anushka/Sujit

AFR/NAFR	
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