

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7312 of 2021**

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1. Vinit Kumar S/o Uday Kant Jha R/o Lamauniya, ward no. 05, Sugauli, District- Purvi (East) Champaran, Bihar, Pin- 845456
2. Nishant Verma, S/o Binod Kumar Verma R/o Village and Post- Amwan, Bodhgaya, Distict- Gaya, Bihar, Pin- 824231
3. Vivek Verma C/o Amresh Kumar R/o Village and Post- Kurmawan Post, District- Gaya, Bihar, Pin- 824237
4. Krishna Kumar S/o Surendra Singh R/o Village and Post- Kochas, District- Rohtas, Bihar, Pin- 821112
5. Sushant Raj, S/o Shambhu Sharan Singh R/o Village- Gangauli, Post- Mashrakh Gangauli, District- Saran, Bihar, Pin- 841417
6. Sanjeev Kumar S/o Shambhu Prasad R/o Ward 16, Chhota Parewa, Raxaul, District- Purvi (East) Champaran, Bihar, Pin-845305
7. Deepak Kumar, S/o Pravin Kumar R/o Narayanpur, Bima Lakhansen, District- Vaishali, Bihar, Pin-844125
8. Animesh Kumar, S/o Sumit Kumar Singh R/o Narayanpur, Sultanganj, District- Bhagalpur, Bihar, Pin-813213
9. Amardeep Kumar, S/o Avinash Kumar R/o Bahadurpur, Jharkuria, District- Bhagalpur, Bihar, Pin-813210
10. Ritesh Kumar S/o Kapil Dev Prasad R/o Biranchi, Post Barni, Masaurhi, District- Patna, Bihar, Pin- 804452
11. Aditya Anand S/o Bipin Singh R/o Behind Girls Middle School, Hajipur, District- vaishali, Bihar, Pin- 844101
12. Shubham Kumar Singh S/o Haricharan Singh R/o Village- Gangauli, Post- Mashrakh Gangauli, District- Saran, Bihar, Pin- 841417
13. Abhishek Kumar S/o Birendra Singh Agahra, District- Saran, Bihar, Pin- 841443
14. Amit Kumar S/o Satyendra Kumar Singh R/o Suratpur Vidya Belkunda, Belkunda Post, District- Vaishali, Bihar, Pin-844125
15. Raja S/o Uday shankar Goswami R/o Gourachowki, Belagachhi, Kajraili, District- Bhagalpur, Bihar, Pin-812005
16. Rahul Kumar S/o Subodh Kumar R/o Anadipur Gangalday, Ward no. 01, Colgong, District- Bhaglpur, Bihar, Pin- 813203
17. Pritam Kumar S/o Sanjay Kumar Suman r/o Ward no. 10, Sohma, District- Samastipur, Bihar, Pin- 848207
18. Arpan Kumar S/o Jay Kumar R/o Bhandar Kon, Oralaha, Barhara, District- Purnea, Bihar, Pin-854203
19. Sumit Kumar Suman S/o Shiv Kumar R/o Naya Tola, Naugachhia, District- Bhagalpur, Bihar, Pin- 853204
20. Ashish Kumar S/o Anil Kumar R/o Olapur Gangaur, District- Khagaria, Bihar, Pin- 851204



21. Nishant Kumar Nishu S/o Tej Narayan Biswas, R/o Pramanpur, Tarauna, District- Purnea, Bihar, Pin-854327
22. Miland Kumar S/o Balkrishna Bishwas R/o Gangali, Tarauna, District- Purnea, Bihar, Pin-854327
23. Ravi Kumar Anand S/o Ashok Kumar Thakur R/o Ward no. 11, Village and Post- Bara Moha, P.S.- Simraha, Rajhalhalia, Forbesgunj, District- Araria, Bihar, Pin- 854318
24. Alok Kumar S/o Daya Nand Yadav R/o Awas Board, District- Khagaria, Bihar, Pin- 851205
25. Shantanu Kumar S/o Shiv Shankar Prasad Shankar, R/o Ganga bag Meerachak, Bahadurpur, Sabour, District- Bhaglpur, Bihar, Pin- 813210
26. Nikhil Kumar S/o Dharmendra Biswas R/o Gangaili, Tarauna, District- Purnea, Bihar, Pin- 854327
27. Anil Kumar Gupta S/o Maheshwar Prasad Sahu, R/o Bichla Road, Ward no. 07, Near Shiv Mandir, Sohma, District- Samastipur, Bihar, Pin-848207
28. Anshu Kumar Ray S/o Bhushan Ray R/o Ray Tola, Radhia Post, Radhia, District- Purvi (East ) Champaran, Bihar, Pin- 845458
29. Divyanshu Shekhar S/o Ashok Kumar Singh r/o Babhantoli, Rajaouli, District- Nawada, Bihar, Pin-805125

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna
3. The Principal Secretary, Water Resources Department, Government of Bihar, Patna
4. The Director, Department of Land Records and Survey, Government of Bihar, Patna
5. The Principal Secretary, State Board of Technical Education, Bihar, Patna
6. The Secretary, Bihar Technical Service Commission, Bihar, Patna

... .. Respondent/s

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with

**Civil Writ Jurisdiction Case No. 21651 of 2018**

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1. Ranjan Kumar S/o Ramikbal Singh, R/o Village- Bansa, Karwandiya, P.S.- Sasaram, District- Rohtas.
2. Rahul Nanda, S/o Gulabchand Prasad, R/o Village- Malvigaha, Kaliyachak, P.S.- Hilsa, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human



Resources Development, Government of Bihar, New Secretariat, Patna

2. The Principal Secretary, Science and Technology Department, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Principal Secretary Panchayati Rajya Department, Bihar.
6. The Secretary, All India Counsel of Technical Education Statuary body under Ministry of H.R.D., Government of India, Nelson Mandela Marg, New Delhi
7. Sheo Shankar Yadav, Son of Lal Bahadur Yadav, Resident of Village- Kauwahat, P.S. Sugauli, District- East Champaran.
8. Gore Lal, Son of Arun Kumar Rajak, Resident of Village- Makhawa, P.S. Bhagwanpur, District- Begusarai.
9. Santosh Kumar, Son of Parmanand Paswan, Resident of Village- Meghauna, P.S.- Alauli, District- khagariya.
10. Gulshan Kumar, Son of Sonelal Sah, Resident of Village and P.S.- Madhuban, District- East Champaran.
11. Deepak Kumar Mandal, Son of Ajit Kumar Mandal, Resident of Village- Narahia, P.S. Laukahi, District- Madhubani.
12. Razeesh Alam, Son of Md. Rajjak, Resident of Village- Garwa, P.S. Phulparas, District- Madhubani.
13. Rohit Kumar, Son of Arjun Mistri, Resident of Village- Dhushumri Bishanpur, P.S. and District- Khagariya.
14. Vikash Kumar, Son of Shiyalal Shah, Resident of Village- Bara Chakia, P.S. Chakia, District- East Champaran.
15. Vijay Kumar Raj, Son of Ramayodhya Paswan, Resident of Village- Sirisiya Mal, P.S. Nakardei, District- East Champaran.
16. Jaymandal Kumar, son of Ramkrit Yadav, resident of Village- Kauwahat, P.S. Sugauli, District- East Champaran.
17. Rajeev Kumar, Son of Laliteshwar Prasad, Resident of Village- Bhabhul, P.S. Pipra, District- Patna.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 7685 of 2019**

1. Appu Kumar, Son of Anup Prasad, Resident of Village- Samhari Garh, P.S. Kadirganj, district- Nawada.
2. Raushan Kumar, Son of Rajendra Prasad, Resident of Village- Gopkita, P.S.- Pandarak, District- Patna.
3. Shailendra kumar Son of Nawal Kishore Prasad Resident of Village-



Sathopur, P.S. Deepnagar, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, General Administration Department, Patna.
2. The Principal Secretary Water Resources Department, Bihar, Patna.
3. The Principal Secretary Planning and Development, Bihar, Patna.
4. The Principal Secretary Urban Development and Housing Department, Bihar, Patna.
5. The Principal Secretary Rural Development, Bihar, Patna.
6. The Principal Secretary, Public Health Engineering Department, Bihar, Patna.
7. The Principal Secretary, Building Construction Department, Bihar, Patna.
8. The Principal Secretary, Road Construction Department, Bihar, Patna.
9. The Principal Secretary, Minor Irrigation Department, Bihar, Patna.
10. Bihar Technical Service Commission 19, Harding Road, Patna.
11. The Deputy Secretary Bihar Technical Service Commission, 19, Harding Road, Patna.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 9887 of 2019**

1. Virendra Kumar Paswan Son of Hari Paswan Resident of Village and P.O.- Lakhiapura, P.S.- Mohanpur, District- Gaya (Bihar), Pin Code- 824232.
2. King Kislay Kumar, Son of Upendra Paswan, Resident of Village- Zilalapunarwas, P.O.- Sihma, Police Station- Matihani, District- Begusarai (Bihar), Pin- 851129.
3. Ajit Kumar, Son of Dadan Prasad Singh, Resident of Village- Pachma, P.O.- Piro, Police Station- Piro, District- Bhojpur (Bihar), Pin- 802204.
4. Sanjay Kumar Son of Akhileshwar Prasad Resident of Village- Madarpur, P.O.- Jat Dumari, Police Station- Punpun, District- Patna (Bihar), Pin- 804453.
5. Bibhuti Kumar, Son of Kopindra Prasad Resident of Village- Bhagwatpur, P.O.- Islampur, Police Station- Islampur, District- Nalanda, Pin- 801303.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary Water Resources Department Govt. of Bihar, Patna.
3. The Secretary, Bihar State Technical Service Commission Bihar, Patna.
4. The Principal Secretary, General Administration Department, Government



of Bihar, Patna

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 10816 of 2019**

1. Amit Kumar, Son of Sri Subodh Prasad Resident of Village Chhotaki Delha, P.o- Gaya Railway Station, P.S. - Delha, District- Gaya.
2. Santosh Patel, Son of Maneshwar Singh, Resident of village chauk bigha, p.o- kanap, p.s.- daudnagar, distt- aurangabad.
3. Md. Saheem Haider Son of Md. Nowan haider, Resident of Dargha Mohalla, P.o- hilsa, P.s.- hilsa, distt. nalanda.
4. Md. Feroz Uddin, Son of Md. Regaj uddin, Resident of Golakpur near Ansari Hotel, P.o- Golakpur, P.s.- Sampatehak, Distt. Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary.
2. Principal Secretary of Department, of Science and Technology, Vishwasaraiya Bhawan, P.S. Sachiwalay, Patna. 800001.
3. Bihar Technical Service Commission Through its Deputy Secretary
4. Deputy Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna- 800015

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 13389 of 2019**

Milan Kumar Son of Sri Rishideo Prasad, Resident of Village- Anandpur, Post Office and Police Station- Sonepur, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary General Administration, Department of Bihar, Patna.
3. The Principal Secretary Water Resources Department, Government of Bihar, Patna.
4. The Bihar State Technical Service Commission Through its Secretary, 19 Harding Road, Patna.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 14305 of 2019**



1. Sonu Kumar S/o Gopal Prasad Singh R/o Village- Maranchi, P.S.- Maranchi, District- Patna.
2. Nitish Kumar S/o Ram Kumar Rai R/o Village- Kochas, P.S.- Kochas, District- Rohtas.
3. Shivam Kumar S/o Lalan Saw R/o Village- Doiya, P.S.- Noorsarai, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of India, Patna.
5. The Director, Department of Land Record and Survey, Government of Bihar, Patna.
6. The Secretary, All India Council of Technical Education (Statuary body under Ministry of H.R.D., Government of India, Nelson Mandela Marg, New Delhi).

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 15860 of 2019**

1. Alok Kumar Sinha, S/o Umesh Prasad Singh R/o Village- Cheran, P.S.- Harnaut, District- Nalanda.
2. Vikash Kumar S/o Devendra Prasad R/o Village- Khorampur, P.S.- Islampur, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
3. The Secretary Bihar State Technical Service Commission, Bihar, Patna.
4. The Principal Secretary Water Resources Department, Government of Bihar, Patna.
5. The Principal Secretary Panchayati Rajya Department, Government of Bihar, Patna.
6. The Secretary Department of Land Record and Survey Government of



Bihar, Patna.

7. The Engineer in Chief cum Special Secretary Public Health and Engineering Department Government of Bihar.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 16296 of 2019**

Devraj Singhaniya, S/o Shambhu Singh R/o Village-Nanda Bigha, P.S.-  
Harnaut, District-Nalanda Pin -803110

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna
3. The Principal Secretary Water Resources Department, Government of Bihar, Patna
4. The Secretary Department of Land Record and Survey, Government of Bihar, Patna
5. The Secretary Bihar State Technical Service Commission, Bihar, Patna

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 16775 of 2019**

Deepak Kumar S/o Satyandra Prasad R/o Village-Chhota Hasanpur, District-  
Panta, Pin-803202

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna
3. The Principal Secretary, Water Resources Department, Government of Bihar, Patna
4. The Secretary, Department of Land Record and Survey, Government of Bihar, Patna
5. The Secretary, Bihar State, Technical Service Commission, Bihar, Patna

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 17726 of 2019**



1. Amit Kumar Ranjan S/o Sri Hiralal Mahto, R/o Village and P.O.-Parsauni Bazid, P.S. Kalyanpur, District-East Champaran, Bihar
2. Shubham Kumar S/o Sri Upendra Prasad R/o Village, P.O. and P.S.-Nayagaon, District-Saran, Bihar
3. Vineet Varddhan, S/o Sri Arjun Roy R/o Village - Khirkhauan, P.S. Bhagwanpur, P.O. Warishpur, District-Vaishali, Bihar
4. Md. Asfaque Alam, S/o Sri Eltaf Alam @ Md. Altaf Alam, R/o Village-Paigambarpur, P.O. Kanhauli Manohar, P.S. Baniyapur, District-Saran, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar
2. The Principal Secretary Water Resources Department, Government of Bihar
3. The Principal Secretary Department of Planning and Development, Government of Bihar
4. The Principal Secretary Urban Development and Housing Department, Government of Bihar
5. The Principal Secretary, Rural Works Department, Government of Bihar
6. The Principal Secretary, Public Health Engineering Department, Government of Bihar
7. The Principal Secretary, Building Construction Department, Government of Bihar
8. The Principal Secretary Road Construction Department, Government of Bihar
9. The Principal Secretary, Minor Water Resources Department, Government of Bihar
10. The Principal Secretary General Administration Department, Government of Bihar
11. The Secretary Bihar State Technical Service Commission, Bihar, Patna

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 5056 of 2021**

Sanjay Singh, S/o Sri Krishna Nandan Singh, R/o Village- Purnahiya, P.O.-Harnahiya, P.S.- Sahiyara, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
3. The Secretary, Bihar State Technical Service Commission, Bihar, Patna.





4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Principal Secretary, Panchayati Raj Department, Government of Bihar.
6. The Secretary, Department of Land Reforms and Survey, Government of Bihar, Patna.
7. The Engineer in Chief cum Special Secretary, Public Health and Engineering Department, Government of Bihar.

... .. Respondent/s

**Appearance :**

(In Civil Writ Jurisdiction Case No. 7312 of 2021)

For the Petitioner/s : Mrs. Nivedita Nirvikar, Sr. Advocate  
Mr. Murlidhar Mishra, Advocate  
Mr. Manoj Kumar, Advocate  
Mr. Sameer Kumar, Advocate  
Mr. Arya Achint, Advocate  
For BTSC : Mr. Nikesh Kumar, Advocate  
Mr. Praveen Kumar, Advocate  
For the State : Mr. Lalit Kishore, AG  
Mr. Anjani Kumar (AAG4)  
Mr. Bishwa Bibhuti Singh, AC to AG  
Mr. Alok Kumar Rahi, AC to AAG4

(In Civil Writ Jurisdiction Case No. 21651 of 2018)

For the Petitioner/s : Mr. Ravindra Kumar, Advocate  
For the Respondent/s : Mr. P. K. Verma- AAG3  
Mr. Saroj Kumar Sharma, AC to AAG-3

(In Civil Writ Jurisdiction Case No. 7685 of 2019)

For the Petitioner/s : Mr. Sanjay Kumar, Advocate  
For the Respondent/s : Mr. Anjani Kumar (AAG4)

(In Civil Writ Jurisdiction Case No. 9887 of 2019)

For the Petitioner/s : Mr. Prashant Sinha, Advocate  
For the Respondent/s : Mr. Lalit Kishore (AG)

(In Civil Writ Jurisdiction Case No. 10816 of 2019)

For the Petitioner/s : Mr. Kalyan Shankar, Advocate  
For the Respondent/s : Mr. Archana Meenakshee (GP6)  
Mr. Prabhat Ranjan, AC to GP-6

(In Civil Writ Jurisdiction Case No. 13389 of 2019)

For the Petitioner/s : Mr. Binod Bihari Singh, Advocate  
For the Respondent/s : Mr. Anjani Kumar (AAG4)

(In Civil Writ Jurisdiction Case No. 14305 of 2019)

For the Petitioner/s : Mr. Ravindra Kumar, Advocate  
For the Respondent/s : Mr. Raj Kishore Roy ( GP18 )

(In Civil Writ Jurisdiction Case No. 15860 of 2019)

For the Petitioner/s : Mr. Ravindra Kumar, Advocate  
For the Respondent/s : Mr. Lalit Kishore (AG)

(In Civil Writ Jurisdiction Case No. 16296 of 2019)

For the Petitioner/s : Mr. Devraj Singhaniya (In Person)  
For the Respondent/s : Mr. Lalit Kishore (AG)

(In Civil Writ Jurisdiction Case No. 16775 of 2019)

For the Petitioner/s : Mr. Deepak Kumar (In Person)  
For the Respondent/s : Mr. Anjani Kumar ( AAG4 )

(In Civil Writ Jurisdiction Case No. 17726 of 2019)



For the Petitioner/s : Mr.Pratyush Kumar, Advocate  
For the Respondent/s : Mr.Lalit Kishore ( AG)  
(In Civil Writ Jurisdiction Case No. 5056 of 2021)  
For the Petitioner/s : Mr.Ravindra Kumar, Advocate  
For the Respondent/s : Mr.Lalit Kishore (Ag)

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE S. KUMAR**  
**CAV JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE S. KUMAR)**  
**Date : 19-04-2022**

Heard learned counsel for the parties.

Petitioners have prayed for following reliefs:-

“(I) To declare Rule 4(a) of the Bihar Water Resources Department Subordinate Engineering (Civil) Cadre Recruitment (Amendment) Rule, 2017, (Annexure 4 in CWJC No.7312 of 2021) (a nodal department of the State government for appointment on the post of Junior Engineer) issued under gazette notification no.9/East -11-39/2006 Part-I-3950 dated 07/11/2017, by which 40 % seats of total vacant post has been reserved for the candidates holding Diploma certificate from the Government Polytechnic Institutes within the State of Bihar as ultra vires.

(II) For quashing Clause 3(ii) of the advertisement no.01/2019 dated 03.03.2019 (Annexure 5 in CWJC No.7312 of 2021) issued by the Revenue and Land Reforms Department, (Directorate of Land Records and Survey) Government of Bihar, by which 40 % seats of total vacant posts has been reserved for the candidates holding Diploma certificate from the Government Polytechnic Institute within the State of Bihar.

(III) For quashing Clause 4 (iv) (ka) of the advertisement No.01/2019 published by the Bihar Technical Service Commission on 08.03.2019, (Annexure 6 in CWJC No.7312 of 2021), by which 40 % seats of total vacant posts has been reserved for the candidates holding Diploma certificate from the Government Polytechnic Institute within the State of Bihar.

(IV) For quashing Clause 5(2) of the advertisement dated 03.08.2018 issued by Department of Panchayati Raj, Government of Bihar (Annexure 1 in CWJC No.21651 of 2018) for appointment of Technical Assistant (having Diploma in Civil Engineering from recognized Polytechnic) whereby 40% seats have reserved for the candidates from the recognized Government



Polytechnic Institute.

Briefly stated the facts of the case is that petitioners have completed Diploma courses from different affiliated polytechnic institutes situated within the State of Bihar in different academic sessions and were granted diploma certificate by State Board of Technical Institute, Government of Bihar, Patna.

It is submitted that students who are studying in Government Institutes or private institutes are granted diploma certificates by the State Board of Technical Institute, Bihar who conducts semester examinations of both and, as such, pass-out students from Government or private Polytechnic recognized institutions are granted certificates from same examining body.

State Board of Technical Education, Bihar is responsible for conducting the examination of both the institutions, Government or Private and award diploma certificate in terms of General Rules for Diploma in Engineering / Technology Examinations dated 3.7.2017.

There is common entrance examination for admission in diploma / certificate course run by Government Polytechnic Institutions and private affiliated Polytechnic Institutions called Diploma Certificate Entrance Competitive Examination which is conducted by Bihar Combined Entrance Competitive Examination Board, which enables candidates to take admission either in



Government Polytechnic institutions or private affiliated polytechnic institutions as per their ranking in the merit list.

AICTU is the statutory body regulating the standard of Technical Education and grants approval for opening of the Government Polytechnic Institutes or private Polytechnic Institutes and both Government Polytechnic Institutes or Private Polytechnic Institutes are granted recognition by the All India Council of Technical Education (AICTU) and thereafter affiliation is granted by the State Board of Technical Institution, Bihar, Patna.

Water Resources Department of Bihar, which is a nodal agency at Government level, vide notification dated 11.05.2015, notified the Bihar Water Resources Department Subordinate Engineering (Civil Cadre Recruitment Rules, 2015) framed under Article 309 of the Constitution of India. Clause 5 of said Rule provided that provision of Bihar Reservation of vacancies in Post and Services Act, 1991 and the Rules made thereunder shall be applicable to the appointment and promotion in the cadre.

Under 2015 Rules, there was no provision for institutional reservation for the candidates passing out from the polytechnic institutions located within the State of Bihar, however, by the 2017 amending Act, provision for 40% institutional reservation for the candidates passing out from the State of Bihar



was made, however, same was confined to the candidates passing out from government polytechnic institutes only and the candidates who were passed out from affiliated polytechnic institutions were excluded/ denied such institutional reservation and grievance of the petitioner is with respect to said denial/exclusion. The relevant clause 4(a) of amending Act, 2017 reads as under:-

**“(4) Appointment of the Civil Diploma holding candidates as Junior Engineer (civil) shall be made in the following manner-**

**(a) As per Rule - 5 of Bihar Water Resources Department Subordinate Engineering (Civil) Cadre Recruitment Rules, 2015, 40% seats of total vacant post shall be reserved for the candidates holding Civil Diploma from the Government Polytechnic Institutes under the state as per category wise reservation merit list. Merit list will be prepared as per established norms mentioned above vide Rule 10(2).”**

Advertisements were issued on behalf of Bihar Technical Service Commission for appointment on the post of Technical Assistant/ Junior Engineer on regular / contractual basis with qualification of Diploma in Civil Engineering from any recognized Polytechnic Institutions (A.I.C.T.U.) all over the country on regular / contract basis under different Departments of Government of Bihar which includes Department of Water Resources (Nodal Department), Panchayati Raj Department, Revenue and Land Reforms Department (Directorate of Land



Records and Survey) with further stipulation that 40 % of seats shall be reserved for the candidates who have obtained Diploma certificate from Government Polytechnic Institutions within the State of Bihar.

It is submitted on behalf of counsels for the petitioners that petitioners took admission in the private affiliated polytechnic institute and at the relevant time, 2015 Recruitment Rules were in vogue which did not provide any institutional reservation, however, after passing out from said institute and petitioners becoming eligible to be appointed, 2015 Rules have been amended in 2017 to the detriment of petitioners by which, their chances of being employed under State Government has diminished because of said amendment although petitioners being more meritorious and having scored higher marks than the pass out of the government polytechnic institutes in the result declared by the State Board of Technical Education, Bihar.

It has also been brought on record by way of Annexure 13, in which, it has been admitted by the State Board of Technical Education that diploma certificate granted to students of Government Polytechnic institute and private affiliated polytechnic institute are one and the same, however, on account of 2017 Amendment, even petitioners, being more meritorious, are



deprived of appointment.

Petitioners have also brought on record resolution dated 18.09.2018 (Annexure 7 in CWJC No.7312 of 2021), by which 50% institutional reservation has been provided to the degree holders of medical / engineering / veterinary colleges which are located within the State of Bihar. The relevant clause 3 of said resolution is reproduced as under:-

3. उक्त बिन्दु पर सम्यक् विचारोपरान्त निर्णय लिया गया है कि—

- (i) राज्य सरकार के अन्तर्गत विभिन्न विभागों के नियंत्रणाधीन चिकित्सा पदाधिकारी, सहायक अभियंता एवं पशु चिकित्सा पदाधिकारी के पद पर नियुक्त हेतु साक्षात्कार का प्रावधान नहीं रहेगा। अब संबंधित अर्हक परीक्षा में प्राप्त अंकों के आधार पर ही आयोग द्वारा मेधा सूची (**Merit list**) तैयार कर नियुक्त हेतु अनुशंसा की जायेगी।
- (ii) बिहार राज्य के अन्दर अवस्थित अभियंत्रण महाविद्यालयों/चिकित्सा महाविद्यालयों/पशु चिकित्सा महाविद्यालयों से उत्तीर्ण अभ्यर्थियों के लिए सभी आरक्षण कोटि में 50 प्रतिशत क्षैतिज आरक्षण लागू होगा।

It is submitted on behalf of counsel for the petitioners that the action of respondent selectively applying the proviso in relation to similarly situated person is arbitrary and illegal. Such discrimination is not based on any reasonable classification and is violative of all doctrines of equality which is enshrined in the



Constitution of India.

The law does not permit the employer to apply the rules differently in relation to persons similarly situated. In support of her submission, learned Sr. Counsel has relied upon para nos.101, 102, 102.1 and 102.3 of a judgment passed by Apex Court in case of **Binoy Viswam versus Union of India and others since reported in (2017) 7 Supreme Court Cases 59**, of which para 102, 102.1 and 102.2 read as under:-

**102.** What follows is that Article 14 forbids class legislation; it does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific ends. Classification to be reasonable should fulfil the following two tests:

“**102.1.** It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped together in the class from others left out of it.”

**102.2.** The differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in question.”

Learned Sr. counsel in support of her contention submitted that sub-classification is not based upon any intelligible differentia and does not have any nexus to the objective sought to be achieved by said sub-classification and has relied upon para 51 of a judgment passed by Apex Court in case of the **State of Andhra Pradesh and others Versus U. S. V. Balram, etc., since reported in (1972) 1 Supreme Court Cases 660** and said para 51





reads as under:-

“51. It is no doubt open to the State to prescribe the sources from which the candidates are declared eligible for applying for admission to the Medical Colleges; but when once a common Entrance Test has been prescribed for all the candidates on the basis of which selection is to be made, the rule providing further that 40 per cent of the seats will have to be reserved for the H.S.C. candidates is arbitrary. In the first place, after a common test has been prescribed, there cannot be a valid classification of the P.U.C. and H.S.C. candidates. Even assuming that such a classification is valid, the said classification has no reasonable relation to the object sought to be achieved, namely, selecting the best candidates for admission to the Medical Colleges. The reservation of 40 per cent to the H.S.C. candidates has no reasonable relation or nexus to the said object. Hence we agree with the High Court when it struck down this reservation under Rule 9 contained in GO No. 1648 of 1970 as violative of Article 14.”

Learned Sr. counsel, in support of her contention, has also referred various judgments passed by the Apex Court in cases of **Secretary, Mahatama Gandhi Mission and another versus Bhartiya Kamgar Sena and others**, since reported in (2017) 4 Supreme Court Cases 449 (para 80, 82-90); **Sri Srinivasa Theatre and others versus Government of Tamil Nadu and others**, since reported in (1992) 2 Supreme Court Cases 643; **M/S Dwarkadas Marfatia and Sons Versus Board of Trustees of the Port of Bombay**, since reported in (1989) 3 Supreme Court Cases 293 and **The State of Jammu and Kashmir versus Shri Triloki Nath Khosa and others**, since reported in (1974) 1 Supreme



Court Cases 19.

Counter affidavit has been filed on behalf of State of Bihar in which, it has been stated that by government resolution dated 25.7.2018, a policy decision has been taken by way of resolution by the State Cabinet by Resolution No.4046 dated 25.7.2018 notifying in the Extra Ordinary Gazette of Bihar (Gazette No.724 dated 25.7.2018) (Annexure A of supplementary C.A. filed by Department of Panchayati Raj in CWJC No.21651 of 2018) to provide 40 % reservation to such candidates, who have obtained Diploma certificate in Civil Engineering from the Government Polytechnic Institutes of Bihar. Earlier also, a policy of the State Government for appointment on the post of Junior Engineer in the State was decided and notified vide notification no.3950 dated 7.11.2017 issued by Water Resources Department, Government of Bihar.

It is further stated that merit list is to be prepared on the basis of marks obtained in Diploma certificate in Civil Engineering and further 40 % seats have been reserved for such candidates, who have obtained the Diploma certificate in Civil Engineering from the Government Polytechnic Institutes of Bihar.

It has been further submitted on behalf of State that Article 14 forbids class legislation but does not forbid reasonable



classification based upon intelligible differentia. Law does not interdict creation of a class within a class and there is a rational basis for creating a sub-class and objective of granting 40 % reservation to the government Polytechnic institute under the State of Bihar is to strengthen government Polytechnic Institutes. Petitioners have participated in selection process and as such cannot challenge the validity of selection process after appearing and taking opportunity of being selected and have relied upon a judgment rendered in **G. Saranna Vs. University of Lucknow, since reported in (1976) 3 SCC 585** and another judgment rendered in **Madanlal Vs. State of J&K, since reported in (1995) 3 SCC 486**.

Heard learned counsel for the parties and considered their submissions as well as materials available on record.

A classification is reasonable if it includes all persons who are similarly situated with respect to purpose of the law. Classification must be founded on some reasonable grounds, which distinguishes persons who are grouped together and grounds of distinction must have rational relation to the object sought to be achieved by the rule.

This Court fails to understand, how 40% institutional reservation confined/restricted to diploma holder from



Government Polytechnic Institute within the State of Bihar and excluding diploma holders from private affiliated polytechnic institute within the State of Bihar will strengthen the Government Polytechnic Institute when examining body to conduct selection test for admission in polytechnic institute as well as conducting semester examination and grant of diploma certificate are the same.

It is equally surprising that when 2015 Recruitment Rules were satisfactorily working and appointments were being made without any controversy or complaint or grievances, what prompted / prevailed upon government to bring 2017 Amendment Rules, when skilled man power is the need of the hour and demand of skilled man power cannot be fulfilled by government polytechnic institutes and incentives were provided by Government of Bihar for opening private affiliated polytechnic institutes.

The Apex Court has approved/permitted 50% of institutional reservation in matter of admission/employment to the students, who have passed out from the technical institutions situated within the State but has not made any distinction with respect to Government Technical Institutions and Private Technical Institutions.



Effect of 2017 amending Rules will be that even petitioners being more meritorious and have scored higher marks, they will be deprived of appointment only for the reason that they have obtained diploma certificate from affiliated polytechnic institute, whereas, candidate having lower merit, will get appointment only for the reason that he has obtained diploma certificate from a government polytechnic institute, although diploma certificate has been granted by the same institute, i.e., the State Board of Technical Institute, Government of Bihar, Patna.

It has come on record that Government of Bihar has granted 50% of Institutional Reservation in matter of admission/employment with respect to degree holders who have passed from Medical Colleges/Engineering Colleges/ Veterinary Colleges within the State of Bihar, but in case of diploma holders, 40% institutional reservation has been given to diploma holders of Government Polytechnic Institute only excluding petitioners, which is discriminatory, arbitrary, irrational and violative of Articles 14 and 16 of the Constitution of India.

For the reasons, as stated above, Rule 4(A) of the Bihar Water Resources Department Subordinate Engineering (Civil Cadre Recruitment) Amendment, 2017 are held to be arbitrary, discriminatory and unreasonable.



At this stage, it is apt to reproduce para 88 of judgment in case of Secretary, Mahatma Gandhi Mission and another Versus Bhartiya Kamgar Sena and others, since reported in (2017) 4 Supreme Court Cases 449, which reads as under:-

“88.What is the remedy open to the citizen and the corresponding obligation of the judiciary to deal with such a situation, where the inequalities are created either by the legislation or executive action? Traditionally, this Court and the High Courts have been declaring any law, which created inequalities to be unconstitutional, but in *Nakara case*[*D.S. Nakarav.Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] this Court realised that such a course of action would not meet with the obligations emanating from a combined reading of the directive principles and Article 14. Therefore, this Court emphatically laid down in *Nakara case* [*D.S. Nakara v.Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] that it is possible to give an appropriate inductive relief by eliminating the factors, which creates the artificial classification leading to a discriminatory application of law.”

In said view of the matter, amending Act 2017 is read down to the extent that 40% institutional reservation shall be provided to all affiliated and recognized polytechnic institutions by the AICTU within the State of Bihar and merit list/select list is to be prepared accordingly.

This Court permitted the Bihar State Technical



Selection Commission to continue / conclude ongoing selection process, however, it was made clear by interim order dated 06.12.2019 passed in CWJC No.21651 of 2018 and analogous cases that all the appointments made will be subject to outcome of writ petition.

Accordingly, appointments made to extent in terms of Rule 4(A) of amending Rules, 2017 are set aside and the Bihar State Technical Selection Commission is directed to prepare a fresh select/merit list granting 40% institutional reservation to all the diploma holders, who have obtained their diploma certificate from any polytechnic institutes recognized by AICTU and affiliated by State Board of Technical Institutions, Bihar, Patna within the State of Bihar.

The writ petitions stand allowed.

**( S. Kumar, J)**

**I agree.**

**(Sanjay Karol, CJ)**

Sanjay/-

AFR/NAFR	NAFR
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