

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2605 of 2000

Rajesh Kumar, son of Sri Basant Bihari Singh, Resident of Village Garauli, P.S. Baikunthpur, Dist. Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director Panchayati Raj Secretariat, Bihar, Patna.
3. The Managing Committee through the Chairman of Zila Parishad, Gopalganj.
4. The Zila Parishad, Gopalganj through its Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Gopalganj.
5. Kanhaiya Prasad, son of Gautam Prasad, Resident of Village Sisai, P.S. Safiabab, Dist. Gopalganj.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Adv.
Mr. Sunil Prasad, Adv.

For the Respondent/s : Dr. Punam Kumari Singh, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 01-04-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

- "1(i) To issue rule in the nature of certiorari to quash the order vide letter No. 240 dated 22.12.99 and the order vide memo No. 64 dated 7.3.2000 issued by the Deputy Development Commissioner cum Chief Executive Officer, Gopalganj by which respondent no.5 has been appointed on the post of Junior Engineer at Barauli under Zila Parishad, Gopalganj.
- (ii) To issue rule of mandamus commanding the respondents to appoint amongst the participant diploma holder apprentice trainees on the post of Junior Engineer Zila Parishad Gopalganj as has been directed in A.I.R. 1995(SC) 1115 in case of apprentice

trainees."

3. Mr. Dhananjay Kumar, learned counsel for the petitioner, in support of the aforementioned prayer, has straightway sought to assail the order of appointment of the respondent no.5 as contained in Annexure-9 dated 7.3.2000 on the ground that though the petitioner was a better qualified candidate in the sense that he had not only shown trainee under the Apprenticeship Act but even otherwise had sufficient experience and somehow the respondent no.5, the son-in-law of M.L.A. was favoured by his appointment in preference of better claim of the petitioner. In this regard, reliance has been placed by him on the judgment of the Apex Court in the case of *U.P. State Road Transport Corporation & Anr. Vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh & Ors.* reported in *AIR 1995 (SC) 1115* and a judgment of this Court in the case of *Dayakar Reddy Vs. M.D. Allwyn Auto Ltd. & Ors.* reported in *2000(2) PLJR SC 57*. Further reference has been made on an unreported Division Bench judgment of this Court which will be noted herein after.

4. It is not in doubt that the petitioner had earlier been successful in assailing the appointment of the respondent no.5 when he was appointed on the basis of some advertisement in the Notice Board and, as a matter of fact, the appointment of respondent no.5 was quashed by a judgment of this Court dated 6.7.1999 in CWJC No.

6382 of 1998. This Court while quashing the appointment of the respondent no.5 at that point of time had held as follows:-

"This court is of the view that the question of last date does not arise when there has been no proper advertisement. When there has been improper advertisement and in valid circulation thereof, there is no question of expiry of the last date as it is of no significance. This court is of the view that sitting in writ jurisdiction, it will only decide the dispute between the parties but it has also the right to see that the fair and proper procedure is followed in the matter of public appointment.

Therefore, this court quashed the appointment of respondent no.5 Kanhaiya Prasad made pursuant to the aforesaid advertisement published in Saran Ka Baagi. This court however direct the Zila Parishad, Gopalganj (Respondent No.3) to insert a proper advertisement in two leading news papers of the State about the aforesaid vacancy within a period of one month from today and follow a proper procedure in the matters of appointment. This court makes it clear that for the said post the petitioner and respondent no.5 will be entitled to put in their candidature in response to the said advertisement provided they are eligible to the same in accordance with the terms of the said advertisement. It is, however, made clear at the suggestion of the learned lawyer appearing for the Zila Parishad that if any one of the candidate is found over age, the same may be condoned by the Zila Parishad while considering their candidature.

This writ petition is thus allowed to the extent indicated above. There will be no order as to cost."

5. According to learned counsel for the petitioner, thereafter an advertisement was issued which was published in Times



of India and another newspaper but, in the advertisement, there was a condition mentioned that person having higher qualification shall be given preference. According to Mr. Kumar, this was only provided in order to suit and serve the interest of the respondent no.5. This Court, however, will not allow Mr. Kumar to raise this issue because the petitioner had never challenged the terms and conditions of the advertisement at relevant point of time and in fact had participated in the selection process on the basis of same advertisement. In that view of the matter, the terms and conditions of the advertisement cannot be assailed by unsuccessful candidate like the petitioner.

6. The submission that in a similar case before the Division Bench of Court, the State Government had withdrawn an advertisement for the post of Junior Engineer wherein preference was sought to be given to the decree holder will also be of no consequence. Each of the advertisement and that too by a separate appointing authority in this case Zila Parishad cannot be a ground to assail the terms and conditions of the advertisement especially when that selection process had completed way back in the year 1999.

7. The only remaining submission that the petitioner ought to have been given weightage for his experience in course of interview of 27 persons including the petitioner and respondent no.5 has to be also noted in the backdrop of the provisions made under the



Apprenticeship Act, 1961. The apprenticeship Act, 1961 contains a solitary provision as to what would be the duty of the organization where a person has to be given training as a trainee. No right accrues to any person on the basis of becoming trainee under the Apprenticeship Act. As a matter of fact, the issue which was decided by the Apex Court in the case of U.P. State Road Transport Corporation (supra) or this Court in the case of Dayakar Reddy (supra) does not lay down a proposition of law that every apprenticeship, having received training, will have the first right of appointment and there would be nothing more save and except to see as to whether a person has been trained under the Apprenticeship Act and the moment the Selection Board finds that a person is qualified of being trained under the Apprenticeship Act, he or she has to be appointed. To that extent, the petitioner has some misconceived notion of scope of Apprenticeship Act.

8. The only issue, therefore, would be as to what was the norm followed by the Selection Board in course of examining the candidature including the petitioner and respondent no.5. There is nothing on record much less by way of allegation of malafide against the members of the Board. The submission that the father-in-law of the respondent no.5 was Ex-MLA in Zila Parishad. Such a MLA will have no bearing as he had no role to play. The submission of Mr.

Kumar that respondent no.4 could have been appointed through the Collector of the district is again only to be noted for its being rejected. An allegation of malafide has to be specific and if allegation of malafide on fact is alleged, the person concerned has to be made party by name. The law in this regard has been well settled by the Apex Court in the case of *S. Pratap Singh Vs. State of Punjab* reported in *AIR 1964 SC 72*.

9. Thus, this Court does not find any flaw in the appointment of the respondent no.5.

10. This writ application is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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