

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9740 of 2013

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1. Bhagwan Singh Son Of Sri Bindeshwari Singh G.D.S. Mail Deliverer
Kharenda Edeo Via Bhagwanpur, District Kaimur, Resident Of Village +
P.O. Kharenda, District - Kaimur (Bihar)

.... Petitioner

Versus

1. The Union Of India Through The Secretary, Govt. Of India, Ministry Of
Communication, Department Of Posts, New Delhi-Cum-The Director
General , Department Of Posts New Delhi - 110001
2. The Chief Postmaster General, Bihar Circle, Patna - 800001
3. The Superintended Of Post Offices, Rohtas Division, Sasaram
4. Sub Divisional Inspector Of Post Offices, Bhabua Sub Division Of At
Bhabha, P.O. - Bhabua, District - Kaimur
5. Ashok Kumar Singh Son Of Sir Vijay Shankar Singh Gds Mail Deliverer
Kharenda, P.O. Via - Bhagwanpur, S.O. District - Kaimur, Resident Of
Village - Belaon, P.O. - Kharanda, District - Kaimur

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. M.P. Dixit, Advocate.
		Mr. Sanjay Kumar Choubey, Advocate.
For the Respondent Nos. 1 to 4		Mrs. Nivedita Nirvikar, CGC.
For the Respondent No. 5 :		Mr. Raghunandan Kr. Singh, Adv.
		Mr. Bimal Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

6 05-02-2015 Heard learned counsel for the petitioner, learned

counsel for the Union of India through the department of Posts and

the learned counsel for the Private respondent no.5 and with their

consent this writ petition is being disposed of at the admission

stage itself.

The petitioner allegedly was duly selected for the post of Extra Departmental Delivery Agent. His appointment was cancelled at the instance of private respondent no.5 without notice. He challenged unsuccessfully before the Administrative Tribunal, hence the writ petition.

The learned counsel for the petitioner states that his father was Extra Departmental Delivery Agent and was promoted in 1998 and thus there was vacancy. This vacancy was advertised on 15.10.1999 and he applied. It is his case that his application was not properly processed or acted upon. Later on, on 03.08.2001 there was yet another advertisement for the post of Extra Departmental Mail Carrier for which the private respondent applied. As per petitioner the private respondent no.5 applied for the post of mail carrier. Ultimately, the petitioner was appointed in the year 2001 which appointment at the instance of the private respondent has now been cancelled exparte. The department has appeared and filed counter affidavit.

Having perused the record and having heard learned counsel for the parties, it appears that the facts as apparent and found by us are slightly different. Neither of the parties has given full and complete picture of the actual happening. On 15.10.1999 an advertisement was issued for the post of Extra Departmental



Delivery Agent and the petitioner had applied. But the correct fact is that it was his solitary name that was forwarded by the Employment Exchange. It is for this reason that it was not immediately acted upon. We then came to the advertisement issued on 03.08.2001. The petitioner states that the said advertisement was exclusively for male candidate and on the same day there were two advertisements by the same authority for the same place, one for Extra Departmental Delivery Agent and other for Extra Departmental Mail Carrier. The private respondent no.5 applied for the post of Delivery Agent in which the petitioner had also earlier applied. Annexure- R/2 to the counter affidavit of the department is the order of the Superintendent of Post Office, Rohtas Division dated 31.01.2003, pursuant to which selection of the petitioner was cancelled. Though the petitioner was communicated that his candidature was being cancelled because the post was reserved for Scheduled Caste but the order, in fact, shows something else.

At this stage, we may note that we saw the advertisements, copies whereof were available in the department's file, reserved for Scheduled Caste as appearing in the advertisement of 1999. We find the said advertisement in different writings and further if it is so then there was no necessity to write



in the advertisement that the OBC/Scheduled Caste and Scheduled Tribe candidates should produce certificates. It would be contradictory in term. But what Annexure-R/2 of the counter affidavit shows is that there had been a ban on appointment which was communicated to S.D.I. Bhabua and circulated everybody including S.D.I. on 08.08.2001, but notwithstanding the aforesaid communication he appointed the petitioner on 04.09.2001. It is for this reason apart from other that his appointment was ordered to be cancelled. This letter does not show issuance of any direction to appoint the private respondent no.5 in place of petitioner, and then neither the petitioner nor the private respondent could have been appointed.

Having considered the entire matter, in our view if the position which is not in dispute that there was ban on appointment is correct and it is the ban of department itself then not only the appointment of the petitioner was void, the respondent no.5 could also not to be considered nor he could be appointed. His appointment is also void. The ban does not operate for one and leave other.

Having considered the matter in view of this alone, we are unable to set aside the order of Tribunal though on a different ground. The dismissal of the petition is not interfered with, but at

the same time we direct that respondent No.5 also could not be appointed.

With these observations/ directions the writ petition is disposed of.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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