

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23418 of 2013

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Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Boring Road,
Patna (Bihar).

.... Respondent- Petitioner

Versus

1. Pravin Kumar, son of Sri Vijay Singh, ex-casual labour on Muster Roll,
Jawahar Navodaya Vidyalaya, Simdega, resident of village & P.O. Lakhanpur,
P.S. Punpun, District-Patna.
- Applicant- Respondent 1st Set.
2. Union of India through the Commissioner, Navodaya Vidyalaya Samiti, A/28,
Kailash Colony, New Delhi.
3. Joint Commissioner, Navodaya Vidyalaya Samiti, A/28, Kailash Colony, New
Delhi.
4. Principal, Jawahar Navodaya Vidyalaya Samiti, P.O. Gotra, District-Simdega-
835235.

..... Respondents-Respondent 2nd Set.

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Appearance :

For the Petitioner : Mr. Siddhartha Prasad, Advocate

For the Respondent No.1 : Mr. Siddharth Harsh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 13-01-2015

Navodaya Vidyalaya Samiti- (for short, 'the
Samiti') established institutions at various places in the
country. One such institution is at Simdega in the State of
Jharkhand. Two posts of clerk became vacant in that
institution. Proposals in that behalf, were submitted by the
Principal, to the Deputy Commissioner- the petitioner
herein. Through letter dated 02.02.2009, the petitioner
informed the Principal that the first vacancy cannot be

filled up since a case is pending in relation thereto, and the steps may be initiated for filling up the second vacancy; in accordance with the norms stipulated by the Samiti.

The Samiti prepared guidelines to be followed in the matter of selection; through its order dated 29.03.2004. Apart from prescribing the method of selection, the order provided that, the candidates must be sponsored through the District Employment Exchange and no provision was made for issuing advertisement or giving other publicity to the process of appointment. Through an order dated 01.08.2005, the condition was modified only to the extent of displaying of the notice on the Notice Board of the concerned institution.

The institution i.e. the 4th respondent herein, initiated steps for appointment of the Clerk. The matter was notified to the Employment Exchange which, in turn, sponsored 11 candidates. The Selection Committee comprising of the Principal, JNV, Simdega, the District Education Officer, Simdega, the Principal, JNV, Gumla and the Principal, Kendriya Vidyalaya, Simdega was constituted. The meeting of the Selection Committee was held and six candidates appeared before it. Only two of them, including the 1st respondent herein, were found to be qualified. In the

process of evaluation according to the prescribed norms, the 1st respondent was awarded 8.22 marks, whereas another candidate by name Rinku Kumar Singh, was awarded 6.47 marks.

The minutes of the Selection Committee were forwarded to the petitioner herein for approval. Through his order dated 15.04.2009, the petitioner refused it to accord approval by stating two grounds, namely that the vacancy was not notified on the Notice Board and the weightage given for higher qualification for the selected candidate, i.e. 1st respondent is not correct. Aggrieved by that, the 1st respondent filed O.A. No.57 of 2010 before the Central Administrative Tribunal, Patna Bench, Patna. The case has since been transferred to the Jharkhand Bench of the Tribunal.

Through its order dated 26.10.2010, the Tribunal remanded the matter to the Commissioner of the Navodaya Vidyalaya Samiti- the 2nd respondent. The 2nd respondent passed an order dated 27.04.2011 upholding the view taken by the petitioner. The same was challenged by the 1st respondent in O.A. No.339 of 2012 in the Patna Bench of the Tribunal. The O.A. was allowed on 6th September, 2013. Hence, this writ petition.

Heard Sri Siddhartha Prasad, learned counsel for the petitioner and Sri Siddharth Harsh, learned counsel for the 1st respondent.

We may mention at the outset that the writ petition suffers from a basic flaw. The 1st respondent herein filed O.A. against the respondents 2, 3, 4 and the petitioner herein (respondent no.3 in the O.A.). All the respondents in the O.A. are the authorities of the Navodaya Vidyalaya Samiti at various levels. In case, they had any grievance against the order passed by the Tribunal, all of them, i.e. the respondents in the O.A. ought to have joined, in filing the writ petition. However, only the Deputy Commissioner i.e. the petitioner herein filed the writ petition, that too by including his two superiors and one subordinate, in the Samiti as respondents. The same is impermissible in law and a serious defect has crept in the proceedings.

Be that as it may, it is on the instructions given by the petitioner herein that the 4th respondent initiated steps for selection of the Clerk. The matter was notified to the Employment Exchange and 11 candidates were sponsored. It is brought to the notice of the Court that the proposal to fill up the vacancy was displayed on the Notice Board of the institution also. It is rather surprising to note

the contents of the order dated 15.04.2009 passed by the petitioner herein, who at the relevant point of time was one Sri A.K. Shukla.

To

The Principal

JNV, Simdega (Jharkhand)

Sub: Reg. appointment of LDC

Sir,

The following defects have been found in your proposal for appointment of LDC in the Vidyalaya.

[1] The vacancy & reservation categories not displayed on the Notice Board.

[2] The weightage given for higher qualification is wrong.

You are instructed to be very careful in carrying out the recruitment process. A casual and careless attitude may lend you and the approval committee in trouble. Each step should be taken strictly according to the provision of the Recruitment Rules. You are therefore instructed to initiate the process of appointment of LDC afresh as per rules. You are also advised to be careful in future.

Yours faithfully,

Sd (A.K. Shikla)

Dy. Commissioner

So far as the first defect, pointed out in the order, is concerned, it was not even mentioned that any candidate has complained that on account of lapses on the part of the petitioner or the 4th respondent, he did not have the

opportunity to submit application. Further, the said order does not disclose that he has called for any report from the Principal as to display of the proposal on the Notice Board of the 4th respondent.

So far as the second defect, pointed out in the order is concerned, it is evident the 1st respondent herein was awarded 8.22 marks and the only other qualified candidate was awarded 6.47 marks. The defect pointed out by the petitioner is about award of weightage marks for the qualification, over and above prescribed one. According to the petitioner, only one mark ought to have been awarded for this, whereas the Selection Committee awarded two marks to the 1st respondent. Even if that is done, the result does not change. The 1st respondent continues to be first in the merit list, since his marks would be 7.22, as against 6.47 marks, awarded to the other candidate.

There would have been certainly justification for the petitioner herein to set at naught the selection process only if there was any complaint by any other meritorious and qualified candidate. By pointing out the non-existent and inconsequential defects, the then Deputy Commissioner has scuttled the selection process and virtually played with the life of an unemployed person i.e. the 1st respondent.

Apart from that, he has caused serious dislocation of the work in the concerned school. Unfortunately, it is on account of attitudes exhibited by the superior officers, that the institutions suffer.

The Tribunal has examined the matter from the proper perspective and granted relief. We are not inclined to interfere with the same. The writ petition is dismissed.

We further direct that in case the order of appointment is not issued to the 1st respondent within four weeks from today, the petitioner herein and the respondents 2 to 4 shall be under obligation to pay entire back wages from the date of their selection.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Gopal Prasad, J)

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