

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11824 of 2007

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Amod Kumar, son of Baidyanath Prasad Singh, resident of village Nerut, P.S.- Sare
(Old Asthawan), District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Patna.
3. The Commissioner-cum-Secretary, Personnel and Administrative Reforms
Department, Government of Bihar, Patna.
4. District Magistrate, Sheikhpura
5. Deputy Development Commissioner, Sheikhpura.
6. Additional Collector, Sheikhpura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad, Sr. Advocate.

Mr. Pramod Kumar

Mr. Ritesh Kumar

For the Respondent/s : Mr. Shankar Kumar, A.C. to AAG-15

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 28-04-2015

Heard Mr. Rajendra Prasad for the petitioner and A.C. to
A.A.G.-15 for the State.

The writ application has been filed seeking a direction on
the respondent authorities, particularly, the District Magistrate,
Shekhpura to furnish him appointment letter on a Class-III post in the
Collectorate and other departments in terms with the recommendation
made by the Bihar Public Service Commission (for short 'the
Commission').

For different non-technical posts in Class-III of different
departments, the Commission advertised the posts inviting



applications from eligible persons. The petitioner, claiming himself to be a candidate of other backward class (OBC) category, applied for the same. He was issued admit card and pursuant thereto he appeared at the preliminary examination conducted by the Commission in which he was declared successful. He was called upon to take the main examination which was held in September, 2002. Result of the examination was published on 16.9.2002 (Annexure-7) wherein 45 candidates under different categories were recommended to be appointed in the district of Shekhpura vide Shekhpura Advertisement No. 54/1998. The petitioner was recommended under unreserved (UR) category. While making recommendation, the Commission noted that verification of identity, educational qualification, caste certificate etc. shall be done by the appointing authority before issuing appointment letter as per the merit list prepared and furnished by the Commission. On 30.1.2003, the office of the District Magistrate by a notice (Annexure-8) called upon the petitioner to appear for verification of documents etc. on 26.2.2003. It is the case of the petitioner that he appeared before the authority on 26.2.2003 and the documents in original furnished by him were verified. The petitioner's case further is that by Memo No. 736 dated 16.12.2004 (Annexure-9), he was once again called upon by the District Magistrate to appear before him along with originals of the documents including the



caste certificate, if any, for verification. What happened thereafter has not been stated in the writ application. However, it has been stated that again by a notice sent through speed post (Annexure-9/1), he was called upon to appear before the authority which letter was not received by him on time. He filed an application (Annexure-10) in this regard before the District Magistrate and thereafter before the other authorities including the State Government. By a letter dated 14.7.2006 (Annexure-16), he was again called upon by the respondent District Magistrate to appear before him on 24.7.2006 at 11 a.m. for verification of original documents as per the instructions made in the recommendation of the Commission. The writ petition stops there. In the aforesaid factual background, the petitioner has prayed for the relief noted hereinabove.

Two counter affidavits have been filed by the concerned respondents including the respondent District Magistrate. In the first counter affidavit, it has been stated that the educational certificates produced by the petitioner were verified on 26.2.2003 when the same were produced by the petitioner whereafter on 24.12.2004, the applicants who were found eligible were called upon to appear for the letters of appointment. 21 candidates appeared with papers amongst which photographs of 3 candidates were found forged at first glance and action were taken against them. 18 candidates were selected and



given appointment on Class III post. The petitioner, on that occasion, did not turn up and hence his candidature was not considered. The District Magistrate by another communication dated 14.7.2006 informed the petitioner to appear in person with all papers on 24.7.2006 at 11 a.m.. The said counter affidavit thus concludes that after proper verification, the appointment letter shall be issued to the petitioner. A supplementary counter affidavit was thereafter filed on 31.3.2015 on behalf of respondent nos. 4 to 6 affirmed by the Director, Accounts, Administration and Self-Employment, Seikhpura stating therein that after long delay, two of the candidates who were recommended by the Commission including the petitioner appeared in person for verification of their identity, educational qualification, caste certificates etc. Paragraph 11 of the supplementary counter affidavit states as under:

“11. That it is pertinent to mention here that the petitioner appeared before the Committee set up at district Level Sheikhpura on 06.05.2008 where on verification the photo of the petitioner on application form-K was found different from the photo signature received from the commission. The district Magistrate Sheikhpura requested the Secretary BPSC vide letter no. 558/Estt. Dated 31.07.2008 and letter no. 60/Estt Dated 26.02.2009 to send the attendance sheet of examination of the petitioner for verification. The Dy. Secretary, BPSC vide letter no. 439 dated 21.05.2009 sent the certified copy of attendance sheet and application form KH and the same was verified and found differences in the photos taking it seriously the District Magistrate, Sheikhpura vide his letter no. 234 dated 19.06.2009 sent all concerning papers/documents



to the Superintendent of Police, Sheikhpura for conducting enquiry. The S.P. Sheikhpura vide his letter no. 1582 dated 17.09.2009 returning all the relevant papers recommended to lodge F.I.R. against the petitioner apprehending that the petitioner has adopted fraud and forgery manner in the BPSC examination. Sri Abhaya Kumar Singh, Executive Magistrate, Sheikhpura was directed by the District Magistrate Sheikhpura to lodge F.I.R. against the petitioner vide memo no. 446/Estt. Dated 01.10.2009. Later on Sri Abhaya Kumar Singh Executive Magistrate, Sheikhpura lodged FIR against the petitioner on 12.10.2009. That was the reason the petitioner was not appointed on class 3rd post. It is pertinent to mention here that on demand of the information to furnish information under Right to Information Act 2005, a detailed information was sent to the petitioner vide memo no. 350/Estt dated 08.08.2009 under the signature of Establishment Dy Collector Sheikhpura in which right from the beginning, the information about the petitioner has been furnished, to the petitioner. It would be evident from the enclosed annexures to this reply.”

It is the aforesaid reason that the petitioner was not appointed and instead an F.I.R. was lodged against him in which he is facing trial.

Mr. Prasad has submitted that there is sharp difference in the two counter affidavit(s) filed on behalf of the respondents. Nothing has been said about the forgery or fraud committed by the petitioner in taking the examination in which an imposter appeared on behalf of the petitioner to write the answer. The petitioner failed to satisfy the whims of the authority only thereafter the allegation of having committed forgery and fraud has been levelled. In the light of

the statement which has been made in the first counter affidavit, the prayer made in the writ petition merits to be allowed.

Per contra, learned counsel for the State has submitted that way back in the year 2009 itself, the F.I.R. was lodged against the petitioner upon verification of the documents which ex-facie demonstrated that some other person (imposter) took the examination on behalf of the petitioner. He has drawn attention of the Court to the two documents which have been enclosed along with the second counter affidavit placed at pages 24-25 respectively. Page 24 contains the form and photograph of the candidate filled up for taking the examination conducted by the Commission. Page 25 is the form furnished by the petitioner after the result before the appointing authority which contains his handwriting as well as the picture. A bare perusal thereof, it appears that the photograph of the candidate who took the examination and the petitioner who appeared before the appointing authority along with the application form after the final result published by the Commission are quite different. There is absolutely no similarity. The respondents have asserted that on being *prima facie* satisfied, the matter was referred to the Superintendent of Police for further enquiry who after examining the materials produced by the District Magistrate opined for lodging of F.I.R. for the misdeeds of the petitioner. Accordingly, F.I.R. was lodged in the year

2009. Surprisingly, in the first counter affidavit, there is no mention of these facts. However, in the supplementary counter affidavit affirmed by the Director, all the relevant facts have been stated. There is no dispute between the parties that the petitioner is facing criminal trial in the said case.

On a consideration of these materials appearing from the record, it appears that respondents have denied him appointment on the ground that fraud and forgery was committed by him for which a criminal proceeding has already been launched. The contention of the counsel for the petitioner that all these happened due to the fact that the petitioner did not please the respondents does not impress the Court. If a fraud has been committed then the petitioner would not be entitled to invoke discretionary writ jurisdiction of this Court. Law in this regard is settled beyond cavil. Any further comment on the matter would probably prejudice the case of the petitioner and, as such, this Court refrains from observing further.

For the reasons aforementioned, this Court finds no merit in the application. It is, accordingly, dismissed.

(Kishore Kumar Mandal, J)

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