

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.430 of 2015

IN

Civil Writ Jurisdiction Case No.10694 of 2012

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Sanjay Kumar, S/o Sri Sahdeo Sharma, R/o Shyamal Das Lane,
Isack Chak, Lichi Bagan, Bhagalpur.

.... Appellant

Versus

1. The Bihar State Electricity Board through its Secretary, Vidyut Bhawan, P.S. Kotwali , Bailey Road, Patna.
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, P.S. Kotwali, Bailey Road, Patna.
3. The Secretary, Bihar State Electricity Board , Vidyut Bhawan, P.S. Kotwali , Bailey Road, Patna.
4. The Joint Secretary of General Administration, Bihar State Electricity Board, Vidyut Bhawan, P.S. Kotwali, Bailey Road, Patna.
5. Mr. Manoj Kumar Lal, S/o Shyam Bihari Lal, R/o House No. 31A, Raipura, P.O. Fatuha, P.S. Fatuha, District Patna, Bihar, Pin 803201.
6. Bihar State Power Holding Company Ltd., through its Chairman-cum-Managing Director, Bihar, Patna.
7. Director (HR) Bihar State Power Holding Company Ltd., Patna.
8. Divisional Manager (HR), Bihar State Power Holding Company Ltd., Patna.

.... Respondents

With

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Letters Patent Appeal No.181 of 2015

IN

Civil Writ Jurisdiction Case No.10733 of 2012

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Surendra Kumar Yadav, S/o Shri Vakil Rai, R/o Saraiyan, Chitahan, Saraiyan Bazar, P.S. Paharpur, Distt. East Champaran (Bihar).

.... Appellant

Versus

1. Bihar State Electricity Board through its Secretary, Vidyut Bhawan, Bailey Road, P.S. Kotwali, Distt. Patna.
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, P.S. Kotwali, Distt. Patna.
3. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, P.S. Kotwali, Distt. Patna.
4. The Joint Secretary of (General Administration), Bihar State Electricity Board, Vidyut Bhawan, P.S. Kotwali, Distt. Patna.
5. Alok Kumar, Son of Shri Binish Kumar, R/o Priyadarshi Nagar, Near Bhagwat Milan Mandir, Bahadurpur Housing Colony, P.S. Agam Kuan, Distt. Patna 800026.
6. Bihar State Power Holding Company Ltd., through its Chairman-cum-Managing Director, Bihar, Patna.
7. Director (HR), Bihar State Power Holding Company Ltd., Patna.
8. Divisional Manager, (HR), Bihar State Power Holding Company Ltd., Patna.

.... Respondents/Respondents

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Appearance :

(In LPA Nos. 430 of 2015 & 181 of 2015)

For the Appellants : Mr. Jagganath Singh, Advocate

For the Respondents : Mr. Ranjit Sinha, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

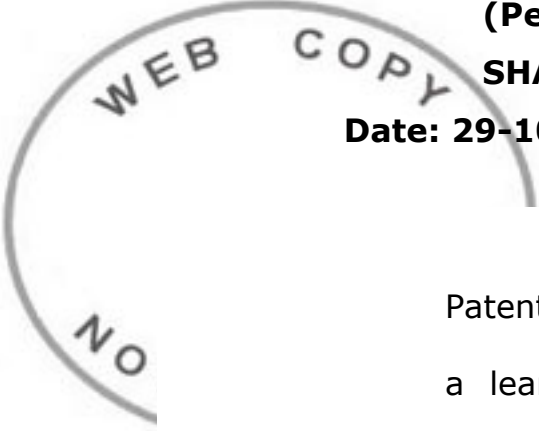
And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)

Date: 29-10-2015



These appeals, under Clause 10 of the Letters Patent of this Court, arise out of common order, passed by a learned single Judge, in C.W.J.C. No.10694 of 2012 (Sanjay Kumar Vs. The Bihar State Electricity Board, through its Secretary & Ors.) and C.W.J.C. No.10733 of 2012 (Surendra Kumar Yadav Vs. Bihar State Electricity Board, through its Secretary & Ors.), whereby the applications, filed by the appellants herein, under Article 226 of the Constitution of India, have been disposed of refusing to grant the relief sought for by them.

2. The dispute relates to appointment to the post of Accounts Officer, pursuant to an employment notice, issued by the erstwhile Bihar State Electricity Board, Patna, Bihar (**hereinafter referred to as "the Board"**), through Employment Notice No.05 of 2011. The appellant, namely, Sanjay Kumar (L.P.A. No.430 of 2015) had applied, pursuant to the said advertisement, as a candidate belonging to Extremely Backward Class Category, whereas the appellant, namely, Surendra Kumar Yadav (L.P.A. No.181 of 2015), had applied, as a candidate belonging to

Backward Class Category.

3. It is not in dispute that the selection was to be made on the basis of written test and those, who were found successful in the written examination, were to appear in Computer Literacy Test (***hereinafter referred to as the "C.L.T."***). This apart, minimum qualifying marks had been prescribed in respect of the C.L.T. for candidates, belonging to different categories, with clear stipulation that failure to obtain minimum qualifying marks would disqualify a candidate from being placed in the provisional merit list. There is also no dispute about the fact that, as per the selection procedure prescribed, the merit list was required to be prepared on the basis of marks obtained in the written test only subject to obtaining minimum qualifying marks in the said C.L.T.

4. Before we enter into the correctness of the grievance of the appellants, we must take note of an admitted fact that the appellants secured less marks than the private respondents of their respective categories.

5. It is the case of the appellants that though as per the advertisement, passing of C.L.T. was mandatory requirement for a candidate to be placed in the provisional merit list, the Board granted exemption to Manoj Kumar Lal (respondent No. 5 in L.P.A. No.430 of 2015) and Alok



Kumar (respondent No.5 in L.P.A. No.181 of 2015) from appearing at the said test. It is, accordingly, the case of the appellants that though they participated successfully in the C.L.T., the respondents, who had not participated, were still declared successful contrary to the terms of the advertisement.

6. Counter affidavits have been filed, on behalf of the Bihar State Power (Holding) Company Limited, taking a plea that the contesting private respondents were in the service of the Board and had cleared C.L.T before the present selection process commenced and, in this background, a policy decision was taken by the Board, as contained in *memo* No.277, dated 21.03.2012, to exempt them from clearing the said test once again.

7. Learned single Judge, considering the stand taken on behalf of the respondents-Bihar State Power Holding Company Limited, held that the private respondents could not be blamed for not having participated in the C.L.T., as the exemption was granted to them by the Company/Board, in view of their past service, rendered to the Board, and in view of the fact that they had already cleared C.L.T. This being an admitted fact that the private respondents had secured higher marks than the appellants in the said written test, which was the basis for preparation



of merit list, for the purpose of appointment, the learned single Judge refused to entertain the relief as sought for by the appellants. Learned single Judge, however, by the order under appeal, dated 07.11.2014, directed that the private respondents would be obliged to face C.L.T. within four months from the date of receipt of a copy of the order and would be required to obtain minimum qualifying marks so as to enable them to continue on the said post.

8. Mr. Jagganath Singh, learned counsel, appearing on behalf of the appellants, has submitted that it was not permissible for the respondents-Company/Board to have changed the terms of the advertisement, which required obtaining minimum qualifying marks in C.L.T. for a candidate to be placed in the provisional merit list for appointment. He has submitted that this aspect has not been duly considered by learned single Judge, while disposing of the writ applications by a common order, under appeal, and, therefore, this Court needs to interfere with the said order in the present *intra*-Court appeal.

9. Mr. Ranjit Sinha, learned counsel, appearing on behalf of Bihar State Power (Holding) Company Limited, on the other hand, has submitted that no prejudice could be said to have been caused to the appellants, in the facts and circumstances of the case, as indisputably, they have



secured less marks in the written test than the private respondents for the simple reason that learned single Judge, by the order, under appeal, required them also to clear the said C.L.T. by scoring prescribed minimum percentage of marks. He has further submitted that in special circumstance, exemption was granted to the respondents from taking C.L.T.

10. We have given our anxious consideration to the rival submissions, made on behalf of the parties, and we have perused the pleadings and materials available on the record. We have also gone through the order, under appeal, carefully.

11. In our considered view, the learned single Judge rightly recorded that the private respondents could not be faulted with for their non-participation in the C.L.T when their non-participation was because of the policy decision of the Power Holding Company/the Board, that they stood exempted from appearing at the test.

12. Situated thus, we are clearly of the view that learned single Judge rightly refused to interfere with the selection and appointment of the private respondents on the post of Accounts Officer. We further find that learned single Judge, by the order, under appeal, directed the Power Holding Company/the Board, to make the private

respondents clear the required C.L.T. within four months, which they are said to have cleared. In the circumstances, it cannot be said that any prejudice was caused to the appellants.

13. We, accordingly, find no reason to interfere with the order, under appeal, dated 07.11.2014, passed by the learned single Judge.

14. These appeals are, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

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