

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1432 of 2014

IN

Civil Writ Jurisdiction Case No. 11537 of 2013

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1. Ashok Kumar son of Sri Rameshwar Choudhary resident of Mohalla - Kamruddin Ganj, Back to Gandhi Park, Post Office - Biharsharif, Police Station - Laheri, District - Nalanda, Pin Code - 803101.

.... Appellant/s

Versus

1. The State of Bihar , through the Principal Secretary, Road Construction Department, Nirman Bhawan, Patna.
2. The Chairman, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001.
3. The Bihar Public Service Commission through its Secretary 15, Jawaharlal Nehru Marg, Bailey Road, Patna - 800001.
4. The Deputy Secretary-cum-Controller of Examination, Bihar Public Service Commission, 15-Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001.
5. The Principal Secretary, Public Health Engineering Department, New Secretariat, Patna - 800001.

.... Respondent/s

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Appearance :

For the Appellant/s : M/S S.R.C. Pandey, Rajnandan Prasad Singh & Amit Anand

For the Respondent/s : Mr. S.C.14-Dr. Ansuman

For the BPSC : Mr. Sanjay Pandey

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 16-04-2015

This appeal is preferred against the order dated 31-7-2014 passed the learned single Judge in C.W.J.C.No. 11537 of 2013.

2. The facts giving rise to the present appeal are set out below.



3. The appellant holds a degree in Civil Engineering. The Government of Bihar issued Advertisement No. 02/11 inviting applications for selection of candidates for Assistant Engineer(Civil). Apart from providing various reservations, the Government also provided for reservation in favour of physically handicapped candidates. Clause 4 of the Advertisement is to the effect that the selection is on the basis of marks obtained in the written test conducted for this purpose. The minimum mark for general category is 40%, whereas for the reserved category i.e., Scheduled Caste, Scheduled Tribe and Physically Handicapped it is 32%.

4. The appellant secured 26% marks in the written test. On account of that he was not called for interview. Aggrieved by the same, the appellant filed the writ petition. The learned single Judge dismissed the same. Hence, the appeal.

5. Heard Mr.S.R.C. Pandey, learned counsel for the appellant, Mr. Sanjay Pandey, learned counsel for the B.P.S.C. and Dr. Ansuman, learned counsel for the State.

6. It is well-settled that the employer has the discretion to stipulate standard for selection of the candidates. Much would depend upon the job requirement. It is only when the conditions are found to be totally irrelevant and improper that the Court can interfere.

7. The appellant did not feel aggrieved by the stipulation of 32% of minimum marks in the written test, and it is only when it emerged that he did not secure the minimum marks that he challenged the very provision stipulating the minimum marks.

8. Assuming that the principle of acquiescence does not apply, we find it difficult to accept the contention that the respondents cannot stipulate any minimum marks at all. It is fairly well-known that the minimum marks is

stipulated keeping in view the nature of duties that are to be performed by the selected candidates. Unless the candidate holds the minimum knowledge in the subject or exhibits his minimum ability, the Courts cannot compel the employer to appoint the candidate. It is no doubt true that the physically handicapped candidate is a class by itself. However, when the Government stipulated 32% minimum marks even for Scheduled Caste and Scheduled Tribe candidates in whose favour reservation is made, which is the requirement of the Constitution, the case of physically handicapped person does not stand on a better footing.

9. We do not find any basis to interfere with the order of the learned single Judge under appeal. The appeal is, accordingly, dismissed.

10. The Interlocutory application, if any, shall stand disposed of.

11. There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

B.Roy/-Rahman

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