

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1657 of 2015
IN
Civil Writ Jurisdiction Case No. 4964 of 2015

- =====
1. Vidya Bhushan S/o - Brij Nandan Prasad R/o - Village + P.O. - Banarashi Bigha, P.S. - Islampur, Distt. - Nalanda, Bihar.
 2. Rakesh Kumar Azad S/o Baidyanath Prasad R/o Village + P.O. - Chakwai, P.S. - Warsaliganj, District - Nawada, Bihar.
 3. Anjali Kumari D/o Uday Kumar Mehta R/o - Prabhat Colony, Purnia, District - Purnia, Bihar.
 4. Mithilesh Kumar S/o Upendra Kumar R/o Village - Rupchhap, P.O. - Durgamatihaniya, P.S. - Bishamvarpur, District - Gopalganj, Bihar.
 5. Vikesh Bharti S/o Phulena Paswan R/o Village - Karimtol, P.O. - Muzeffara, P.S. - Birpur, District - Begusarai, Bihar.

.... Petitionrs/Appellants

Versus

1. The State of Bihar.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
4. The Additional Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
5. The Principal Secretary, General Administration Department, Bihar, Patna.
6. The Inspector General of Registration, Govt. of Bihar, Patna.
7. The Chairman, Bihar Staff Selection Commission, Govt. of Bihar, Patna.
8. The Secretary, Bihar Staff Selection Commission, Govt. of Bihar, Patna.

.... Respondents/Respondent

with

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Letters Patent Appeal No. 1730 of 2015
IN
Civil Writ Jurisdiction Case No. 2763 of 2015

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Rakesh Kumar Azad & Ors

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

(In LPA No. 1657 of 2015)

For the Appellant/s : Mr. Rajendra Naryan, Sr. Advocate
Mr. Jai Prakash Tiwari, Advocate
For the Respondent/s : Mr. Anjani Kumar, AAG VI
M/s M Nasrul Hoda Khan, M Irshad AC to SC 18

For Bihar Staff Selection

Commission : Mr. K K Upadhayay, Advocate

(In LPA No. 1730 of 2015)

For Appellant/s : Mr. Anju Mishra
For the Respondent/s : Mr. Nirbhay Kumar Singh, GP 26
For Bihar Staff Selection
Commission : Mr. K K Upadhayay, Advocate

CORAM: HONOURABLE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 10-12-2015

The appellants have preferred these appeals under Clause 10 of the Letters Patent of this Court being aggrieved by two separate orders passed, on 11.8.2015, by a learned Single Judge in CWJC No. 4964 of 2015 (Rakesh Kumar Azad & Others vs. The State of Bihar & Others) and CWJC No. 2763 of 2015 (Ravi Shankar Sinha & Ors. Vs. The State of Bihar & Others).

2. The appellants herein were writ petitioners in CWJC No. 4964 of 2015 filed under Article 226 of the Constitution of India and by the order under appeal passed in the said writ petition, their application came to be dismissed, though they had sought for a direction to the respondents to appoint them on the post of Amin on the basis of the fact that

they were declared successful candidates in the Amin Competitive Examination (Main), 2014, held by the Bihar Staff Selection Commission and their names were recommended by the Commission for appointment for the said post.

3. CWJC No. 2763 of 2015 was filed seeking quashing of the recommendations made by the Staff Selection Commission, based on the result of the said competitive examination, as according to these writ petitioners in CWJC No.2763 of 2015, those, who were declared successful and whose names were recommended for appointment, did not hold the requisite qualification as prescribed under the Statutory Rules and also as required by the Advertisement inviting applications for the post of Amin CWJC No. 2763 of 2015 came to be allowed by the learned Single Judge by order, dated 11.8.2015, which is under appeal in LPA No. 1730 of 2015.

4. In view of the stand taken by the Department of Revenue and Land Reforms, accepting the facts, as emerged from an enquiry conducted by the Vigilance Department, that none of the candidates, whose names had been recommended, except 3, held the requisite qualification for appointment to the post of Amin.

5. The appellants herein have filed IA No. 7801 of 2015 seeking leave to prefer appeal against the order, dated

11.8.2015, passed in CWJC No.2763 of 2015.

6. For the reasons stated therein and in the interest of justice, IA No. 7801 of 2015 stands allowed by granting the appellants leave to appeal.

7. LPA No. 1657 of 2015 has, thus, been preferred assailing the order, dated 11.8.2015, passed in CWJC No. 4964 of 2015, whereas LPA No. 1730 of 2015 has been preferred against the order of the same date passed in CWJC No. 2763 of 2015. Both the appeals have been heard together with the consent of the parties and are being disposed of by the present judgment inasmuch as the issues involved in both the cases are same.

8. The facts, essential for deciding the present appeals, are not at all in dispute, which are, in brief, as under :-

(a) The Government of Bihar has framed Rules under Article 309 of the Constitution of India, known as "Bihar Amin Cadre Rules, 2013" (hereinafter referred to as the 'Rules'), to regulate recruitment/appointment and other service conditions of the Amins for the (i) districts, (ii) Directorate of Consolidation and (iii) Directorate of Land Record and Survey, Government of Bihar. Rule 6 of the Rules deals with the appointment to the post of Amin and it requires that such

appointments can be made on the basis of recommendation obtained from Bihar Staff Selection Commission through competitive examination.

(b) Sub-rule (3) of Rule 6 of the Rules provides essential qualification for a candidate to be appointed as Amin. Rule 6 of the Rules is being extracted hereinbelow for quick reference:-

"6. Appointment. *-(1) The direct appointment to the post of Amin shall be made on the basis of the recommendation obtained from Bihar Staff Selection Commission through competitive examination conducted for the post of Amin.*

(2) Separate requisition of the District sub-cadre, Directorate of Consolidation sub-cadre and Directorate of Land Records and Survey sub-cadre will be sent to the commission and receive the recommendation from commission separately too.

(3) It would be essential for the candidate to have certificate of Intermediate (10+2) or equivalent qualification from a recognized Board or equivalent institution and Degree of Amanat from a Government recognized institute or success in the training of surveyor from I.T.I."

(Emphasis added)

(c) On the basis of requisition received from the Revenue and Land Reforms Department, Government of Bihar, the Bihar Staff Selection Commission, Patna, (in short, 'the Commission') invited applications for filling up 721 posts of Amin. In the advertisement, the minimum educational

qualification was prescribed as intermediate and essential technical qualification as *"ITI Surveyor"* or *"Certificate Holder of Amanat"* from a *"recognized training institute"*.

(d) The appellants and several others applied against the said posts.

(e) Before we advert to other relevant facts, it is to be noted, at the outset, that indisputably, the appellants / writ petitioners neither have the qualification of ITI Surveyor nor do they have Degree of Amanat from a *"Government recognized institution"*. They claimed to have obtained such certificates from private institutions, which are, admittedly, not recognized by the State Government or the Central Government or any other Government body.

(f) The Commission held preliminary as well as final examination on the basis of the said advertisement and recommended 820 names of the applicants for appointment vide Memo No. 4089, dated 27.11.2014. While making such recommendation, the Commission appears to have advised the Department to ensure that at the time of offering appointment letter, the educational qualification and other certificates be verified in compliance of the earlier resolution of the Department bearing No. 2082, dated 2.5.2013.

(g) In course of verification of the documents of



the candidates, whose names were recommended by the Commission, the Department found that only 3 candidates held the requisite qualification as prescribed in the advertisement in conformity with the Rules. Rest of the candidates failed to produce any proof of recognition of the institutions, for conducting training for Amanat or Surveyor, duly accredited by the competent authority, from where the certificates of having successfully completed training of Amanat were issued in their favour. They produced documents of registration of the society, conducting such courses, under the Societies Registration Act, 1860. It was in this background that appointment letters were issued in favour of those 3 candidates only, who held the requisite qualification as per the advertisement and the Rules.

(h) It appears that by filing a writ petition which gave rise to CWJC No. 2763 of 2015, some of the aspirants to the post had earlier challenged recommendation made by the Commission of 820 candidates for appointment as Amin on the ground that they did not hold the requisite qualification as per the advertisement and in accordance with the Rules.

(i) As has been noted above, the State Government had decided not to appoint the persons, who did not hold qualification prescribed under the advertisement and

as per the Rules. The said CWJC No. 2763 of 2015, thus, came to be allowed by the order under appeal, dated 11.08.2015, which has led to the filing of LPA No. 1730 of 2015. Following order was passed by the learned Single Judge in CWJC No. 2763 of 2015:-

"Now that a clear and categorical affidavit has been filed on behalf of Respondent Nos. 3 to 6 representing Revenue and Land Reforms Department, accepting the position which was thrown up by the Vigilance Department in their enquiry with regard to recommendation of names for appointment as Amin, the petitioners succeed to the extent that none of the recommended candidates, except three, by the Staff Selection Commission are required to be appointed as Amin as they lack basic qualification.

The State Government has also clearly indicated that they would not like to appoint such people keeping in mind the Cadre Rules, which have now been framed in the year 2013.

With application is allowed."

(j) The appellants had a grievance of their non-appointment, despite there being a recommendation in their favour by the Commission. This led to filing of a writ application under Article 226 of the Constitution of India by them giving rise to the present CWJC No. 4964 of 2015. The learned Single Judge dismissed the said writ application, by the order under appeal, in the following terms:-

"Keeping in mind the order passed in CWJC No. 2763 of 2015 and the stand taken by the State, no direction in favour of these petitioners can be issued for their appointment on the post of Amin.

Writ application is dismissed."

9. Mr. Rajendra Narain, learned Senior counsel, appearing on behalf of the appellants, has submitted, assailing the orders under appeal, that the learned Single Judge dismissed the writ application filed by these appellants in the light of the order passed in CWJC No. 2763 of 2015, whereas the petitioners of said CWJC No. 2763 of 2015 had no *locus standi* to maintain the aforesaid writ application. The learned Senior counsel has submitted that the learned Single Judge ought to have considered that said CWJC No. 2763 of 2015 was filed by the persons, who were working in the capacity of Amin on contractual basis and they just wanted to thwart the process of regular appointment on the post as that would have adversely affected their contractual engagements. Mr. Narain has submitted that the petitioners of CWJC No. 2763 of 2015 were such candidates, who could not even clear the preliminary test and are also not holders of the certificates as required by the Rules. He has further submitted that the petitioners of CWJC No. 2763 of 2015 had previously filed a writ application, giving rise to CWJC No. 9687 of 2014, challenging the very advertisement in question, which was, however, dismissed and that the petitioners of CWJC No. 2763 of 2015 would succeed, in their endeavour to forestall regular



appointment to the posts of Amin on the basis of open competition, if the candidates, like the appellants, having certificates issued by the private institutions of Amanat, are not appointed on the basis of recommendations made by the Commission. Mr. Narayan also contends that there is no recognized institute in the State of Bihar imparting training for grant of Amanat certificate and it is because of this fact that out of 820 candidates recommended for appointment on the basis of competition, only three have been found to be qualified for appointment in terms of the technical qualification prescribed under the Rules and also in the advertisement. It is submitted by learned Senior counsel that Rule 6(3) of the Rules and Clause (v) of the advertisement should be given, in the exceptional facts and circumstances of the present case, a liberal construction so as to include such candidates, who have obtained Amanat certificates from the institutions registered under the Societies Registration Act, 1860.

10. Per contra, Mr. Anjani Kumar, learned Additional Advocate General VI, appearing for the State of Bihar, contends that the provisions of the Rules, which are statutory in nature, are unambiguous and binding on all concerned. The learned Additional Advocate General submits that it would be discriminatory and violative of Articles 14 and



16 of the Constitution of India if a clear prescription of educational qualification, embodied in the advertisement, is construed in a manner which will make the rules redundant. He has submitted that the learned Single Judge has rightly dismissed the writ application as the appellants do not, admittedly, have the requisite qualifications in terms of the advertisement for appointment to the post and they have no legal right to be appointed on the said post in breach of the statutory Rules.

11. While admitting the factual position that there are no institutions, recognized by the State of Bihar, which can validly grant Amanat certificate, learned Additional Advocate General has submitted that the State Government is contemplating certain amendments in the Rules, but he has submitted, in the same breath, that the amendments, if any, shall have the prospective effect and cannot be applied for the purpose of the present advertisement. This submission, he has made, on instruction, in the presence of the Principal Secretary, Home Department, Government of Bihar, and the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar in Court.

12. From the facts mentioned and the submissions noted as above, we find that "ITI Surveyor" or



"Holder of certificate of Amanat" has been prescribed under the statutory Rules framed under Article 309 of the Constitution of India as eligibility criteria for appointment to the post in the cadre of Amin. The Rules specifically and mandatorily require, for the purpose of appointment to a post in the cadre of Amin, that a person must possess degree of Amant from a "*Government recognized institute*" or successful completion of training as Surveyor from an ITI. The appellants do not have either of the two qualifications. They have, therefore, no right to be considered, let alone, to be appointed to the posts in the cadre of Amin. The fact that the appellants' name have been recommended for appointment to the post, in question, by the Commission does not vest in the appellants any indefeasible right to demand appointment, when they do not made the prescribed essential qualification.

13. We are of the further view that no recruitment can be made in deviation of the prescribed qualification in terms of the advertisement and the Rules governing such appointment, for any deviation would be arbitrary and discriminatory being in breach of Articles 14 and 16 of the Constitution of India. A person, who is ineligible for appointment, cannot claim appointment merely on the ground that he was allowed to participate, and became successful, in

the *preliminary test* and *final examination*.

14. Further, in no circumstances, writ, in the nature of writ of *mandamus* can be issued in disobedience of law/or Rules having statutory force. This position of law has been explicitly laid down in case of ***J & K Public Service Commission vs. Dr. Narindra Mohan***, reported in **(1994) 2 SCC 630**, and in case of ***State of Bihar vs. Ram Deo Yadav***, reported in **(1996) SCC 493**.

15. Our attention has been drawn to the guidelines issued by the National Council for Vocational Training (NCVT), Ministry of Labour & Employment, laying down accreditation criteria for Government and private Industrial Training Institutes seeking affiliation of NCVT, which has been entrusted with the responsibility of prescribing standards and curricula for Craftsman Training, advising the Government of India on the overall policy and program, conducting all India Trades and awarding National Trade Certificates. The said guidelines prescribe that all Industrial Training Institutes, intending for National Council for Vocational Training and institutes affiliation, are required to obtain accreditation from Quality Council of India (QCI). From the said guidelines, it appears that National Accreditation Board of Education and Training (NABET) is one of the



constituent boards of the Quality Council of India and is responsible for handling the scheme of accreditation of Government and private Industrial Training institutes. It further appears from the said guidelines that accreditation of the Quality Council of India (National Accreditation Board of Educational Training) is applicable to the following Industrial Training Institutes :-

a) New Government and Private Industrial Training Institutes

b) Existing ITI desire to add new trades

c) Existing ITI to add units in existing Trade/s"

16. Merely on the basis of the fact that the institutions from where certificates of Amanat qualification have been issued to the appellants are registered under the Societies Registration Act, 1860, they cannot be said to be fulfilling the requirement of "Government Recognized Institute" as occurring in Rule 6(3) of the Rules.

17. Situated thus, we do not find any infirmity, factual or legal, in the orders under appeal. The appeals, therefore, fail and are accordingly dismissed.

18. Before we part with, we are constrained to observe that works of Amin are being performed by persons appointed on contractual basis, because there are no

institutions recognized by the Government of Bihar imparting training leading to grant of "Amanat" degree. It is high time for the State of Bihar to consider and take appropriate measures so that persons are appointed on the said post on the basis of open, fair and transparent process of selection as expeditiously as possible. For the present, we have restrained ourselves from making any observation under the impression that the respondent authorities of the State will act *bona fide* with all promptitude to ensure filling up of the vacancies by adopting such procedure, which is in conformity with requirements of Articles 14 and 16 of the Constitution of India and the Rules, which are existing or as may be framed, in future, in accordance with law.

19. The appeals stand disposed of accordingly.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ.: I agree.

(I A Ansari, ACJ.)

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