

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1152 of 2014

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1. Binod Kumar Pandey S/O Bishwanath Pandey Resident Of Mohalla New Area (South Of Peer Baba Mazar), P.O. Sasaram, P.S. Sasaram Muffasil, District Rohtas At Sasaram.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Department Of General Administration, Govt. Of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Department Of Social Welfare, Govt. Of Bihar, Old Secretariat, Patna.
4. The Director, Directorate of Social Security and Disable, Department Of Welfare, Govt. Of Bihar, Patna.
5. The Commissioner, Disable Person, Govt. Of Bihar, Patna.
6. The Bihar Public Service Commission Through Its Chairman, Bihar Public Service Commission 15, Jawahar Lal Nehru Marg (Baily Road), Patna.
7. The Chairman, Bihar Public Service Commission 15, Jawahar Lal Nehru Marg (Baily Road), Patna.
8. The Secretary, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg (Baily Road), Patna.
9. The Additional Secretary-Cum-Examination Controller, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg (Baily Road) Patna.
10. The Joint Secretary-Cum-Special Work Officer, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg (Baily Road) Patna.
11. The Public Information Officer-Cum-Under Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg (Baily Road) Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nityanand Mishra
For the BPSC : Mr. Lalit Kishore, Sr. Advocate
Mr Satyabir Bharti
For the State : Mr Dev Kumar Pandey, AC to GP 6

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 28-09-2015

Petitioner was one of the successful candidates, which were short listed under the physically disabled category candidate but not recommended by Bihar Public Service Commission (BPSC). Petitioner participated in 48th -52nd Common Combined



Competitive Examination held in the year 2008 as well as 53rd -55th Common Combined Competitive Examination held in the year 2011. As usual, many a things have been said as to how he has been discriminated not only in terms of his merit position with 696 marks but also denied the benefit of a central legislation dealing with people suffering from disabilities under the 1995 Act.

Besides the counter affidavit, a supplementary counter affidavit has also been filed on behalf of BPSC. They have explained the factual position with regard to the manner in which candidates coming from the disabled category were recommended and in this regard, the Court is tempted to reproduce paragraphs 4 to 9, which are as follows :

“4. That for the aforesaid examination, a total of 29 posts was earmarked for the disabled category candidates. Out of the 29 earmarked posts for the Disabled Category Candidates, 10 post was earmarked for the Visually Impaired (VI) candidates, 10 post was earmarked for the Deaf & Dumb (DD) Category Candidates and 9 post was earmarked for the Orthopedic Handicapped (OH) Category.

5. That however, due to unavoidable reason on account of rectification of final results, 1 post of EBC (04) under the disability category was given to Non-Disabled Category Candidate and 1 post was

carried forward to the next requisition for filling the vacancies.

6. *That for selection of eligible candidates under the disabled category, on the basis of final marks obtained by the candidates in written examination and interview, a merit list of 77 Disabled Candidates was prepared.*

7. *That all such candidates in the merit list of Disabled Category, who were selected on their own merit were adjusted to appropriate posts in the merit list of non-disabled category candidates. A total number of 5 candidates were selected on merit from the merit list of Disabled Category candidates and adjusted in the merit list of Non-Disabled Category Candidates.*

8. *That selection of 28 Disabled Category Candidates was undertaken strictly in order of merit in accordance with their nature of disability, which is demonstrated and explained through an enclosed chart.*

A copy of the chart along with explanation is annexed hereto and marked as Annexure- B.

9. *That the petitioner is a candidate of General (01) and falls under the Deaf & Dumb (DD) Category of Disability. The petitioner had secured 696 marks and stands at Sl.No.58 of the said merit list. As would be manifest from the Chart enclosed along with the affidavit, a total of 14 seats were to*



be allotted under the Disabled (General) Category. The last candidate under the Disabled General (01) Category is at Sl.No.27 of the merit list and he had secured 773 marks. All 14 posts under the Disabled General (01) were exhausted upon selection of the candidate at Sl.No.27 of the merit list. It may also be relevant to state herein that there are two more candidates above the petitioner at Sl.No.46 and Sl.No.57 who falls under the Disabled General (01) DD Category who could not be selected.”

In addition to the above position, the respondent BPSC has annexed as Annexure-B, which is a complete explanation in support of what has been stated above. The modality of the calculation against the various vacancies and the merit position of recommended candidates, all that is visible by reading of Annexure- B.

In totality, therefore, the stand of the respondents is that there is no arbitrariness or mischief in considering the claim of the petitioner. The availability of vacancy for physically handicapped, which is a horizontal reservation, does not bring the petitioner within the ambit of candidates having a better merit position than the ones, who has already been recommended.

Even now two more candidates have better merit position in his category, therefore, merely because Annexure- B indicates

certain vacancies, petitioner cannot acquire a right for a direction
for recommendation.

Writ application, therefore, has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

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