

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1828 of 2015

IN

LPA 427 of 2013

- =====
1. Umesh Jha son of Sri Sivji Jha resident of vill - Mungeriganj, P.S. - Town Thana, District - Begusarai.
 2. Chandra Shekhar Singh son of late Deo Narayan Singh resident of Village - Ratanpur, P.S. - Ratanpur, District - Supaul.
 3. Ram Nandan Paswan son of Tapsi Paswan resident of village - Nadah P.S. - Singaul, Dist - Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Begusarai.
2. The District Establishment Deputy Collector, Begusarai.
3. The Divisional Commissioner, Munger.
4. The Deputy Development Commissioner, Begusarai.
5. The Secretary Personnel Administrative Reforms Department, Bihar, Patna.
6. The District Welfare Officer, Begusarai.
7. The Executive Engineer, Building Division, Begusarai.
8. The Executive Engineer, Road Construction, Begusarai.
9. The Additional Collector, Begusarai.

.... Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Sanjay Prasad, Adv.
For the Opposite Parties : Mr. Lalit Kishore (PAAG)

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 24-10-2016

The petitioners, who were respondents in LPA No. 427 of 2013, have preferred the present application under Section 151 of the Code of Civil Procedure (hereinafter referred to as the 'CPC') for modification of the order, dated 04.03.2014, passed in the aforesaid Letters Patent Appeal, which was dismissed by this Court with following observations :

“To us, it appears that the impugned directions have been issued in accordance with the prevalent law. The appellants cannot be permitted to operate the 2006 panel prepared pursuant to the 2004 recruitment process by revising the said panel and treating it as a 2010 panel. The action proposed to be followed by the appellants is contrary to all canons of service jurisprudence and the law of selection and appointment in public employment.

We see no merit in the challenge to the impugned order. Appeal is dismissed *in limine*.

All vacancies in Class IV cadre in the district of Begusarai will be filled in by holding the recruitment process afresh. The persons placed in the past panel/s will not have a right to priority or a preferential right on account of their placement in such panel/s.

The appellants will prepare a select list for filling up the vacancies existing on the date of advertisement or the date of calling names from the employment exchange office, whichever procedure the concerned authority opts to follow. A wait list may be prepared which shall not be of more than three percent of the select list. The wait list may be operated for a period of one year in case the selected candidate does not accept the offer of appointment. After expiry of the period of one year from the date of the merit list, the same shall expire and shall not be operated further. This order shall replace all the earlier orders.

Interlocutory Applications stand disposed of.”

2. It is contended on behalf of the petitioners that in compliance with the order, dated 04.03.2014, passed in LPA No. 427 of 2013, the respondents have published fresh advertisement bearing Memo No. 1753, dated 06.12.2014, to fill in vacancies in Class IV cadre in the district of Begusarai for which qualification has been fixed as Matric pass or its equivalent. It is contended that the petitioners have been ousted from the zone of consideration as they

were Non-Matric.

3. We have heard Mr. Chakrapani, learned counsel for the petitioners and perused the record.

4. The state has also filed its counter affidavit, wherein, it has been stated that in the light of the order, dated 04.03.2014, passed by this Court, a fresh advertisement was published on 06.12.2014 to prepare panel for appointment in Class IV cadre in Begusarai District, and as per General Administration Department Notification No. 3/M-102/2007-16970, dated 12.12.2012, the qualification fixed is Matric pass or its equivalent.

5. Admittedly, the petitioners have not filed any review application before this Court for review of the order, dated 04.03.2014. They have also not challenged the aforesaid order in appeal. The instant application for modification of the order, dated 04.03.2014, has been filed on 29.07.2015, i.e., after a long delay of over 16 months under Section 151 of the CPC.

6. In our view, Section 151 of the CPC cannot be invoked for re-opening and re-hearing the case on merits, as this is not a substantive provision, which creates or confers any powers or jurisdiction. It merely recognizes the discretionary power inherent in every Court as a necessary corollary for rendering justice in accordance with law and to prevent abuse of its process. It is well settled that the power under Section 151 of the CPC has to be used

with great care and circumspection only when it is necessary, when there is no other remedy and when the bona fides of the petitioners cannot be doubted.

7. In LPA No. 427 of 2013, after hearing the parties, the order was passed in their presence. Since neither any review nor any appeal was preferred by the petitioners or any other party, the order has attained its finality.

8. We are of the view that in the name of modification of the aforesaid order, dated 04.03.2014, the petitioners want re-hearing of the entire matter and challenge the subsequent advertisement issued by the State in compliance with the order passed by this Court. The application lacks bona fide on the part of the petitioners. Even otherwise, no error could be pointed out by the petitioners in the aforesaid order, dated 04.03.2014.

9. In that view of the matter, the application, being devoid of any merit, is dismissed.

(I. A. Ansari, CJ)

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	----
Uploading Date	29-10-2016
Transmission Date	29-10-2016