

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1832 of 2012

IN

Civil Writ Jurisdiction Case No. 6761 of 2007

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1. The State of Bihar through the Secretary Revenue, Old Secretariat Building, Patna.
 2. The District Magistrate, Rohtas, Sasaram.
 3. The Additional Collector, Incharge, Nazarat, Rohtas.
 4. The Deputy Collector, Incharge Nazarat, Rohtas and Sub-Division - Nazarat, Sasaram, Rohtas.
 5. The Sub-Divisional Officer, Sasaram at Rohtas. Appellants.

Versus

1. Keshav Prasad, S/o Sri Ram Janam Ram, R/o Village- Durgapur, P.O. & P.S.- Sasaam, District- Rohtas at Sasaram.
 2. Shyam Sundar Ram, S/o Sri Ambika Ram R/o Village- Oyeny, P.O. & P.S.- Kundra, District- Rohtas at Sasaram. Respondents.
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Appearance :

For the Appellants : Mr. Sunil Kumar Ravi, AC to AAG-III

For the Respondents : Mr. Rajeshwar Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 01-03-2016

The State has preferred this Intra-Court appeal,
being aggrieved by the judgment and order dated 15.12.2011
passed in C.W.J.C. No.6761 of 2007. The writ petition filed by

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the private-respondents in this appeal was allowed with a direction to consider respondent no.1 for appointment on Class-IV post in Rohtas Collectorate and its attached offices, taking into account his position in the panel of 'Ummidwar Peon', irrespective of the fact that he had become overage and, similarly, to consider respondent no.2, ignoring the circular dated 29.05.2004 prescribing educational qualification for such appointments to Class-IV posts.

We have heard the parties and with their consent, this appeal is being heard for final disposal at this stage itself.

It appears that in between 1985-99, the two private-respondents herein were engaged as 'Ummidwar Peon' in the Sub-divisional Offices in Sasaram, Rohtas. It appears that pursuant to the direction passed by this Court in C.W.J.C. No.5425 of 1994 being order dated 17.10.1995 a panel of such persons had to be created for future appointments. The respondents were put in the said panel, which was made ultimately in the year 2000. It further appears that when the private-respondents were not being appointed then they again filed a writ application bearing C.W.J.C. No.870 of 2000, which was disposed of vide order dated 06.10.2005, with a



direction to consider their cases for appointment or regularization. When this order was not complied with, a contempt application bearing M.J.C. No.218 of 2006 was filed. The authorities then considered the cases of the two respondents and rejected their claims. The reason, as given in the order dated 26.08.2006, was that respondent no.1 had become grossly overage for appointment and respondent no.2 did not have the educational qualification, being Class-VIII passed, as prescribed by the State vide Memo No.3577 dated 25.04.1997. This is what was challenged in the writ proceedings and the learned Single Judge directed their absorption, notwithstanding the aforesaid disqualification.

Having considered the matter, in our view, the order dated 15.12.2011 passed in C.W.J.C. No.6761 of 2007 by the learned Single Judge cannot be sustained. Respondent no.1, being grossly overage for any appointment in accordance with the Government regulations, and respondent no.2, being ineligible on the date when appointment was being considered, lacking educational qualification, no direction could be issued to ignore the same as both with regard to age and educational qualification. The eligibility has to be seen on the day when they are being considered for appointment. It is travesty of

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justice to note that a person, who is merely empanelled as 'Ummidwar Peon' in the year 2000, the panel continues and becomes perennial source of employment. This cannot be approved.

We are, therefore, of the considered opinion that both the private-respondents, being ineligible on the date for consideration, even if the panel is taken to be legal, have no right to claim appointment. Thus, we have no option but to allow the appeal preferred by the State and dismiss the writ petition, setting aside the order dated 15.12.2011 passed in C.W.J.C. No.6761 of 2007 by the learned Single Judge.

(Hemant Gupta, J.)

(Navaniti Prasad Singh, J.)

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