

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5640 of 2011

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Dhirendra Kumar Yadav, son of Bhuneshwar Yadav, resident of Village-Jamhara,
P.O. Biratpur, Gram Panchayat-Nanauti, P.S. and Block Sonbarsa, District Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Saharsa,
3. The Deputy Development Commissioner, Saharsa,
4. The District Panchayat Officer, Saharsa,
5. The Block Development Officer, Simri Bhakhtiyarpur, District Saharsa,
6. Sri Sikandar Yadav, son of Bandey Lal Ydadv, resident of Gram Panchayat-Kathdumar, Block- Simri Bhakhtiyarpur, District Saharsa,
7. Sri Kamehswar Yadav, son of Parmeshwar Yadav, resident of Panchayat-Mohanpur, P.S. and District Saharsa, at present post at Sadar Kendriya Block on the post of Panchayat Sewak, District Saharsa

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy

For the Respondent/s : Mr. Ajay Bihari Sinha SC19

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 22-04-2016

Heard counsel for the petitioner as well as learned counsel appearing for the State and Respondent no. 7. No one is present on behalf of Respondent No. 6.

The petitioner seeks quashing of the order contained in Memo No. 13, dated 07.01.2011, whereby the appointment of petitioner has been cancelled and respondent no. 6 has been appointed in his place.

The fact of the case in short is that:-

The government took a policy decision in the year 1996, for

preparation of gradation list of the Dalpatis for appointment to the post of Panchayat Sewak on the basis of seniority. Gradation list was prepared on 19.08.1996. The name of respondent nos. 6 and 7 figured just above the name of the petitioner.

It is relevant to state that the State Government in its Circular, dated 24.08.1989, had laid down eligibility criteria for promotion of Dalpatis to the post of Panchayat Sewak. The Circular stated that the Dalpati should be matriculate, must have obtained two years work experience. The candidate of general category should not be below the age of 40 years, whereas, the candidate of reserved category should not be below the age of 43 years. According to the petitioner, process has been started for filling-up, roster point 57 to 82.

It appears from Annexure-5, that Sikandar Prasad Yadav, respondent no. 6, was recommended for roster point 66, Kameshwar Yadav was recommended for roster point 67 under reserved category, and none was considered for roster point 68 reserved for schedule caste, whereas, the petitioner was recommended for roster point 69, under un-reserved category. It appears that as the petitioner had not undergone training and his original certificates was not available, one Pawan Kumar was considered against roster point 69.

Being aggrieved, the petitioner filed C.W.J.C. No. 3917 of



2000. A Bench of this Court in order, dated 13.01.2006, noticed that the name of the petitioner was at 82nd in the seniority list, whereas, the name of Pawan Kumar, respondent no. 6, was at Sl. No. 83rd. The seniority list was prepared on the basis of date of appointment. Though the petitioner was senior to Pawan Kumar, he was not sent for training whereas, the former was sent for training. As Pawan Kumar had obtained required training, he was appointed as Assistant Teacher. The Court also noticed that for no fault of his own, the petitioner was not sent for training and thus deprived of the benefit of appointment. Taking into consideration that during the pendency of the writ application, the Petitioner had obtained the required training, he was directed to be appointed in place of Pawan Kumar vide order, dated 13.01.2006, of the learned Single Judge. The respondents, complying with the directions, appointed the petitioner against roster point 69.

It is relevant to state that one Sikandar Yadav, who was recommended against roster point 66, was not appointed as his certificate was under verification. Being aggrieved, he filed C.W.J.C. No. 8599 of 2002. Before the Writ Court, he submitted that only for want of verification of certificate, he was not appointed and one Kameshwar Yadav, who was junior to him, was appointed against the roster point 67. The writ application was disposed of with a direction to the respondents to take fresh decision with respect to his claim for

appointment.

Pursuant to the order, dated 11.02.2009, passed in C.W.J.C. No. 8599 of 2002, the respondents vide order, dated 07.11.2011, appointed Sikandar Yadav and petitioner's appointment was recalled. The impugned order is contained in Annexure-1 of the writ application.

Being aggrieved, the petitioner (Dhirendra Kumar Yadav) has challenged the order in this writ application. He submits that he was appointed against roster point 69 pursuant to the order of this Court as he was senior to Pawan Kumar. He was not appointed to the post of Panchayat Sewak, as he was not sent for training for no fault of his own, and his original certificates were under verification. As the certificate was subsequently verified and he acquired the required training, he was appointed against roster point 69. Learned counsel further submits that Sikandar Yadav was recommended for appointment against roster point 66, who too was not appointed as his original certificate was under verification. After verification of certificates, Sikandar Yadav ought to have been appointed against roster point 66, instead, he has been appointed against roster point 69, replacing the petitioner who was appointed against the said roster point, pursuant to order of this Court in C.W.J.C. No 3917 of 2000, disposed of on 13.01.2006. Learned counsel submits that the claim of

Sikandar Yadav ought to have been considered against roster point 66, as no one else was appointed against that roster point.

The State has filed counter affidavit stating that the appointment of the petitioner has been made against roster point 67 which was filled up, and as such, the petitioner was appointed against roster point 69. Furthermore, Sikandar Yadav, admittedly being senior, was appointed against roster point 66. Learned counsel further submits that a Bench of this Court, in case of State of Bihar Vr. Subhash Chandra Shukla & others, reported in 2009(4) PLJR 569, has struck down the scheme of promoting Dalpati to the post of Panchayat Sewak. He submits that no post of Panchayat Sewak is vacant

I find that the Division Bench while deprecating the scheme for promoting Dalpati to the post of Panchayat Sewak, has saved the appointments already made or entitled to be made in the same transactions.

Under such circumstances and in view of the facts that the petitioner was appointed in view of the order of this Court in C.W.J.C. No. 3917 of 2000, upholding his claim for appointment against Pawan Kumar, the State Government may consider the case of the petitioner for promotion against the said post within four months from today, in case vacancy exists.

The writ application is disposed of with the aforesaid observation and direction.

(Samarendra Pratap Singh, J)

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