

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10879 of 2013

=====

Radhakant Kumar Son Of Sri Ram Chandra Paswan Resident Of Village :
Bandhuganj, Police Station : Ghosi, District : Jehanabad

.... Petitioner/s

Versus

1. The State Of Bihar Through Chief Secretary, Government Of Bihar, Patna
2. The Principal Secretary, Environment And Forest Department, Bihar, Patna
3. The Secretary, Environment And Forest Department, Bihar, Patna
4. The Deputy Secretary, Environment And Forest Department, Bihar, Patna
5. The Principal Chief Conservator Of Forest, Bihar, Patna
6. The Principal Secretary, Finance Department, Bihar, Patna
7. The Principal Secretary, General Administrative Department, Bihar, Patna
8. The Principal Secretary, Cabinet Secretariat, Bihar, Patna
9. The Secretary, Bihar Public Service Commission, Bihar, Patna
10. The Secretary, Ministry Of Environment And Forest Department, Government Of India, New Delhi
11. Sri Abhay Kumar Dwivedi, Divisional Forest Officer, Darbhanga
12. Sri Kunder Kumar, Divisional Forest Officer, Purnia Division, Purnia
13. Sri Kaushlendra Kumar Akela, Divisional Forest Officer, Muzaffarpur
14. Sri Lakshyendra Pandit, Assistant Conservator Of Forest, In The Office Of Director, Environment And Ecological, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s	: Mr. Dilip Kumar No.1, Adv. Mr. Sudhir Kumar, Adv.
For the State	: Mr. Sunil Kumar Mandal, SC-3 Ms. Neelam Kumari, AC to SC-3
For the BPSC	: Mr. Subodh Chandra Jha, Adv. J.C. to Mr. K.B. Nath, Adv.
For the Union	: Mr. Ansuman Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-12-2016

Heard learned counsel for the petitioner and counsel for
the State as also counsel for the BPSC.

In this case, the petitioner is challenging Memo No. 1819
dated 14.6.2012 and letter no. 331 dated 21.1.2013 (Annexure-11)
passed by Secretary, Employment Forest Department, whereby and
whereunder, the objection of the petitioner for correction of the



seniority list of the year 2010 has been rejected and sought a relief of mandamus to rectify the irregularity committed in preparation of the gradation list and, after making correction, the name of the petitioner be considered for promotion in the Indian Forest Service Cadre.

As per pleadings of the parties, the Bihar Public Service commission had issued an advertisement for selection of Assistant Conservator of Forest in the year 1985. Altogether there were 40 posts of different categories and the present dispute is confined to only general category candidate but, from the supplementary counter affidavit, the State has come forward with a fact that there was requisition of 40 posts and the Public Service Commission, after holding the examination, recommended the names of 44 candidates and, out of that, only 39 persons were appointed. The break-up has been given as 19 persons were from General category candidate, 5 persons from Extremely Backward category, 3 persons of Backward category, 6 persons from Scheduled Caste category, 1 person from Economic Backward category. So the requisition for scheduled castes was only 6 and the appointment was also made for 6 persons of the scheduled caste. So there is no violation in the selection of scheduled castes category but only the discord that has been raised by the petitioner is about the number of persons appointed in the general category candidate.



Learned counsel for the petitioner has placed reliance on two letters i.e. letter no. 27.9.2011 which has been written by the Principal Secretary, Forest Department to the Principal Secretary of Cabinet Secretariat and another letter dated 9.11.2011 which is issued by Principal Secretary, Environment and Forest Department to the Investigating Officer, National Scheduled Caste Commission. So far as letter dated 27.9.2011 is concerned, it does not reflect that any irregularity has been committed but, learned counsel for the petitioner is completely harping on the letter dated 9.11.2011 from where it appears that there was requisition for 17 posts, recommendation was made for 23 posts and six posts were found to be additional. Other part of the letter does not show that any other illegality has been done in the matter of selection.

It has to be kept in mind that the selection is of the year 1987, the matter with respect to selection has been settled at the High Court level, the matter went to the Supreme Court as some of the persons, who were appointed in the year 1987 and after bifurcation were allotted to the Jharkhand State, filed writ application before the Jharkhand High Court and the Jharkhand High Court dealt with the matter and refused to interfere in the matter and reopen the whole issue of selection of extra persons as Assistant Conservator of Forest. It will be convenient to place reliance on the judgment passed in LPA



No. 597 of 2006 wherein in paragraph no.8 it has been mentioned as follows:-

“In view of the above, any challenge to the appointment made by notification dated 14th December, 1987 cannot be made as said issue has been decided by the Hon'ble Supreme Court, though when challenged by the other persons and not by the petitioners as well as by the direct recruit, and Hon'ble Supreme Court refused to quash the said appointment. Therefore, writ petition is not maintainable so far this relief is concerned.”

In that view of the matter, it has finally been decided by the Hon'ble Supreme Court about the nature of selection. The petitioner cannot claim that selection of the year 1987 should be reopened and it will be proper to test whether six persons, as have been claimed by the petitioner, were wrongly appointed when there is a categorical statement of the State that out of 40 vacancies, only 39 persons were appointed and 19 persons were from the general category. So it has not exceeded more than requisition. Secondly he has raised a claim about seniority and has claimed that the person, who has wrongly been appointed, has wrongly been recommended and has been promoted in the Indian Forest Service. If the issue of seniority is re-opened then the petitioner would be entitled for the promotion to the next grade.

From the counter affidavit, it appears that the name of the



petitioner was recommended for promotion but, on account of his position in the seniority list, he could not be promoted to the next higher post and it will be very important to note that earlier the petitioner, instead of concentrating his claim with regard to seniority, only concentrated with regard to holding a C.B.I. enquiry whereupon this Court has recorded in the order-sheet dated 30.11.2016 which reads as follows:-

"In the present case, the issue has been raised by the petitioner that at the Government level there was a recommendation for handing over the matter for the C.B.I. enquiry.

In the counter affidavit, the State has not given reply about the existence of the recommendation issued by the Government for C.B.I. enquiry, but instead, the State has gone tangent and made a statement that the petitioner has moved before the Jharkhand High Court as well as before this Court for a direction to refer the matter to C.B.I. for inquiry, which has been rejected with certain liberty. It is one thing to say that the petitioner's application for getting the matter inquired into by the C.B.I. is rejected, but it is another thing that when the Government itself recommended that matter should be referred to the C.B.I. The petitioner may not succeed, but when the Government itself recommends, it must apprise this Court where they stand; whether the recommendation is still in operation or whether the recommendation has been withdrawn and whether the Government still interested for handing over the matter for the C.B.I. enquiry or whether the Government is no longer



interested for the same.

Let this case be listed after two weeks under the same heading."

So it is all through thrust was for holding an enquiry by the C.B.I. whereupon this Court had directed to the State to take a clear-cut stand with regard to statement made by the petitioner with regard to conduct of C.B.I. enquiry and, accordingly, the Government has come forward with an explanation. In paragraph no.9 of the supplementary counter, it has been stated, in the instant matter no proposal has been sent to the Home Department for investigation of the appointment made on the post of Assistant Conservator of Forest from the CBI. In paragraph no.10, it has been stated that since no step was taken for investigation by the C.B.I. by the Department, the petitioner and his wife filed writ application before this Court bearing C.W.J.C. No. 7722 of 2014 with a prayer for direction to the respondents to take proper and quick action in the light of letter dated 27.9.2011 and 9.11.2011 of Environment and Forest Department, Government of Bihar for CBI enquiry in the matter relating to appointment on the post of Assistant Conservator of Forest . Along with Environment and Forest Department, Home Department, Cabinet Secretariat Department and Vigilance Department were also made respondent in the writ application and the writ application was dismissed.



Learned counsel for the State has drawn attention of this Court to paragraph nos. 6-10 of Annexure-10 which reflects that the petitioner and his wife right from the beginning has been making allegation without any substance and that was one of the grounds for rejection of the application. From the record, it appears that not only the petitioner is making allegation but, he has allowed his wife to make allegation against the officer of the Forest Department. It does not stand to the reason. It is the employee who is serving the Department and not his wife but repeatedly trying to meddle with the affairs of the Department and this Court cannot subscribe the action of the wife of the petitioner to pursue the case for holding an enquiry by C.B.I. by making an allegation without basis against the officers with regard to the matter which has already been settled much earlier that too in the matter of appointment of the year 1987. It is also important to note herein that earlier the petitioner had approached this Court unsuccessfully in CWJC No. 7122 of 2014 with a prayer to direct investigation through Central Bureau of Investigation into the appointments made in the Department of Environment and Forest, Government of Bihar, to the post of Assistant Conservator of Forest between 1985 and 1987.

Heavy reliance has been placed on the letter dated 27.9.2011 addressed by Principal Secretary, Environment and Forest



Department and this Court had recorded as follows:-

"We did peruse the letter dated 23.9.2011, addressed by the 2nd respondent. Obviously, with an effort to escape from the radar of the petitioners and to protect himself, the 2nd respondent opined that the matter can be entrusted to the agency for enquiry. However, it is the same officer, who addressed the letter dated 9.11.2011, that has taken the view that there is no basis in the allegations of the petitioners.

Even during the course of hearing, we have put some pointed questions as to whether there was any qualified candidate from the category of Scheduled Caste or Scheduled Tribe in 1985, and in particular, whether the 1st petitioner was qualified at that time. The answer is almost in the negative and every possible effort is made to maintain vagueness and to gloss over the question. The petitioners appear to have taken one point programme, namely to harass the Department and the successful candidates. At every place they did not hesitate to press their social status into service.

The writ petition is dismissed. We also direct that in case the 1st petitioner raises this very issue once again, the Department shall proceed in its own way, even to initiate appropriate proceedings, if necessary."

So the claim of the petitioner to give direction for the C.B.I. enquiry as well as reopening the selection process of the year 1987 in view of Annexure-10, which is the basis for the petitioner to ask this Court, is rejected.

It appears that during pendency of this writ application,



an application was filed before the Division Bench. There, the Division Bench recorded that the petitioner has been harassing the Department as well as the successful candidate.

This Court does not find any merit in the present writ application. As because the petitioner belongs to scheduled caste category, he cannot use it as a weapon to harass the Department as well as to the candidates who were appointed in the year 1987. This Court could have awarded cost but, maintained restrain to award the same and gives a warning to the petitioner not to indulge in practicing of frivolous litigation, instead of harassing others, he must concentrate on his own job. However, if the Department finds that the petitioner is entitled for promotion to the next grade, his case should be considered in accordance with law.

With the aforementioned observation, this application is dismissed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.01.2017
Transmission Date	

