

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17624 of 2015

1. Shiyanand Son of Sone Lal Baitha Resident of Bandh Vihar Colony, East of Bahadurpur Housing Colony, Nayatola, Police Station - Agam Kuan, District - Patna.

2. Satyendra Kumar Sinha Son of Late Vishwanath Prasad Resident of Village and Post Office - Gopalbad, Police Station - Sarmera, District - Nalanda.

.... Petitioner/s

Versus

1. Development Commissioner Cum Chairman of Board of Director, Bihar Building Construction Corporation Ltd., Government of Bihar, Patna.

2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.

3. The Managing Director, Bihar State Building Construction Corporation Ltd., Government of Bihar, Patna.

4. The Chief General Manager-cum-Chairman, Selection Committee, Bihar State Building Construction Corporation Ltd., Government of Bihar, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr Y.V.Giri, Sr. Advocate

Mr. Uday Chand Prasad

Mr Manoj Kumar

For the Respondent/s : Mr. Tej Bahadur Singh, Sr. Advocate

Mr Brisketu Sharan Pandey

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 09-02-2016

The two petitioners have jointly approached the High Court when they failed to secure a position on the post of Deputy General Manager (Technical) under the Bihar State Building Construction Corporation Limited, a State enterprise. The advertisement is Annexure- 1. Five vacancies for the post of Deputy General Manager (Technical) have been indicated in the advertisement. The minimum qualification etc. have been indicated therein but what is of significance is that the five vacancies have been

split up giving benefit of reservation in the following manner –
General -2, EBC- 2, SC-1.

In the present case, petitioner no.1 is a claimant for appointment in the category of scheduled caste and petitioner no.2, who happens to be a backward category candidate, has competed on merits as general category candidate.

It is indicated to the Court that the only thing which is required for such candidates within the zone of consideration is obtaining 30% marks in the written examination. If a candidate got 30% marks in the written examination, he was entitled to be called for interview. This would be evident from clause 9 of advertisement contained in Annexure-1. The final merit list was also supposed to be prepared on the basis of the performance in the written examination and interview.

Learned senior counsel asserts that a reading of the terms and conditions of the advertisement including clause 9 does not indicate that there was any cut-off marks fixed for the purpose of interview.

Both the petitioners were invited for facing the interview board. They were hopeful for appointment against the post so advertised. When Annexure- 4 was issued to their shock and horror they discovered that all the post of DGM (Technical) remained

unfilled so is the post of General Manager (Technical). Selections were confined to some of the post indicated in Annexure- 4, dated 30.5.2014.

The sum essence is that the respondent authorities decided not to appoint any of the candidates, who were called for interview for the two posts in question. A mandamus, therefore, is being demanded upon the respondents to appoint the petitioners on the post of DGM (Technical) because it is also insinuated that deliberately a bias has worked against the petitioners because of the category they belong to. It is made clear that such submission is submission at the bar and not part of the pleading.

The Corporation is represented through yet another senior counsel. A counter affidavit has been filed on their part after due service upon the petitioners. Their stand is that a fair and open system of recruitment was followed. There is no irregularity or otherwise alleged in the writ application. The interview was conducted by a panel of 11 experts. The details of the people and their post, who constituted the panel for conduct of interview have been indicated in paragraph 4 of the counter affidavit. The committee or the board after interviewing various candidates and especially the two candidates, could not find their performance in the interview up to the mark and, therefore, were awarded only five marks out of 30.

Inference is that there is a disconnect between the qualification, experience which the petitioners have claimed in their favour and the actual knowledge, which was tested by the interview board consisting of 11 technically qualified persons.

Learned senior counsel for the respondent Corporation also takes a stand that there is no allegation of mala fide against the board and there is nothing to show by way of evidence or arguments that the award of marks given by the members of the interview board was in any manner biased or deliberately marked on the lower side for a reason.

The Court is not unmindful of the position that this is a Corporation which has come from brink of financial crisis. A stage was reached where the Government was giving it an anxious consideration even to wind it up. Credit goes to all those officers who struggled day and night and made it into a profitable organization and this has been achieved only by merit and not by patronage. The quality of work which has been done by them and timely completion of projects have got them business and it is because of the expanding business that the necessity for recruitment at higher level may have been felt and the present exercise is part of that deliberation.

Even these two petitioners obviously could not establish their merit before the interview board and obviously there is a

difference between what they claim to know and what they know, which was tested by the interview board. There is no compulsion upon the respondent organization to hire them or recruit them only to adorn the post and fill them up.

The Corporation needs people with merit and people with commitment, who can deliver especially at high positions.

Merely participation in the process of selection does not create a right in their favour especially when the Corporation has decided not to fill up the post since they felt that none of the participants match the expectation which they had in mind with regard to kind of candidates they were looking for to fill up the post at the level of either the General Manager or Deputy General Manager.

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

(Ajay Kumar Tripathi, J)

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