

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12139 of 2014

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1. Md. Matin S/o Md. Harun Resident of Village- Chainpur, bangara, P.S-
Maniyari, Distt- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Member Secretary, Bihar State legal Service Authority, Patna.
3. The Joint Secretary, Bihar State legal Service Authority, Patna.
4. The Assistant Registrar, Bihar State legal Service Authority, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madhav Roy

For the Respondent/s : Mr. Chandra Shekhar Singh, AC to GP 16

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

CAV JUDGMENT

Date: 29 -01-2016

Annexure-1, dated 13.2.2014 is the order under challenge in the present writ application. By virtue of this order, the Assistant Registrar of Bihar State Legal Services Authority has rejected the claim of the petitioner for appointment on the post of a Peon for the reasons indicated therein. Petitioner, therefore, wants this order to be set aside and a mandamus to be issued to appoint him on the post of a permanent Peon.

2. The short facts pleaded in the writ application are that the petitioner applied against the vacancy on a Peon advertised by the respondents. The advertisement is Advertisement No.1 of 2010 and is annexed as Annexure- 4 to the writ application. The process of selection was made. The authorities short listed the candidature of the

petitioner and indicated his name at waiting list no.1 against the post of a Peon. This can be verified from the newspaper publication contained in Annexure-7. Annexure- 7 also indicated that on failure of a successful candidate not joining or in the event of a vacancy occurring within two years, wait list candidates could be called for appointment.

3. The assertion of the petitioner in paragraph 11 of the writ application is that one Sri Suresh Sharma, who was working on a permanent post of a Peon, retired in the month of March 2013. The post, therefore, became vacant with effect from 1st of April, 2013. In terms of Annexure- 7, the petitioner became eligible and, therefore, he filed an application/ representation on 28.6.2013, a copy of which is Annexure-8. He also reiterated his right for consideration when no response was received by him by filing Annexure-9 dated 3.10.2013. Since the respondents slept over the matter; therefore, the petitioner filed CWJC No.167 of 2014. The writ of the petitioner was heard and disposed of by a learned Single Judge on 7.1.2014 giving a direction upon the Member Secretary of the Legal Services Authority to consider the claim of the petitioner. The order of the learned Single Judge is Annexure- 10.

4. Now, the order passed is under challenge as Annexure- 1 which is in compliance with the direction of the learned

Single Judge. Petitioner also alleges that the reasoning given by the Assistant Registrar in Annexure- 1 is erroneous and contrived only to deny the benefit of appointment to the petitioner.

5. The reason for rejection indicated in the impugned order contained in Annexure-1 is that the post against which the petitioner is claiming his right for appointment from the waiting list was not one of the posts, which were advertised in terms of Advertisement No.1 of 2010. The vacancy caused due to retirement of Sri Suresh Sharma was the post of a Treasury Sarkar. All the six candidates, who were selected against the vacancy of Peon, have joined their post and are working in that capacity, therefore, there is no vacancy of Peon against which the petitioner at waiting list no.1 could be accommodated.

6. The other reason given for rejection of the claim of the petitioner is that a wait list is valid only for a year. There was some kind of typing mistake that instead of one year, two year was typed as well as published. Petitioner cannot take advantage of a typing mistake. The resolution of the High Court with regard to the wait list being valid for a year will operate and this position was also made known when the wait list was issued and petitioner is well aware of the same said fact.

7. Affidavits on behalf of the respondents have been



filed. They further clarify the reasoning assigned in Annexure- 1 by observing that the post of Treasury Sarkar is a promotional post on which no direct appointment can be made. It is a wrong assertion that the post of a Peon became vacant after retirement of Suresh Sharma. Counsel representing the Legal Services Authority also asserts that the petitioner cannot step into the shoes or the vacancy created by Sri Sharma. His alternative argument that one of the Peon has been deputed or directed to work as a Treasury Sarkar also amounts to a vacancy, therefore, the right of the petitioner is created is also required to be rejected for the same said reason.

8. A lot of juggling in the argument has been done by learned counsel representing the petitioner to establish that there is an opening or post available against which the petitioner, the wait listed candidate at serial 1, should be appointed but unfortunately with little success. The number of post which was advertised was six. The persons selected against the same said post as per notification contained in Annexure- 7 are occupying the post under various categories whose name has been indicated. Petitioner cannot be given an opening under the organization on a vacancy occurring on any post other than the post of a Peon. His right even according to Annexure-7 would have accrued either on non-joining of any of the selected candidates or a vacancy having arisen in that post within a

period of one year or may be for the sake of argument two years. None of the candidates appointed on the post of Peon are reported to have either vacated their post or not joined. They are very much in service and the other openings and vacancies arising subsequently with regard to the post other than the post of Peon advertised in terms of Advertisement No.1 of 2010 cannot be made open for occupation by the petitioner.

9. The Court is not going to be bogged down by the argument whether the wait list is valid for a year or two. However, the explanation and the rules offered by the respondents in the counter affidavits does satisfy the Court that the wait list should have been for a year but that argument remains academic because no vacancy has occurred on the post of a Peon, which had been filled up on the basis of selection made against Advertisement No.1 of 2010.

The petitioner's claim, therefore for quashing of Annexure-1 is not made out and the writ application, therefore, is dismissed.

(Ajay Kumar Tripathi, J)

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