

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1554 of 2010

IN

Civil Writ Jurisdiction Case No. 15908 of 2006

Madhurendra, S/O Sri J.N. Sah, R/O Village Devipur, P.O. Nandlalpur, P.S. Kahalgaon, Distt-Bhagalpur

.... Appellant

Versus

1. The Rajendra Agricultural University through its Registrar having office at Pusa, Samastipur
2. The Vice Chancellor, the Rajendra Agricultural University Pusa, Samastipur, Having Office at Rajendra Agricultural University, Pusa, Samastipur
3. The Director, Administration, the Rajendra Agricultural University Pusa, Samastipur
4. Mrs. Kiran, D/O Rajendra Mistri, W/O Akayanand, an office of Allied Civil Services, C/O Dr. S.P. Singh, 2/4 Project Hosted, Rajendra Agricultural University, Pusa, Samastipur,
5. The Dean Faculty of Basic Science the Rajendra Agricultural University Pusa, Samastipur

.... Respondents

Appearance :

For the Appellant/s : Mr. A.B.Ojha, Sr. Advocate
Mr. Shri Niwas Jha, Advocate
For the State : Mr. Anil Upadhyay, Advocate
Mr. Chandra Mohan Singh, Advocate
For Respondent No. 4 : Mr. Kinkar Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 19-07-2016

Heard Sri A.B. OJha, learned Senior Counsel in support of the appeal, learned counsel for the University and the learned counsel appearing for private respondent No. 4 and with their consent this appeal is being disposed of at this stage itself.

The appellant is the unsuccessful writ petitioner. He had challenged the appointment of respondent no. 4 to the post of Research Assistant -cum- Assistant Professor, Bio-chemistry in

Rajendra Agriculture University, Pusa, Samastipur. Learned Single Judge did not accept the challenges, which were, inter alia, on the ground :

(i) Firstly that respondent No. 4 wrongly claimed that she was BC category candidate. She was married to a Class-I officer and, as such, as per Mr. Ojha she came within the definition of “creamy layer”.

(ii) Secondly, Mr. Ojha submitted that she was not NET qualified whereas petitioner appellant was NET qualified. Three years time was granted by the University to qualify the NET examination which respondent No. 4 failed to do. It was wrongly extended by two further years to accommodate her.

On the other hand, learned counsel for the University and respondent No. 4 submit that both these grounds are misconceived.

Mr. Ojha refers to the judgment of the Apex Court in the case of Ashok Kumar Thakur Vs. Union of India and others since reported in AIR 2008 SC (Supp.) 1 in which the 1993 Government of India memorandum has been annexed which was issued pursuant to the Constitution Bench judgment in the case of Indra Sawhney Vs. Union of India since reported in (1996) 6 SCC 506 defining “creamy layer”.

In our view, a bare reference to that would show

that the concept of “creamy layer” as per 1993 memorandum would not apply to BC category candidate being a lady married to a Class-I officer. Hence, submission of Sri Ojha is misconceived.

The next submission is with regard to NET qualification. Even though Sri Ojha has not been able to show us that NET qualification at the time of selection was mandatory, even if we accept that respondent No. 4 had to acquire NET qualification within three years and she failed to do so, would not give any right to the petitioner-appellant, inasmuch as, the appointment process is over by appointment of respondent No. 4. There is no further vacancy left. Even if the respondent No. 4 disqualifies, the vacancy which arises would be a fresh vacancy and the same appointment process already undertaken would not be resurrected. To fill up the vacancy upon her disqualification a fresh selection process would have to be undertaken, so, even if respondent No. 4 was held to be disqualified, which we are not deciding, petitioner appellant gets no right.

In view of the aforesaid, we find no merit in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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