

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9684 of 2011

=====

Anil Kumar Son of Shri Narayan Sharma Resident of Mohalla- Anandpuri,
Bibiganj, Police Station- Brahmapura, District- Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. The Secretary, Rural Development Department, Government of Bihar, Patna
3. The Bihar Rural Development Society, Rural Development Department, Government of Bihar, Main Secretariat, Patna- 800015 through its Chairman
4. The Chairman, Bihar Rural Development Society, Rural Development Department, Government of Bihar, Main Secretariat, Patna- 800015
5. The Officer on Special Duty, RDD Cell, I.A.S. Association Building, Near Airport, Patna- 800014

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Navendu Kumar

For the Respondent/s : Mr. Kaushal Kumar Jha, A.A.G.14

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

9. 02-05-2016 Heard Sri Navendu Kumar, learned counsel for the petitioner and Sri Kaushal Kumar Jha, learned Addl. Advocate General - 14.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has made a prayer for following relief:-

“For issuance of a writ of mandamus to the concerned authorities to appoint the petitioner on the posts of Programme Officer in Grade - I as the petitioner was declared successful in the written examination for the purpose of selection to the above said post, but despite that the petitioner was not appointed as gross irregularities were committed in the appointment process, especially, in the joining which is corroborated with the fact

that persons junior to him in the merit list were appointed, when the petitioner is asked to wait for his turn."

It was claimed that petitioner, pursuant to vacancy advertised under the Mahatama Gandhi National Rural Employment Guarantee Scheme, Bihar (hereinafter referred to as 'MGNREGS'), applied against the vacancy of Programme Officer, Group I post. It has been claimed that petitioner qualified in the written test, however; when no appointment letter was provided to the petitioner, the petitioner tried to ascertain the fact. Even after much persuasion, the petitioner did not get any information, then under Right to Information Act, he filed an application. Thereafter, vide **Annexure - 6** to the writ petition, the petitioner was intimated that his name was not included in the panel list and keeping in view the below rank, no appointment letter was issued. Thereafter, this petitioner approached this Court by filing the present writ petition.

Learned counsel for the petitioner submits that in this case, right from the very beginning, respondents had taken contradictory stand. They had shifted their stand from one point to other and as such, it was alleged that gross irregularities were committed in the selection process, whereas, in this case, counter affidavit and supplementary counter affidavits have been filed.



Sri Jha, learned Addl. Advocate General 14 opposing the prayer of petitioner submits that it is true that petitioner's name had appeared in the 1st selection list, thereafter, though in view of **Annexure - 4** to the writ petition, there was specific condition for producing original certificate for verification, the petitioner did not produce certificates. By way of referring to Clause 4 of **Annexure - 4**, he submits that in case of non-production of certificates for verification, claim of appointment was liable to be forfeited. Sri Jha further by way of referring to Annexure B and B/1 to the supplementary counter affidavit filed on 29th April, 2016 submits that it is true that petitioner had appeared, but from Annexure B/1 to the supplementary counter affidavit, it is evident that he had not produced certificates for verification and as such, he himself forfeited his claim for appointment.

In this case, earlier the respondents were directed to give specific reply to averment made in paragraph 14 to the writ petition wherein by way of referring to names of three selected candidates, it was alleged that petitioner's case was ignored. To this effect, a 2nd supplementary counter affidavit was filed on behalf of respondents on 29th April, 2016 itself and in paragraph - 5, a specific reply has been given to the extent that there were



four candidates having equal marks, which include the petitioner, since all the four candidates had obtained 216 marks. However, since at the time of verification of documents, the petitioner failed to produce its document for its verification, his candidature was cancelled, whereas other three candidates, whose names have been mentioned in paragraph 14 of the writ petition, have participated and produced their certificates and only thereafter, they have been selected.

Ofcourse, by filing supplementary counter affidavit and 2nd supplementary counter affidavit, a specific stand was taken that petitioner had not produced his certificates for verification, no rejoinder was filed refuting this claim. However, orally it was submitted that petitioner had appeared and produced such document.

The Court is of the opinion that only on such submission, the Court may not draw an inference that petitioner had produced certificates, whereas **Annexure B/1** to the supplementary counter affidavit, categorically speaks regarding production of documents by number of candidates for its verification. However, in the column of petitioner and other some candidates, it is blank. Meaning thereby that such documents were not produced. Moreover, such disputed

question of fact may not be examined by this Court while exercising writ jurisdiction.

Accordingly, I do not find any ground to pass any favourable order.

The petition stands dismissed.

(Rakesh Kumar, J.)

Anay

U			
---	--	--	--