

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 10542 of 2013

Principal, Jawahar Navodaya Vidyalaya, Thawe, Gopalganj

.... Petitioner/s

Versus

1. Shabana Yasmin D/O Md. Issa R/O Mohalla- Gopalganj Petroleum, Jamgalia
More, Ward No. 15, P.O., P.S. And District- Gopalganj

.... Respondent

2. Union Of India through The Deputy Secretary Higher Secondary Education,
170C, Wing Shastri Bhawan, New Delhi

3. State Of Bihar Through The Commissioner Jawahar Navodaya Vidyalaya
Samiti, Patna

4. District Magistrate Cum Chairman, N.V., Gopalganj

5. District Education Officer, Gopalganj

6. Public Information Officer, Navodaya Vidyalaya Samiti Null Regional Office,
Boring Road, Patna

7. Mukesh Kumar S/O Jogendra Prasad R/O Village- Balahata, P.S.- Balesra,
District- Gopalganj

.... Performa Respondents 2nd Set

With

Civil Writ Jurisdiction Case No.13075 of 2014

Mukesh Kumar S/O Jogendra Prasad resident of Village - Balahata, P.S. Balesra,
District - Gopalganj.

.... Petitioner/s

Versus

1. Shabana Yasmin daughter of Md. Issa resident of Mohalla Gopalganj Petroleum,

Jamgalia More, Ward No. 15, P.O., P.S. and District - Gopalganj.

2. The Union of India through the Deputy Secretary, Higher Secondary Education,
107C, Wing Shastri Bhawan, New Delhi.

3. The State of Bihar through the Commissioner, Jawahar Navodaya Vidyalaya
Samiti, Patna.

4. The District Magistrate cum Chairman, N.V., Gopalganj.

5. The District Education Extension Officer, Gopalganj.

6. The Principal, Jawahar Navodaya Vidyalaya, Thawe, Gopalganj.

7. The Public Information Officer, Navodaya Vidyalaya Samiti, Regional Office,
Boring Road, Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 10542 of 2013)

For the Petitioner : Mr. Siddhartha Prasad, Advocate
For the UOI : Mr. Anshuman Singh, CGC
For the State : Mr. J. P. Karn, AAG4

(In CWJC No. 13075 of 2014)

For the Petitioner : Mr. Anjani Kumar Jha, Advocate
For the UOI : Mr. Awadhesh Kumar Pandey, CGC
For the State : Mr. Mohan Kumar Singh, AC to SC 5

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 01-04-2016

Heard learned counsel for the parties.

Both the writ applications are directed against the
order dated 22.03.2013 passed by the Central Administrative

Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') in O.A. No. 425 of 2009. The Principal, Jawahar Navodaya Vidyalaya, Thawe, Gopalganj (hereinafter referred to as the 'Vidyalaya') who is petitioner in CWJC No. 10542 of 2013 was respondent no. 5 in the O.A. whereas Mukesh Kumar, the petitioner of CWJC No. 13075 of 2014 was respondent no. 7.

The applicant (respondent no. 1 in both the writ petitions) had moved the Tribunal for a direction to issue appointment letter in her favour on the post of Lower Division Clerk and all consequential benefits. During the pendency of the O.A., respondent no. 7 having been recommended for appointment, the said was also challenged through amendment in the Original Application.

The brief facts of the case are that the name of the applicant was forwarded for appointment in the Vidyalaya through the District Employment Exchange, along with nine others. The applicant thereafter was called for 'Grade Test' on 30.01.2009 for which she appeared but thereafter on 21.04.2009, she was informed that the said recruitment had been stayed. The respondent no. 1 had thus challenged the same in the O.A. before the Tribunal. The Tribunal, after hearing the parties, has held that the reason for cancelling is not justified by any legal ground and order cancelling

the selection was quashed and further that the private respondent (petitioner in CWJC No. 13075 of 2014) was not eligible to apply for the post and order in his favour was also quashed.

Learned counsel for the Vidyalaya submits that the entire process of selection was vitiated for the reason that the vacancy and reservation categories was not displayed on office notice board and that the marks awarded to the successful candidate including additional vocational papers is wrong. It has also been submitted that by order dated 01.08.2005, for the appointments in question it was further stipulated that the employment notice clearly indicating vacancy and reservation categories should also be displayed on the office notice board of the concerned Vidyalaya for wider publicity. Further, maintaining the sponsorship of names from the Employment Exchange, applications of *bona fide* residents of concerned district were also made eligible for consideration along with others on merit without being sponsored from the Employment Exchange. It is submitted that in the present case there was no such display on the notice board with regard to the vacancy and reservation category. It is submitted that though the recommendation was sent to the higher authorities but the lacunae were pointed out and the matter sent back to the Vidyalaya for initiating the entire procedure for recruitment all over again. Learned counsel has drawn



the attention of this Court to the order of a Division Bench of this Court in the Case of **Navodaya Vidyalaya Samiti, Ministry of Human Resources, Department of Education, New Delhi through its Deputy Director and Another Vs. Harendra Kumar Singh and Others (CWJC No. 10478 of 2003)** dated 6th April, 2010, in which it has been held that public employment is a national wealth and every citizen should have unrestricted access to the same which is possible only if the vacancy is widely advertised. It is submitted that the order was with regard to a similar recruitment process and in the present case there being no advertisement in the newspapers coupled with the fact that even the guidelines issued by the authorities with regard to the notice being displayed in the office notice board indicating the vacancy and reservation categories not having been complied with, the direction to go ahead with the procedure of appointment afresh cannot be faulted. Learned counsel further submits that no right had accrued to the respondent no. 1 as the matter had not been finalized and no appointment letter issued to her.

Learned counsel for the petitioner in CWJC No. 13075 of 2014 submits that in fact he was the person who should have been number one in the merit list as earlier there was error in preparing the merit list and thus the recommendation in his favour was valid

and he should be appointed.

The respondent no. 1 in both the writ applications, who was the applicant in the O.A., despite having been validly served notice has chosen not to appear.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we are of the considered opinion that the order under challenge cannot be sustained. The settled law is that public employment has to be made in a transparent manner for which the basic requirement is public knowledge by way of open advertisement. For such proposition, we are also in agreement with the principle laid down by the Division Bench of this Court in **CWJC No. 10478 of 2003** (*supra*) that public employment, to which every citizen should have unrestricted access, is possible only if the vacancy is widely advertised. Further, in the present case despite there being specific instructions with regard to at least there being display on the office notice board with regard to the employment indicating the vacancy and reservation category was also not complied with. We are also in agreement with the contentions of learned counsel for the Vidyalaya that no right can be claimed by the respondent no. 1 on the basis of recruitment procedure which was fatally flawed from the beginning.

For the reasons aforesaid, the order dated 22nd March,

2013 passed in O.A. No. 425 of 2009 by the Tribunal is set aside. CWJC No. 10542 of 2013 stands allowed. O.A. No. 425 of 2009 stands dismissed. The recruitment to the post in question shall now be made afresh following the due procedure after open advertisement and in accordance with law and the relevant Rules and Regulations.

In view of the discussions made hereinabove and having set aside the order impugned, we also find no merit in CWJC No. 13075 of 2014 as the petitioner cannot be directed to be appointed since the entire process has been held to be bad in law and thus CWJC No. 13075 of 2014 stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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