

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1494 of 2011

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Vijay Kumar Rajak, Son of Late Videshi Rajak, Presently working as Part Time Employee in Canara Bank, Bank Road, Raxaul, P.S. - Raxaul, District - East Champaran.

.... Petitioner

Versus

1. Canara Bank through its Chairman-cum Managing Director, Head Office - 112, J.C.Road, Bangluru.
2. General Manager, (Personnel Wing), Canara Bank, Head Office - 112, J.C.Road, Bangluru.
3. General Manager, Canara Bank, Circle Office, Exhibition Road, Patna
4. Deputy General Manager, H.R.M. Section, Canara Bank, Circle Office, Exhibition Road, Patna
5. Manager, H.R.M. Section, Canara Bank, Circle Office, Exhibition Road, Patna
6. The Branch Manager, Canara Bank Branch, Raxaul.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Sinha, Advocate
For the Respondent/s : Mr. Onkar Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
C.A.V. ORDER

20. 19-12-2016 In the present writ petition, the employer is the Canara Bank, which is a nationalized Bank. The Bank, which was expected to be a model employer, in the present case, has acted as a vociferous litigant. The officials of Canara Bank have taken all steps to smother a lower grade workman/employee. They have not even bothered to make incorrect statement, which can be termed as false to frustrate the right of the petitioner. In normal course, this Court would have initiated serious action against the senior officials of the Canara Bank,



who had sworn affidavit, but instead the Court has taken lenient view so that the right of the poor petitioner may not further frustrate.

2. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for directing the respondents to regularize his service as Sub Staff from the post of Part Time Employee (hereinafter referred to as 'PTE'). The plea for regularization was taken on the ground of discrimination and *mala-fide* action of the respondent/Bank. It is case of the petitioner that he joined Canara Bank branch office Raxaul, East Champaran as a Part Time Employee on 03-08-1998 and was working as such till the date of filing of the writ petition. In the year 1999-2000, a letter was issued from the Head office, Personal Wing, Canara Bank, Bangluru to all the Circle Offices of the Bank for absorption of Daily-Wages/PTES/Personal Drivers as Sub Staff. It was claimed by the petitioner that in the list relating to Patna Circle, name of petitioner was included. The petitioner has further pleaded that one employee namely Sri Brajendra Kumar, who was junior to the petitioner and working as Part Time Employee in Canara Bank, Sitamarhi branch within Patna Circle, was absorbed as Sub Staff, whereas his name was not



included in the list. According to the petitioner, the said list of Patna Circle included only 13 persons including the petitioner, but in the said list, name of Sri Brajendra Kumar was not incorporated. The petitioner has brought on record the said list of Patna Circle office, as **Annexure – 1** to the writ petition. Subsequently, the petitioner repeatedly represented raising his grievance, however; vide letter dated 19-11-2008 the petitioner was informed by the Manager, HRM Section, Canara Bank, Circle Office, Exhibition Road, Patna (respondent no. 5) that his matter has been referred to Head Office for appropriate action. Since the grievance of the petitioner was never redressed, the petitioner was constrained to approach this Court by filing the present writ petition, which was affidavited on 29-11-2010 and finally it was registered as C.W.J.C. No. 1494 of 2011 on 21-01-2011.

3. The matter was firstly taken up on 25-01-2011, on which date, on the prayer made by learned counsel for the respondent/Bank, the case was adjourned for filing counter affidavit. Thereafter, a counter affidavit was filed on 30th June, 2011, which was sworn by one Sri G. Saseendra Unnithan, the Deputy General Manager, who has been arrayed as respondent no. 4, in the present writ petition. In the counter affidavit, the



respondent/Bank had controverted the statement made in the writ petition. Though petitioner had taken the plea that his name was included in Patna Circle for being absorbed as Sub Staff from Part Time Employee, a stand was taken that petitioner's name was included in the East Champaran district. The case of the petitioner was distinguished from the case of Sri Brajendra Kumar on the ground that Sri Brajendra Kumar was absorbed on account of vacancy, which arose in Sitamarhi branch. A specific stand was taken that as per record, the said Sri Brajendra Kumar was not junior to the petitioner and in fact date of joining of both petitioner and Sri Brajendra Kumar was 16-09-1997. Sri Brajendra Kumar during 1999 was also recommended for absorption in Sitamarhi branch against vacancy and he was re-designated as Sub Staff against the said vacancy. Regarding the claim of petitioner that there was vacancy even in the East Champaran district, it was replied in paragraph – 8 of the counter affidavit that the name of petitioner was in the list of PTEs to be absorbed as Sub Staff against the vacancy that may arise in the district of East Champaran. It was further stated that one Mr. Md. Shamim, Sub Staff from Patna branch was transferred to Motihari branch on his request and hence there was no vacancy



available to be filled-up by absorbing the petitioner at the said branch/district. At this juncture, it is necessary to indicate that in view of subsequent pleading, the fact has come that at least on the 1st January, 2011 itself, Mr. Md. Shamim had already left for heavenly abode. Meaning thereby that on the date of swearing of the counter affidavit, which was sworn on 27-06-2011 by none else but by the Deputy General Manager in which stand was taken that there was no vacancy, was false statement on oath. The falsity is evident from the fact that about six months prior to the swearing of affidavit, Mr. Md. Shamim had died and as such, the plea that the vacancy was occupied by Mr. Md. Shamim was completely incorrect, rather false.

4. The *mala-fide* on the part of the officials of the Canara Bank is further evident from the fact that on the one hand, a plea was taken that petitioner was PTE, on the other hand during the pendency of the present writ petition only with a view to frustrate the right of the petitioner in the month of December, 2015, the petitioner was transferred from Raxaul branch to Rajgir branch. It is pertinent to mention here that ofcourse in this case, counter affidavit was filed on behalf of the respondent/Bank on 30th June, 2011, it was earlier not



served on learned counsel for the petitioner and on 06-07-2015, since there was non-appearance on behalf of Bank, a Bench of this Court had directed for issuance of notice to respondents. Thereafter, Sri Onkar Kumar, learned counsel for the Bank had appeared on behalf of the respondent/Bank and copy of the counter affidavit was served on learned counsel for the petitioner on 04-11-2015 and thereafter, it was adjourned to enable Sri Shailendra Kumar Sinha, learned counsel for the petitioner to examine the counter affidavit and if necessary, for filing reply. In the meanwhile, certain development had taken place and as such, on 25-01-2016, learned counsel for the petitioner sought adjournment for filing an interlocutory application, which was filed as I.A. No. 889 of 2016. Through the interlocutory application, a very disturbing fact was brought on record. The petitioner during pendency of the writ petition was transferred from Raxaul to Rajgir branch. Accordingly, beside making prayer for amending the writ petition to the extent of treating paragraph no. 2 to 11 of the said interlocutory application as part of the writ petition, a further prayer was made to amend the writ petition, which is as follows:-

“It is further prayed that your



Lordships may graciously be further pleased to quash the order of transfer dt. 16.12.2015 contained in Annexure - 7 and the respondent bank may kindly be directed to absorb this petitioner as sub staff against the existing Vacancy of East Champaran at Motihari branch of Canara Bank.”

5. By order dated 01-02-2016, the interlocutory application i.e. I.A. No. 889 of 2016 was directed to be treated as part of the writ petition. Accordingly, at this juncture, it is required to incorporate relevant paragraphs of the interlocutory application, which was directed to be treated as part of the writ petition. Same are as follows:-

“2. That it may be stated here that Shri Brijendra Kumar was not empanelled in the list for absorption in view of Annexure-1 of the writ petition which is panel of 13 part time employees to be absorbed as Sub Staff for the year, 1999-2000 which does not contain the name of Shri Brijendra Kumar. The name of the petitioner was empanelled as the sole candidate to be absorbed as Sub Staff in East Champaran. The petitioner was



appointed as part time employee on 16.09.1997, but the date 27.11.98 stated by the respondent that the petitioner was subsequently redesignated as $\frac{3}{4}$ Scale P.T.E., does not tally with the Annexure-1 and the list of daily wager as on 01.04.1999 published from Divisional Office Unit II, Patna. The said list of daily wager as on 01.04.1999 contains the names of the petitioner as well as said Shri Brijendra Kumar in which the date of engagement of the petitioner has been given as 03.09.1998 which is also in Annexure-1, but so far Brijendra Kumar is concerned, the list of engagement in the Daily wager List has been given as 09.09.98. In that view of the matter, the petitioner is senior to said Brijendra Kumar.

3. That from perusal of the aforementioned Annexure-6 it would also appear that the name of the petitioner stands above Shri Brijendra Kumar. Since the petitioner is not challenging the appointment of said Shri Brijendra Kumar, therefore, does



not intend to implead him as party respondent in this case, rather the instance of Shri Brijendra Kumar has been given to show the hostile conduct of the Respondent Bank against the petitioner in not absorbing him as Sub Staff, though all other 12 empanelled candidate out of 13 were absorbed, whereas the petitioner has been deprived of his superior and legitimate claim. Now the said Brijendra Kumar has been further promoted as clerk and the petitioner is still functioning as house keeper-cum-peon in Raxaul Branch of Canara Bank and is getting salary of a peon and work of House Keeper is being taken from the petitioner.

4. That even according to the Annexure-R/2 appended to the counter affidavit filed by the respondent bank which is personal Bio Data Sheet of the Staff which contains the date of birth of the petitioner as well Brijendra Kumar. The date of birth of the petitioner is 03.02.1975, whereas the date of birth of Brijendra Kumar is 25.01.1977, and



the same date of engagement shown as 16.09.97 and therefore in that view of the matter the petitioner is senior to said Brijendra Kumar and his services ought to have been regularized as Sub Staff prior to said Brijendra Kumar.

5. That the petitioner humbly submits that the plea taken by the respondent bank that there was no vacancy available to be filled up by absorption at Motihari branch of Canara bank in the District of erstwhile East Champaran on account of request transfer of Md. Shameem Sub Staff from Patna Branch, is now untenable in view of the fact that unfortunately said Md. Shameem has died according to information two years back and the post of Sub Staff of Motihari branch in Canara Bank is lying vacant, but despite the said vacancy occurring two years back the respondent bank did not absorb the petitioner as sub staff though he was the sole empanelled candidate left out for absorption.

6. That according to the procedure for



appointment of peon in the Canara Bank appended with the counter affidavit of the respondent bank shows that the Bank do not appoint any candidate as a probationer directly, rather district wise panels of Daily Wage Earner is prepared and when permanent vacancy arises in the concerned the senior daily wage earner in the Panel is absorbed as sub-Staff and in that view of the matter the petitioner who was/is the sole candidate in the panel of East Champaran, is to be absorbed as Sub Staff as the post is also lying vacant. But now the respondent Bank with a *malafide* view to frustrate the legitimate claim of the petitioner to be absorbed as sub staff against the existing vacancy of Sub Staff in East Champaran at Motihari Branch has now transferred the petitioner by order dt. 16.12.2015 issued by the Asst. General Manager, Human Resources Management Section, Circle Officer, Patna to Rajgir as House Keeper cum Peon (H.K.P.) and was given only four days of joining time



exclusive of journey period the petitioner was relieved from Raxaul Branch of Canara Bank on 19.12.2015 and joined at Rajgir on 21.12.2015 and since then he is working at Rajgir and doing work of cleaning of the bank and also of a peon.

7. That the petitioner humbly submits that by the order of transfer dt. 16.12.2015 (Annexure-5) he loses his claim in the District of East Champaran as the panel of absorption of Daily wager and Part time employees (PTES) is prepared District wise.

8. That from the aforesaid facts it would appear that respondent bank is adversely disposed against the petitioner and is adamant to frustrate his claim, in as much as, the petitioner who is a part time employee, has been illegally transferred to another district whereas, the entire District transfer of a part time employee is not permissible in fact the respondent bank ought to have absorbed the petitioner as Sub Staff at East Champaran Motihari Branch and would have then



transferred the petitioner as peon which has been done in case of other 12 empanelled candidates of annexure-1 who have been absorbed as peon.

9. That it may also be stated here that the petitioner on account of non absorption a Sub Staff is being deprived of chance of further promotion as Clerk onwards whereas, junior to the petitioner Sri Brijendra Kumar was absorbed as Peon (Sub Staff) long back and has also been promoted as Clerk. In the circumstances, the petitioner humbly prays that the respondent bank may kindly be directed to absorb this petitioner from a date prior to his junior has been absorbed alongwith all consequential benefit arising out of said absorption.

10. That in the facts and circumstances stated above, the petitioner is presently not impleading Shri Birjendra Kumar as party in the present case as the grievance of the petitioner can be redressed by the respondent Bank by his absorption as Sub Staff in



Motihari branch of Canara Bank.

11. That in the facts and circumstances stated above the petitioner humbly prays that the order of transfer dt. 16.12.2015 contained in annexure-7 may kindly be quashed as the same is *malafide* and a colorable exercise of power.”

6. The respondent/Bank subsequently filed reply to the interlocutory application. In its reply, besides raising an objection that at much belated stage amendment may not be allowed, the respondent/Bank took the plea that transfer of petitioner from Raxaul to Rajgir was effected on the request letter of the petitioner dated 15-12-2012 and subsequent representations filed by the Canara Bank Employees Association.

7. It is made clear that once the writ petition, in which a plea was taken for regularizing the status of petitioner from PTE to Sub Staff in the district of East Champaran and the respondent/Bank had taken a stand that such regularization was required to be done after availability of the vacancy in the East Champaran, Motihari branch, transferring the petitioner from Motihari branch to Nalanda district, without intimation



to this Court or without its permission, was an attempt to interference with the judicial proceeding. Anyhow, the interlocutory application was already directed to be treated as part of the writ petition and it was subsequently replied by the respondent/Bank. The petitioner has also filed rejoinder to the reply filed by the Bank to the interlocutory application i.e. I.A. No. 889 of 2016.

8. Sri Shailendra Kumar Sinha, learned counsel for the petitioner, on the basis of pleading available on record, has argued that first of all, petitioner's right for being considered as Sub Staff from the status of PTE was infringed by way of granting such relief to one Sri Brajendra Kumar, who was junior to the petitioner. Accordingly, it was pleaded by Sri Shailendra Kumar Sinha, learned counsel for the petitioner that action of the respondent/Bank was violative of Articles 14 & 16 of the Constitution of India. He has further argued that once a plea was taken by the Bank that petitioner was required to be regularized as Sub Staff on the availability of the vacancy in the East Champaran, Motihari branch, immediately after the death of Mr. Md. Shamim which had occurred on 01-01-2011, the petitioner was required to be regularized, but instead in the counter affidavit, which was filed on 30th June,



2011, a plea was taken by the respondent/Bank that Mr. Md. Shamim, on his personal ground was transferred and posted in the East Champaran, Motihari, whereas, fact remains that even at the time of transferring Md. Shamim from Patna to Motihari, obviously there was vacancy available. According to learned counsel for the petitioner, only with a view to frustrate the claim of the petitioner for being regularized as Sub Staff in a malicious manner, the said vacancy was filled-up by way of transfer of Mr. Md. Shamim. He has further argued that on the date of filing of affidavit before this Court, which was sworn by none else but the Deputy General Manager himself i.e. respondent no. 4, a false stand was taken that the vacancy was occupied by Mr. Md. Shamim, whereas fact remains that Md. Shamim had already died on 1st January, 2011. To this effect, Sri Sinha, learned counsel for the petitioner has placed reliance on **Annexure – 9** to the supplementary affidavit, which was filed on 13th July, 2016 by the petitioner. **Annexure – 9** is the photocopy of Attendance Signing Register of January, 2011 wherein column no. 1 of the said photocopy categorically states that Mr. Md. Shamim expired on 01-01-2011. The statement made in supplementary affidavit dated 13th July, 2016 filed by the petitioner has not been controverted by filing



any counter affidavit. Meaning thereby that stand taken in supplementary affidavit is unrebutted and accepted. He has further argued that it is true that in the year 2012, on 15-12-2012, the petitioner had filed a representation for transfer to Biharsharif on the ground that earlier he was residing in Raxaul with his uncle, who had now shifted to Biharsharif, and further his ailing old mother aged about 75-80 years was residing there. It has been argued that mainly on the ground of attending ailing mother, the application was filed on 15-12-2012 with a request to transfer him to Biharsharif. The said request was never given effect to, but at much belated stage, that too after several orders were passed in the present writ petition, the respondent/Bank transferred the petitioner from Raxaul to Rajgir within the district of Nalanda. This order was issued on 16-12-2015. It has been argued that again the present step was taken maliciously by the respondent/Bank to frustrate the right of the petitioner for being regularised as Sub Staff at Raxaul within the district of East Champaran, Motihari. In its rejoinder to the reply to interlocutory application no. 889 of 2016 in paragraph – 4 (running page 62), a categorical stand has been taken, which is required to be incorporated in toto:-



“That the further plea taken in the said paragraph no. 4, 7 & 8 under reply that the petitioner has been transferred on account of his repeated request is also how untenable in view of the fact that initially the petitioner made a representation on 15.12.2012 for transfer to Biharsharif since his 75 year old mother was ill and also to take care of his uncle who is living with him in Raxaul but after his retirement he also went to Biharsharif but unfortunately the mother of the petitioner died on 17.12.2013, therefore, reason for obtaining request transfer was no more there. The subsequent reminders of his request transfer was on account of sheer frustration as the respondent were not absorbing the services of the petitioner as sub staff. The respondents have intentionally taken shelter of the subsequent reminders of the petitioner as a weapon for depriving the petitioner from his legitimate claim of absorption as sub-staff again and again for the reasons best known to them.”



9. By way of placing reliance on **Annexure - 6** to the interlocutory application no. 889 of 2016, it was submitted that the said Sri Brajendra Kumar was shown to be engaged as PTE on 09-09-1998, whereas, petitioner's date of engagement as PTE has been shown as 03-08-1998. Taking aid of **Annexure - 6** (running page 47) it has been argued that the respondents on oath had made false statement that petitioner and Sri Brajendra Kumar were appointed on the same date, whereas the date of engagement of Sri Brajendra Kumar is later than the petitioner. In view of aforesaid facts and circumstances, a prayer has been made to direct the respondents to forthwith change the status of petitioner from PTE to Sub Staff with all consequential benefits as well as quash the order of his transfer (**Annexure - 7** to the interlocutory application).

10. Sri Onkar Kumar, learned counsel for the respondent/Bank has vehemently opposed the writ petition. By way of referring to averments made in the counter affidavit, it has been argued that the petitioner has got no enforceable right to be absorbed as Sub Staff nor any legal right of the petitioner has been infringed and in absence of infringement of any fundamental right, the petitioner is not entitled to



invoke the writ jurisdiction of this Court. Sri Onkar Kumar, learned counsel for the Bank has tried to persuade the Court that there is no illegality in not absorbing the petitioner as Sub Staff, in view of non-availability of any vacancy.

11. Besides hearing learned counsel for the parties, I have also perused the materials available on record. After going through the same, *prima facie* the Court is satisfied that the officials of the respondent/Bank, who has sworn affidavit, has primarily made incorrect and false statement on oath. This fact has already been noticed earlier. In normal course, I would have initiated proceeding against the petitioner, who has sworn affidavit in the present writ petition, but with a view to not to defeat further right of the petitioner, the Court is refraining from taking any such action. It is admitted fact that petitioner is functioning as PTE since 03-08-1998. As per **Annexure - 6**, it is evident that Sri Brajendra Kumar was engaged as PTE on 09-09-1998 i.e. more than one month later to the petitioner. Accordingly, the statement made in the counter affidavit that Sri Brajendra Kumar was not junior to the petitioner is apparently incorrect and false. Moreover, vide **Annexure - 1** to the writ petition, a decision was taken to regularise 13 PTE as Sub Staff and it was claimed by the



petitioner that out of 13 (thirteen), 12 had already been accommodated and adjusted as Sub Staff and only petitioner was left on an unsustainable ground that there was no vacancy. If there was no vacancy, where was the occasion for transferring Mr. Md. Shamim from different district to the district where the petitioner was functioning as PTE. Subsequently, even Md. Shamim died on 01-01-2011 and in counter affidavit, which was sworn in the month of June, 2011, the respondent no. 4 had taken the shelter that there was no vacancy since Md. Shamim was transferred there, whereas fact remains that Md. Shamim had already died on 01-01-2011 and as such, there was no occasion to take the plea of non-availability of the vacancy.

12. After examining the entire materials on record, the Court is of the opinion that the respondents/Bank have maliciously and arbitrarily frustrated the right of a poor employee i.e. petitioner.

13. Accordingly, the writ petition is hereby allowed with a direction to all the respondents to take all steps so that petitioner's status may be given effect from PTE to Sub Staff, as claimed by the petitioner with effect from the date when it occurred in East Champaran district at least after the death of



Md. Shamim which occurred on 1.1.2011, where the petitioner was functioning as PTE with all consequential benefits. Since the order of transfer i.e. **Annexure - 7** to the I.A. No. 889 of 2016, which has been treated as part of the writ petition, was passed during the pendency of the writ petition without any intimation to this Court, which *prima facie* appears to have been passed to frustrate the claim of the petitioner for being absorbed as Sub Staff, the order of transfer is also hereby set aside.

14. The writ petition is allowed with all consequential benefits.

15. The respondents are directed to take the decision regarding absorption of the petitioner as Sub Staff with effect from the date when vacancy occurred in East Champaran district. However, financial benefit shall be given from the date of giving status to the petitioner as Sub Staff. All the formalities must be completed within a period of eight weeks from the date of receipt/production of a copy of this order.

(Rakesh Kumar, J.)

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