

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3504 of 2016

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1. Vijay Kumar Mishra, S/o - Sri Shambhu Nath Mishra, C/o - Panchanand Mishra, Village - Naini, P.O. - Naini, P.S. - Muffasil (Chapra), District - Chapra.
 2. Sunil Kumar Singh, S/o – Daya Shanker Singh, Behind U.N.P.G. College Padrauna, East Kannaugia Ward, Padrauna, Thana & Post - Padrauna, District - Kushinagar (U.P.).

.... Petitioners

Versus

1. The High Court of Judicature at Patna through the Registrar General, Patna High Court Patna.
2. The Registrar General, Patna High Court, Patna.
3. The Selection & Appointment Committee, Patna High Court, Patna.
4. The Chairman, Selection & Appointment Committee, Patna High Court, Patna.

.... Respondents

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Appearance :

For the Petitioners : Mr. Purushottam Kumar Jha, Advocate.
Mr. Avanindra Kumar Jha, Advocate.

For the High Court : Mr. Piyush Lal, Advocate.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI, A.C.J.

and

HONOURABLE MR. JUSTICE HEMANT GUPTA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 12-05-2016

The challenge in the present writ application is to the communication, dated 16th of February, 2016, whereby representation of the petitioners to appear in interview for the post of District Judge Entry Level (Direct from Bar) Examination, 2015, was rejected and a condition was imposed that petitioners will have to tender their rejection, first, from the Subordinate Judicial Service of the State of Bihar and only, thereafter, they could appear in the interview.

2. An Advertisement No. 01/2015 was issued inviting applications from eligible Advocates for direct recruitment in respect

of 99 vacancies as on 31st of March, 2015. The cut off date for the eligibility was 5th of February, 2015. The petitioners appeared in the Preliminary as well as in the Mains Examination pursuant to such advertisement.

3. In the meantime, petitioners qualified for the Subordinate Judicial Service of the State of Bihar in 28th Batch. The petitioners accordingly joined the Subordinate Judicial Service of the State of Bihar in August, 2015.

4. The result of the Mains Examination of the District Judge Entry Level (Direct from Bar) was published on 22nd of January, 2016. Both the petitioners qualified in the Mains Examination.

5. The High Court published the detail of interview schedule and issued Call Letters for the interview to both the petitioners; but one of the conditions in the Interview Letter was 'No-Objection Certificate of the Employer'. Therefore, the petitioners filed their representation before the Registrar General, Patna High Court, Patna, to appear in the interview. The requests were declined on 16th of February, 2016. The communication to one of the petitioners reads as under:-

"To,

*The District & Sessions Judge
Siwan*

Dated, Patna the 16th February,

2016

Sir,

With reference to your letter no. 80 dated 05.02.2016, I am directed to say that the Court have been pleased to reject the representation dated 05.02.2016 of Sri Vijay Kumar Mishra, Probationary Civil Judge (Junior Division), Siwan with regard to permission to appear in the interview in respect of District Judge Entry Level (Direct from Bar) Examination, 2015, in view of Article 233(2) of the Constitution of India, as he is already in the State Subordinate Judicial Service. However, he may choose to resign before participating in the interview, which resignation, once tendered, would not be permitted to be withdrawn.

The officer concerned may be informed accordingly.

Yours faithfully

Sd/-

Registrar General”

6. It is the said letter, which is subject matter of challenge in the present writ application, wherein the petitioners claim that since they were eligible on the date of inviting applications, the action of the High Court in not permitting them to appear in the interview is illegal.

7. Article 233(2) of the Constitution of India provides that a member of the Service of the Union or State is not eligible for appointment as District Judge. Article 233 (2) of the Constitution of India reads as under:-

“233 (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is

recommended by the High Court for appointment.”

8. A similar contention in respect of serving Judicial Officers of the State of Bihar has been examined by this Court in C.W.J.C. No. 2641 of 2015 (***Sharad Chandra Kumar & Ors. Vs. The Union of India & Ors.***) and other analogous cases decided on 27.04.2016, wherein it has been held that serving Judicial Officer is not eligible to compete for District Judge Entry Level (Direct from Bar). The said order reads as under:-

“The petitioners are judicial officers working in the State of Bihar. The claim of the petitioners is that in the Bihar Superior Judicial Service Rules, 1951 (hereinafter referred to as ‘the Rules’), the words “eligible advocate”, for the purposes of direct recruitment on the post of District Judge Entry Level, should mean not only an advocate, but also person, who has held/holds judicial office.

10. In view of the aforesaid judgment, the members of judicial service are not eligible for appointment as District Judges in terms of sub-clause (2) of Article 233 of the Constitution.

11. Situated thus, we have no hesitation in holding that the members of State Judicial Service are not eligible to seek appointment as District Judges.”

9. Learned counsel for the petitioners refers to the judgment, reported as ***Bhupinderpal Singh and others Vs. State of Punjab and others (2000) 5 SCC 262***, and ***P.Ramakrishnam Raju Vs. Union of India and others (2014) 12 SCC 1***, to contend that the *cut off* date is relevant for determining the eligibility. Therefore, the

intervening fact of the petitioners joining the Judicial Service will not act as bar for their appearance in the interview.

10. We do not find any merit in the argument raised.

11. None of the judgments referred to by the learned counsel for the petitioners deals with the right of a member of the Judicial Service to compete for appointment to the post of District Judge. Since before the date of interview, the petitioners joined the Judicial Service, the petitioners cannot, in terms of Clause(2) of Article 233 of the Constitution, be permitted to continue with the selection process for District Judge Entry Level (Direct from Bar) as they are, now, members of the Judicial Service. Therefore, the petitioners have rightly not called for interview.

12. In view thereof, there is no merit in the present writ application. The same is dismissed.

(Hemant Gupta, J)

I agree
I. A. Ansari, ACJ

(I. A. Ansari, ACJ)

P.K.P.
N.A.F.R.

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