

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20352 of 2011

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Vinay Kumar S/o Sri Ram Naresh Sharma R/o Village- Rampur Hasan Lai, P.O.-
Lai, P.S.- Bihta, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Collector, District - Patna
2. The Block Development Officer Cum Block Panchayat Raj Officer, Bihta, Patna
3. Babita Devi W/o Divesh Kumar Sarpanch, Gram Panchayat Machalpur Lai,
Bihta, District - Patna
4. Nikunj Kumar S/o Shri Sahja Singh R/o Village- Babhan Lai, P.O.- Lao, P.S.-
Bihta, District- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Saket Tiwary

For the Respondent/s : AC to SC 1

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 11-05-2016

Heard Sri Saket Tiwary, learned counsel for the petitioner ,

learned AC to SC No. 1 as well as Sri Ram Kant Jha, learned counsel

appearing on behalf of the respondent no. 3 and 4.

The petitioner invoking writ jurisdiction of this court under

Article 226 of the Constitution of India has made a prayer for

quashing of an order dated 4.8.2011 passed by the District Magistrate,

Patna. By the said order the District Magistrate has rejected the

appeal preferred by the petitioner against the order dated 14.6.2010

passed by Sub Divisional Officer - cum- Grievances Redressal

Officer, Danapur in Misc. Case No. 01 of 2010 and petitioner has

further prayed to direct the respondents to appoint him on the post of

Panchayat Secretary.

Short fact of the case is that some time in the year 2007 step was taken for appointing Secretary, Gram Kutchery at different places including in Gram Kutchery Macchalpur Lai, Block- Bihta, Patna. After completion of selection process merit list was prepared and as per the merit list one Dinesh Kumar was selected having obtained 69 marks. Petitioner name had occurred at serial no. 02 having 66.57 marks. After the list was prepared since the first candidate did not join and the post remained vacant, step was taken for filling up the said vacancy from the next candidate. It is the case of the petitioner that though petitioner was at serial no. 02, ignoring the case of the petitioner the official respondent appointed the person at serial no. 03 namely Sri Nikunj Kumar who has been impleaded as respondent no. 4. After noticing the illegality committed in the selection process the petitioner raised dispute before the Sub Divisional Officer, however, his claim was rejected. Thereafter petitioner approached this court by way of filing a writ petition vide CWJC No. 13183 of 2010 which stood disposed of on 16.9.2010 on the objection raised by learned counsel for the state that petitioner was having statutory remedy of appeal. Thereafter petitioner filed an appeal before the District Magistrate, Patna which was registered as Miscellaneous Appeal Case No. 4 of 2010-11. The appeal of the

petitioner too was rejected and thereafter the petitioner has approached this court.

Sri Saket Tiwary, learned counsel for the petitioner raising his grievance submits that the petitioner was maliciously not selected and instead of the petitioner candidate who was having lesser marks than the petitioner and who was at serial no. 03 has been selected. He submits that in official communication there was no reason for issuance of a letter through U.P.C. but to defeat the right of the petitioner it was shown that twice after the post remained vacant petitioner was intimated through U.P.C. He further submits that second ground taken before the S.D.O. was that petitioner was absconding in a criminal case and due to the said reason he did not respond to the notice, but according to learned counsel for the petitioner the said stand was also apparently illegal. He submits that it is true that petitioner was made an accused in a police case however in the year 2008 after obtaining anticipatory bail he had surrendered before the court below and on 21.11.2008 his bail bond was accepted and he was released. According to learned counsel for the petitioner both the grounds which have been taken by the respondents regarding non participation by the petitioner is not sustainable in the eye of law and as such it is a fit case where this court may direct for appointing the petitioner as Panchayat Secretary.



At the very outset learned counsel for respondent has raised an objection that right from the very beginning the petitioner has given incorrect name of the post. He submits that appointment was in relation to Secretary of Gram Kutchery not Panchayat Secretary. He further submits by way of referring to Annexure – 6 to the present petition i.e. an order dated 14.6.2010 that it is not a case that petitioner was only intimated by U.P.C. but fact remains that even after the meeting of the Aam Sabha which was held on 19.5.2009 the respondent no. 4 was selected and thereafter in his favour also appointment letter was issued through U.P.C. He reiterates that in the proceeding regularly aid of U.P.C. was being taken for sending communication to the concerned person. According to learned counsel for the respondent no. 3 and 4 since even after repeated communication i.e. communication dated 5.2.2009 as well as 20.2.2009 which was sent through U.P.C., the petitioner had not responded, steps were taken to accommodate the next candidate and as such next candidate i.e. respondent no. 4 was selected and appointed. It has been reiterated that no illegality has been committed by the authority concerned.

Besides hearing learned counsel for the parties I have also perused the material on record. In the writ petition of -course the petitioner has made a prayer for quashing of the order of the District

Magistrate but there is no specific pleading for cancelling the order of the Sub Divisional Officer whereby firstly claim of the petitioner was rejected. In the writ petition even though petitioner has noticed that respondent no. 4 was appointed no specific relief has been sought for cancelling the appointment of respondent no. 4. Moreover, on going through the material on record particularly the order of the Sub Divisional Officer i.e. Annexure – 6 to the writ petition the court is satisfied that the respondent authority had taken appropriate steps intimating the petitioner for appointment after the vacancy occurred but since even after two communications petitioner did not respond the respondent had rightly issued appointment letter to the respondent no. 4. The order of the Sub Divisional Officer has already been approved by the Collector -cum- District Magistrate. In view of the facts and circumstances I do not find any ground to pass any favourable order.

The writ petition stands dismissed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16-05-2016
Transmission Date	N.A.