

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13927 of 2015

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Tarkeshwar Prasad, S/o - Shri Ram Preet Prasad, R/o Village + Post - Tarwa
Parasiya Police Station : - Drauli, District : - Siwan, State : - Bihar.

.... Petitioner

Versus

1. The High Court of Judicature at Patna (Through its Registrar General), Bihar, Patna.
2. The Government of Bihar (Through the Law Secretary) Old Secretariat, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar No.1, Adv.
	:	Mr. Akshya Lal Pandit, Adv.
	:	Mr. Rakesh Kumar, Adv.
For the State	:	Mr. Sanjay Kumar, AC to GA-13
For the High Court	:	Mr. Piyush Lal, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 21-12-2016

The challenge in the present writ application is to the issuance of Advertisement No. 01 of 2015 issued by the High Court of Judicature at Patna for filling up the vacant post of the District Judge (Entry Level) in terms of Bihar Superior Judicial Service Rules, 1951 (hereinafter referred to as the “Rules”).

The argument of the petitioner is that the High Court is not competent to issue any advertisement for filling up the post of the District Judge (Entry Level) as such power to fill up the post has to be exercised by the State Government. He refers Rule-5 of Rules which



reads as under:-

“5. Appointments to the Bihar Superior Judicial Service, which shall, in the first instance, ordinarily be to the post of Additional District and Sessions Judge, shall be made by the Governor in consultation with the High Court-

- (a) by direct recruitment, from among persons qualified and recommended by the High Court for appointment under clause (2) of Article 233 of the Constitution; or
- (b) by promotion, from among members of the Bihar Judicial Service.”

Article 233 of the Constitution of India read as under:-

“(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(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”

The said provisions have been examined recently in a judgment reported as ***Mahinder Kumar v. High Court of M.P., (2013) 11 SCC 87***, wherein it has been held that while the Governor of the State is the appointing authority of the District Judges, the selection for such appointments, as well as the subsequent aspects, namely, postings, promotions, etc. of the District Judges, are to be determined by the High Court in respect of the State concerned. The



Court held as under:-

“34. Article 233(1) specifically states that the appointment of persons to be made, as well as the posting and promotion of District Judges in any State, can be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. In other words, while the Governor of the respective State is the appointing authority of the District Judges, the selection for such appointments, as well as the subsequent aspects, namely, postings, promotions, etc. of the District Judges, are to be determined by the High Court in respect of the State concerned.

35. When such being the constitutional mandate, which empowers the respective High Court to deal with the selection of District Judges, within its jurisdiction and the ultimate appointment to be made by the Governor of such State concerned, a reading of Article 233(1) of the Constitution along with Rule 7 of the 1994 Rules, as amended in the year 2005, it will have to be held that the first respondent High Court is invested with every power and authority to evolve an appropriate procedure in the matter of selection for direct recruitment and promotion of the entry level District Judges and that depending upon the exigencies, such procedures can also be specified by the first respondent High Court from time to time. Therefore, we have no difficulty in holding that the first respondent High Court was fully empowered under Rule 7 to prescribe the required procedure for selection of the entry level District Judges by way of direct recruitment and specify such procedure from time to time according to the exigencies prevailing”.

We may notice that in the said case, the advertisement for appointment for the posts of District Judge (Entry Level) was published by the High Court. Similarly in the case of (2001) 6 SCC 89 – Ganga Ram Moolchandani and Ors. Vs. State of Rajasthan and



Anr., the advertisement to fill up the posts of District Judges was published by the Rajasthan High Court and in (2015) 5 SCC 479, the advertisement to fill up the posts of District Judge was published by Allahabad High Court alone. Such is the practice in other States as well, which is in fact based upon the powers conferred upon the High Courts under Article 233(1) of the Constitution. Thus we find that the High Court has complete control over the Subordinate Judiciary in respect of matter of discipline and control whereas the power of appointment to the post of District Judge (Entry Level) is to be exercised by the High Court, though the final appointment is also to be made by the Governor, who is the appointing Authority.

In view of the above, we do not find any merit in this writ application. Accordingly, it is dismissed.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Amrendra/Ashwini

AFR/NAFR	A.F.R
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