

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6053 of 2013

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Yogendra Pandit Son of Late Ram Kishun Pandit, resident of village - Sahpur,
P.O. Murli Basantpur, P.S. Saharsa, District – Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Saharsa
3. The Deputy Collector (Establishment), Saharsa
4. The Deputy Collector (Nazarat), Saharsa
5. The Sub - Divisional Officer, Saharsa, District - Saharsa

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Neeraj Kumar, Adv.

For the Respondent/s : Mr. Utsav Kumar, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 15-03-2016

Heard learned counsel for the petitioner and learned
counsel for the State.

In this case, the petitioner applied for the post of Peon
as he was already discharging the duty on daily wages basis in the
Sub-divisional Office, Saharsa.

At the level of Collectorate and Sub-divisional Office,
a panel was prepared of those who were discharging their services
on daily wages.

As per the claim of the petitioner, in the said panel he
is quite above to those who have been accommodated and
regularised in service on class-IV post. He has given the name of

Shiv Shankar Ram, Suresh Jha, Suresh Jha, Madhukant Jha and Kailash Mandal. Claim has been made of neglecting his seniority in the said list. He has stated that Shiv Shankar Ram and Kailash Mandal have been appointed under the E.B.C. category.

A counter affidavit has been filed by the State there the claim has been made that as the name of the petitioner was far below than Shiv Shankar Ram and Kailash Mandal, they were accommodated and regularised in service, but the order passed by the District Magistrate shows that Shiv Shankar Ram and Kailash Mandal have neither been enlisted in the sub-divisional office list nor in the panel of 1997-98 and they have not been appointed. Hence, the petitioner's allegation is quite false and baseless. This finding falls flat in view of the counter affidavit filed by the State where admittedly shows two persons above named have been brought in regular service, may have been made on its own explanation, but the order impugned suffers from illegality of non-application of mind as the wrong fact has been recorded by the Collector. Counsel for the respondent tried his best to sanctify the order impugned by placing reliance on certain paragraph of counter affidavit. If the order suffers from illegality, it cannot be improved by filing counter affidavit and tried to justify the order.

It has been decided by the Hon'ble Supreme Court



when order suffers from illegality cannot be modified and improved through counter affidavit, reliance can be placed on the judgment reported in A.I.R. 1978 S.C. 851 (Mohinder Singh Gill vs. Chief Election Commissioner). It will be relevant to quote para 8 of the said judgment, is as follows:

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18):

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to

whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older.

A Caveat.”

Admittedly the order of Collector suffers from illegality on account of narration of wrong facts. Accordingly, the same is set aside. The matter is remanded back to the District Magistrate, Saharsa to apply his mind, examine the material on record and pass a reasoned order in accordance with law.

With this observation and direction, this petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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