

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19277 of 2015

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Anil Kumar Mukund, Son of Late Rit Narayan Lal Das, resident of 1A/12, New Patliputra, Near Boring Road, Paani Tunki, PS Patliputra, District Patna

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. chief Minister of Bihar, Patna
3. Secretary, Law Department, Patna
4. Shri Ram Balak Mahto, Advocate General Bihar, Office of Advocate General, High Court, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Anil Kumar Mukund (in person)
For the State : Mr. Lalit Kishore, Principal Additional Advocate General
Mr. Ranjeet Kumar, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HEMANT GUPTA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 03-03-2016

The present Public Interest Petition has been filed by an Advocate of this Court seeking a writ of *Quo Warranto* against the functioning of the Advocate General, Bihar, after he has crossed the eligibility criteria of age limit of 62 years, as contained in Article 217 of the Constitution of India.

2. The respondent No. 4 was appointed as Advocate General, Bihar, on 24th November, 2015, i.e., after he had attained the age of 62 years. It is pleaded that respondent No. 4 became Advocate General number of time, but now he has become frail and is not able to cope with the heavy workload and the responsibility of the post after his open-heart surgery.

3. The petitioner, who appeared in person, vehemently argued that respondent No. 4 is not eligible for appointment as Advocate General of the State for the reason that he was more than 62 years of age and thus being not eligible for appointment as a Judge; consequently, he was not eligible for appointment as Advocate General as well.

4. In the ***State of Uttaranchal vs. Balwant Singh Chaupal [(2010) 3 SCC 402]***, the Supreme Court examined the same question as raised in the present petition that the Advocate General, Uttarakhand, had attained the age of 62 years of age before he was appointed as Advocate General. The Supreme Court noticed that even after controversy has been settled by a number of judgments of the Court, still petitions are being filed. After considering all the judgments, the Apex Court in the aforesaid case held as under :-

"11. Despite the fact that the controversy has been fully settled by a judgment of this Court, it has been raised from time to time in a number of writ petitions before the various High Courts. We would reproduce some of the judgments to demonstrate that after the controversy has been finally settled by this Court, the filing of indiscriminate petitions for the same relief creates unnecessary strain on the judicial system and consequently leads to inordinate delay in disposal of genuine and bona fide cases. The following cases would demonstrate that, in how many High Courts, the similar controversy has been raised after the matter was finally settled by this Court.

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16. In view of the clear enunciation of law in the aforesaid judgments, the controversy has been fully settled that the Advocate General for the State can be appointed after he/she

attains the age of 62 years. Similarly, the Attorney General for India can be appointed after he/she attains the age of 65 years. In a number of other cases regarding the appointment of other authorities, the Courts have consistently taken a similar view. This Court in ***Binay Kant Mani Tripathi v. Union of India [(1993) 4 SCC 49]*** has reaffirmed the position. The Court pointed out that the decision of appointing D K Agrawal to the position of the Vice-Chairman of the Central Administrative Tribunal could not be held to be illegal or wrong on the ground that he was more than sixty-two years old.”

5. In view of the aforesaid judgment of the Supreme Court deciding the same questions as are raised in the present writ petition, we do not find any merit in this writ petition.

6. The writ petition is accordingly dismissed.

(Hemant Gupta, J)

I. A. Ansari, ACJ - I agree.

(I.A. Ansari, ACJ)

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