

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.403 of 2016

In
Civil Writ Jurisdiction Case No.445 of 2011

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Ram Vijay Singh Son of Late Dinanath Singh Resident of Village - Jamalpur,
P.O. - Nadaul, P.S. - Masaurhi, District - Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Cabinet Secretary, Bihar, Patna.
3. The Joint Secretary, Cabinet Secretariat Department, Bihar, Patna.
4. The Deputy Secretary, Establishment Cabinet Secretariat, Bihar, Patna.
5. The Deputy Secretary, Cabinet Secretariat Bihar, Patna.
6. Vijay Bahadur Singh, Peon, Cabinet Secretariat, Bihar, Patna.
7. Shri Ram Binod, Peon, Cabinet Secretariat, Bihar, Patna.
8. Shiv Kumar Sahani, Peon, Cabinet Secretariat, Patna.

... .. Respondent/s

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Appearance :

For the Appellant	:	Mr. Aditya Narain Singh, Advocate Mr. Kundan Kumar Sinha, Advocate Mr. Ranvijay Narain Singh, Adv.
For the Respondent State:		Mr. Sanjay Prasad, AC to AAG-4
For the Respondent No. 7:		Mr. Binod Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 06-11-2017

Heard learned counsel for the petitioner, learned counsel representing the State and learned counsel representing the respondent No.7.

Pursuant to the order dated 23.03.2017 passed by a coordinate Bench of this Court in the present appeal, affidavits have been filed on behalf of the State as well as respondent No.7.



A simple question which has arisen for consideration in the present case is as to whether the respondent No.7, a reserved category candidate, who happen to be a daily wager in the department placed in the seniority list below the present appellant could have been appointed against the roster point No.3, which was meant for an unreserved category candidate.

Contention of the petitioner-appellant before the learned single Judge as well as before this Court is that admittedly when three sanctioned posts were being filled-up, the seniority list which was prepared taking date of birth of the daily wagers working in the department was the basis for appointment against the sanctioned posts. It is admitted position emerging from affidavits that the roster point No.3 was for the general category/unreserved, then it was the petitioner-appellant who should have been appointed, but by appointing respondent No.7, who is a reserved category candidate, the State has itself transgressed and violated the roster point which was held for the general category candidate.

In the counter affidavit filed by the State in paragraph '7' it has been specifically admitted that the roster point No.3 was for general category. The case of respondent No.7 is that a reserved category candidate may be appointed against a general category post and for that in support reliance has been placed upon the



judgment of the Hon'ble Supreme Court in the case of ***Jitendra Kumar Singh and Another vs. State of Uttar Pradesh and Others***, reported in **(2010) 3 SCC 119**. A judgment of the learned single Judge of this Court has also been enclosed which is on the same lime.

Learned counsel for the appellant submits that on the face of the affidavits on the record admitting the factual position that the roster point No. 3 was meant for general category, nothing remains in dispute and it is apparent that in place of the present appellant, respondent No. 3 was wrongly appointed. On the other hand learned counsel representing respondent No.7 has reiterated that he being a reserved category candidate could have been appointed against the post which was though meant for the general category by granting relaxation in age.

We have considered the rival submissions at the bar and have perused the records. The affidavit filed on behalf of the State admits that roster point No.3 was made for the general category. If it was so, the appointment of respondent No.7 cannot be said to be valid. The contention of learned counsel representing respondent No.7 drawing strength from the judgment of Hon'ble Supreme Court is totally fallacious inasmuch as it is not a case in which the appointment is made on the basis of a merit list prepared on the



basis of any kind of marks obtained in a written or interview tests. In the case of ***Jitendra Kumar Singh*** (supra), the Hon'ble Supreme Court was dealing with a totally different fact-situation where the issue *inter alia* was as to whether or not a candidate in Other Backward Class category participated in the selection process on relaxation in age and fee could have been considered against a general category vacancy if he obtains marks more than last general category candidate. This is not the case here. In the present case, admittedly, the seniority is to be considered from the date of birth of the daily wagers who were working in the department and it is not in dispute that the appointment against the sanctioned posts have been made from the said seniority list alone which was a case of regularization.

We are, therefore, of the considered opinion that if the roster point No. 3 was meant for the general category candidate, the State respondents were not justified in excluding the petitioner-appellant and appointing respondent No.7 against the said sanctioned post. Admittedly appellant is placed above respondent No.7 in seniority list also. The learned single Judge while dealing with this aspect of the matter had in fact taken a view contrary to the records because the roster point No.3 is not for reserved category candidate. It is not a case of selection on merit, the learned single Judge has



committed an error to that extent. We set aside the impugned orders in the writ application as well as the order passed by the learned single Judge. The appeal is accordingly allowed. The respondents are directed to appoint the petitioner-appellant within a period of three months.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

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