

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14866 of 2016

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1. Sunit Kumar Son of Bhupendra Nath Verma, Resident of Mohalla- Ram Raj Mohalla, P.S. + District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Commissioner, Gaya Range, Gaya.
4. The District Magistrate, Aurangabad.
5. The Deputy Development Commissioner, Aurangabad.
6. The Addell, Collector, Aurangabad.
7. The Senior Deputy Collector, Aurangabad.
8. The District Establishment Deputy Co editor, Aurangabad.
9. The District Welfare Officer, Aurangabad.
10. The Executive Engineer, Town Development Organization, Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rama Kant Sharma, Sr. Adv.
Mr. Lakshmi Kant Sharma, Adv.

For the Respondent/s : Mr. Suman Kumar Jha, A.C. to AAG3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-07-2017

Heard Mr. Rama Kant Sharma, learned Senior counsel appearing for the petitioner along with Mr. Rajesh Kumar Advocate on Record and Mr. Suman Kumar Jha, A.C. to AAG 3 for the State.

The petitioner prays for quashing of the order dated 20.11.2015 passed by the District Magistrate, Aurangabad in Service Appeal No. 29 of 2015 whereby and whereunder a decision has been taken not to extend the life of the panel so prepared pursuant to the Advertisement No.1 of 2009 which decision is resting on the decision of a Committee chaired by the District Magistrate, Aurangabad dated 14.11.2015



impugned at Annexures-1 and 12 respectively to the writ petition.

Facts of the case briefly stated is that it is in the light of the orders passed by this Court on different writ petitions that the District Magistrate, Aurangabad published an advertisement bearing No. 1 of 2009 inviting applications for appointment against Class-IV posts to be filled up in accordance with the prescriptions present in the resolution of the Department of Personal and Administrative Reforms, Patna bearing letter No. 3577 dated 25.7.2007, Circular No.16441 dated 3.12.1980 and Circular No. 13984 dated 17.8.1971. The terms and conditions were inclusive of the eligibility requirement of the applicants and at item No. 6 specifically provides that a daily wage employee whose name figured in the earlier panel would be given priority in accordance with law. The petitioner applied and was also empanelled in the merit list so prepared, a copy of which is present at Annexure-3 to the writ petition. The name of the petitioner appears at Serial No.180. Since the appointment order was not forthcoming that the petitioner alongwith some others came before this Court in C.W.J.C.No.8879 of 2014 and the writ petition was disposed of with the liberty to the petitioners to raise their grievance before the District Magistrate, Aurangabad who was directed to dispose of the same in accordance with law. A copy of the order passed by a coordinate bench of this Court on the writ petition so preferred by the petitioners



and some others is placed at Annexure-4 to the writ petition. In obedience the petitioner filed their representation at Annexure-5 and which was followed by a submission of written argument in compliance of the direction issued from the office of the District Magistrate which is present at Annexure-8. The matter was considered by the District Magistrate who vide order passed on 12.5.2015 present at Annexure-9 sought guidelines from the Department inter alia on the issue of expiry of panel by reason of the delay so caused. A formal letter to such effect issued under the signature of the District Magistrate addressed to the Principal Secretary, General Administration Department, is placed at Annexure-10. The General Administration Department through its Under Secretary informed the District Magistrate that he was empowered enough to extend the validity of the panel for a reasonable time. The matter was again considered by a Committee headed by the District Magistrate, Aurangabad and consisting of the Senior district officials and vide Agenda No.2, a decision was taken not to act upon the panel so prepared since according to the Committee, the validity of the panel had expired on 27.4.2014. The decision of the Committee is impugned at Annexure-12 and which is followed by an order whereby the claim of the petitioner has been rejected on grounds that the validity period of the panel had expired in terms of the Bihar Group-



D Appointment and Service Condition Rule, 2010 (hereinafter referred to as 'the Rule, 2010'). The order passed by the District Magistrate is impugned at Annexure-1 to the writ petition and feeling aggrieved, the petitioner is before this Court.

I have heard learned counsel for the parties and I have perused the records and while it is the contention of Mr. Sharma learned Senior counsel that the grounds assigned by the respondent to reject the claim of the petitioner is entirely attributable to the laches on their own part, the argument has been contested by Mr. Jha learned State counsel in reference to the stand taken at paragraph 15 of the counter affidavit which again reflects the same position as emanating from the impugned order and which is that the validity of the panel got expired in terms of 'the Rule, 2010'.

In my opinion, the reason assigned by the District Magistrate, Aurangabad to disqualify the petitioner for appointment is only taken to be rejected. The 'Rule, 2010' relied upon by the District Magistrate, Aurangabad to reject the claim of the petitioner cannot be applied to vacancies advertised vide Advertisement No.1 of 2009 i.e prior to its enforcement. The law on the issue is well settled and the rules of the game is to be guided in tune with the legal prescription existing on the date when the advertisement was published. 'Rule, 2010' having been brought in to force subsequently, it could not have



been applied respectively nor could have guided the appointment process initiated prior thereto. The respondents were bound by the terms and the conditions present in the advertisement.

Even otherwise the stand taken by the District Magistrate, Aurangabad to disqualify the petitioner, is an attempt to overreach the order of this court passed on 10.12.2014 (Annexure-9) which require a consideration of the case of the petitioner. It is peculiar that although this order was passed on 10.12.2014 and even when it is the opinion of the District Magistrate, Aurangabad that the panel got expired on 27.4.2014 but no such objection was taken by them when the order of remand was passed by this Court. The District Magistrate thus cannot be permitted to raise issues which was not put to contest in the earlier round of proceedings.

Even on merits, the order is unsustainable in view of the legal position so settled by the Supreme Court in the judgment since reported in **(2000)3 SCC 699 (State of U.P. Vs. Ram Swarup Saroj)**. It stands well settled that if an applicant has taken legal recourse during the validity of a panel, his claim would not get prejudiced by its expiry during the pendency of litigation.

Mr. Sharma learned Senior counsel has informed this Court that though according to the respondents themselves the panel expired on 27.4.2014 the petitioner had approached this court through C.W.J.C.



No. 8879 of 2014 on 24.4.2014 i.e prior to the expiry of the panel and the matter was remitted for consideration and disposal of the claim.

The above discussion would show that the District Magistrate, Aurangabad has not applied his mind either to the facts governing the issue or the legal position existing. As discussed above, the petitioner had a right for consideration for appointment and the non-consideration of his claim led to the previous round of litigation. The objection so raised, thus is a slur on the delayed action by the respondent who themselves are guilty for delaying the matter. In view of the legal position explained, this cannot be permitted.

For the reasons aforementioned the decision of the Committee Annexure-1 in so far as it concerns the petitioner, cannot be upheld and is accordingly quashed and set aside. The writ petition is allowed with a direction to the District Magistrate, Aurangabad to consider the case of the petitioner for appointment against Class IV post, which decision should be taken within four weeks of receipt/production of a copy of this order.

The writ petition is allowed.

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.08.2017
Transmission Date	NA

(Jyoti Saran, J)

