

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21079 of 2013

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1. Bisheshwar Tanti Son Of Late Dhannu Tanti Resident Of Village Garsanda, P.S.
& Dist. Jamui

.... Petitioner/s

Versus

1. The State Of Bihar Through District Magistrate, Jamui
2. Principal Secretary, Revenue And Land Reforms Department, Government Of Bihar, Patna
3. Principal Secretary, General Administration Department, Government Of Bihar, Patna
4. Divisional Commissioner, Munger Division, Munger
5. District Magistrate, Jamui
6. District Program Officer (Establishment), Jamui

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan Singh,
Mr. Alok Kumar, Advocate.

For the State : Mr. Dhurjati Kr. Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 15-02-2017

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

In the present writ petition, petitioner is challenging the
entire process of selection making an allegation that no one has
been appointed under the category of disabled person whereas
present petitioner is a disabled person by locomotor and his
candidature has been rejected on two grounds; one is over age
and another is that he has not attached the copy of employment
exchange card.

Brief fact of the case is that the District Administration,
Jamui issued an advertisement for preparation of panel for Class



IV (Group D) candidates. Petitioner and others have submitted their applications and claim has been made that petitioner is a member of backward class at the relevant time. He has applied for empanelment of his name but has been refused for empanelment on the ground that he has not attached the registration card with Employment Exchange as well as he has crossed the age of appointment. As per case of the petitioner, two grounds which have been assigned by the District Administration are not sustainable on account of the fact that District Administration has granted relaxation of age to those persons who are petitioners in M.J.C. No. 2950 of 2012. The petitioner was not in that case, in such circumstances he has not been granted the same benefit. If the District Administration has granted age relaxation to certain section of candidate which cannot be given selective manner as in providing public employment, equality and fairness is the hallmark of good administration. If the administration has granted the age relaxation to certain section of candidate, it cannot deprive to another section similarly situated. So far as registration in the employment exchange is concerned it cannot be a ground for rejection of the candidature of the petitioner as it is not a sine qua non, it is not in the service jurisprudence only person who has attached the same would be considered as contesting



candidate for the employments in public service but the law is even those who are not registered under the employment exchange, if he/she applies against the advertisement cannot be deprived having not registered in the employment exchange. Employment Exchange is an office, where unemployed youths get their name registered, intending to get job, registration in Employment Exchange would not be the sole basis for selection on advertisement if any person applies his candidature cannot be rejected.

This Court has asked the State as to whether any person from disabled category has been appointed. In the counter affidavit no positive statement has been made with regard to appointment under that category. Parliament has enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 wherein mandate has been given in Section 33, provides that every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent, each shall be reserved for persons suffering from- (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or cerebral palsy in the posts identified for each disability,

The State of Bihar has fixed three per cent



reservation and fixed the roster point no. at point-33 point no.66 and point no.99.

This Court has asked the State to produce the original records. All the records have been produced but it is very difficult to verify whether any person in disabled category has been appointed. The reservation of disabled persons is horizontal reservation, not the vertical reservation. It is not based on its caste but it is based on reservation for class which has been pronounced by the Hon'ble Supreme Court in the case S.S. Balu and another v. State of Kerala and others, reported in (2009)2 SCC 479 paragraph 17, Union of India and another v. National Federation of the Blind and others, reported in(2013) 10 SCC 772. The Court has held that the reservation for disabled person is a beneficial piece of legislation. It is the duty of the welfare State to promote overall development of its citizens including those who are differently disabled in order to enable them to lead a life of dignity, equality, freedom and justice as mandated by the Constitution of India. The roots of statutory provisions for ensuring equality and equalization of opportunities to the differently disabled citizens in our country could be traced in Part III and Part IV of the Constitution. For the persons with disabilities, the changing world offers more new opportunities owing to technological advancement,



however, the actual limitation surfaces only when they are not provided with equal opportunities. Therefore, bringing them in the society based on their capabilities is the need of the hour. It will be relevant to quote paragraph nos. 50 to 56 of the aforesaid judgment:

“50 Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.

51. The Union of India, the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various International treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today.

52. Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., “computing 3% reservation on total number of vacancies in the cadre strength” which is the intention of the legislature. Accordingly, certain clauses in the OM dated 29.12.2005, which are contrary to the above reasoning are struck down and we direct the appropriate Government to issue new Office Memorandum(s) in consistent with the decision rendered by this Court.

53. Further, the reservation for persons with disabilities has nothing to do with the ceiling of



50% and hence, Indra Sawhney (supra) is not applicable with respect to the disabled persons.

54. We also reiterate that the decision in R.K. Sabharwal (supra) is not applicable to the reservation for the persons with disabilities because in the above said case, the point for consideration was with regard to the implementation of the scheme of reservation for SC, ST & OBC, which is vertical reservation, whereas reservation in favour of persons with disabilities is horizontal.

Directions:

55. In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:

55.1. We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Court's Order within three months from the date of passing of this judgment.

55.2. We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

55.3. The appellant herein shall issue instructions to all the departments/public sector undertakings/Government companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in department/public sector undertakings/Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.

56. Before parting with the case, we would like to place on record appreciation for Mr. S.K Rungta, learned senior counsel for rendering commendable assistance to the Court. The appeal is disposed of with the above terms."



Admittedly there is no material to show that any person from disabled category has been appointed. This Court directs the District Administration, Jamui to engage itself to find out whether in disabled category any person has been appointed. If any person has not been appointed in the category of disabled person then they should be appointed giving 3% reservation in horizontal reservation, in the manner, those who ranks get higher position in merit list, would get preference and will be adjusted against their own caste category by push down last person in that category.

With the aforesaid observation and direction this writ petition is disposed of. The whole process should be completed within a period of three months from the date of receipt/production of a copy of this order.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	1.3.2017
Transmission Date	NA

