

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.16726 of 2007**

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Surendra Kumar, son of Sri Prasadi Mahto, resident of village+ P.O.  
Hathiawayan, via-Hulasganj, District- Gaya

.... .... Petitioner

Versus

1. The State of Bihar through the Commissioner-cum- Secretary,  
Department of Revenue and Land Reforms, Govt. of Bihar, Old  
Secretariat, Patna
2. The Director of Survey, Govt. of Bihar, Old Secretariat, Patna
3. The Deputy Director of Survey, Survey Office, Gulzarbagh, Patna

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. N.D.Choubey

For the Respondent/s : Mr. AC to AAG-11

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**  
**ORAL ORDER**

8      12-01-2017      Heard learned counsel for the petitioner and learned  
AC to AAG-11.

The sole petitioner has approached this Court, invoking its writ jurisdiction under Article-226 of the Constitution of India, with a prayer to quash an order, contained in Memo No.1049 dated 29.07.2006 issued by the Commissioner-cum-Secretary, Department of Revenue and Land Reforms. By the said communication, a joint representation filed by the petitioner along with others in the light of the order passed in C.W.J.C.No. 5591 of 1999 was rejected. The petitioner has claimed that he was earlier engaged as daily-wager in the year 1991. Subsequently the petitioner along with others was disengaged.

Learned counsel for the petitioner submits that after



disengagement in the year 1991, the petitioner along with others approached this Court by way of filing a writ petition. However, this Court did not interfere with the matter. In stead direction was issued for advertising the post. This submission was made orally. Along with writ petition, order earlier passed by this Court in a writ petition has not been brought on record and orally submission was made. He submits that thereafter an advertisement was published in the year 1993 vide Annexure-1 to this writ petition for appointment. The petitioner, pursuant to the said advertisement, applied and finally he was not selected. Along with the petitioner some other persons were not selected. Thereafter, again the petitioner along with others approached this Court and filed a writ petition vide C.W.J.C.No.5591 of 1999. Learned counsel for the petitioner has referred to Annexure-3 to the writ petition i.e. copy of the order dated 10.12.2004, whereby a Bench of this Court considering the disputed question of fact did not interfere with the matter and only remitted back the matter to the concerned authority with liberty to the petitioner and others to file representation along with the order before him and the authority concerned was directed to examine the matter and pass a detailed reasoned order. A plea has been taken by the petitioner that in the light of the order of this Court, the petitioner filed a joint



application before the Commissioner-cum-Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna giving details about his eligibility. However, the Secretary by the impugned order has rejected the claim of the petitioner. Learned counsel for the petitioner tried to persuade the Court that the Secretary, while examining the representation of the petitioner, has failed to appreciate that the petitioner had obtained total 27 points. He submits that incorrectly the Secretary has recorded in its order that the petitioner has obtained only 22 points. Learned counsel for the petitioner further tried to persuade the Court by referring to Annexure-6 to the writ petition that as per certificate issued by the Assistant Director, Bihar Survey Office, Gulzarbagh, Patna, the petitioner had obtained 17 points for his work and 10 point for his past experience. According to learned counsel for the petitioner, if Annexure-6 to the writ petition is taken into account, the petitioner was having much higher marks/points than the last candidate, who was accommodated against the category of the petitioner and, as such, a prayer has been made to quash the impugned order so far as the petitioner is concerned and direct the authority concerned to consider the case of the petitioner and appoint him.

Learned State Counsel, opposing the prayer of the



petitioner, has argued that after filing of the representation whatever material was available on record, same was thoroughly examined and it was concluded that in the category, to which the petitioner was seeking employment, last candidate had obtained total 23 marks, whereas total marks obtained by the petitioner was only 22. Keeping in view the higher marks obtained by the last candidate than the petitioner, there was no question to entertain the prayer of the petitioner. Learned State Counsel refuting the statement made by the petitioner regarding Annexure-6 i.e. so called certificate issued by the Assistant Director, Bihar Survey Office, Gulzarbagh, Patna, submits that in the counter affidavit itself a specific averments has been made that the petitioner had obtained only 22 points whereas the last candidate had obtained 23 points in the category of the petitioner.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that the petitioner is seeking employment pursuant to an advertisement, which was published long back in the year 1993. Earlier the matter was examined by this Court and since there was completely disputed question of fact, this Court declined to interfere with the matter and simply remitted back the matter to the concerned authority granting liberty to the petitioner to file a



detailed representation and the authority concerned was required to examine the matter and pass appropriate order. Pursuant to order of this Court, a representation was filed and the Secretary, Department of Revenue and Land Reforms, Govt. of Bihar after examining the record has concluded that so far as the petitioner is concerned, he had obtained lesser marks than the last candidate appointed in his category. The Court is of the opinion that in a case which is primarily to be decided on the basis of fact, which has been disputed, this Court may not exercise the writ jurisdiction.

I do not find any ground to interfere with the matter. The writ petition stands dismissed.

**(Rakesh Kumar, J)**

NKS/-

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