

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15243 of 2007

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Usha Bharti wife of Shree Dinesh Lal Das, resident of Araria Ward No. 6, Police Station- Araria, District- Araria.

.... Petitioner

Versus

1. The State of Bihar.
2. The Commissioner, Purnia.
3. The District Appointment Committee, Araria through the Collector, Araria.
4. The Collector, Araria.
5. The Additional Collector, (Establishment Section) Araria Collectariate, Araria.

.... Respondents

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Appearance :

For the Petitioner : Mrs. Asha Verma,
Mr. Amarendra Kumar Singh, Advocates.
For the Respondents : Mr. Arun Kumar Sinha, AC to GP 24.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 04-08-2017

I.A. No. 5191 of 2013 and I.A. No. 1362 of 2017

I.A. No. 5191 of 2013 has been filed with a prayer for disposal of writ petition in terms of order dated 20.10.2011 passed in C.W.J.C. No. 5048 of 2007 concerning similarly situated persons.

2. I.A. No. 1362 of 2017 has been filed for withdrawing the prayer made at para-1(A) of the writ petition with regard to quashing of appointment of respondent nos. 6 to 27 along with others and accordingly deleting their names from the array of parties and thus confining the writ petition to the prayer made in para-1(B) of the writ petition.

3. Having regard to the nature of the prayers made in the interlocutory applications, the same are allowed and are treated as



part of the writ petition. The petitioner is permitted to delete prayer at para no. 1(A), as well as the names of respondent nos. 6 to 27 from the array of parties, in course of the day.

C.W.J.C. No. 15243 of 2007.

4. The prayer made in para-1(B) of the writ petition is for a direction to the respondents to issue appointment letter and appoint the petitioner to the post of peon within the district of Araria in pursuance of Advertisement No. 01/97-98.

5. The short facts of the case according to the petitioner are that being eligible, she applied in response to an advertisement published in 1991 for appointment in Class-IV post in the Government offices within the district of Araria in the General Category. The duly approved panel was published on 18.05.1992 (Annexure-3) in which the petitioner's name appeared at Serial No. 1 among female candidates and Serial No. 101 among the General Category candidates. The petitioner has been working on daily wage basis since 1992 along with other empanelled candidates. One of the empanelled candidates, Shanker Paswan, whose name appeared at Serial No. 12 of the panel dated 18.05.1992, approached this Court in C.W.J.C. No. 10870 of 1996 which was disposed of by order dated 12.08.1997 (Annexure-9) wherein it was directed to prepare the fresh panel in the following terms-

"I direct the Respondent- District Magistrate, Araria to consider the grievances of the petitioner. He is directed to



prepare fresh panel for the year 1997-98 in accordance with the guidelines laid down by the State Government. If the petitioners are found to be daily wage employees and their names were appearing in the earlier panel then, it is needless to say that their position are not be disturbed, vis-à-vis other daily wage employees, whose names were appearing in the earlier panel.

A direction in this regard is to be taken and the current panel is to be prepared within a period of three months from the date of receipt/production of a copy of this order. If there is any difficulty, in that case, the petitioners should be communicated with such decision within the aforesaid period.”

6. For the purpose of preparing a fresh panel, Advertisement No. 01/97-98 was published, categorically stating therein that the applicants whose names appeared in previously published panel and applicants belonging to Araria District would be given preference. It is stated that no fresh panel was prepared pursuant to the advertisement of 1997, however, a seniority list of candidates was published on 13.12.1999 (Annexure-8) wherein the petitioner’s name did not appear even though she was an applicant under the said advertisement.

7. Learned counsel for the petitioner submits that the respondents have acted in an arbitrary manner in excluding her from consideration for appointment in Class-IV post. It is stated that there was a clear direction in the order of this Court passed in C.W.J.C. No.



10870 of 1996 (Annexure-9) that in the fresh panel, seniority of the candidates appearing in the earlier panel would not be disturbed. However, in the seniority list of 1997, the petitioner's name has been effaced. It is further stated that the persons appearing at Serial Nos. 1 to 11 of the General Category above the petitioner have already been appointed and those at Serial Nos. 12 to 100 have not been appointed in absence of roster clearance (except Serial No. 93, Lalan Hembram, in whose case there was roster clearance). Even though the next name for consideration at Serial No. 101 was that of the petitioner, she was bypassed and Asha Devi appearing at Serial No. 102 of the said panel has since been appointed and is working under/in Raniganj Block, District- Araria after her name appeared at Serial No. 88 of the new seniority list, as stated in para-7 of the Interlocutory Application No. 1362 of 2017. It is therefore submitted that the petitioner has suffered hostile discrimination at the hands of the respondents in the matter of appointment.

8. Learned counsel for the respondent State, on the other hand, resists the writ petition and submits on the basis of para-14 of the counter affidavit that the petitioner was only 7th Class pass. It has further been submitted that appointments have been made not on the basis of the panel prepared in the year 1992 rather a fresh panel was prepared in the year 1999 on the basis of the eligibility criteria laid down in the advertisement published in the year 1997.



9. Having heard the parties and on a consideration of the materials on record, this Court finds considerable merit in the writ petition. This order passed in C.W.J.C. No. 10870 of 1996 contained a clear direction that the *inter se* position of the candidates appearing in the earlier panel was not to be disturbed while preparing the fresh panel. This direction appears to have been given to complete a go-by and a fresh seniority list has been prepared in 1999 said to be on the basis of eligibility criteria according to the advertisement of 1997. As a matter of fact, the respondents have not brought on record any fresh panel which may have been prepared pursuant to the advertisement of 1997. It is also not in dispute that Asha Devi whose name had appeared at Serial No. 102 of the panel of 1992 below the petitioner's name appearing at Serial No. 101 thereof, has been appointed. The petitioner claims to be Class-IX pass on the basis of a certificate (Annexure-1) as stated in para-5 of the writ petition, to which however the respondents have merely made a bald statement in the counter affidavit that the petitioner is only 7th Class pass without however disclosing the basis for such statement. Learned counsel for the State has also not been able to explain, if the petitioner was not eligible for appointment, how and under what circumstances her name was included in the panel of 1992 in the first place. Moreover, such new ground could not be taken at this belated stage in the face of the order of this Court in C.W.J.C. No. 10870 of 1996 directing that the position of



the candidates in the panel of 1992 was not to be disturbed.

10. In the above view of the matter, the respondents are directed to consider the case of the petitioner for appointment on Class-IV post in the District of Araria in the light of the observations contained hereinabove, in accordance with law.

11. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
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