

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9550 of 2014

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1. Saurabh Kumar Son of Ashok Kumar Resident of village - Kasba Mehasi, P.O. Mehasi, P.S. Mehasi, District - East Champaran Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Nagar Vikas and Awas Department, Bihar, Patna.
2. The Collector, East Champaran, Motihari.
3. The Executive Officer, Nagar Panchayat, Mehasi, East Champaran.
4. The Chief Counsellor-cum-Chairman, Nagar Panchayat, Mehasi.
5. Amit Shrivastava @ Amit Kumar Shrivastava son of Late Kanahiya Prasad Shrivastava Resident of Mohalla - Raniganj, Post & P.S. Chakiya, District - East Champaran Respondents

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Appearance :

For the Petitioner : Mr. Ajeet Kumar, Adv.
For the State : Mr. S.K. Ranjan, AC to GP VII
For the Respondents 3 & 4 : Mr. Hemendra Prasad Singh, Sr. Adv. with Mr. Rajesh Singh, Adv.
For respondent no. 5 : M/S Shree Prakash Shrivastava & Priyank Samdarshi, Advs.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 23-11-2017

Heard Mr. Ajeet Kumar, the learned counsel for the petitioner, Mr. S.K. Ranjan, learned Assistant Counsel to Government Pleader VII, Mr. Hemdra Prasad Singh, the learned senior counsel, appearing for the respondents 3 and 4 and Mr. Prakash Shrivastava, learned counsel appearing for respondent no. 5.

2. The petitioner filed this writ petition for direction to the respondents to appoint the petitioner on the post of Head Clerk in the office of Nagar Panchayat, Mehasi, East Champaran, after cancelling the appointment of respondent no. 5, who was illegally appointed, although his name was not included in the merit list prepared on the basis of marks obtained in the matriculation, intermediate and bachelor examinations

3. The brief facts, which is relevant for disposal of this writ petition, is that vide Memo No. 359, dated 01.02.2012, a notice was issued inviting application for appointment on different posts on contract



basis for one year in Mehasi Nagar Panchayat. The petitioner having requisite qualification applied for the post of Pradhan Lipik (Head Clerk) and Tax Daroga. Many other persons were also applied. On the basis of the marks obtained by the petitioner and other applicants, a merit list was prepared and published on 25.08.2012. The petitioner got first position in the merit list, but, the respondents called respondent no. 5 for interview although according to the merit list the name of respondent no. 5 appeared at serial no. 11. Only ten candidates should have been called for interview in view of Clause 3 of the advertisement (Annexure 1), but, respondent no. 5 was appointed after granting higher marks in interview.

4. The learned counsel for the petitioner submits that the entire appointment procedure is fixed. The respondents authorities were pre-determined to appointment respondent no. 5, Amit Srivastava @ Amit Kumar Srivastava on the post of Head Clerk though he did not figure among the ten candidates in the merit list, but, he was called for interview and on the basis of the marks obtained in the interview, respondent no. 5 was illegally appointed. On the contrary, Mr. Hemdra Prasad Singh, the learned senior counsel, appearing for respondents 3 and 4 and Mr. Shree Prakash Srivastava for respondent no. 5 submitted that the appointment was made for one year. The advertisement was issued in the year 2012. After lapse of contract period, the petitioner moved this Court. The petitioner participated in the appointment process and when he became unsuccessful, he filed this writ petition challenging the appointment of respondent no. 5. Once, the petitioner participated in the process of appointment, he shall be precluded from raising any objection with regard



to process of selection and with regard to the method of selection.

5. The learned counsel for the respondents placed reliance on the judgment of **D. Sarojakumari Vrs. R. Helen Thilakom & Ors.**, reported in **2017(4) P.L.J.R. (S.C.), 165**. It is, further, submitted that the proceedings of the standing committee of Nagar Parishad Mehasi, East Champaran, is annexed as Annexure 'B' to the counter affidavit filed on behalf of respondent no. 3 and the same clearly shows that all the members of the Selection Committee or empowered committee unanimously resolved to call respondent no. 5 for interview and no illegality was committed in appointment of respondent no. 5 on the post of Head Clerk as he got highest marks in interview.

The learned counsel for the respondent no. 5 has submitted that the petitioner has been working as Statistical Assistant, ICDC, Patehi, since 2013 and he is not at all unemployed.

6. Having considered the submissions of both sides I find no force in the submission of the learned counsel for the respondents. Admittedly, the advertisement (Annexure 1) was issued by the Executive Officer, Nagar Panchayat, Mahesi, East Champaran, to fill the post of Head Clerk. According to advertisement, one post of Head Clerk was to be filled-up from the candidates of general category in the pay scale of Rs.1320-2040. The appointment was to be made on contract basis. Clause 1 of the advertisement says that the merit list shall be prepared on the basis of marks obtained by the candidates in the matriculation, intermediate and graduation examinations. The minimum qualification for the post is graduate. By the same advertisement application for



appointment on different posts were also invited. Clause 3 of the aforesaid advertisement says that to fill-up one post, ten candidates shall be interviewed, according to their merit. A merit list was prepared in accordance with the marks obtained by the candidates in the matriculation, intermediate and graduation examinations. The petitioner Saurav Kumar got 198.83% marks and his name figured at serial no. 1. In order to fill-up one post of Head Clerk, merit list of only ten persons should have been prepared, but, the respondents authority prepared the merit list of eleven candidates. The name of respondent no. 5 figured at serial no. 11 in the merit list. According to the condition stipulated in the advertisement, the person appearing at serial no. 11 in the merit list should not have been called, but, the Executive Officer wrongly called respondent no. 5 also for interview. The interview Board granted 35 marks in order to select him. This fact makes it abundantly clear that the respondents have already decided to appoint Amit Srivastava @ Amit Kumar Srivastava, respondent no. 5, on the post of Head Clerk and the entire process of appointment is sham and farce because the appointment of respondent no. 5 is against the terms of advertisement as respondent no. 5 should not have been called for interview for the post of Head Clerk because his name appears at serial no. 11 in the merit list and only ten candidates of the merit list should have been called for interview to fill-up one post of Head Clerk. It further appears that the appointment was made on contract basis for one year in the year 2012, but, respondent no. 5 was allowed to continue in service even after lapse of one year till the order of this Court restraining the respondents to take work from respondent



no. 5. Therefore, I find that appointment of respondent no. 5 is not sustainable and he can not be allowed to work on the post of Head Clerk, Nagar Panchayat, Mahesi, East Champaran.

7. Accordingly, respondents are directed not to take work from respondent no. 5 in pursuance of the advertisement, as contained in Annexure 1. In the result, this writ petition is **allowed**.

(Prabhat Kumar Jha, J)

SA/BKS

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

