

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17482 of 2016

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Pritam, son of Doman Mandal, Resident of Village-Kiranpur, P.S. Mednichowki,
District- Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Bihar Staff Selection Commission, Patna.
2. The Secretary, Bihar Staff Selection Commission, Veterinary College Campus, Patna 800014.
3. The principal Secretary, Department of General Administration, Government of Bihar, Patna.
4. The principal Secretary, Department of Water Resources, Government of Bihar, Patna.
5. The Deputy Secretary, Department of General Administration, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Adv. Mr. Om Prakash Maharaj, Adv.
For the Respondent-State	:	Mr. Partha Sarthi, GA-4 Mr. Utsav Kumar, AC to GA-4
For the Respondent-BSSC	:	Mr. Lalit Kishore, Sr. Adv. with Mr. S.S. Sundaram, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-11-2017

The petitioner while praying for quashing of the letter dated 30.4.2007 of the Deputy Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna, whereby on an allegation of adopting unfair means in the selection process so held for appointment to the post of Junior Engineer by the Bihar Staff Selection Commission (hereinafter referred to as 'the Commission'), the candidature of the petitioner was cancelled and an FIR was instituted, a copy of which is impugned at Annexure-7,



has prayed for a direction to the respondents to appoint him on the post of Junior Engineer on his succeeding in the selection process held by the respondent-Commission.

Some undisputed facts on record of the proceeding is that the petitioner in response to Advertisement No.1406 dated 14.8.2006 at Annexure 1 issued by the respondent-Commission inviting applications for appointment against the post of Junior Engineer (Civil), the petitioner applied and was issued Admit-Card at Annexure 2. The result of the examination was declared at Annexure 3 and the petitioner was declared successful under BC-2 category.

On allegation of adopting illegal means for success in the examination, a complaint was filed and the respondent-Commission vide letter No.47 dated 18.1.2007 directed the petitioner to be present with all original documents on 29.1.2007. The petitioner appeared on the scheduled date with all papers which were found genuine but the respondents not being satisfied by his response to the questions put, instituted a police case bearing Gardanibagh P.S. Case No.77 of 2007 registered under various provisions of the Indian Penal Code, a copy of which is at Annexure-5 and ultimately the letter in question was issued informing him about the cancellation of his candidature on 30.4.20107 impugned at



Annexure 7.

The results of the selection process so held after moving through this Court reached the Supreme Court in SLP (C)No.5752-5753 of 2008 and under the judgment and order dated 13.3.2013 the results were re-evaluated and a fresh list of successful candidates was published vide Annexure 9 in which the name of the petitioner appears at serial no.37.

That in the trial so held on the allegation present in the FIR at Annexure 5, the petitioner was acquitted by the trial court vide judgment and order passed on 20.5.2016 at Annexure 10. It is on being acquitted by the trial court and since following the exercise of re-evaluation carried out by the respondent-Commission in compliance of the order of the Supreme Court where the petitioner figured at serial no.37 of the merit list of candidates, the petitioner represented before the Secretary, Bihar Staff Selection Commission for issuance of the appointment order and since no order was being passed on his request that he is before this Court.

With the consent of the parties the writ petition has been heard with a view to its final disposal at the stage of admission itself.

Mr. Siya Ram Shahi, learned counsel has appeared for the petitioner along with Mr. Om Prakash Maharaj, the Advocate on



Record, while the State is represented by Government Advocate No.4 and the respondent-Commission is represented by Mr. Lalit Kishore, learned Senior Advocate who appears with Mr. S.S. Sundaram, Advocate on record.

Espousing the case of the petitioner it is the submission of Mr. Shahi that the cloud whatsoever on the candidature of the petitioner which even led to institution of the police case, has been removed by the judgment and order of the trial court acquitting the petitioner of all charges present at Annexure 10 to the writ petition which is dated 20.5.2016. He submits that in so far as the merit of the petitioner is concerned, the re-evaluation carried out by the 'Commission' in the light of the direction of the Supreme Court, leaves no confusion that the petitioner is well within the merit list for appointment as his name appears at serial no.37. It is thus submitted that in these changed circumstances it is highly arbitrary on the part of the respondents to deny appointment to the petitioner, simply because he failed to answer some questions put up during enquiry.

It is responding to the arguments of Mr. Shahi, Mr. Lalit Kishore, learned Senior Advocate has with reference to the counter affidavit filed on behalf of the respondent-Commission submitted that even though the petitioner has succeeded in the criminal trial



but the fact is that on receiving complaint of having adopted unfair means to succeed in the examination that when the 'Commission' directed him to present himself, the petitioner though appeared but failed to answer a single question. According to Mr. Kishore since the petitioner even failed on the fundamentals of technical as well as general knowledge that a decision was taken to cancel his candidature as well as his result in the proceeding held on 2.3.2007, a copy of which is enclosed at Annexure 'C' to the counter affidavit. In reference to the letter dated 19.7.2013 at Annexure 'D' he submits that although the exercise was carried out for re-evaluation of the answer-sheets in the light of the direction of the Supreme Court and though the name of the petitioner figured at serial no. 37 of the recommended candidates, but since his recommendation was cancelled for adopting unfair means that a decision was taken to treat his candidature as well as result as cancelled.

In sum and substance the argument of Mr. Kishore, learned Senior Advocate appearing for the 'Commission' is that the petitioner failed to satisfy the 'Commission' on his knowledge in the field of general information as well as technical education that the decision to cancel his candidature was taken.

I have heard learned counsel for the parties and I have



perused the records.

Even though Mr. Kishore, learned Senior Advocate appearing for the 'Commission' has rather painstakingly, tried to demonstrate that the success of the petitioner as reflecting in the results of the examination is in fact not attributable to the knowledge of the petitioner rather is an outcome of adopting unfair means for securing a success but then these very allegations were subject matter of the police case and has gone through the process of trial where the prosecution had every opportunity to demonstrate this aspect of the matter and persuade the trial court on the allegations but the judgment and order of the trial court present at Annexure 10 would confirm that the prosecution neither chose to examine any witness or adduce any evidence to support the prosecution case although according to the trial court sufficient opportunity was granted to them.

In such view of the matter where the opinion carried out by the 'Commission' as regarding 'lack of knowledge' possessed by the petitioner, was never established during the course of trial, in my opinion the action of the 'Commission' to hold a parallel enquiry to test the petitioner and disqualify him, was an unwarranted exercise having no lawful sanction.

In the circumstances where it is owing to the complaint



resulting in institution of the criminal case and the alleged failure of the petitioner to come up to the expectation of the 'Commission' in the in-house enquiry carried out by them which became the foundation for cancellation of his candidature as well as his result, the very fact that the foundation on which the entire exercise was carried out has been removed by the acquittal of the petitioner in the criminal case coupled with the merit position of the petitioner in the re-evaluation exercised at Annexure 9 it is my opinion that the petitioner cannot be denied the fruit of success in the examination, the result of which is at Annexure 9. Even though a statement has been made at paragraph 7 of the counter affidavit filed on behalf of the 'Commission' that a decision has been taken for filing an appeal against the judgment and order of the trial court but then a futuristic thought cannot be an impediment to the relief to which the petitioner is entitled. The situation as it stands today is that the petitioner stands exonerated of all allegations.

For the reasons and discussions aforementioned the decision of the 'Commission' to cancel the candidature of the petitioner as well as his result as found at Annexure 'C' together with the communication contained in the letter dated 30.4.2007 at Annexure-7 are quashed and set aside.

Let the 'Commission' take appropriate steps to forward its



recommendation in favour of the petitioner for appointment as Junior Engineer to the appropriate authorities of the Water Resources Department, for taking the recommendation to its logical conclusion by issuance of appointment letter which exercise be completed by the respondents preferably within a period of 8 weeks from the date of receipt/production of a copy of this judgment.

It goes without saying that since it is the specific case of the 'Commission' that they would be questioning the order of the trial court in appeal, the appointment of the petitioner shall abide by the final result of such challenge, if any.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.11.2017
Transmission Date	NA

