

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19366 of 2016

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Rajesh Safaiya, Son of Samli Dom, Resident of Sundargarh, Near Nagar Nigam,
Biharsharif, P.S. - Biharsharif in the district- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Home (Jail) Department, Govt. of Bihar, Patna.
2. The Secretary, Home (Jail), Govt. of Bihar, Patna.
3. The Inspector General, Prison, Govt. of Bihar, Patna.
4. The Superintendent of Divisional Jail, Biharsharif, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate

For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-05-2017

Heard Mr. Sanjeev Kumar, learned counsel appearing for
the petitioner and Mr. Suman Kumar Jha, learned Assisting Counsel
to Additional Advocate General No.3 for the State.

The writ petition was filed praying, inter alia, for a
direction to the respondents to regularize the service of the petitioner
from the date of his initial engagement i.e. 18.5.1998 as a Safai
Mazdoor in Biharsharif District Jail. Alternatively a prayer was
made for considering the case of the petitioner for one time
appointment as against the advertisement present at Annexure-6.

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.

Facts of the case lie in a very narrow compass and this
petitioner was initially engaged as a contingent menial discharging
the duty of Safai Mazdoor on 18.5.1998 in the District Jail



Biharsharif. The petitioner has worked continuously on the post without any break.

A writ petition was filed by the Bihar Rajya Jail Chaturth Wargiya Kamgar Union in this Court seeking grant of minimum scale for contingent menials giving rise to CWJC No.4282 of 2000 and the petitioner was also a party to the writ petition. The writ petition was disposed of vide judgment and order dated 6.4.2005 allowing the reliefs. A copy of the judgment is placed at Annexure-4. While the petitioner was working that the statutory rules governing the service conditions of contingent menials was framed i.e. The Bihar Jails Nai and Safai Mazdoor Cadre Rules, 2011. It is in view of the statutory rules that a policy decision was taken by the State to allow the contingent menials an opportunity of appointment and in which direction a notification was issued on 13.12.2014, a copy of which is present at Annexure-5. Following the policy decision that an advertisement was published, a copy of which is placed at Annexure-6 inviting applications from the persons functioning in different jails as contingent menials and in response where to the petitioner filed his application, a copy of which is present at Annexure-8 which is complete in all respect. Since no final decision was taken that the petitioner has come before this Court after representing before the Superintendent, District Jail, Biharsharif and when the respondents have contested the prayer by



filing counter affidavit which has enclosed the decision of the screening committee dated 22.9.2016 and whereunder the case of the petitioner has been rejected on grounds that he had not enclosed an affidavit along with his application form relinquishing his right for any other appointment. The name of the petitioner appears at serial no. 19 at page 47.

An Interlocutory application bearing I.A. No.3506 of 2017 has been filed to question the decision dated 22.9.2016 and considering the nature of dispute, the prayer is allowed and the petitioner is permitted to question the decision in the present writ petition itself. In consequence the interlocutory application is allowed.

Mr. Sanjeev Kumar, learned counsel appearing for the petitioner has invited the attention of this Court to the application at Annexure-8 to submit that the petitioner had earlier submitted application form for regularization with affidavit that he would not claim appointment against any other post and since he had already filed such affidavit which was available with the respondents that it was not enclosed. Attention of the Superintendent, District Jail, Bihar Sharif was invited vide representation present at Annexure-9.

Mr. Jha, learned counsel appearing for the State submits that since the affidavit was wanting hence the rejection.

I have heard learned counsel for the parties and I have



perused the records.

An impression which this Court gathered is that the respondents find pleasure in rejecting bona-fide application on hyper technical grounds. It is not in dispute that this contingent menial is working for the respondents continuously since 1998 i.e. a period of almost two decades without any break. A decision is also taken by the respondents themselves to provide this contingent menial with a regular appointment against the sanctioned post and following which an advertisement was published.

It is quite understandable that the petitioner discharging the duty of contingent menial was under an impression that since he has already given an affidavit on oath that he would not claim appointment against any other post as back as on 17.12.2014, he was not required to again repeat the same. In fact he has also drawn the attention of the Superintendent, District Jail, Bihar Sharif towards this aspect and in any view of the matter, a filing of an affidavit of such kind, is a mere procedural requirement and does not comment upon the eligibility of a person for regularization by way of appointment nor any contingent menial can be disqualified on such lapse. The continuity of service of the petitioner is not in dispute nor his eligibility to the post is in dispute. In such undisputed circumstances, in case the application filed by the petitioner/contingent menials was wanting on some respect, it was for the authority to ask the



petitioner to do the needful but certainly they cannot reject the application on hyper technical ground for want of an affidavit and in the present case the affidavit is in the custody of the respondents since 17.12.2014.

In the circumstances discussed, the decision of the respondents to disqualify the petitioner impugned at Annexure 12 to the Interlocutory Application is resting on hyper technicality and cannot be upheld and it is accordingly quashed and set aside in so far as the petitioner is concerned. In case the affidavit which forms part of Annexure-8 is not found available with the respondents they can advise the petitioner to file a fresh affidavit but certainly this cannot be a ground to disqualify him.

The writ petition is allowed. The Inspector General of Prison, Government of Bihar, Patna as well as the Superintendent, District Jail, Bihar Sharif are accordingly directed to proceed in the matter of appointment of the petitioner in terms of the direction aforementioned within a period of six weeks from the date of receipt/production of a copy of this judgment.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31-05-2017
Transmission Date	NA

