

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10184 of 2008

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Raj Kishore Paswan, son of late Mangan Paswan, resident of Village- Jawo, P.S-
Bhawanipur, District- Purnea

.... Petitioner

Versus

1. The State of Bihar
2. The District and Sessions Judge, Purnea Civil Court, Purnea
3. The Registrar General, Patna High Court, Patna.
4. Bablu Kumar Paswan, son of Devendra Paswan

Resident of Mohalla –Salimpur Ahra, P.S. – Kadamkuan, District –Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. SURESH PD.BARNWAL, Advocate
For the Respondent/s : Mr. (GP1)
For Respondent nos. 2 and 3 : Mr. Piyush Lal, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
Date: 23-01-2017

Heard learned counsel for the petitioner, learned G.P. 1
for the State and Mr. Piyush Lal for respondent nos. 2 and 3.

The present writ application has been filed for a direction
to the respondent authorities to appoint the petitioner to the Class-IV
post of peon in the Judgeship of Purnea.

The factual matrix would unveil that the petitioner
belonging to Scheduled Tribe community, submitted application in
pursuance to Advertisement No. 1/99, issued by the office of the Civil
Court, Purnea, for being considered to be appointed on Class-IV post
of peon. Consequently, the petitioner appeared in the interview on



18.12.2007, but he could not be selected. The petitioner's date of birth is 19.2.1964 but respondent no. 4 whose date of birth is 5.6.1987 was selected. The contention of the petitioner is that despite the fact that he was about to cross the age limit for such selection, he was not given preference in being selected. The petitioner's representations were not considered, hence, the present writ application.

It is submitted by learned counsel for the petitioner that the petitioner performed well in the interview and he was about to cross the age limit prescribed for selection on Class-IV post of peon, he ought to have been given preference over the persons who are younger to the petitioner, particularly, respondent no. 4. It has also been pleaded in paragraph 7 of the writ application that the petitioner was assured by the respondents that he ought to be selected, but despite such assurance, he was not selected, since he failed to gratify the respondent authorities, by making a payment of Rs. 2,50,000/-.

The petitioner represented before the Chief Justice of India, the Chief Justice of Patna High Court and also before the Registrar, Patna High Court as well as the District & Sessions Judge, Purnea, but it has been pleaded by the petitioner that he was not selected for appointment due to malafide considerations.

Mr. Piyush Lal, learned counsel for respondent nos.2 and 3 submits that initially, the advertisement for appointment, in the



Judgeship of Purnea was made in 1999 and thereafter in 2000 but the vacancies were not filled up. Later on, vide Memo No. 653 dated 19.2.2003, on the request of respondent no. 2, the High Court directed to advertise the posts of Class IV afresh with a condition that the candidates who had applied earlier, shall also be considered, though no appointment was made in 2003. Finally, applications were again invited for appointment to Class-IV posts, in the Judgeship of Purnea, vide Advertisement no. 3 of 2007, published in daily newspaper “Aaj” on 15.10.2007. Consequently, appointment process commenced and interview letters were issued. The appointments were made by the Appointment-cum-Selection Committee on the basis of merit list which was prepared on the basis of merit of the candidates. The appointment in the Civil Courts are made in accordance with the Bihar Civil Courts Staff (Class III and Class IV) (Amendment) Rule, 2001 and there is no provision in the said Rule for giving weightage to a candidate who is about to cross the age-limit, as is the case of the petitioner. The appointment of respondent no. 4, Bablu Kumar, whose name appeared at serial no. 28 in the merit list having Roll No. 183 and who belonged to Scheduled Castes category, was made only on the basis of his performance at the interview, where he secured 65 marks at the interview. There is no violation of roster points. Altogether 52 candidates were selected and candidates from serial



nos. 53 to 83 were kept in the waiting list but no candidates from the waiting list were selected. The merit list has been brought on record as Annexure B to the counter affidavit. The petitioner's name is neither found in the merit list between Sr. Nos. 1 to 52 nor in the waiting list between Sr. Nos. 53 to 83. The representations of the petitioner were considered and it was opined that no further action is required.

On completion of interview process vide letter no. 217 dated 6.2.2008, the then District & Sessions Judge, Purnea, sent list of selected candidates and having considered the same and approval of the High Court, intimation was sent vide letter no. 1748 dated 8.2.2008 (Annexure C to the counter affidavit), to the District and Sessions Judge, Purnea and thereafter, the appointment letters were issued. Hence, the present writ application is sans any merit.

Learned counsel for the respondent-state submitted that the State of Bihar is a formal party, therefore, the State has no say in the matter.

Considering the rival submissions of the parties, this court is of the view that the petitioner has not raised any objection with regard to the selection process, not being conducted as per the Rules, nor has he claimed any violation of the terms of advertisement. The petitioner is crying foul only on the ground that since he was about to cross the age-limit prescribed for the selection, he ought to



have been given preference over others. Such ground is not only flimsy but is also sans any prudence and appears to have been made just for the sake of it. Neither is the case, nor there is any such pleading on behalf of the petitioner that the terms of the advertisement prescribed preference on age basis, for the purpose of selection on Class-IV posts.

It is a well settled proposition of law that where selection is to be made only on the basis of interview, the Commission or Selection Board can adopt a rational procedure for making selection and the satisfaction of the interview board is of paramount importance. Since the interview was conducted by the Board and nothing specific has been raised with regard to the fairness and impartiality of the Selection Committee and merely because it is the assertion of the petitioner that he ought to have been appointed since he was about to cross the maximum age limit, no direction can be given in this regard. Though in paragraph 7 of the writ application, it has been asserted that the petitioner was given assurance for being appointed and he was not appointed only because he failed to gratify the respondents, but the casual manner in which such allegatory averments are made, does not appeal to the conscience of this court. Such casual averments without any specifics, appear flimsy and frivolous on the face of it. Bald statements of allegatory nature will



not vitiate the appointment process. The petitioner's name neither found place in the merit list nor in the waiting list, could be attributable to poor performance in the interviews, and in the absence of any pleading of arbitrariness in the interview process, this Court does not find it fit to interfere, on any score. Interview is the best mode to assess the suitability of a candidate for a particular post. While the written examination testifies the candidate's academic knowledge the oral test alone can bring out and disclose his overall personality and alertness and ability to take decision and other things. The selection committee is the best body to get the suitable candidates as per requirements.

Moreover, the appointment was made in the year 2008, the writ application was also filed in 2008 itself, but it was dismissed for non-prosecution vide order dated 10.4.2015, though it was subsequently restored vide order dated 20.1.2016 passed by a co-ordinate Bench of this Court in MJC No. 2021 of 2015.

The writ application also fails on the ground of non-impleadment of the selected candidates in the array of party respondents. Though the petitioner has only claimed to be appointed but such claim cannot be considered because once it is considered, it may lead to displacement of the selected persons from the present rank. Besides, some of them also have to go out of the select list



hence it was imperative on the part of the petitioner that all selected persons should have been made party respondents in the writ application otherwise no order could have been passed affecting their rights without giving them an opportunity of being heard. Moreover, filing of such kind of frivolous writ applications has been deprecated by the Apex Court in several judgments where the candidate participates in the interview and when he fails, he subsequently files an application as the result was not palatable to him. Useful reference may be made to the case of Madanlal & Ors. Vs. State of J & K & Ors. (1995) 3 SCC 486 and Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Ors. 1986 (Supp) Supreme Court Cases 285 where it has been clearly laid down by a Bench of Hon'ble Apex Court that when a candidate appears in the examination without protest and when he finds that he would not succeed in the examination, he files a petition challenging the said examination, the High Court should not entertain such applications.

The petitioner has filed reply to the counter affidavit filed on behalf of respondent no.2 but in the reply, none of the contentions of respondent nos. 2 and 3 have been controverted and the petitioner has again restricted his pleadings only to him having become overage, hence, his claim for appointment as Peon be considered.



Before parting, this Court would again repeat to say that the writ application is hopelessly frivolous and has been based on casual insinuations of malpractice in the selection process, which ought to be deprecated.

This writ application is, accordingly, dismissed.

Ashwini/-

(Dinesh Kumar Singh, J)

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

