

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14453 of 2007

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Sanjeet Kumar Sinha, S/o Late Bhuwaneshwar Prasad Sinha, resident of
Village – Mangobandar, P.S. – Khaira, District – Jamui.

.... Petitioner

Versus

1. The State of Bihar , through the Chief Secretary, Bihar, Patna.
2. The Secretary, Primary and Adult Education Department,
Government of Bihar, Patna.
3. The Director, Bihar Education Project, Patna.
4. The District Magistrate, Jamui.
5. The District Education Superintendent cum District Programme
Coordinator, Bihar Education Project, Jamui.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar Karn, Adv.

For the Respondent/s : Mr. Rishi Raj Sinha (SC - 19)

Mr. Akhilesh Kr. Sinha, AC to SC 19

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 27-04-2017

Heard Sri Hemant Kumar Karn, learned counsel for the
petitioner and learned A.C. to Standing Counsel – 19.

2. The petitioner had approached this Court by filing the
present writ petition under Article 226 of the Constitution of India
in the month of November, 2007. The petitioner, initially in the writ
petition, had prayed for issuance of writ of mandamus directing the
respondents to issue appointment letter and allow the petitioner to
join on the post of Peon-cum-Night Guard in the office of Bihar
Education Project at Jamui, pursuant to his selection on the said post
with all incidental and consequential benefit.

3. After filing of the writ petition, a counter affidavit was



filed on behalf of the respondent no. 5 i.e. District Education Superintendent cum District Programme Coordinator, Bihar Education Project, Jamui and alongwith the counter affidavit, a proceeding of Executive Committee was brought on record, vide **Annexure 'D'**, to show that by Agenda No. 12, the request for allowing the petitioner to join was rejected on the ground of delay. Alongwith the petitioner, the request for joining of another person was also rejected. Thereafter, the petitioner filed an interlocutory application, vide I. A. No. 951 of 2017, and made a prayer for allowing the petitioner to amend relief portion in the writ petition to the extent of quashing decision taken in Agenda No. 12 in the meeting of Executive Committee of ***Sarva Shiksha Abhiyan*** held on 11-08-2006, vide Memo No. 678 dated 04-09-2006 and the said proceeding was also brought on record, as **Annexure - 4** to the interlocutory application. After hearing the parties, by order dated 06-03-2017 on Interlocutory Application No. 951 of 2017, this Court directed to treat the interlocutory application as part of the writ petition.

4. It is case of the petitioner that pursuant to advertisement for the post of Peon-cum-Night Guard, the petitioner submitted his application, which was sent through registered post. Thereafter, the petitioner was directed to appear for interview,



which was to be held on 02-12-2005, vide **Annexure – 1** to the writ petition. It is case of the petitioner that petitioner was fully eligible to be selected and after his participation in interview, he alongwith other twelve persons were selected. However, no communication was made by the respondents regarding publication of result or communication of the appointment letter. In the month of April, 2006, when the petitioner got an information regarding his selection, he immediately rushed to the concerned respondent and requested for allowing him to join, but on one way or the other, no decision was taken and finally, the petitioner was constrained to approach this Court by filing the present writ petition in the year 2007 itself.

5. It has specifically been mentioned in paragraph – 12 of the writ petition that till the date of filing of the writ petition, one post was still vacant and as per information, other persons, who were selected, had already been made permanent.

6. In this case, firstly, a counter affidavit was filed on 2nd March, 2006 on behalf of respondent no. 5. In the counter affidavit, it was virtually admitted that petitioner was selected, but a plea has been taken that after his selection, appointment letter was issued to the petitioner, vide letter no. 1083 dated 31-12-2005, i.e. **Annexure – B** to the counter affidavit.



7. Learned State counsel, by way of referring to **Annexure – B**, submits that as per appointment letter, which was issued on 31-12-2005, the petitioner was required to join within a week, however; even after expiry of several months, the petitioner did not join. Alongwith the petitioner, on another person, had also not joined. Thereafter, the matter was placed before the Executive Committee for consideration and vide Resolution No. 12 of proceeding of the Executive Committee (**Annexure – D** to the counter affidavit), the request for allowing joining to the petitioner and another was rejected. In paragraph – 13 of the counter affidavit, though stand was taken that appointment letter was issued, vide letter no. 1083 dated 31-12-2005, nothing has been indicated as to whether the said appointment letter was communicated or served on the petitioner or not? If communicated, what was the mode?

8. In this case, subsequently, respondent no. 5 filed a supplementary counter affidavit and now in supplementary counter affidavit, a plea has been taken that the appointment letter was issued through U.P.C.

9. It is surprising that once while inviting application after the advertisement, application was required to be sent through registered post, what was the reason for sending the appointment letter through UPC ? Neither in the counter affidavit nor in the



supplementary counter affidavit, it has been indicated that the said result was published in any newspaper. In such situation, particularly in absence of publication of result in the newspaper, it was necessary to communicate the appointment letter through the registered post. No step was taken by the respondent, save and except, taking a lame excuse that appointment letter was sent to the petitioner through UPC. Moreover, in the supplementary counter affidavit, it has been accepted that till the date of filing of the supplementary counter affidavit, which was filed on 20th February, 2017, one post was still vacant. It has also not been disputed that the service of other persons, who were similarly selected, has been confirmed.

10. Learned counsel for the State tried to persuade the Court that once the appointment letter was issued, even through UPC, it was the duty on the part of the petitioner to submit joining, as prescribed.

11. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Since the petitioner was already selected and it has been admitted that appointment letter was issued, ofcourse, there was nothing on record to suggest as to whether said communication was served on petitioner or not. There was no plausible reason for non-acceptance



of joining. The Court is of the opinion that even if the petitioner had approached in the month of April , 2006, in normal course, it was necessary to allow him to join.

12. Considering the fact that one post is still vacant and petitioner was duly selected and due to laches on the part of the respondent, he was not allowed to join, the respondents are required to allow his joining forthwith.

13. Accordingly, the writ petition stands allowed with a direction to allow the petitioner to join on the post of Peon cum Night Guard on the basis the appointment letter, which was earlier issued and copy of same has been brought on record as Annexure B to the Counter Affidavit. The joining of the petitioner must be accepted within a period of three weeks from today.

14. The writ petition is allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.04.2017
Transmission Date	N/A

