

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12504 of 2007

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Yogendra Yadav son of Late Kamal Yadav, resident of village and P.O. Nandlali,
P.S. Behra, Block Sattar Kattaiya, District Saharsa

.... Petitioner

Versus

1. The State of Bihar.
2. The District Magistrate, Saharsa.
3. The Deputy Collector Establishment, Saharsa.
4. The Deputy Collector Nazarat, District Saharsa.
5. The Civil Surgeon-cum-Chief Medical Officer, Saharsa
6. Bhageshwar Yadav, son of Laxmi Prasad Yadav, resident of Village Aguawanpur, Police Station and District Saharsa at present appointed and working on Class-IV post in the office of Civil Surgeon cum-Chief Medical Officer, Saharsa

.... Respondents

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Appearance :

For the Petitioner : Mr. Jitendra Kumar Roy
Ms. Nikki Singh, Advocates
For the State : Mr. Virendra Kuar, AC to SC 13
For Respondent No. 6 : Mr. S. M. Ashraf, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-07-2017

Heard learned counsel for the petitioner, learned counsel
for the State and also learned counsel for the respondent no. 6.

2. The present writ petition has been filed for
consideration of the case of the petitioner for appointment on Class IV
post from the panel of candidate peons of 1995-96 prepared and
published on 20.03.2007 as against the post reserved for the backward
categories.

3. The short facts of the case, according to the petitioner,
are that the petitioner had been working on daily wages in the



Collectorate of Saharsa since 1982. Advertisement No. 6 of 1995 was issued but however, without cancelling the same, fresh Advertisement No. 7 of 1997 was issued. One Vijay Kumar Singh approached this Court through CWJC No. 4021 of 2000 which was disposed of on 22.09.2005 directing the authorities to take steps for finalizing the panel for making recruitment in the backdrop of the advertisements of 1995 and 1997. The panel finally came to be prepared on 20.03.2007 (Annexure-7/A) to the supplementary affidavit wherein, the name of the petitioner appeared at serial no. 21 and respondent no. 6 was placed at serial no. 66. The appointment of various persons including the respondent no. 6 was made vide letter no. 2542 dated 24.04.2007 (Annexure-6) but the petitioner was not appointed.

4. Learned counsel for the petitioner submits that the appointment of respondent no. 6 is wholly illegal rather the petitioner ought to have been appointed in place of respondent no. 6, the latter being junior to him in the panel dated 20.03.2007.

5. Learned counsel for the State submits that against the four vacant posts in the backward category, three persons, namely, Bhupendra Kumar Yadav, Bijendra Mehta and Kedar Yadav at serial nos. 16, 17 and 18 of the panel, were appointed on the basis of their seniority. Against the last remaining vacancy, the respondent no. 6 was appointed in the light of the order of this Court dated 16.09.2004 passed in CWJC No. 5698 of 1999.



6. Learned counsel for the respondent no. 6 vehemently opposes the writ petition submitting that the respondent no. 6 had approached this Court in CWJC No. 5698 of 1999 wherein this Court vide its order dated 16.09.2004 directed as follows:-

“... However, as and when an advertisement is made for regular appointment the case of the petitioner can be considered for appointment on the aforesaid post after giving relaxation of his age to the tune of period he has discharged his duty as daily wage employee and weightage can be given to him for the work discharged by him if he is found equal to others.”

7. Respondent no. 6 then filed MJC No. 748 of 2006 which was disposed of on 20.12.2006 with the following observations :-

“From the show cause, it transpires that the steps for filling up the class-IV post on regular basis has been taken. Steps have been taken for preparing panel for that, an advertisement has been published on 07.9.2006. Applications are being received and the roster clearance is under process. From the show-cause, it appears that appropriate steps have been taken by O.P. No. 2 for compliance of the direction of this court. In paragraph 12 of the show-cause, it has been stated that case of the petitioner shall be considered along with others in the light of the Hon’ble Court’s order.

This contempt proceeding is dropped. It is expected that as per direction of this court, while considering the case of the petitioner, he will be given age relaxation and due weightage for his experience. His appointment will be



considered as per direction of this Court.”

8. It is therefore submitted on behalf of the respondent no. 6 that it was in pursuance of the orders of this Court granting him age relaxation and work experience, that he has duly been appointed vide letter dated 24.04.2007 (Annexure-6).

9. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds merit in the writ petition. The fact that the petitioner was placed at serial no. 21 of the panel dated 20.03.2007 and hence, senior to the respondent no. 6 who was placed at serial no. 66, is not in dispute. The respondent-State has taken the stand that the respondent no. 6 was appointed pursuant to the order of this Court passed in CWJC No. 5698 of 1999. Similar is the stand of the respondent no. 6, who claims to have been appointed on the basis of his work experience and with age relaxation, as directed by this Court in the said writ petition as well as in MJC No. 748 of 2006. The stand on behalf of the respondents cannot be accepted. The orders of this Court as referred to above merely contemplate that the petitioner could be considered for appointment and there was no positive order that he must be appointed. There was further rider in the two orders to the effect that the respondent no. 6 would be considered for appointment if he was found equal to others. More significantly, the case of respondent no. 6 was to be considered “as and when an advertisement is made for regular appointment” and



in the present case an advertisement was published on 07.09.2006 after this Court disposed of the writ petition on 16.09.2004. As far as the work experience of respondent no. 6 is concerned, the said order dated 16.09.2004 itself notices that as on that date the respondent no. 6 had put in 16 years of service meaning thereby that he had been working since 1988. As against this, the petitioner claims to have been working since 1982 as stated in paragraph 4 of the writ petition, which fact has not been controverted by any of the respondents. Let it be noted however, that the petitioner has not made any specific prayer challenging appointment of the respondent no. 6 and as such, this Court refrains from making any observation in that regard.

10. In the above circumstances, this Court is of the opinion that the respondents have erroneously failed to consider the case of the petitioner for appointment with reference to 1995 panel in proper perspective. The writ petition is accordingly disposed of with a direction to the District Magistrate, Saharsa (respondent no. 2) to consider the case of the petitioner for his appointment in the light of the observations made above, after affording an opportunity of hearing to both the petitioner as well as to the respondent no. 6, expeditiously and preferably within a period of three months from the date of receipt/production of a copy of this judgment. While disposing of the matter, the respondent no. 2 shall regard to the statement made in paragraph 10 of the supplementary counter affidavit filed on behalf of



the respondent nos. 2 and 3 to the effect that at present there are 53 vacancies of Group-D in Collectorate cadre.

(Vikash Jain, J)

B.T/Ibrar

AFR/NAFR	NAFR
CAV DATE	N.A.
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