

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3061 of 2017

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Mahesh Kumar, Son of Chandradeo Yadav, Resident of Phesra, P.S.- Guruwa,
District- Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Health Department,
Government of Bihar, Patna.
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The Principal, Anugrah Narain Magadh Medical College, Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sudhanshu Kumar Lal, Adv.

For the Respondent/s : Mr. Nagendra Pd.Yadav, SC23

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 07-04-2017

Heard Mr. Sudhanshu Kumar Lal, learned counsel for the
petitioner and Mr. Nagendra Prasad Yadav, learned SC-23, for the
State.

The grievance of the petitioner is that although he was
selected for appointment against the post of Peon vide order bearing
No. 02/C dated 11.1.2017, a copy of which is placed at Annexure 3,
but the joining of the petitioner vide Annexure 4 was not accepted and
a fresh list of selected candidate was pasted on the Notice Board on
16.1.2017 present at Annexure 5, which did not bear the name of the
petitioner. The petitioner filed his representation before the Principal,
A.N.M.Medical College and Hospital, Gaya and on getting no
response, has come before this Court for appropriate direction.

With the consent of the parties the writ petition has been



heard with a view to final disposal at the stage of admission itself.

The facts of the case are in a very narrow compass. It is in response to the advertisement published in the newspapers, a copy of which is placed at Annexure 1 and the computer generated copy is placed on record vide Annexure 7 to the rejoinder, the petitioner applied and was selected for appointment vide order dated 11.1.2017 at Annexure 3. The petitioner seeks appointment against a Class IV post. It is when the joining of the petitioner vide Annexure 4 on 16.1.2017, was not being accepted that he tried to find out the reason and when he gathered knowledge about a fresh list of selected candidates bearing office No. 45/2017 dated 16.1.2017, a copy of which has been placed at Annexure 5, which does not contain the name of the petitioner. The petitioner represented before the Principal of the College vide Annexure 6 but with no response and hence, this writ petition.

A counter affidavit is filed enclosing the application of the petitioner at Annexure 'A' and it is the stand of the respondents that since the advertisement number was wrongly mentioned in the application form, which has led to its cancellation on 15.12.2016 and consequently his name has been deleted from the select list.

Mr. Lal, learned counsel for the petitioner, has made reference to the computer generated copy of the advertisement placed at Annexure 7 to submit that whereas the computer generated copy



does not contain any advertisement number, in so far as the newspaper publication of the notice at Annexure 1 is concerned, the number given at the bottom of the advertisement is a Press Release number and would not signify the number of advertisement. He next refers to the provision relating to scrutiny as present in the advertisement to submit that the scrutiny of the application took place in between 10.12.2016 and 13.12.2016 and no infirmity was found in the application form of the petitioner rather the petitioner crossed the stage to participate in the interview. He submits that the stipulation relating to scrutiny clearly mentions that it is only such of the applicant whose application is found in order, would be entitled for interview. He submits that the interview of the petitioner took place on 15.12.2016 and whereafter the select list at Annexure 3 was published. He, thus, submits that the cancellation of the application of the petitioner is illegal and an abuse of the executive power by the authorities.

Mr. Yadav, learned counsel for the State, contesting the argument of Mr. Lal has submitted that apart from the admitted fact that the application of the petitioner mentioned a wrong advertisement number, even otherwise the result at Annexure 3 does not reflect a correct position because though the petitioner comes from Backward category but his result has been published against Extremely Backward Class Category. He submits that no privilege can be



claimed by the petitioner on this result which is an incorrect reflection of the factual position. It is also the stand of Mr. Yadav that the petitioner has not participated in the interview and even on this ground the prayer is fit to be rejected.

I have heard learned counsel for the parties and have perused the records.

Although Mr. Yadav, learned SC-23, has raised several grounds to disqualify the petitioner from selection but the counter affidavit does not refer to any such objection, rather paragraphs 8 to 10 of the counter affidavit simply refers to an incorrect mentioning of the advertisement number by the petitioner in the application form which has led to its cancellation. In my opinion, while the objections raised by Mr. Yadav relating to category of the petitioner and whether on the basis of marks secured, he would be within the select list of Backward category candidate and whether he actually participated in the interview, though relevant but not being the foundation for his non-selection, this Court would not express any opinion at this stage. The reason for non-selection of the petitioner as it transpires from the stand taken by the Principal in his counter affidavit and the supplementary counter affidavit is, the wrong mentioning of the number in the application form, which in my opinion is an absurdity because as rightly canvassed by Mr. Lal, the computer generated advertisement notice at Annexure 7 does not refer to any number and



on the other hand, the paper advertisement refers to a Press Release Number. Even otherwise, the incorrect number mentioned in the application form, a copy of which is Annexure 'A', was well to the knowledge of the respondents, when it was put to scrutiny and apparently they have chosen to ignore the defect and allow the petitioner to participate in the interview. Be it on merits or the scrutiny stage crossed by the petitioner, the respondents cannot now revert back to disqualify him on a technicality of an error occurring in the application. Reference in this regard is made to the judgment of the Supreme Court in the case of **M/s Hindustan Sugar Mills v. State of Rajasthan & ors.**, reported in (1980) 1 SCC 599, and the opinion expressed in the judgment would be an advice to the respondent authorities, which reads as follows:

" We hopefully expect that the Central Government will not try to shirk its legal obligation by resorting to any legal technicalities, for we maintain that in a democratic society governed by the rule of law, it is the duty of the State to do what is fair and just to the citizen, and the State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness and justice demand."

Similar expression can be found in paragraph 5 of the judgment reported in (2010)1 SCC 512 (Urban Improvement Trust, Bikaner v. Mohan Lal), which reads thus:

"5. It is a matter of concern that such frivolous and unjust litigations by Governments and statutory authorities are on the increase. Statutory authorities exist to discharge statutory



functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and high-handed manner. They cannot behave like some private litigants with profiteering motives.
..... "

In my opinion the objection taken by the respondents to reject the application form is an instance of a State body litigating at the lowest ebb. The computer generated advertisement bears no number and the paper advertisement bears Press Release Number which is not the same as an advertisement number. A non issue has been given a bloated status to disqualify the petitioner.

For the reasons aforementioned, the ground assigned in the counter affidavit to reject the candidature of the petitioner cannot be upheld and is accordingly quashed and set aside.

The issue again has to be seen in the background of the issues pointed out by Mr. Yadav with reference to Annexure 3 which categorizes the petitioner amongst Extremely Backward category candidate although he comes in the Backward category and whether the petitioner has participated in the interview.

These two issues definitely needs to be satisfied i.e. whether the petitioner has participated in the interview and if 'Yes' then whether the marks secured by the petitioner would bring him within the merit list of being appointed amongst the candidates who have been selected within the Backward Class category. The matter is remitted to the Principal, A.N.M.Medical College and Hospital, Gaya



for taking a decision in this regard within a period of four weeks of the date of receipt/ production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2017
Transmission Date	NA

