

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7390 of 2010

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Sudhir Choudhary, S/o Late Kalru Choudhary, resident of Village and P.O. -
Parwana, P.S.-Hathari, District-Samastipur.

.... Petitioner

Versus

1. The State of Bihar.
2. The Secretary, Personnel and Administrative Reforms Department, Bihar,
Patna.
3. The District Magistrate, Samastipur.
4. The Superintending Engineer, Rural Works Department, Work Circle,
Darbhanga.
5. The Executive Engineer, Rural Works Department, Works Division, Rosera,
District- Samastipur.
6. Binod Kumar, S/o Sri Ram Sunder Singh, resident of Village and P.O. Karuwa,
Via-Pusa, P.S.- Chakmaheshi, District-Samastipur.
7. Yugal Yadav, S/o Sri Muneshwar Yadav, resident of Village and P.O.-
Pokhrera, Via- Viroli, P.S.- and District-Samastipur.
8. Suresh Sah, S/O Sri Jageshwar Sah, resident of Village-Virsinghpur
Mahendabad, P.S. Kalyanpur, District- Samastipur.
9. Chandeshwar Rai, S/o Sri Yogendra Rai, resident of Village & P.O.- Purlahi,
P.S.- Waris Nagar, Via - Kisanpur, District- Samastipur
10. Giriwar Krishna Vikrampur, S/o Late Ram Krishna, resident of Village &
P.O.- Vikrampur Bande, Via-Sambhoopatti, District- Samastipur
11. Upendra Rai, S/O Sri Pitamber Rai, resident of Village & P.O.- Vikrampur
Bande, Via-Sambhoopatti, District- Samastipur
12. Superintending Engineer, Rural Works Department, Work Circle,
Samastipur
13. District Level Panel Formation-cum-Appointment Committee through
the Chairman-cum-District Magistrate, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Rajendra Narayan, Sr. Advocate.
Mr. Asit Kumar Jha
Mr. Gopal Jha, Advocates.

For the Respondents : Mr. (GP-22)

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 06-11-2017

Heard learned counsel for the petitioner and learned
counsel for the respondents.



2. The present writ petition has been filed for quashing of the proceedings/recommendations dated 06.03.2010 (Annexure-11) held by the District Level Panel Formation-cum-Appointment Committee with respect to the recommendations made for the appointment of 6 (six) candidates in the Class-IV category at the Rural Works Department, Works Division, Rosera, District-Samastipur; and to consider the candidature of the petitioner whose name has been excluded by the Respondent No. 3 without assigning any reason.

3. The short facts of the case according to the petitioner are that on 01.05.1988, he was appointed as a Godown Chowkidar on daily wage basis at Rural Engineering Organisation Camp-Rosera, District- Samastipur. As he had skill/knowledge of Civil Drawing, he was asked to perform the duty of *Tracer*. The petitioner worked for the period 01.05.1988 to 30.11.1993 but all of a sudden from 01.12.1993, he was disengaged/removed from service. The petitioner approached this Court in C.W.J.C. No. 11414 of 1994 and pursuant to the orders passed therein, he filed representations before the respondents for appointment on the post of *Tracer*. Owing to inaction on the part of the respondents, the petitioner once again moved this Court in C.W.J.C. No. 7200 of 2000 which was disposed of with an observation granting liberty to the petitioner to move this Court for initiation of contempt proceedings in case the petitioner filed application pursuant to



advertisement and the order of this Court was not complied with. The petitioner accordingly once again represented before the authorities but however, the respondent no. 5 informed the petitioner by his letter dated 25.09.2000 that he stood removed from service in view of Resolution dated 18.06.1993. Thereafter, an advertisement in January, 2006 was published by the District Magistrate, Sitamarhi, pursuant to which the petitioner applied on 28.03.2006 through *Speed Post* and submitted all the relevant documents along with his application as required in terms of letter dated 16.06.2006 issued by the Under Secretary, Rural Development Department (Rural Engineering Organisation), Patna calling upon all the Departments of State Government to prepare a panel of retrenched employees having worked for a minimum period of 240 days prior to 11.12.1990 for consideration of their cases in accordance with Resolution dated 16.03.2006 of the Personnel and Administrative Department, Patna. The Superintending Engineer, Rural Works Department, Work Circle, Darbhanga (respondent no. 4) asked all the Executive Engineers (respondent no. 5) including the Rural Engineering Organisation, Rural Works Department, Work Division, Rosera, District-Samastipur to furnish the details of such daily wages employees, which were duly prepared and sent to the Superintending Engineer, Rural Works Department (respondent no. 4) by letter dated 25.07.2007 (Annexure-6) according to which the petitioner stood at Serial No. 8 showing him



to have worked for a total number of 1716 days. The petitioner also filed a representation before the Committee consisting of three Secretaries constituted for adjudication of claims of daily wage employees. The representation was instituted as Miscellaneous Case No. 34 of 2007 which however came to be rejected by the Secretary, Personnel and Administrative Reforms Department (respondent no. 2). By letter dated 12.11.2009, the Executive Engineer, R.E.O., Work Division, Rosera (respondent no. 5) informed the District Magistrate, Samastipur that at the Divisional Level there were 19 posts of Class-IV of which 6 (six) were vacant (Annexure-10). The District Magistrate published a panel of eligible candidates for appointment in different Departments of the Government but however the petitioner's name did not find place in the said panel. The petitioner filed his objection but however the final list was published on 23.02.2010 by the District Magistrate, Samastipur and interview held the very next day on 06.03.2010. A meeting of the District Level Panel Formation-cum-Appointment Committee under the Chairmanship of the District Magistrate, Samastipur was held and several candidates were recommended for appointment including 6 persons (respondent nos. 6 to 11) for appointment in the office of the Executive Engineer, Rosera (respondent no. 5).

4. Mr. Rajendra Narayan, learned Senior counsel appearing on behalf of the petitioner, submits that the respondents



have acted in a most arbitrary manner in not considering the case of the petitioner for appointment to Class-IV post despite the orders of this Court. It is stated that the petitioner had duly applied in pursuance of the advertisement published in January, 2006 but however his name had been kept out of the panel prepared and his case had not been considered. The respondents have acted contrary to Resolution dated 16.03.2006 (Annexure-3) according to which retrenched employees of any Department had to be adjusted against the vacancy only in that Department from where they have been retrenched, whereas the respondent nos. 6 to 11 who had been appointed. The persons who had been recommended for appointment in the office of the Superintending Engineer, Darbhanga had never worked in the Department on daily wage basis. The petitioner had admittedly worked for 1716 days i.e. more than 240 days on daily wage basis prior to 11.12.1990 as evident from the letter dated 25.07.2007 of the Executive Engineer, Rosera (Annexure-5) and hence he was eligible to be considered for appointment in terms of the Government Resolution. It is further submitted that the appointment of the six persons (respondent nos. 6 to 11) was contrary to the reservation policy of the State Government as they are all persons belonging to the BC-II category as evident from the minutes of the meeting dated 06.03.2010 of the District Level Panel Formation-cum-Appointment Committee (Annexure-11), whereas according to the letter no. 1624 dated 25.06.2012 (Annexure-19), the



reservation roster approved by the Commissioner showed that appointments of six persons had to be made against the roster points 217 to 222 namely EBC-1, BC-1, BC Women-1 and Open Category-3. It is further submitted that the relevant Rules of the State Government required roster clearance prior to appointment but in the present case, the appointments have been made in anticipation of roster clearance as evident from Note-4 of the appointment letters of the said six persons (Annexures 24 and 25).

5. Mr. Kumar Alok appearing on behalf of the respondents vehemently opposes the writ petition and has advanced detailed arguments on the various issues raised by the petitioner. He has sought to defend the appointment of the 6 persons (respondent nos. 6 to 11), submitting that pursuant to the advertisement for appointment of all eligible persons, the District Magistrate accordingly obtained details with regard to available posts in the Rural Works Department, Works Division, Rosera and was informed about the vacancy of 6 posts out of 19 sanctioned posts. A panel of 224 persons was prepared which did not include the name of the petitioner. As regards the roster clearance, it is submitted that the appointments have been made in terms of letter no. 189 dated 24.02.2010 issued from the office of the Commissioner Darbhanga Division, Darbhanga which required filling up of the vacancies with reference to the approved roster of the year 2007 which had not been filled up. The process of selection at the District Level



was required to be carried out by the Selection Committee headed by the District Magistrate as required in terms of Government's letter dated 03.12.1980 (Annexure-C) as mentioned in the advertisement, and had accordingly the exercise for selection had been undertaken by the District Magistrate, and thereafter the appointments of the six persons (Respondent Nos. 6 to 11) had been made by the Superintending Engineer, Darbhanga as appointing authority.

6. Despite issuance of notices to the respondent nos. 6 to 11 by order dated 27.04.2017 which were validly served, none has entered appearance nor are they represented when the matter is called today.

7. It has been claimed by the petitioner that even though he had worked for more than requisite number of days in terms of the Government resolution and his name appeared at serial no. 8 of the letter dated 25.07.2007 issued by the Executive Engineer, Rosera (Annexure-6) informing the Superintending Engineer, Darbhanga with regard to the vacant posts and the list of persons who had worked on daily wages, he had not been considered for appointment. It has further been submitted that the petitioner had applied on 28.03.2006 pursuant to the advertisement, but he has been ignored during preparation of the panel. As such, by order dated 08.09.2017, this Court required the respondents to take a clear stand in the above regards whether the petitioner had been considered for appointment



on the basis of his past service as well as with regard to his claim of having applied on 28.03.2006 pursuant to the advertisement and the reason why the petitioner was not empanelled in the panel of 224 candidates which had been prepared. A clarification was also sought with regard to the letter dated 25.06.2012 (Annexure-19) and whether the details of the roster points therein related to Darbhanga Circle and not to the office of the Executive Engineer, Rosera.

8. Pursuant to the aforesaid order dated 08.09.2017, a second supplementary counter affidavit has been filed in which it has been admitted that pursuant to the advertisement, the petitioner had applied for inclusion in the panel vide application serial number 5290. Apart from such admission, however, no further clarification has been forthcoming from the respondents.

9. In the above facts and circumstances of the case, it is therefore abundantly clear that the respondents are unable to explain the reasons why the petitioner has been ignored and has been excluded from the zone of consideration despite having applied pursuant to the advertisement, moreso in the backdrop of the order dated 08.08.2000 passed by this Court in C.W.J.C. No. 7200 of 2000 which contemplated that the petitioner had to be considered if he applied pursuant to an advertisement. The respondents have not offered any details, clarification or basis for preparation of the panel of 224 persons. This Court has thus no hesitation in holding that the



respondents have acted arbitrarily and in a manner lacking in transparency in keeping the petitioner out of the zone of consideration. This Court is therefore of the view that the writ petition must succeed on this score alone and there would be no need to adjudicate upon the rival submissions of the parties on the other aspects of the matter.

10. The respondents are accordingly directed to consider the case of the petitioner on the basis of his application made pursuant to the advertisement published in January, 2006. In case he is otherwise found eligible and fit for appointment, he shall be so appointed to a Class-IV post in the office of the Executive Engineer, Rosera, Rural Works Department, Works Division, Rosera and for this purpose the person having the least marks out of the six persons who had been appointed against the six vacant posts (respondent nos. 6 to 11) shall make way to accommodate the appointment of the petitioner. Consequently, the impugned office order bearing Memo No. 1022 dated 28.03.2012 (Annexure-24) or office order bearing Memo No. 1069 dated 31.03.2012 (Annexure-25) only to the extent that it is relatable to the outgoing appointee as stated above, shall stand treated as quashed. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	NAFR
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CAV DATE	N.A.
Uploading Date	07.11.2017
Transmission Date	N.A.

