

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1338 of 2013
IN
Civil Writ Jurisdiction Case No. 935 of 2013

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Neelam Kumari Devi Daughter of Mahendra Paswan And W/O Shambhu Paswan
Resident of Village - Turki, Tola - Barkurwa, P.S. Kurhani, Distt. – Muzaffarpur

.... Respondent 2nd Set/Appellant
Versus

1. The State of Bihar
2. The Principal Secretary, Deptt. of Social Welfare, Govt. of Bihar, Patna
3. The District Magistrate, Muzaffarpur
4. The Commissioner, Tirhut Division, Muzaffarpur
5. The District Programme Officer, Muzaffarpur

.....Respondent 1st Set

6. Rambha Kumari D/O Kapildeo Ram, W/O Praful Kumar Resident of Village - Kalibari, Mali Ghat, Muzaffarpur
7. Kumari Medhavi (Detail Not Found in The Merit List)
8. Punam Kumari D/O Bhikhari Rajak, W/O Ram Prakash Rajak Resident of Jamalabad, Uma Nagar, Minapur, Muzaffarpur
9. Sushma Kumari D/O Jagat Paswan Resident of Village - Jhapaha, Ahiyapur, Muzaffarpur
10. Punam Devi D/O Satya Narain Choudhary, W/O Manoj Kumar Chaudhary Resident of Village - Dadarkolhua, Paigambarpur, Muzaffarpur

.....Respondent 2nd Set

11. Krishna Kumari W/O Ram Sewak Paswan Resident of Village - Madhurapur, P.O. Sahila Rampur, P.S. Hathauri, Distt. - Muzaffarpur, At Present Resident of Bhagwanpur Shiv Mandir, P.S. Sadar, Distt. – Muzaffarpur.

.....Writ Petitioner/Respondent 3rd Set

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Verma, Advocate
For the State : Mr. A.C. to S.C. 18

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
And
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)



Date: 15-02-2017

This Court is not willing to set aside the order of the learned Single Judge on the technicality that the appellant i.e. respondent no. 11 was not heard by the learned Single Judge, while deciding the writ application vide his order dated 03.07.2013, which is being challenged. The reason for doing so is that, no purpose would be served and no different conclusion would be reached by setting aside the order and remanding the matter for fresh consideration. This is the conclusion we arrive at after hearing the counsel for the appellant.

The finding of the learned Single Judge is that the petitioner who is Respondent No. 11 in the present appeal, was an intermediate, though she had a qualification known as Vidya Vinodini which is said to be equivalent to matriculation but not recognized as such by the State authorities. But since the appointment was made on the basis of the intermediate qualification which is a higher qualification and the total points which accrued in favour of the petitioner was 89.80, whereas the present appellant had only 82 marks. Ordering removal of the private respondent, i.e. the petitioner of the writ application will, in no manner help the present appellant, occupy the post on the vacancy created by her removal as she is not next in the serial.



Counsel for the appellant harps on the same point that the minimum qualification was matriculate. She was not a matriculate because Vidya Vinodini was not recognized as equivalent to matriculate. She could not have been appointed in the very first place. The submission of the counsel for the appellant is flawed because intermediate is a higher degree and, therefore, once a candidate acquires a higher degree, the validity or no validity of previous degree loses its meaning.

The finding of the learned Single Judge is that since the petitioner of the writ application had a higher percentage of marks than any of the shortlisted candidate, much more than the present appellant, a direction was issued to appoint her on the post of female supervisor.

Since by allowing the appeal and remanding the matter, the final position will not alter, merely on the ground that the present appellant was not heard by the learned Single Judge, it will be a futile exercise amounting to nothing. Thus Division Bench gave adequate opportunity to the counsel for the appellant to dislodge the findings as well as the final outcome of the direction in favour of the petitioner of the writ application, but the final conclusion reached by the learned Single Judge does not alter in any manner.



In view of the same, the appeal has no merit, it is
dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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