

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6451 of 2008

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Kundan Prasad Singh, son of Jharu Prasad Singh, Residents of Village-Pakra, P.S. –
Naugachia, District –Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar
2. The District and Sessions Judge, Purnea
3. The Registrar, Purnea Civil Court, District Purnea.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Brajesh Kumar Singh, Advocate

For the Respondent Nos. 2 and 3 : Mr. Bindhyachal Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 18-01-2017

Heard learned counsel for the petitioner and Mr.
Bindhyachal Singh, learned counsel for respondent nos. 2 and 3.

The present writ application has been filed for the
following reliefs :-

"a) a writ in the nature of mandamus be
issued, commanding the respondents to select and
appoint the petitioner on Class IV post in their services
within Purnea Judgeship.

b) any other relief/reliefs which the
petitioner may be found entitled in the facts and
circumstances of this case."



The factual matrix would unveil that the petitioner was engaged as Ummidbar peon in 1994 in the Judgeship of Purnea. While the petitioner was working as Ummidbar Peon, Advertisement No. 1/99 was issued for appointment to Class IV post. The petitioner made application and on 4.1.2008, the date was fixed for interview, but the interview was not conducted on that date. The petitioner applied in pursuance to the subsequent Advertisement no. 2/03, made for recruitment of Class IV post in the judgeship of Purnea and the petitioner was consequently interviewed on 11.1.2008 but in spite of satisfactory performance, the petitioner was not selected. Though the petitioner earlier filed a writ application being C.W.J.C. No. 7160 of 2004, with a prayer for regularizing the service on account of being engaged from before, as Ummidbar Peon, but since the petitioner had applied in pursuance to the Advertisement for regular appointment, the petitioner's prayer for withdrawal of the said writ application was allowed vide order dated 31.8.2005, as contained in Annexure-1.

It is submitted by learned counsel for the petitioner that the petitioner worked as a casual worker in the Judgeship of Purnea from 1994 to 2001. In the year 1994, respondent authorities prepared



a list of casual workers for getting them regularized. The petitioner came to know that his name was on the top of the list but thereafter a second list was prepared in 2001, wherein the petitioner's name did not figure, and in 2001, the petitioner was removed. The petitioner submitted several representations before the respondent authorities for redressal of grievances (for regularization), as contained in Annexure 2, but it was not considered. The petitioner applied for regular appointment in pursuance to the Advertisement of 1999 for which interview was fixed on 4.1.2008 but he was not selected. The Selection Committee did not follow the reservation policy. It is contended by the petitioner that the Selection Committee resorted to unfair practice. The petitioner sought information under the Right To Information Act on 3.3.2008, to seek reasons for his non-selection. The petitioner was called on 13.3.2008 but the information was not provided to him. Hence, the petitioner filed the present writ application. Though the petitioner admits that previously another writ application was filed by him for regularization of his service, since he worked as casual worker till 2001, but the petitioner withdrew that writ application since he had applied for regular appointment in pursuance to the subsequent advertisement.

Mr. Bindhyachal Singh, appearing for respondent nos.



2 and 3, submits that the petitioner was never appointed as casual worker, rather he was enrolled as candidate Peon on 04.04.1994 till 24.04.1995, but the work of the petitioner was not satisfactory as he absented himself without any information to the authorities concerned, from 17.2.1995 to 6.3.1995 and from 16.3.1995 to 23.3.1995. It is further contended that all the 14 candidate Peons worked till 1995 only and no appointment of candidate Peon was made thereafter in the Judgeship of Purnea. All the candidate peons were appointed in two transactions and the petitioner has wrongly claimed that he worked as Ummidbar Peon till 2001. It is further submitted that no list was prepared for regularizing Ummidbar Peon nor any document to that effect has been brought on record by the petitioner. It is further contended that a false statement has been made in paragraph 11 of the writ petition that the petitioner submitted representations. No representation of the petitioner was received in the office of the respondent no. 2. The petitioner made application in pursuance to Advertisement no. 1 of 1999 and 2 of 2003 but the petitioner made false statement that interview could not be conducted on 4.1.2008 but the fact is that the interview was conducted on 4.1.2008 and 11.1.2008. The petitioner appeared in the interview on 4.1.2008, whereas he falsely claims that he appeared at



the interview on 11.1.2008. These facts get clarified from the attendance sheet of the interview dated 4.1.2008. Though three advertisements were made, vide Advertisement Nos. 1/99, 2/03 and 3/07 and a common interview was taken but the petitioner's performance was not found satisfactory. Hence, the petitioner's name did not find figure in the select list.

So far as non-supply of information under the Right to Information Act is concerned, the petitioner failed to submit the required fee, inspite of intimation and hence the same was not supplied.

52 persons were selected as per the merit list and the persons from serial number 53 to 83 were in the waiting list but the name of the petitioner did not find place either in the merit list or in the waiting list, though waiting list candidates were not appointed.

Learned counsel for the State submits that the State is a formal party hence, he has no say in the matter.

Considering the rival submissions of the parties, it is apparent that the petitioner has only claimed for being appointed on Class IV post though pleadings have been made to the effect that the petitioner claimed his regularization by virtue of having worked as Ummidbar Poen from 1994 to 2001 and for the same C.W.J.C. No.



7160 of 2004 was filed and the same was dismissed as withdrawn. The petitioner has not made out any foundational fact making out a case for interference.

In the counter affidavit filed by respondent nos. 2 and 3, it has been specifically stated that the petitioner had made several false statements, particularly, with regard to his working as casual worker from 1995 to 2001, whereas he was removed for being absent from work without information to the authorities, in the year 1995 itself and with regard to the submission of representation. Hence, the writ application is fit to be dismissed on this ground alone.

In the interview based selection, the satisfaction of the Selection Committee is of paramount importance. Since the services of the petitioner while he was Ummidbar Peon was not satisfactory, hence that might be a reason for the selection committee not to select the petitioner. In reply to the counter affidavit filed by the petitioner, the petitioner has not controverted any contention of respondent no. 2 made in the counter affidavit, rather it is only pleaded in reply that all Ummidbar Peons were not selected which clouds the entire selection process but there is nothing on record to suggest that the advertisement stipulates any weightage to be given to the Ummidbar



Peon who worked at any point of time earlier. The petitioner has not raised any objection with regard to the selection process not being conducted as per the rules, nor is there any violation of the terms of advertisement. It is well settled law that where selection is to be made only on the basis of interview, the Commission or Selection Board can adopt a rational procedure for making selection and the satisfaction of the interview board is of paramount importance. Since the interview was conducted by the board and nothing specific has been raised with regard to the fairness and impartiality of the Selection Committee. Merely on the assertion that the petitioner ought to have been appointed since he worked for some time as Ummidbar Peon, no direction can be given in this regard. The petitioner's name neither found place in the merit list nor in the waiting list, which could be attributable to his prior performance in the interview. Hence, the petitioner has not pleaded any foundational facts for alleged malafide.

Interview is the best mode to assess the suitability of a candidate for a particular post. While the written examination testifies the candidate's academic knowledge, the oral test alone can bring out and disclose his overall personality and alertness and ability to take decision and other things. The selection committee was the best body



to get the suitable candidates as per requirements.

The writ application also fails on the ground of not impleading the selected candidates in the array of party respondents. Though the petitioner has only claimed for being appointed but such claim cannot be considered because once it is considered, it may lead to displacement of the selected persons from the present rank. Besides, some of them also have to go out of the select list, hence it was imperative on the part of the petitioner that all selected persons should have been made party respondents in the writ application in the absence of which no order could have been passed affecting their rights without giving them an opportunity of being heard. Moreover, filing of such kind of frivolous writ applications has been deprecated by the Apex Court in several judgments where the candidate participates in the interview and when he fails, he subsequently files an application as the result was not palatable to him. Useful reference may be made to the case of Madanlal & Ors. Vs. State of J & K & Ors. (1995) 3 SCC 486 and Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Ors. 1986 (Supp) Supreme Court Cases 285, where it has been clearly laid down by a Bench of Hon'ble Apex Court, that when a candidate appears in the examination without protest and when he finds that he would not succeed in the examination, he files a petition



challenging the said examination, the High Court should not entertain such applications.

This Court finds no reason for interfering in the matter, on any score, more so, since the appointment was made in 2008, this Court is not inclined to interfere in the matter at this stage after more than seven years.

This writ application is, accordingly, dismissed.

(Dinesh Kumar Singh, J)

Ashwini/-Anil/

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	/04/2017
Transmission Date	NA

