

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6744 of 2010

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Mahesh Prasad, S/O Ram Preet Prasad, R/O Village- Kusait Garh, P.O.- Mandachh,
P.S.- Hilsa, Distt.- Nalanda

.... Petitioner

Versus

1. The State of Bihar
2. The Director, Panchayati Raj Govt. of Bihar, Old Secretariat, Patna
3. The District Magistrate, Nalanda
4. The District Panchayati Raj Officer, Nalanda
5. The Sub-Divisional Officer, Hilsa, Distt.- Nalanda
6. The Block Development Officer, Hilsa, Distt.- Nalanda
7. The Gram Panchayat Supervisor Nodal Officer, Hilsa, Distt.- Nalanda
8. The Sarpanch, Gram Kachahari Korawan, Hilsa, Distt.- Nalanda
9. Mr. Anil Kumar Singh, son of not Known to the Petitioner, R/O Vill.-
Mokilapar, P.S.- Hilsa, Distt.- Nalanda
10. Mr. Upendra Prasad, son of Late Ram Sidheshwar Prasad, resident of village-
Kusait, P.S.- Hilsa, District- Nalanda.
11. Mr. Ajay Kumar, son of Sri Krishna Narain Singh, resident of village- Shiv
Shankarpur, P.S.- Teghra, District- Nalanda.
12. Mr. Subhash Kumar, son of Sri Krishadeo Prasad, resident of village- Sudikpur,
P.S.-Teghra, District- Nalanda.
13. Mr. Rajkishore Prasad, son of Yogendra Prasad, resident of village- Milkipur,
P.S.- Hilsa, District- Nalanda.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Pankaj Kumar, Advocate
For the State : Mr. Y.P. Sinha, A.A.G.-7

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 05-03-2018

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



2. In this case, the petitioner is challenging the order dated 18.03.2010 passed by the District Magistrate, Nalanda, in Miscellaneous (Nyay Mitra) Case No.11 of 2010, whereby and where-under he has been removed from the post of 'Nyay Mitra' holding that having a lesser mark even then he was appointed to the said post and thereafter he was sent for training but at no stage, the payment has been made to the petitioner and further stated that the post was reserved for the backward class female but wrongly the male candidate i.e. the present petitioner has been appointed on the said post. But at the end of the order, it has been recorded that Sub-Divisional Officer, Hilsa, is the competent authority to pass the order and accordingly, the District Magistrate has transferred the matter to the Sub-Divisional Officer, Hilsa, for passing appropriate order. Where-after, the Sub-Divisional Officer, has passed the orders dated 13.05.2010 (Annexure-7), 12.06.2010 (Annexure-8) and 16.03.2010 (Annexure-9) on the same line holding that the selection of the petitioner to the post of 'Nyay Mitra' was wrong as roster point reflects that it was meant for backward class female.

3. Learned counsel for the petitioner submits that all three orders suffers from apparent illegality on the fact that the Sub-Divisional Officer has only followed the order of the District



Magistrate on the dotted line as the fact is that at the initial stage the District Magistrate passed the order and held that appointment of the petitioner is illegal and referred the matter to the Sub-Divisional Officer for passing appropriate order as under the rules, he has no jurisdiction to pass order, it is the Sub-Divisional Officer, who is the competent authority to take decision whereas the District Magistrate is the appellate authority.

4. In such view of the matter, when the District Magistrate has passed the order and recorded that the appointment of the petitioner is illegal, nothing left for the Sub-Divisional Officer to decide, thereby the right of appeal available to the petitioner has been taken away by passing the order of the District Magistrate.

5. In such view of the matter, the order of the District Magistrate, Nalanda dated 18.03.2010 passed in Miscellaneous (Nyay Mitra) Case No.11 of 2010 (Annexure-6) as well as the order of the Sub-Divisional Officer, Hilsa, dated 13.05.2010 (Annexure-7) and order dated 12.06.2010 (Annexure-8) are set aside. Consequently, the order dated 16.03.2010 (Annexure-9) passed by the Sub-Divisional Officer is also set aside. The matter is remanded back to the Sub-Divisional Officer, Hilsa, to examine the case of the petitioner afresh and take decision in according with law.



6. Accordingly, this writ petition is disposed of. It is clarified that this Court is not giving any opinion on the merit of the case.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	15.03.2018
Transmission Date	N/A.

