

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10936 of 2014

Gautam Paswan @ Gautam Kumar son of Sri Prasadi Paswan, Resident of village and P.S. Halsi, District- Lakhisarai

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar at Patna
2. The Divisional Commissioner, Munger Division, Munger
3. The District Magistrate-cum-Collector, Lakhisarai
4. The Additional Collector, Lakhisarai
5. The Block Development Officer, Lakhisarai
6. The Child Development Project Officer, Lakhisarai

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bhola Kumar
For the Respondent/s : Mr. SC17- ARVIND KUMAR

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 23-03-2018

This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 6.5.2014 (Annexure-3) passed by the District Magistrate, Lakhisarai (Respondent no. 3) by which services of the petitioner has been terminated.

Briefly stated the case of petitioner is that he was appointed on daily wages with effect from 2.10.2002 in the office of Child Development Programme Officer, Lakhisarai, on the sanctioned post of jeep driver. Petitioner served as daily wager for seven years and his services were regularized with effect from 19.1.2013



by order dated 19.1.2013 passed by the Collector, Lakhisarai, and his service book was also opened on 19.9.2013 and he was directed to join office of B.D.O., Barbigha, in the district of Lakhisarai and he joined there on 22.1.2013. However, his services has been terminated by the District Magistrate, Lakhisarai (Respondent No. 3) by order dated 6.5.2014 without any departmental proceeding.

It has been further submitted on behalf of petitioner that he was appointed by District Magistrate, Lakhisarai (Respondent No. 3) in terms of direction given by the Hon'ble Court by order dated 25.1.2012 passed in MJC No. 3769 of 2011(arising out of CWJC No. 16679 of 2009). It has been further submitted that services of petitioner has been terminated on the ground that name of petitioner does not appear in the panel of the year 2002. However, it is submitted that there is no direction by this Court to make appointment from 2002 panel which was cancelled by Divisional Commissioner, Munger Division (Respondent no. 2) by order dated 2.10.2003. As such, there cannot be any appointment from 2002 panel. The ground for his removal that name of petitioner does not appear in panel of 2002 is erroneous.

It has been further submitted that there was no direction in CWJC No. 16679 of 2009 for making appointment from 2002



panel. The aforesaid order was challenged in LPA No.775 of 2012 by the State of Bihar but the same was withdrawn on 25.9.2012.

Petitioner has further submitted that Respondent No. 3 has taken shelter for his removal for order passed in CWJC No. 18240 of 2008 and its contempt in MJC No. 1230 of 2013. In MJC No. 1230 of 2013 the State had made a false statement before this Hon'ble Court that petitioner was appointed on contractual basis whereas petitioner has been appointed on regular basis. The State of Bihar had again filed MJC No. 1162 of 2014 for modification of the order passed in MJC No. 3769 of 2011 for seeking permission to terminate petitioner but the same was withdrawn on 16.4.2014 yet the services of petitioner has been terminated.

In the case of Gopal Kumar, this Court had never directed Respondent No. 3 to terminate the services of petitioner and appoint Gopal Kumar in his place. Petitioner belongs to Scheduled Caste after roster clearance he has been appointed and he is having the required educational qualification being passed Madhyama from Bihar Sanskrit Shiksha Board.

A counter affidavit has been filed on behalf of Respondent Nos. 3 and 4 in which it has been stated that petitioner had worked as daily wager from 2.10.2000 in the CDPO office, Lakhisarai. He filed CWJC No. 16679 of 2009 for regularization of his service



from daily wager to a regular employee in which this Court directed to make regular appointment on the vacant sanctioned posts of jeep drivers in Collectorate, Lakhisarai, within one year as per recruitment procedure for regular appointment and to do away with taking work by daily wager as same has been condemned by Apex Court in judgment of Uma Devi and others and if petitioner applies, his case may be considered for relaxation of age and weightage of past work experience, if admissible.

However, from perusal of order dated 2.10.2000 passed in CWJC No. 16679 of 2009 it is apparent that the case of petitioner for regularization of his services was rejected by the Hon'ble Court and the Court had directed the Respondents not to take work on daily wages and to make regular appointment as per recruitment rules and as such services of petitioner was discontinued as daily wager in compliance with order passed by High Court and process for appointment on regular basis was initiated.

Petitioner had filed MJC No. 3769 of 2011 for non-compliance of order passed in CWJC No. 16679 of 2009 on the ground that even after direction for regular appointment within one year, no such appointment was made. In the said MJC a show cause was filed on behalf of the Respondents that against thirteen



posts, ten posts have been filled up by regular appointment and three posts are still vacant which may be filled by regular appointment and Court dropped the contempt proceeding with liberty to make all appointments within six months.

The meeting of Establishment Committee was called on 8.1.2013 in which Gautam Paswan @ Gautam Kumar (petitioner) along with two drivers were selected for appointment. From the records which have been produced by Respondents it appears that the appointment of petitioner was made on the basis of direction issued by this Court in MJC No. 3769 of 2011 dated 25.11.2012 but this Court is unable to find any such direction passed by the Court to appoint petitioner on the post of driver.

It is yet surprising that in the meeting of Establishment Committee held on 8.1.2013 the post of driver was meant for backward class candidate but in a most strange manner the post was converted as Scheduled Caste post on the ground that no backward candidate was available although in the panel prepared in the year 2002 many names of backward candidates were empanelled but none of the candidates, who were empanelled in the panel of 2002, were given opportunity for appointment as per their seniority in the panel of 2002.



Pursuant to said direction respondents stopped taking work from petitioner as directed by the Hon'ble Court after one year and meanwhile also had initiated regular appointment on sanctioned vacant post in accordance with recruitment procedure and requisition was sent to Staff Selection Commission for appointment of driver, as post of driver was notified as group-C post and appointment on group-C post can only be made on recommendation of Staff Selection Commission and the deponent had no authority to make appointment on such post.

In another petition CWJC No. 18240 of 2008 filed by one Gopal Kumar, High Court has set aside the notification by which post of driver was included as group-C post and High Court observed that it is a group-D post and thereafter the procedure for appointment of group-D post was followed and as per practice on the basis of panel prepared of Drivers the appointment of driver which was held to be group-D post was to be made on the basis of panel prepared of Drivers on the basis of named being sponsored by Employment Exchange as per procedure followed.

In said writ petition filed by Gopal Kumar and others, who also worked as daily wager drivers in the district of Lakhisarai. It was contended in the said writ petition that there were 12 vacancies for drivers in the district. A panel of names was called



from the Employment Exchange and name of petitioner figured in the list sent by the District Employment Exchange. However, against the vacancies of 12 sanctioned posts, only 5 appointments were made and 7 posts were still vacant. In the said writ petition it was admitted by the District Administration that there were 12 sanctioned vacant posts of drivers in the district of Lakhisarai and for which requisition to Employment Exchange was made and pursuant to name sponsored by the Employment Exchange, a panel was prepared in which petitioner's name figured at Serial No. 7 to 11. Against which roster clearance was also obtained but only 5 appointment were made.

With regard to remaining vacancy it was stated that the post of driver has been notified as Class-III post and as such further appointment can be made on the basis of recommendation made by Staff Selection Commission. The Writ Court did not accept said stand that post of Driver is a Class-III post and thereafter directed the District Administration to fill the post of Driver as Class-IV post and make appointment on the remaining posts from the panel prepared from which five persons were already appointed and to make further appointment on 7 posts from the panel and with said direction the case was disposed of.



In the order impugned dated 6.5.2014 the District Magistrate, Lakhisarai, has considered all the four orders passed by the High Court in CWJc No. 16679 of 2009 and MJC No. 3769 of 2011 and CWJC No. 18240 of 2008 and MJC No. 1230 of 2013 and from the record it was found that in compliance of the order passed by the High Court the meeting was convened on 8.1.2013 by the District Magistrate for appointment against three vacant posts against Roster Points 16, 17 and 18, appointments were to be made.

Against Roster Point No. 16, which was reserved for Scheduled Caste, appointment of Ganesh Paswan from panel was made. Against Roster Point No. 17 which was also reserved for Scheduled Caste appointment of Rajesh Paswan from the panel was made. However, against Roster Point No. 18 which was reserved for backward class, appointment of Gautam Paswan @ Gautam Kumar, who was not in the panel, was made although he belonged to scheduled caste.

In CWJC No. 18240 of 2008 and MJC No. 1230 of 2013 High Court had directed to make appointment on the basis of panel of Drivers prepared in 2002. Under such circumstances, a show cause notice was issued to the petitioner dated 23.1.2014 as to why his appointment be not cancelled and in response to said show



cause petitioner filed his reply that this appointment was made pursuant to order passed by the High Court in MJC No. 3769 of 2011, as such, he was rightly appointed and moreover there was no direction by the High Court to make appointment from 2002 panel of Drivers and said reply was not found to be satisfactory by the Establishment Committee in its meeting on 6.2.2014 and as the High Court had directed to make appointment in accordance with law and established recruitment procedure but there was no direction to make appointment of petitioner and thereafter a second show cause notice was issued to petitioner on 24.4.2014 in which petitioner had again reiterated that in the order passed in MJC No. 3769 of 2011 the High Court has not directed any appointment to be made from the panel.

The LPA filed by the Divisional Commissioner being LPA No. 775 of 2012 has been dismissed. The panel of 2002 has been cancelled by the order passed by the Divisional Commissioner, Munger, on 2.10.2003 and said submission on behalf of petitioner was considered in the meeting and it was observed that there was no direction made by the High Court for direct recruitment and from the order passed in LPA No. 775 of 2012 no opinion was expressed by the Appellate Court in respect of the order passed by the learned Single Judge and as far as cancelling the panel of



Drivers of 2002 by the Commissioner is concerned that order was set aside by the High Court passed in CWJC No. 3093 of 2004. It was decided in the said meeting that as per direction given in CWJC No. 18240 of 2008 (Gopal Kumar and others vs. State of Bihar) the order dated 15.1.2014 passed in MJC No. 1230 of 2013 by the High Court to appoint from the panel of Drivers of 2002 and petitioner not being in the panel his appointment was illegal and as such was terminated.

Services of petitioner was terminated by order dated 6.4.2014 passed by the District Magistrate, Lakhisarai, has been impugned in this writ petition. The original records for appointment against 13 vacant posts of Jeep Driver was called for by the High Court and after going through the records and materials available, this Court finds that petitioner had filed CWJC No. 16679 of 2009 for direction to Respondent-authorities for regularization on the post of Driver as he was working on the said post as a daily wager since 2002. However, same did not find favour by the High Court and was rejected on 19.1.2010. However, an observation was made to initiate process for regular appointment of Drivers on the vacant posts as prescribed under recruitment Rules and this petitioner may also apply under said recruitment procedure and also be considered in accordance with law and if there is any provision for



relaxation of age same may be given to the petitioner. There was no direction to appoint him on regular basis.

However, when the procedure for regular appointment was not concluded within one year as directed by the High Court, MJC No. 3769 of 2011 was filed by petitioner for non-compliance of the order. In which a show cause was filed stating therein that out of 13 posts, 10 posts of Driver were filled up by regularly appointed persons from panel of Drivers of 2002 and steps have been taken to fill up remaining three vacancies on regular basis.

From the two orders on the basis of which the petitioner has claimed that there was a direction by the High Court in contempt petition to make his appointment is incorrect and mischievous. This Court does not find any such direction issued by the High Court to appoint petitioner on the post of Driver. However, the District Magistrate in connivance with petitioner, although there was no such direction to appoint petitioner in its meeting, appointed him on the post of Driver against the post reserved for backward class candidates and converted the same post as Scheduled Castes in an illegal and unauthorised manner on the pretext that such appointment is to be made pursuant to High Court's order.



In another writ petition filed by Gopal Kumar and four others, who were working on daily wages as Drivers in the district of Lakhisarai. There was 12 vacant posts of Jeep Drivers and panel of Drivers was prepared in the year 2002 after requisitions were sent to Employment Exchange and names were sponsored by the District Employment Exchange and panel was prepared in the year 2002 of Drivers for 12 vacant posts to be filled up from the said panel.

However, only five appointments were made and remaining appointments were to be made, although petitioners names were notified as Class-IV Post in the panel on the ground that further/remaining vacancies will be filled by Staff Selection Commission for the post of Driver a class-III post. However, in the said writ petition the High Court set aside the notification of driver of class III post and directed to treat the post of driver as class IV post and to make appointment on vacant post from the panel of 2002.

Gopal Kumar and others filed MJC No. 1230 of 2013 for non-compliance of order dated 15.1.2004 in which the State had taken the plea that since petitioner has already been appointed on the said post and steps were being taken to remove petitioner and thereafter Gopal Kumar & others shall be appointed and pursuant



to order passed in said MJC on 12.2.2014 a direction was issued to take appropriate action for appointment of Gopal Kumar and others immediately. Pursuant to said direction the meeting of Establishment Committee was held and by order dated 6.5.2014 the services of petitioner has been terminated.

In view of aforesaid discussion, it is apparent that there was no direction of this Court in writ petition or contempt petition to appoint petitioner and in an illegal and unfair manner and also in connivance with the then District Magistrate, petitioner was appointed although he was not in the panel of 2002 which was prepared on the basis of names sponsored by the Employment Exchange for appointment on the vacant posts of driver and petitioner was appointed by deliberate misinterpreting order of this Court although there was no direction of this Court to appoint petitioner, but in the garb of High Court's order and in order to favour petitioner in a dubious and clandestine manner the then District Magistrate appointed petitioner and said appointment after due consideration and discussion in detail, considering all the four orders passed by the High Court, the services of the petitioner has been terminated.

This court does not find any error or irregularity in the order dated 6.5.2014 passed by the District Magistrate, Lakhisarai, as



such present petition is devoid of any merit and is accordingly dismissed.

(S. Kumar, J)

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