

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2879 of 2016

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Manoj Kumar, Son of Rajesh Vishwakarma, Resident of village- Gewal Bigha,
Near Munni Maszid, Balipur, P.S.- Civil Lines in the District of Gaya.

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Department of Law, Government of Bihar, Patna.
2. The Appointment cum Selection Committee, Gaya Civil Court, Gaya.
3. The District & Sessions Judge, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Braj Nandan Kumar Tiwary, Adv.
For the Respondent/s	:	Mr. Satyeshwar Prasad, AC to SC-7
For the High Court	:	Mr. Bindhyachal Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-04-2018

Heard Mr. Braj Nandan Kumar Tiwary, learned counsel appearing for the petitioner, learned counsel for the State and Mr. Bindhyachal Singh, learned counsel appearing for the Judgeship of Gaya.

The petitioner prays for quashing of the Order No.1102/12 dated 19.03.2012 of the District and Sessions judge, Gaya, whereby he has not allowed the joining of the petitioner by seeking opinion of the High Court on the appointment of the petitioner against a Class IV post of Peon in the Gaya Civil Court.

Facts of the case briefly stated is that following an Advertisement bearing No. 2 of 2003 published for appointment of Class IV employees in Gaya Civil Court that the petitioner responded and vide resolution of the Appointment –cum- Selection Committee dated 25.11.2005, bearing Order No. 69 of 2005 that he



was appointed against one of the Class IV posts of Peon. A Copy of the order is at Annexure 3. Since the appointment of the petitioner did not reach its conclusion that he came before this court in CWJC No.6575 of 2007 and a coordinate Bench of this Court vide order passed on 01.12.2011 remitted the matter before the District and Sessions Judge, Gaya for its disposal. A copy of the order of this Court is at Annexure 7. It is following the remand that the order impugned has been passed by the District and Sessions Judge, Gaya, which mentions that the appointment of the petitioner was against a post earmarked for Scheduled Tribe Category, but since on production of caste certificate it transpired that the petitioner belongs to the Extremely Backward Class and not Scheduled Tribe, his joining could be accepted. It also transpired that no post in Extremely Backward Class was available because the last of the post in this category was filled up by candidate having better marks than the petitioner. The matter was thus remitted by the District Judge, Gaya before this Court on the administrative side for opinion and since nothing happened that the petitioner is again before this Court through the present writ petition.

It is taking note of the peculiarity of the situation that this Court by order dated 19.03.2018 asked Mr. Singh, leaned counsel representing the Judgeship to verify whether there were any post available from the selection process in question, to accommodate the petitioner against the post earmarked for Extremely Backward Class,



since admittedly, the petitioner did not come under the Scheduled Tribe Category. In so far as the Extremely Backward Class is concerned, the records transpire that there were two persons above the petitioner with better marks namely, Sailender Kumar at serial no.56 and Awadesh Kumar at S1 No. 57 as manifest from the merit list at Annexure 'A' to the counter affidavit.

It is on receiving instruction that Mr. Singh, learned counsel appearing for the Judgeship of Gaya informs that there is no post available in the Extremely Backward Category against which the petitioner along with two others above him, can be accommodated, although there is a post under Scheduled Tribe category vacant, on which the petitioner had wrongfully recommended. It is informed by Mr. Singh that the petitioner had been wrongfully recommended against the post meant for Scheduled Tribe category, when in fact the caste 'Lohar' to which the petitioner belongs comes under Extremely Backward Class. It is submitted that there is no post of the selection process in question against which, the petitioner can be accommodated. On instruction, it is also informed by Mr. Singh that by passage of time about 36 vacancies do exist in the Judgeship.

Having heard learned counsel for the parties and considering that it is plain human error that led to the recommendation of the petitioner against the post of Scheduled Tribe Category, when in fact he belongs to the Extremely Backward



Class, an incorrect recommendation would vest no right in the petitioner to claim the post. The equity founded exercise by this Court has also not provided dividends for the petitioner because there is no post vacant in the said category available from the selection process in question and vacancies arising subsequently, certainly cannot be taken into account.

In the circumstances so noted, while allowing the petitioner to participate in the selection process as and when it is taken up in the Judgeship, this Court finds no reasons to grant indulgence to the relief so prayed.

Considering that it is but for the faulty recommendation that legitimate expectation has arisen for the petitioner, I deem it proper to record that as and when the respondents would initiate any selection process and in case the petitioner applies and requires age relaxation, the Judgeship would consider his request bearing in mind their own lapses.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
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