

1. Tara Kant Sinha Son of Sri Bhupendra Narain Sinha resident of Mohalla-Nakki Nagar (Kayasth Tola), P.O. & P.S.- Jamalpur, District- Munger

.... Petitioner/s

1. The Registrar (administration) Patna High Court, Patna
2. The District & Sessions Judge, Nalanda, Bihar Sharif null null
3. The Judge Incharge (Administration), Nalanda, Bihar Sharif
4. The Babloo Kumar Son of Sri Lakhan Prasad resident of Mohalla- Naisarai, Post- Bihar Sharif, District- Nalanda, presently working as Sweeper, Civil Court, Bihar Sharif
5. Manju Devi Wife of Sri Balam Dom resident of Mohalla- Saida Bazar (Kali Asthan), P.O. & P.S. -Hilsa, District- Nalanda

.... Respondent/s

For the Petitioner/s	:	Mr. Prashant Sinha
For the Respondent no. 1 to 3	:	Mr. Piyush Lall
For respondent no. 4	:	Mr. Vishal Saurabh

4 19-04-2018 Heard learned counsel for the petitioner,

learned counsel for the High Court and learned counsel appearing

for the private respondent.

This writ petition has been filed for setting aside the result dated 13.05.2013 issued by the District & Sessions Judge, Nalanda, Bihar Sharif. Petitioner confines his challenge to the selection of respondent No. 4 as sweeper under the same result.

It is submitted by the counsel for the petitioner that the advertisement specifically required that the candidates for the post of sweeper was required to possess experience of work in cleaning and sweeping, and it is specifically asserted by the petitioner that respondent No. 4 has no work experience.



Petitioner on the other hand had enclosed certificate with his application form and documents certifying his experience. Said submission is advanced on the basis of Xerox copy of application form of the petitioner (Annexure-2), wherein in column- 11 he has clearly mentioned that he has work experience of 4 years and he is enclosing experience certificate in respect of the work of sweeper.

He draws attention of the Court towards Annexure- 3, which is Xerox copy of the application filed by the respondent No. 4. Column- 11 of the same is shown to be blank and, as such, it is submitted that the respondent No. 4 had no experience and, as such, did not possess the requisite qualification for appointment.

It is the petitioner's case that in view of the stand of the official respondent that respondent No. 4 actually had work experience as sweeper, he had made application under the Right to Information Act in the district judgship, seeking details in respect of experience of respondent no. 4. He submits that the information provided under the Right to Information Act is not with reference to any specific documents or records showing respondent no. 4's engagement and experience as sweeper in the District Judgship for 14 years as is claimed by official respondent.

It is the submission of the petitioner that the manner in which they have tried to sustain selection of respondent No. 4



by giving reference of his 14 years experience in the District judgeship without any reference to records clearly shows that respondent No. 4 has been favoured in the selection process, although he did not possess the experience.

The respondent High Court has filed counter affidavit. The submissions advanced in respect of the case made out on behalf of the petitioner are that the advertisement, Annexure-1 of the writ petition, clearly gives the parameters in support of which documentary evidence/certificates/testimonies are to be submitted at the time of making applications. Consciously, no requirement has been made with reference to experience. He submits that the said requirements are also in consonance with the Bihar Civil Court Staff (class-3 and class-4) Rules 1998, as amended by the Bihar Civil Court Staff (class-3 and class-4) (Amendment) Rules, 2001. Even under the said rules, there is no specific requirement of experience. It is submitted that in view of the rules, the respondents have not insisted for any document in support of experience. He points out with reference to Annexure-1, i.e. the advertisement, that the requirement was that the candidates should have knowledge and experience. Accordingly, considering the long experience of the respondent no.4 in the District Judgeship itself marks have been awarded by the Interview Committee, considering all other parameters on the



basis of the performance of the candidates in the interview.

It is submitted by the counsel for the respondent that neither there has been any violation of the rules nor any mala-fide has been alleged against any individual in the selection process. Even the assertion of the respondent that the Appointment Committee has awarded marks on the basis of performance of the candidate in the interview, has not been denied or disputed in the rejoinder filed by the petitioner. By making such submission, it is asserted that as a result of procedure conducted fairly and objectively, the respondent No. 4 was awarded 15 marks, which is much higher than the petitioner, who was awarded 4 marks. It is, therefore, submitted that there is no infirmity in the selection process and merely doubt expressed by the petitioner on the basis of information obtained under the Right to Information Act, is insufficient to ignore the experience of respondent No. 4. This Court should not interfere with the selection process. He has also submitted that in fact the information provided under Right to Information Act, more specifically, the information which is dated 19.12.2015 and part of Annexure-11 to the rejoinder filed on behalf of the petitioner, clearly shows that details in respect of payments made to respondent No. 4, from the financial head of office expenses has been provided in respect of the work performed by the respondent No. 4 as sweeper in the District



Judgeship.

Having heard the parties, this Court finds that Annexure-1, i.e., advertisement clearly does not require furnishing any document in support of experience of the candidate. Clause (11) of the format in the advertisement is a column provided for any additional qualification which the candidate may have possessed. Therefore, the fact that respondent No. 4 left column-11 blank cannot inure to the benefit of the petitioner. Admittedly, the knowledge and experience of work of sweeper was not an additional qualification. It was only a basic requirement.

The specific stand of the respondent High Court has been also that marks have been awarded on the basis of the performance of the candidate at the interview. Thus, merely because the petitioner has produced the certificate in support of his claim of experience cannot be put him in a better position than the respondent No. 4 as no such certificate was required in the process of selection and respondent No. 4 had working knowledge in the District Judgeship itself for a considerable period. It is the specific stand of the respondent with reference to demand of document under the Right to Information Act that the matter relates to very old engagement of petitioner on daily wages.

The fact that the payments being made to the respondent No. 4 was inadequate cannot bring to the conclusion



that respondent No. 4 had not work at all. The petitioner has also not alleged any violation of the statutory rules referred to by the respondent High Court and actually no specific allegation of mala-fide has been made. Merely a doubt has been expressed by submitting that information supplied under the RTI Act, it was not sufficient to show that the respondent no.4 had experience in the District Judgeship as sweeper.

This Court would also notice that interview for the selection was conducted in April, 2013. Result was declared in May, 2013. The petitioner has come forward to file case for the first time in 2015. After the result, he approached the authorities under the RTI Act as he had no detailed information regarding the selection. Even if that is taken to be true that the petitioner was duly informed about the selection by information provided under the RTI Act under letter No. 102/14, dated 04/07/2014, the writ petition has been filed much later in January, 2015. That also on the basis of the challenge in respect of inter-se merit between the petitioner and respondent No. 4 by virtue of the experience certificate, which was not a requisite in the process of selection under advertisement No. 1 of 2012.

Learned counsel for the petitioner also relies upon the unreported judgment of Apex Court in the case of Deepa E.V. Vs. Union of India and Ors. (Civil Appeal No. 3609 of 2017). On the



strength of the said judgment, he submits that since the respondent no. 4 was a candidate of reserved S.C. category, he could not have been appointed on the post of sweeper, which post was in the general category and, as such, the appointment of respondent No. 4 is bad on that score also. The judgment of the Apex Court is with reference to a particular office memorandum of the Government of India, which has no bearing in the present case. It is trite that a judgment is a binding precedent for the issue it decides. The facts of the said case are also essentially different where the reserved category candidates had taken advantage of relaxation by virtue of being a reserved category candidate. Thus the judgment relied upon by the petitioner has no application in case.

In view of the consideration hereinabove, this Court finds no merit in the application filed by the petitioner. The same is dismissed.

(Madhuresh Prasad, J)

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