

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12378 of 2012

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1. Gaurav Sinha S/O Sri Virendra Kumar Sinha Resident of Village Mahamda, P.O. Patam, Police Station Nayaram Nagar, District Munger.
2. Mrinal Kumar Mishra S/O Shailendra Kumar Mishra, Resident of Mohalla Puraniganj, Kali Asthan Road, Munger, P.S. Kashim Bazar, District Munger.

.... Petitioners

Versus

1. High Court of Judicature at Patna through Registrar General, Patna High Court, Patna.
2. Chairman, District Legal Services Authority, Munger.
3. Secretary, District Legal Services Authority, Munger.
4. Amritash Kumar, S/O Shesh Nath Kushwaha Resident of Chhoti Kelawari, Police Station Kotwali, District Munger.
5. Sushil Kumar, S/O Birendra Kumar Resident of Village Bigha Jamalpur, P.O. + Police Station Shekhpura, District Shekhpura, Pin 811105.
(Following respondents no. 6 to 9 have been made party as per the order dated 10.09.13 passed in I.A. No. 5576/2012)
6. Kumari Sangeeta, D/o Sri Suresh Chandra Prasad, R/o Topkhana Bazar, P.O. + P.S. + Distt. Munger,
7. Sanjay Kumar Sinha, S/o Sri Surendra Kishore Sinha, R/o Shashtri Nagar, Munger, P.O. + P.S. + Distt. Munger,
8. Santosh Kumar, S/o Sri Durga Prasad Sah, R/o Guljar Pokhar, P.O. + P.S. + Distt. Munger,
9. Swatantra Kumar Jyoti S/o Shri Shiv Shankar Jyoti, R/o New Gangotri Madhepur, P.O. + P.S. + Distt. Munger.

.... Respondent/s

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Appearance:

For the Petitioner/s:	Mr. Jitendra Prasad Singh, Advocate.
For the Respondent/s:	Mr. Bindhyachal Singh and
(For High Court)	Mr. Avinash Kumar, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 16-01-2018

Heard learned counsel for the petitioners and learned
counsel representing the respondents.

2. The petitioner in the present case initially filed this Writ
Application for quashing of the letter dated 21.04.2012 as contained



in Memo No. 91 and 92 issued by the respondent no. 3 by which the appointment letters issued to the petitioners were cancelled. The petitioners also prayed for a direction to the respondents to appoint them on the post of Lower Division Clerk in the office of the District Legal Services Authority, Munger pursuant to the appointment letter issued on 30.01.2012.

3. During the pendency of the Writ Application, the respondents issued a fresh merit list in which names of these petitioners could not find place, therefore, the petitioners have filed one Interlocutory Application being I.A. No. 5576 of 2012 by which they have sought to amend the Writ Application in order to enable them to challenge the notice published by the respondents on 04.07.2012 in which the names of the petitioners have been removed from the merit list and the names of the respondents no. 4 and 5 have been included.

4. Learned counsel for the petitioners submits that these petitioners were placed in the first merit list, they were issued appointment letters but those appointment letters were recalled in the name of certain discrepancies which had allegedly occurred in the matter of preparation of the merit list. Learned counsel submits that subsequently when the merit list was published their names were not found and the respondents no. 4 and 5, who belong to EBC category,



were brought in and have been appointed. Thus, according to the learned counsel for the petitioners, the appointment is illegal, arbitrary and bad in law, hence the impugned orders as well as the merit list are liable to be set aside and cancelled.

5. On the other hand, learned counsel representing the respondents submits that in the Counter Affidavit filed on behalf of the respondents no. 2 and 3, which has been sworn by the Secretary, District Legal Services Authority, Munger, the reasons given for publication of the second merit list have been well explained. Attention of this Court has been drawn towards the statements made in Paragraph 11 of the said Counter Affidavit. It is specifically stated therein that as per Government Sankalp No. 2374 dated 16.07.2007 relating to reservation policy, the candidates belonging to reserved category, who secured higher marks more than the last candidate appointed under the General (Unreserved) category, are to be brought in the list of the General category candidates. It is stated that the policy could not be applied inadvertently while preparing the first merit list of seven candidates including the two petitioners whose names were mentioned at Sl. No. 3 and 4 respectively. According to the answering respondents, after application of the reservation policy the candidates at Sl. No. 6 & 7, namely, Santosh Kumar and Swatantra Kumar Jyoti both under EBC category securing 90.08 and



86 marks out of 150 marks respectively, were higher in rank than the candidates at Sl. No. 3 and 4 (the present petitioners), therefore, they have been treated as candidates of General (Unreserved) category and have been appointed accordingly.

6. In view of the stand taken in the Counter Affidavit, learned counsel for the petitioners could sense the difficulty in pressing the Writ Application further as the law is well settled on this behalf that a reserved category candidate, if obtains more marks than the last candidate in the General category who has been found fit for appointment, the reserved category candidate shall take the place of the General category candidate and will be treated as a General category candidate for purpose of appointment.

7. The Writ Application is thus liable to be dismissed and is accordingly dismissed but without any order as to cost.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.01.2018
Transmission Date	N/A

