

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1665 of 2013**  
**In**  
**Civil Writ Jurisdiction Case No.8209 of 2007**

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1. The State Of Bihar
  2. The Commissioner, Tirhut Division, Muzaffarpur
  3. The District Magistrate, Vaishali At Hajipur
  4. The Deputy Collector, Establishment, Vaishali Collectorate, Hajipur
  5. The Deputy Collector, Nazarat, Vaishali Collectorate, Hajipur
- ... .. Appellants

Versus

1. Urmila Devi Wife Of Late Raghav Sharan Singh Resident Of Village- Kuarikhurd, P.O.- Balwa Kuari, Police Station- Hajipur Sadar, District- Vaishali At Hajipur
2. Naval Kishore Prasad Son Of Kameshwar Prasad Resident Of Village- Uprawan, District- Nawada, At Present Residing At Mohalla- Bagmati Hajipur, And Having Appointed Working On The Post Of Class-Iv Post In Vaishali Collectorate, Hajipur

... .. Respondents

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**Appearance :**

For the Appellant : Mr. Shashi Shekhar Kumar Prasad, AC to AAG 2

For the Respondents : Mr. Jitendra Kumar Roy

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**  
**and**  
**HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)**

**Date : 26-09-2018**

The State of Bihar has preferred this appeal against the order of the learned Single Judge dated 5.3.2012 passed in CWJC No. 8209 of 2007.

The brief background leading to filing of the writ



petition was that the petitioner was rendering services on daily wages as a Candidate Peon from the year 1991. She was included in the panel of candidate peons notified from time to time, which is evident from the extract of one panel (Annexure 3 to the writ petition). However, she was not given employment on regular basis on Class IV post in the Collectorate, Vaishali. Raising a grievance that others from the panel had been appointed ignoring her legitimate claim, the petitioner approached this Court by filing the writ petition.

The learned Single Judge has taken note of the fact that since the petitioner's right to be considered for appointment by way of regularisation is based on her initial engagement in the year 1991, therefore, the qualification of VIIIth pass, which has been imposed much later by circular of the State Government issued in the year 1997 as well as circular of the Chief Secretary 19/2001 and circular of the Personnel Department dated 23.9.2002, cannot be made applicable to reject the petitioner's claim.

The learned Single has also taken note of the fact that since the petitioner had placed on record (Annexure 1 in the writ petition) a School Leaving Certificate of Deep Narayan High School, Purantarn, Vaishali dated 31.3.1997, from which



it appears that she left the School while she was in Class IX, therefore, it was considered that the petitioner was also possessing the requisite qualification i.e. VIIIth pass. On the aforesaid two grounds the prayer of the writ petitioner was allowed by the learned Single Judge and a direction was issued to consider the petitioner's claim for appointment by way of regularisation without imposing requirement of VIIIth pass as per subsequent circulars.

Counsel for the appellant State has submitted that the order of the learned Single Judge was unsustainable inasmuch as no right was made out by the petitioner to be considered, ignoring the standards laid down in the circular of 1997, circular of the Chief Secretary 19/2001 as well as circular of the Personnel Department dated 23.9.2002. The other submission made by the Counsel for the State is that the school leaving certificate, showing the petitioner to have left the school in Class IX, has been found to be forged in the enquiry report submitted by the District Education Officer, Vaishali. Such submission has been made without even placing on record the alleged report of the District Education Officer, Vaishali.

Counsel for the respondent – writ petitioner rightly submits that even the details of the alleged report of the District



Education Officer, Vaishali has not been stated in the LPA. A vague submission has been made in sub-para (iii) of the grounds in the memo of appeal wherein a most cryptic submission has been made which is being reproduced hereinbelow:-

**“(iii) For that the School Leaving Certificate of Class – IX submitted by the writ petitioner before this Hon’ble Court was not produced by her before the authorities in the year 2007. However, the said certificate submitted by the writ petitioner has been found to be forged in the enquiry report submitted by the District Education Officer, Vaishali.”**

It is submitted by the Counsel for the writ petitioner that he has no knowledge of such enquiry. He submits that the submissions made without any details of the enquiry report and without enclosing the same, are unreliable. The valid claim of the petitioner in respect of her qualification (VIIIth pass), as contained in Annexure 1 of the writ petition, cannot be obliterated merely by making such cryptic submission in the memo of appeal. No details of the enquiry as well as details of the alleged enquiry report, including the date of the same, has not been mentioned in the memo of appeal.

Such submission of the respondent-writ petitioner is



worth consideration. If at all the School Leaving Certificate, which forms basis of the petitioner's claim of possessing the requisite qualification (VIIIth pass) has to be enquired into, the same can be done only in accordance with the principles of natural justice and fair play. Merely by making a statement in the memo of appeal such valid right of the petitioner arising out of Annexure 1 of the writ petition cannot be extinguished. No material has been placed on record by the appellant State to show that any valid procedure has been adopted before declaring the school leaving certificate (Annexure 1) as forged.

This Court is, therefore, of the considered opinion that till such time a proper enquiry is conducted into the validity of Annexure 1 after due opportunity to the petitioner and the same is found to be false/fabricated in accordance with law, the petitioner cannot be denied benefits of qualification of VIIIth pass on the basis of the same.

As regards the submission of the State Counsel regarding the direction of the learned Single Judge to ignore the qualification prescribed in the circulars, this Court would find that in view of the fact that the petitioner's qualification of VIIIth pass (Annexure 1) has not been set aside or enquired in accordance with law, she cannot be deprived of the benefits of



the same. Therefore, the relaxation granted to the petitioner under the orders of the learned Single Judge is not required. This Court would, therefore, set aside the order of the learned Single Judge to the extent it directs for ignoring the circulars of 1997, circular of the Chief Secretary 19/2001 and the circular of the Personnel Department dated 23.9.2002.

We are also informed that during pendency of the instant LPA the District Magistrate, Vaishali under memo dated 3.11.2012 bearing No. 966 has appointed the writ petitioner on Class IV post. That being the position today, no further orders need be passed in the instant proceeding. The petitioner, however, cannot be removed from Class IV post without applying the principles of natural justice as noticed herein above.

The LPA is dismissed with the modification and observations hereinabove.

**(Dr. Ravi Ranjan, J.)**

Snkumar/-

**( Madhuresh Prasad, J.)**

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| AFR/NAFR          | NAFR       |
| CAV DATE          | N/A        |
| Uploading Date    | 28.09.2018 |
| Transmission Date | N/A        |

