

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.435 of 2018

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Neshat Praveen, wife of Md. Sabbir Alam, resident of Village- Sarsaula Khurd, P.S. Sheohar, District- Sheohar.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj, Government of Bihar, Patna.
3. The District Magistrate-cum- District Election Officer (Panchayat), Sheohar, District- Sheohar. null null
4. The District Panchayat Raj Officer, Sheohar, District- Sheohar.
5. The Chief Executive Officer-cum- Deputy Development Commissioner, Zila Parishad, Sheohar, District- Sheohar.
6. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the Secretary.
7. The State Election Commissioner, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
8. The Joint Secretary, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Pushpendra Kumar Singh, Advocate
For the Respondent : Mr. Kameshwar Prasad Gupta -GP10

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 07-03-2018

In the instant writ petition, the petitioner has prayed for issuance of a writ in the nature of mandamus directing respondent-authorities to fill up posts of member of Zila Parishad Territorial Constituency No.3 (North), Sheohar forthwith which became vacant on account of fact that Sri Arun Kumar Gupta, who was member of



the said constituency, has been disqualified under section 136(1)(g) of the Bihar Panchayat Raj Act, 2006, vide order dated 04.08.2017.

2. Learned counsel appearing for the petitioner submitted that Sri Arun Kumar Gupta was accused in Sheohar P. S. Case No. 5 of 2008 dated 19.01.2008 for the offences under Sections 341, 323, 342 and 379/34 of the Indian Penal Code. He was put on trial in the said case and vide order dated 08.03.2017 passed in Trial no.74 of 2017, he has been convicted and sentenced to undergo simple imprisonment for one year and fine of Rs.500 for the offence committed under Section 323 of the Indian Penal Code, one month simple imprisonment for the offence committed under Section 341 of the Indian Penal Code and two years simple imprisonment for the offence committed under Section 379 of the Indian Penal Code. The conviction recorded by the trial court has already been confirmed by the appellate court and the revisional court with certain modifications. He submitted that since Sri Arun Kumar Gupta has already been disqualified and the post held by him became vacant, the respondent authorities are duty bound to hold election for the vacant posts.

3. In reply, learned counsel appearing for the State Election Commission submitted that process for filling of vacancy incurred due to death/disqualification/ orders of tribunal in three tier panchayat bodies has already been started by the State Election



Commission and the Commission vide letter no.4641 dated 29.12.2017 directed to all the District Magistrate-cum District Election Officer (Panchayat) to give the details of the vacant seats till 15.12.2017 in three-tier panchayat bodies. He submitted that after taking necessary steps, the Election Commission would immediately notify the election for filling up posts in three-tier panchayat bodies.

4. Having heard learned counsel for the parties and perused the record, this Court is of the opinion that since the State Election Commission is already in seisin of the matter and is taking necessary steps to hold election for the vacant posts, no mandamus is required to be issued by this Court as there is no reason to doubt that State Election Commission would not take necessary steps in accordance with law for holding election of vacant posts in due course of time. A writ of mandamus is issued by the court to compel performance of an act by a government officer or body to correct a prior action or failure to act. On the facts and in the circumstances, there is nothing to show that the State Election Commission has failed in its duty.

5. Accordingly, the writ petition is disposed of.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.03.2018
Transmission Date	NA

