

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.686 of 2018

In

Civil Writ Jurisdiction Case No.10936 of 2014

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Gautam Paswan @ Gautam Kumar Son of Sri Prasadi Paswan, Resident of
Village-Halsi, Police Station-Halsi, District-Lakhisarai.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Munger Division, Munger.
3. The District Magistrate-cum-Collector,, Lakhisarai.
4. The Additional Coilector, Lakhisarai.
5. The Block Development Officer, Lakhisarai.
6. The Child Development Project Officer, Lakhisarai.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Om Prakash Maharaj

For the Respondent/s : Mr. P.K.Verma -AAG3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-10-2019

1. Heard the learned counsel for the parties.

2. The appellant, who was appointed on daily-

wage w.e.f. 02.10.2002 in the office of C.D.P.O.,



Lakhisarai on the sanctioned post of Jeep Driver and whose services were regularized from 19.01.2013 under the orders of the Collector, Lakhisarai, was terminated *vide* order dated 06.05.2014 without any departmental proceeding on the ground of his having been appointed on a false claim of there being a direction of this Court and for appointing him and that his appointment was against the roster, as the post belonged to the other backward caste category but the same was wrongly filled up by appointing the appellant who belonged to Scheduled Caste Category.

3. A writ petition came to be filed against the order of termination dated 06.05.2014 issued by the District Magistrate, Lakhisarai contained in Memo No. 239, on several grounds, *viz*, that the appellant has been terminated without any departmental proceeding even when his appointment was made after following due process and in terms of the directions given by this Court *vide* order 25.01.2012 passed in M.J.C. No. 3769 of



2011 and that the ostensible plea of the appellant's name did not figure in the panel of 2002 is absolutely incorrect, as the aforesaid panel was cancelled by the Divisional Commissioner, Munger and which cancellation was challenged by one Nageshwar Paswan in C.W.J.C. No. 3093 of 2004 but to no avail and which order was never challenged.

4. The learned Single Judge *vide* the order impugned dated 23.03.2018 has dismissed the writ petition, upholding the order of termination dated 06.05.2014 passed by the District Magistrate, Lakhisarai as being in consonance with law and facts.

5. To straighten the records, it is noted that the appellant preferred a writ petition *vide* C.W.J.C. No. 16679 of 2009 seeking regularization of his services as a Driver having spent of a long number of years as daily-wager against sanctioned and vacant post. A Bench of this Court *vide* order dated 19.01.2010, finding such adhocism to be a fraud on the Constitution, directed the respondents



therein to make regular appointments on vacant sanctioned posts of Jeep Drivers in the Collectorate at Lakhisarai within a period of one year and if the appellant applied for the same, his claim should be considered after giving him adequate relaxation for his age in accordance with law and giving due weightage to the past work experience. The Court also directed that in the event of the respondent not making any regular appointment against such vacant sanctioned posts within the stipulated period of one year, the respondent shall not utilize the services of any one of the daily-wagers nor would substitute one daily-wager with another thereafter.

6. The appellant thereafter filed a contempt petition *vide* M.J.C. No. 3769 of 2011, which was disposed off *vide* order dated 25.01.2012, on the statement made by the respondents that out of 13 posts of Drivers, 10 had already been filled up and process was afoot for filling up the remaining three vacancies, which was expected to be completed within a period of six



months. The Court, by the aforesaid order, emphasized that if the appellant applied, his candidature would be considered in accordance with law.

7. It would also be relevant to state that against the order dated 19.01.2010 passed in C.W.J.C. No. 16679 of 2009, referred to above, the State preferred a Letters Patent Appeal No. 775 of 2012, which was dismissed *vide* order dated 25.09.2012.

8. It further appears from the records that the appellant along with two other Drivers were selected for appointment by the Establishment Committee on 08.01.2013. The recommendation made by the Committee clearly states that the issue regarding the appellant is covered by the order passed in M.J.C. No. 3769 of 2011 dated 25.01.2012. Since a direction had been given to complete the appointment process within a period of six months, therefore against the roster point no. 18, even though earmarked for female candidate of Backward Caste Category, but in accordance with Section 4(6)(g) of the



Bihar Reservation Act 3 of 1992, in case of non-availability of the roster category, there could be consideration for other categories including SC/ST and Other Backward Caste, the case of the appellant was considered and recommended.

9. From the perusal of the order passed in C.W.J.C. No. 16679 of 2009 and M.J.C. No. 3769 of 2011 as also the recommendation of the Establishment Committee dated 08.01.2013, there does not appear to be any consideration with respect to the appointments to be made only from the panel prepared in the year 2002.

10. We have also found from the records that one Gopal Kumar and four others had also preferred a writ petition, bearing C.W.J.C. No. 18240 of 2008, seeking employment against the vacancies for Jeep Drivers in the district of Lakhisarai.

11. By order dated 30.11.2012, another Bench of this Court directed the District Magistrate / Collector, Lakhisarai to consider the appointment of the aforesaid



Gopal Kumar and others in accordance with the panel that existed at the time of the vacancies in respect of which the panel was created and which was for the purposes of appointment of 12 Drivers for which roster clearance had already been taken and only 5 persons were appointed whereafter the matter was dropped.

12. Herein again, the exercise of appointment was directed to be completed within a period of two months from the date of production/communication of a copy of the order, referred to above.

13. A contempt petition also appears to have been filed by aforesaid Gopal Kumar and others for non-implementation of the order dated 30.11.2012 passed in C.W.J.C. No. 18240 of 2008, referred to above.

14. In the aforesaid contempt case, it was observed by the learned Single Judge on 12.02.2014, after having been informed that there was some difficulty in implementing the order as the vacancies had already been filled up by another person and that also by virtue of an



order of the Court and, therefore, for implementation of the order dated 30.11.2012, the person who was employed on contractual basis for the purposes of implementing the order passed by another Court, that the State must take appropriate action in that regard but the petitioners therein ought to be adjusted in compliance of the order as such order could not await execution indefinitely.

15. All the afore-mentioned orders, namely, order dated 19.01.2010 passed in C.W.J.C. No. 16679 of 2009; order dated 25.01.2012 passed in M.J.C. No. 3769 of 2011; order dated 30.11.2012 passed in C.W.J.C. No. 18240 of 2008; and order dated 12.02.2014 passed in M.J.C. No. 1230 of 2013, were considered by the District Magistrate while passing the order dated 06.05.2014 referred to above and it was found that there was no direction of this Court for appointing the appellant on regular basis but there was only a direction to consider the case of the appellant. After having put the appellant to



notice and second show-cause notice, it was found that his appointment on regular basis was not in consonance with the Rules of appointment and therefore the services of the appellant was terminated.

16. As noted above, the aforesaid order of the District Magistrate, Lakhisarai dated 06.05.2014 was challenged before the learned Single Judge in C.W.J.C. No. 10936 of 2014, who dismissed the writ petition and upheld the aforesaid order of termination primarily on the ground that the appointment of the appellant was on a mistaken notion of there being a positive direction in a writ petition and a resultant contempt petition to appoint him, whereas the only mandate of the Court was to consider the case of the appellant. The learned Single Judge, therefore, found that the orders of this Court was misinterpreted and the appointment was offered to the appellant in a dubious / clandestine manner which was ultimately terminated by the District Magistrate, which order did not require any interference, and dismissed the writ petition.



17. Hence the appeal.

18. While hearing this appeal, this Bench by order dated 14.02.2019 observed as follows:

"It is, thus, evident that these two sets of claimants had approached this Court and Gopal Kumar also instituted M.J.C. No. 1320 of 2013, Faced with these two sets of directions, orders came to be passed cancelling the appointment of the appellant in order to accommodate others who were claiming such appointment under the garb of the orders passed in the M.J.C. filed by Gopal Kumar and others. It is not in dispute that Gopal Kumar and others were already appointed and there was absolutely no necessity of cancelling the appointment of the appellant keeping in view the fact that the appellant had been appointed against a clear sanctioned post at Barahiya after deliberations which is evident from the proceedings of the Establishment Committee dated 8th of January, 2013.

The order of cancellation came to be passed on 6th of May, 2014, that became subject matter of challenge in the



writ petition giving rise to the present appeal. A learned Single Judge of this Court, after having traversed the facts, on a prima facie opinion passed an order on 5th of December, 2017, calling upon the respondent State to file a counter affidavit whereafter the impugned judgement came to be delivered on 23rd of March, 2018 rejecting the claim of the appellant on the grounds referred to hereinabove.

Advancing his submissions, Shri Singh has urged that, firstly, there was no challenge to the appointment of the appellant by any person nor any other claimant was affected by the appointment of the appellant. It is contended that the statement made before this Court by the learned counsel for the State of Bihar in M.J.C. No. 1230 of 2013, which was recorded in the order dated 12th of February, 2014, was a totally wrong statement and against the record that came to be made the basis for cancelling the appointment of the appellant. It is, thus, submitted that an incorrect statement of the counsel before this Court in a proceeding to which the appellant was



not a party could not have been made a basis for eliminating the appellant without there being any adverse impact on the appointment of the any other person. It is, therefore, submitted that the statement made as recorded in the order dated 12th of February, 2014 was merely used as a ploy to eliminate the appellant which aspect appears to have escaped the notice of the learned Single Judge which dismissing the petition. It is submitted that if the very foundation of the cancellation order is on account of perversity resulting out of a wrong statement made by the counsel, then the same has to be corrected and the learned Single Judge, therefore, fell in error in proceeding to dismiss the writ petition by accepting such an error of fact to be correct.

Secondly, the issue of roster has been incorrectly dealt with when the Establishment Committee itself, after having assessed the roster which was prepared way back in the year 2002, came to the conclusion that no candidate of an Other Backward Caste Category was available. This, according to the learned



counsel, is further fortified by the fact that no person of the other Backward Caste Category was either affected or did come forward to question the correctness of the offer of appointment to the appellant on account of non-availability of the candidate in the said category. In this background, the learned Single Judge could not have inferred that the appointment of the appellant was an outcome of a connivance between him and the District Magistrate. This inference of the learned Single Judge, therefore, not being based on facts, is an error apparent on the face of the record.

There is another feature which deserves to be noticed in the background of the aforesaid chronology of events, namely that a modification application had been moved by the State in M.J.C. No. 1162 of 2014 seeking permission for removal of the appellant. On being confronted that the same would not be permissible, the said application was withdrawn by the State which stands recorded in the order dated 16.04.2014. It was immediately 15 days thereafter that



the cancellation of the appointment of the appellant occurred.

Having considered the aforesaid facts, before we further proceed in the matter, it would be appropriate that the Court is informed of the current status of the availability of the post/s against which the appellant had been appointed or such information that may be necessary for adjudication.

Learned counsel for the appellant prays for a week's time to file an aforesaid to that effect.

Let the matter come up on 21st of February, 2019 by which date learned counsel for the State of Bihar may also obtain instructions and advance his submissions keeping in view the aforesaid facts which are already on record."

19. Now a supplementary counter affidavit on behalf of Respondent Nos. 3 and 4 has been filed stating the same things, viz that the appointment of the appellant was made under the threat of contempt by the Establishment Committee on 08.01.2013 without observing the formalities of advertisement and seeking



resume' of the appellant and that there was also a direction in the case of Gopal Kumar and others Versus State of Bihar in C.W.J.C. No. 18240 of 2008 directing for finalising the matter of appointment after taking necessary steps. An additional ground has been raised in this appeal that a fraud was played by the appellant and the District Magistrate, on advice from the Advocate General of the State of Bihar to act in accordance with law, terminated the services of the appellant after serving a second show-cause notice to him. It has also been urged that since the appointment of the appellant was casual in nature, no departmental proceeding was initiated.

20. The aforesaid affidavit, we are constrained to observe, is a reiteration of the earlier stand which was noticed by us and recorded in the order dated 14.02.2019 (some part of which has been extracted above).

21. The issue, therefore, is whether an appointment made pursuant to an order of this Court could be terminated on the basis of wrong understanding of the



order but in the absence of any wrong representation on the part of the appellant. We have not been able to appreciate that when Gopal Kumar and others had already been appointed, where was the necessity of cancelling the appointment of the appellant when he had been appointed against a sanctioned post at Barahiya by the Establishment Committee. We have also noted that the appointment of the appellant was never challenged by any claimant. The appellant was never appointed against a casual vacancy but against sanctioned permanent post. No fraud appears to have been played by the appellant justifying the termination of his appointment.

22. The issue of roster also had been correctly dealt with by the Establishment Committee in its recommendation for appointment of the appellant.

23. The learned Single Judge, in our opinion, has completely ignored the fact that the Establishment Committee, while appointing the appellant against a permanent post, took into account the relevant roster point



which was meant for woman candidate of backward category but in the absence of such candidate, the post could be filled up by other candidate and which decision was in consonance with the Bihar Reservation Act of 2003. Neither in the consideration of the Establishment Committee dated 08.01.2013 nor in the representation of the appellant was there any wrong understanding or wrong presentation of facts respectively with respect to the contents and the import of the orders passed by this Court in C.W.J.C. No. 16679 of 2009 and M.J.C. No. 3769 of 2011 and therefore the appointment of the appellant could not have been faulted with.

24. The order of the learned Single Judge suffers from another non-consideration of vital materials, *viz*, that Gopal Kumar and others had already been appointed and that there was no claimant of other categories to the post on which the appellant was appointed. In such an event, upholding the decision of the District Magistrate in



terminating the appointment of the appellant cannot be said to be a correct approach.

25. We therefore, on consideration of the entire materials on record, set aside the order of termination dated 06.05.2014 passed by the Collector, Lakhisarai as also the order passed by the learned Single Judge dated 23.03.2018 upholding the order of termination.

26. The appeal stands allowed.

27. Needless to state that the appellant shall be reinstated in service with all resultant benefits.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	01.10.2019
Transmission Date	

