

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11168 of 2016

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Shambhu Sah Son of Sh. Mahanth Sah resident of Village and Post- Dhum
Nagar, Police Station- Nautan, District- West Champaran, Bettiah.

... .. Petitioner

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar Patna
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Commissioner, Tirhut Division, Muzaffarpur.
4. The District Magistrate, West Champaran, Bettiah
5. The Deputy Development Commissioner, West Champaran, Bettiah.
6. The Deputy Collector, Nazarat/Establishment, West Champaran, Bettiah.
7. The District Welfare Officer, West Champaran, Bettiah.
8. The District Employment Officer, West Champaran, Bettiah.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Manoj Kumar, Mr. Prabhakar Sahai, and
Ms. Saleha Sabiha
For the Respondent/s : Mr. S.S.P.Yadav, SC 14

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 04-04-2019 Heard learned Counsel for the petitioner and the
learned Counsel for the respondent State.

The petitioner's claim for relaxation of age, having regard to his services as daily wager, while considering him for appointment has been rejected by the impugned order passed by District Magistrate.

The ground set forth for rejection of the petitioner's claim is that prior to the cut off date i.e. 11.12.1990 the petitioner had not completed 240 days in a year. Such a



conclusion is based on two reasons; first that in the representation filed by the petitioner he has enclosed a document showing his deputation in the Vehicle Cell during 1989 Lok Sabha election. The District Magistrate on the basis of the said deputation order has concluded that the Vehicle Cell was a temporary set up for discharge of works during election and therefore the same does not suffice for consideration. The other reason assigned is that petitioner's name did not figure in the panel prepared in 2008 for considering the claim of daily wagers who were working since prior to the cut off date for relaxation of age.

Counsel for the petitioner submits that both reasons assigned by the District Magistrate are unsustainable. His deputation was for small period in the Vehicle Cell, when the petitioner was already in the daily wage establishment. Otherwise the word deputation would not have been used. Other submission raised by the petitioner's Counsel is that merely because his name does not figure in 2008 panel, cannot be made basis to presume that he has not worked prior to 11.12.1990.

Learned Counsel for the petitioner has drawn attention of the Court to the letter issued by the District Magistrate forwarding revised panel prepared on 30.3.1990 of



such daily wagers who had crossed their age limit for regular appointment by virtue of lapse of time. In the revised panel petitioner's name figured at serial No. 281. The petitioner's name being sent by the District Magistrate, according to the Counsel for the petitioner is sufficient proof that he along with others were treated as belonging to a class and subsequent rejection by the District Magistrate, putting petitioner in a different class, without any basis and which is impugned in the instant writ petition, cannot be sustained.

Having considered the rival submissions, this Court would hold that presumption of the District Magistrate based on the fact that the petitioner's name did not appear in subsequent panel of 2008 is nothing but a hypothesis. What was required to be looked into was the records in the office prior to 11.12.1990 having regard to the communication sent from the office of District Magistrate dated 21.2.2012.

As noticed above, the petitioner's name clearly figures in the list forwarded by the District Magistrate dated 2.12.2012. The said list also takes note of the fact that the petitioner's name figured in the panel prepared way back in 1991-92 and that in the said panel the petitioner was at serial No. 281.



These facts were required to be looked at or considered by the District Magistrate for proper appreciation of the issue before concluding merely on the basis of hypothesis that because the petitioner's name did not figure in 2008 panel therefore it is presumed that he did not work prior to cut off date 11.12.1990.

The conclusion of the District Magistrate in the impugned order rejecting the petitioner's claim is clearly unsustainable. The order dated 12.4.2016 passed by District Magistrate, West Champaran, is hereby quashed. The District Magistrate Bettiah should examine the claim of the petitioner having regard to the facts stated hereinabove and take final decision with respect to the petitioner's entitlement of age relaxation based on records available in the office including the said letter dated 21.2.2012. Let final decision be taken by the District Magistrate expeditiously without undue delay within a period of eight weeks from the date of receipt/production of a copy of this order. In case the claim of the petitioner is substantiated, it is needless to say that appropriate steps should be taken for extending the benefits to the petitioner as is being done in the case of others similarly situated.

The writ petition is allowed.

(Madhuresh Prasad, J)

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