

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2163 of 2015

In
Civil Writ Jurisdiction Case No.14078 of 2015

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Zubair Ahmad (wrongly named as Md. Subair Ahmad in the connected writ petition), Son of Late Md. Ayub Hussain, resident of L-1, Ali Nagar Colony, Post Office Anisabad, District Patna 800002, at present working as Member, District Forum, Bhagalpur

... .. Appellant

Versus

1. The State Of Bihar through the Secretary, Food and Consumer Protecting Department, Govt. of Bihar, Patna
2. The Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna
3. The State Commission, Consumer Protection, Bihar, through the Secretary, the Commission, Consumer Protection, Bihar, Road no. 02, R-Block Patna
4. The District Judge Bhagalpur Cum Chairman, Screening Committee, Bhagalpur
5. Dr. Sunil Kumar Agrawal son of late Ramjee Agrawal. Resident of Mohalla-Nayabazar, Post office Bhagalpur city, District Bhagalpur 812002

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Purushottam Kumar Jha, Adv.
For the Respondent/s : Mr. Sandeep Kumar GA8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 12-04-2019

This intra-Court appeal arises from the judgment and order dated 8.10.2015 of a learned Single Judge passed in C.W.J.C.No. 14078/2015, whereby the challenge to the appointment of the petitioner as a Member, District Consumer Forum, Bhagalpur made vide notification No. 9683 dated 18.12.2014, inter alia, on grounds that he did not possess the



prescribed qualification as well in view of the prescription underlying Section 10(2) of the Consumer Protection Act (hereinafter referred to as 'the Act'), which inter alia allows a Member so selected to be appointed for two terms only and since the petitioner had already served in such capacity albeit in Dhanbad for such two terms he could not be given a third term, has been upheld, the writ petition allowed and the appointment of the petitioner set aside together with cost imposed on the State Government to the tune of Rs.50,000/-.

The facts are not in dispute and are admitted. The appellant, who was respondent before the Writ Court, possesses Sahitya Alankar degree issued by Hindi Vidyapeeth, Deoghar and has also served two terms as a Member, District Consumer Forum, Dhanbad prior to the impugned notification dated 18.12.2014.

We have heard Mr. Purushottam Kumar Jha, learned counsel appearing for the appellant, Mr. Kumar Ravis, learned AC to GA-1 for the State and Mr. S.M.Ashraf, learned counsel appearing for the respondent- writ petitioner and have perused the records.

Learned Single Judge has commented on the qualification possessed by the appellant as not being equivalent to a Graduate qualification and for which he has relied upon a



judgment reported in 2012(3) PLJR 353 (**Reeta Srivastava v. State of Bihar**).

We would reserve our opinion on this aspect of the matter because the qualification possessed by any person from Hindi Vidyapeeth, Deoghar ipso facto cannot be rejected simply on a negative list published by the State of Bihar for even if the Govt. of Bihar in its Education Department vide notification chose not to recognize such qualification, such a notification issued by the State Government to derecognize a qualification of the present kind prima facie cannot apply retrospectively to cover appointments obtained on the basis of such qualification prior thereto. We for the present, do not deem it necessary to delve into the issue, whether or not, the qualification obtained by the appellant was worthy of acceptance and not prejudiced by the notification issued by the State Government de-recognizing such qualification because we are satisfied to note that the appellant-respondent having served two terms as a Member, District Consumer Forum, Dhanbad, was disqualified for any such appointment in view of the provisions underlying Section 10(2) of 'the Act', which runs under:

“10(2) Every Member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier:



Provided that a Member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (be) of sub-section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee:

Provided further that a Member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the Member who is required to be appointed under the provisions of sub-section (1-A) in place of the person who has resigned:

Provided also that a person appointed as the President or as a Member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or Member, as the case may be, till the completion of his term.”

(Emphasis supplied)

Mr. Jha, learned counsel appearing for the appellant, in his persuasive argument has tried to canvass that the two terms which the petitioner has served as a Member, District Consumer Forum, was in a different state but bearing note of the legislative



intent underlying Section 10(2) of ‘the Act’ which creates no such compartment, rather allows a member simply ‘another term’ or until ‘sixty five years’ whichever is earlier that the petitioner has already served two terms in such capacity even if at Dhanbad, he is disqualified for a third term.

In such view of the matter and while reserving our opinion on the issue of qualification in so far as the appellant-respondent is concerned, we uphold the judgment of learned Single Judge in so far as it quashes the appointment of the appellant- respondent because certainly in view of clear language present in Section 10(2) of ‘the Act’ the appellant- respondent could not have been provided with the third term.

The appeal is dismissed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	NAFR
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