

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15729 of 2017

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Md. Ahsanul Hoda Najmi Son of late Md. Abdullah Resident of Mohalla-
Samanpura, Raja Bazar, P.S. Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. Bihar Vidhan Sabha, Patna Through Its Secretary
2. The Secretary, Bihar Vidhan Sabha, Patna.
3. The Deputy Secretary, Bihar Vidhan Sabha, Patna.
4. The Under Secretary, Bihar Vidhan Sabha, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anand Ojha Advocate Mr. Md. Fahimuddin Advocate
For the Respondent/s	:	Mr. Kaushal Kumar Singh Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 22-01-2019

Heard Mr. Anand Ojha, learned counsel for the
petitioner and Mr. Kaushal Kumar Singh, for the Bihar Vidhan
Sabha.

The petitioner seeks a direction to the respondent
authorities to consider his case for promotion to the post of
Section Officer from the post of Assistant, Bihar Vidhan Sabha
primarily on the ground that a junior Assistant has been
considered for the said post and has now been tipped for being
promoted to the post of Under Secretary, Bihar Vidhan Sabha.



The history of the service of the petitioner in the Bihar Vidhan Sabha is not required to be noted except for the fact that he joined the Bihar Vidhan Sabha way back in the year 1993 as an Urdu Typist. He could not appear in the departmental examination which was held in the year 2016 on account of his illness. However, he felt aggrieved that one Chhote Paswan who ranked junior to the petitioner and even though he too had not passed the departmental examination, was promoted to the post of Section Officer. This impelled the petitioner to approach this Court for redressal of his grievances vide C.W.J.C. No. 14097 of 2016. A Bench of this Court vide order dated 19.01.2017 directed the petitioner to approach Respondent No. 2 by filing a fresh representation and in that event the Respondent No. 2 was asked to take a decision within a period of three months from the date of filing of such representation. Pursuant to the aforesaid representation, an order has been passed dated 13th of April, 2017, which has been impugned in the present petition, rejecting the claim of the petitioner for being promoted to the post of Section Officer. The order impugned inter alia reflects that in the year 2015,



four posts had become vacant and since there was no availability of any candidate who had passed the departmental examination, aforesaid Chhote Paswan was promoted to the post of Section Officer with a caveat that if he did not clear the departmental examination within a period of six months, he would be reverted back to the post of the Assistant. Since Chhote Paswan could not pass the departmental examination which was conducted in the month of January, 2016, he was reverted back to the post of Assistant. The order further reflects that thereafter no one who has not passed the departmental examination has been promoted to the post of Section Officer. Simultaneously, the claim of the petitioner for his exemption from appearing in the examination also was rejected on the ground that he never appeared in the departmental examination which was conducted in the year 2016 and 2017.

Mr. Anand Ojha, learned advocate appearing for the petitioner has submitted that the issue of the petitioner not having appeared in the departmental examination comes later. The first grievance of the petitioner all through has been that



Chhote Paswan who was junior to the petitioner in the rank of the Assistant was given promotion to the post of Section Officer, even when he had not passed the departmental examination. He has further drawn the attention of this Court to the later counter affidavit wherein it has been stated that after Chhote Paswan was reverted to the position of an Assistant in the event of his having failed in the departmental examination in the year 2016, he was again promoted to the post on the premise that he had appeared in the examination of the year 2016.

The counter affidavit does not refer to any condition attached to such promotion for the second time and it also does not explain or state that any exemption was granted to aforesaid Chhote Paswan for his having made consistent efforts of passing the examination or of his having come of the age of 50 years for him to obtain such exemption.

A bare reading of the counter affidavit, it has been urged by Mr. Ojha, learned advocate, would reflect that without Chhote Paswan having passed the departmental examination and without there being any exemption in his favour, he has



been accorded promotion to the higher post. No further explanation has been given in the counter affidavit for the aforesaid promotion to Chhote Paswan, who admittedly is junior to the petitioner.

Learned counsel for the petitioner has further submitted that the rejection of the application of the petitioner for exemption from appearing in the departmental examination which is contained in the order dated 19th of April, 2018, no specific ground apart from his not having appeared in the departmental examination of 2016 and 2017 has been given. The order misses to deal with the situation that because of illness, in the first instance, the petitioner could not appear in the departmental examination of the year 2016 and later when the departmental examination was again held in the year 2017, this matter was subjudice, giving an impression in the mind of the petitioner that he is not required to appear in the examination. These two grounds of the petitioner were never considered or at least does not get reflected in the order dated 19th of April, 2018 contained in Annexure- 5.



The learned counsel for the petitioner has also taken exception to the averments made in the counter affidavit which as has been noted earlier does not get reflected in the order dated 19th of April, 2018. The explanation offered for rejecting the claim of exemption in favour of the petitioner is that he had feigned illness and that he had deliberately not appeared in the departmental examination of the year 2016 and 2017, thereby rightly giving an impression in the mind of the employer that there was no consistent effort of the petitioner to pass the examination.

Mr. Ojha therefore contends that if this were so, it ought to have been stated in the order dated 19th of April, 2018.

The sum and substance of the arguments of the learned counsel for the petitioner, therefore, is that a folly was committed by the employer in firstly choosing a junior person to be appointed on a higher post of Section Officer and secondly, the petitioner has been discriminated against even in the sphere of granting exemption to him from passing the departmental examination for him to qualify for being



considered for being promoted to a higher post of Section Officer even when he was ill and the matter was subjudice.

The aforesaid aspects have not been taken into account while rejecting the claim of the petitioner for being considered for the post of promotion.

Mr. Kaushal Kumar Singh, learned advocate for the Bihar Vidhan Sabha has however opposed the contentions of the petitioner on the ground that in the absence of the petitioner having obtained any exemption from the department and his not having appeared and passed the departmental examination, he cannot be considered for promotion to the higher post.

What Mr. Singh has really missed out in explaining to this Court as to why even on failure of aforesaid Chhote Paswan to pass the departmental examination in the year 2016 when he was reverted to the post of the Assistant, he was again promoted to the higher post on the simple ground of his having appeared in the next examination. There is no statement before this Court expositing whether aforesaid Chhote Paswan had passed in the departmental examination or



because of his regular efforts in clearing the examination but not being successful, he was accorded the concession of exemption from appearing in such examination.

Thus, this Court feels that a fresh opportunity be given to the petitioner to represent his case before the Respondent No. 2 for him to take a fresh decision in the matter on the ground of parity and also keeping in mind that the petitioner now is 50 years of age and has been agitating ever since Chhote Paswan, a junior to him has been provisionally promoted to the post of Section Officer, and which post he still holds but for a brief interregnum when he was reverted back to the post of Assistant.

In view of the aforesaid facts and circumstances, this Court directs the petitioner to prefer a fresh application, seeking exemption from passing the departmental examination as also an application before the Respondent No. 2 for taking a fresh decision over the suitability of the petitioner for being considered for the post of promotion to the higher post of Section Officer. In case such an application is filed within a period of three weeks from today, a decision shall be taken by



Respondent No. 2 with a speaking order taking into account all the facts that have been stated in the order, within a period of eight weeks thereafter.

With the aforesaid observation / direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	24.01.2019
Transmission Date	

