IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 6404 of 2010

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Yogendra Sharma, S/o Late Anandi Singh, R/o Vill- Katru Bigha, Gram Panchayat- Bisai Bigha (New Chausanda), PS and Block - Parwalpur in the district of Nalanda

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Panchayati Raj, Govt of Bihar, Patna
2. The Director, Panchayati Raj Department, Govt of Bihar, Patna
3. The Commissioner, Patna Division, Patna
4. The District Magistrate-Cum-Collector Nalanda
5. The Deputy Development Commissioner Nalanda at Bihar Sharif
6. The District Panchayat Raj Officer, Nalanda at Bihar Sharif
7. The Additional Director, Department of Panchayati Raj, Govt Of Bihar, Patna
8. Nawal Kishore Pd, S/o Ragho Mahto, R/o Vill + PO – Nekpur, PS – Rajgir, District – Nalanda
9. Bechan Pd, S/o Sadasiv Prasad, R/o Vill - Mundipur, PO – Ranipur, PS – Ekangarsarai, District – Nalanda
10. Anil Kumar, S/o Ram Naresh Singh, R/o Vill + PO – Telmar, PS – Harnaut District – Nalanda
11. Upendra Kumar, S/o Ramashish Singh, R/o Vill – Mustafapur, PS – Islampur, District – Nalanda
12. Manoj Kr, Son of Ram Kishore Singh, R/o Village – Pokharpur, PS – Giriak, District – Nalanda
13. Ajit Sharma, R/o Vill – Mayapur, PS – Katrisarai, District – Nalanda
14. Birendra Pd, S/o Basudeo Pd, R/o Vill - + PO – Pillichhi, PS – Parwalpur, District - Nalanda

... ... Respondent/s

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For the Petitioner/s	:	M/s Siya Ram Shahi, Sunil Kr, Advocates
For the Respondent/s	:	Mr Sudish Kr, AC to PAAG

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 08-07-2019

Heard learned counsel for the petitioner and the respondent-State. None appears for the private respondents.

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2 Case of the petitioner, in brief, is that he was a Dalpati and entitled for appointment by granting relaxation of age on the post of Panchayat Sachiv/Secretary. The roster point was determined on 29.08.2009 for making the selection. Case of the petitioner is that by following the roster point, the petitioner, who is a candidate of the Unreserved Category, was duly considered for appointment by the Committee on 01.09.2009. From bare perusal of the determination of the roster point, it is evident that since selection was being done of only 8 candidates, following roster point 316 – 323, four candidates were required to be selected from Unreserved Category. Petitioner has, therefore, been selected by the Selection Committee in its Meeting dated 01.09.2009, against the posts in Unreserved Category. A complaint was made by one Mr Birendra Prasad claiming that, being a Member of the Extreme Backward Caste, he has been deprived of consideration on the roster point meant for his category within the 8 posts for which the Selection Committee had made its recommendation on 01.09.2009. On account of complaint made by him, the issue was reexamined. The District Level Selection Committee again met on 09.02.2010. On this occasion, petitioner' counsel, by referring to the roster point determination dated 29.08.2009 (Annexure 4), submits that selections were made against the eight posts deviating

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from the roster point and violating the same. He submits that as a result of violation of the established roster point, the candidates belonging to other reserved categories have been selected against the General Category.

3 The entire violation of the roster point, as alleged by the petitioner, is not relevant in the instant proceedings as the petitioner's claim is confined to himself. Having regard to the fact that four roster points, within the eight posts for which selections were done, was determined to be for unreserved category.

4 The petitioner is claiming only against one such post. Taking notice of the grievance of the petitioner that such violation, which was sought to be justified by the authorities, by referring to existing of posts backlog, this Court, under order dated 16.07.2010, had stayed the Minutes of the Meeting dated 09.02.2010 of the District Level Selection Committee. Subsequently, after the instant matter remained pending for some time, this Court had allowed the respondents to proceed for filling up seven out of eight posts in question, keeping one post under general /unreserved category vacant. This Court had directed that the said one post could be filled up subject to the final orders passed in the instant case. The order of this Court to this extent is dated 03.07.2013.

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5 It is admitted position that one post has been kept vacant for the petitioner and no appointment against the same has been made pursuant to the Minutes of the District Level Selection Committee dated 09.02.2010. The latest supplementary counter affidavit, filed by the respondent-State, does not dispute the roster point position, as submitted by the petitioner. In paragraph 9 of the supplementary counter affidavit, stand is taken that the Unreserved Category posts were filled up from other categories, due to non-availability of candidates of General Category.

6 Such stand of the respondents is, prima facie, incorrect. The petitioner, admittedly, a Member of the Unreserved Category was available and had been declared selected as per the District Level Selection Committee Minutes dated 01.09.2009. Alleged non-availability of candidates from General Category is factually untenable on account of the Minutes of the District Level Selection Committee dated 01.09.2009 (Annexure 6).

7 In view of the said findings, this Court would find no difficulty in allowing the petitioner's selection against the roster point vacancy meant for Unreserved Category having regard to the fact that the post has been kept vacant in view of the earlier orders of this Court, taken note of herein above and having regard to the stand of the respondents to the extent that though the vacancy was

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available for Unreserved Category, the same was being filled up from the Reserved Category due to non-availability of Unreserved Category candidate.

8 This Court direct that the respondents should proceed to take up the petitioner's case for appointment against the Unreserved post and if there is no other impediment in petitioner's appointment, the same should be done expeditiously and preferably within three months from the date of receipt/production of a copy of this order.

9 In respect of other claims, such as age relaxation, the petitioner cannot be made to suffer prejudice on account of delay and parity must be maintained with the other seven persons who had been declared selected under the Minutes of District Selection Committee dated 01.09.2009.

10 Writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2019
Transmission Date	NA

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