

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14533 of 2019

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Amit Kumar Azad Son of Sri Shiv Shankar Yadav Resident of Mohalla-
Laxmipuri, Ward No.14, P.S. and Town and District- Madhepura.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Director of Land Records and Survey, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Prashant Sinha, Advocate Mr. Rohan Verma, Advocate
For the Respondents	:	Mr. Md. Asif Kalim, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 17-10-2019

This writ application relates to recruitment for the post of Special Survey Assistant Settlement Officer on the basis of Advertisement No. 3 of 2019 issued on 04.03.2019 by the Directorate, Land Records and Survey. The petitioner has put to challenge Clause 3(ii) of the said advertisement, which provides for 50% of horizontal reservation for civil engineering graduates having passed out from the Government Engineering Colleges of the Bihar, for the purposes of said recruitment process. The recruitment is indisputably governed by the Bihar Special Survey Honorarium Based Contractual Appointment Rules, 2019 (hereinafter referred to as 'the Rules'), framed by the State



Government of Bihar under Article 309 of the Constitution of India and the Bihar Survey and Settlement Act, 2011.

2. The challenge to the said stipulation under Clause 3(ii) of the advertisement rests on the plain reasoning that there being no provision for such reservation under the rules, which have statutory character, it could not have been incorporated in the advertisement. Rule 5 of the rules provides for reservation in the matter of selection/appointment to the posts to the effect that the provisions of reservation in service and posts (including horizontal reservation) issued by the General Administration Department, Government of Bihar, shall be applicable in the appointments of Special Survey Assistant Settlement Officer.

3. It is the petitioner's case that there is no such instruction/guidelines or decision of the General Administration Department providing horizontal reservation for the engineering graduates, who have passed out from the Government Engineering Colleges. The petitioner is an applicant to the post against the said advertisement and belongs to B.C. category. He is said to have passed civil engineering graduation examination from a privately managed engineering college.

4. When the matter was taken up on 13.08.2019, this Court had directed that till disposal of this writ application, at least



one place shall be kept vacant. It is evident from the said order dated 13.08.2019 that a provisional merit list, on the basis of said advertisement, was already published when the said matter was taken up on 13.08.2019. The provisional list was published on 02.08.2019, but final result has yet not been published/announced.

5. A counter affidavit has been filed on behalf of the respondent State of Bihar and in order to justify the said stipulation under Clause 3(ii) of the advertisement, it has been vaguely stated that the said provision of 50% horizontal reservation in favour of the candidates having civil engineering degree from Government Engineering Colleges of Bihar has been incorporated in the 'interest of the State of Bihar'. Further, following statement has been made in paragraph 15 of the counter affidavit : -

“15. That in view of many queries received by the Directorate from applicants regarding non-inclusion of the their name in the merit list, the Director, Directorate of Land Records and Survey, Department of Revenue and Land Reforms, Bihar, Patna, vide notification no.829, dated 30.05.2019 (Annexure-7 of the writ petition) has issued notice whereby it has been clearly held “It is hereby clarified that the list of applicants to be called for counselling has been prepared to invite applicants in ratio of 2.5 times the category and sub-category-wise vacancy for each Position. Vertical reservation application for EBC, BC, SC, ST, WBC & EWS applicants horizontal reservation-35% for female applicants, 4% horizontal for Divine Body applicants and 2% for maternal



and paternal grandson/granddaughter of freedom fighters has been incorporated in this merit list in accordance with the process as laid out in General Administration Department, Government of Bihar letter no.-11364, dated 04-09-2017.”

6. Since the said letter of General Administration Department dated 04.09.2017 was not annexed with the counter affidavit, the Court had asked learned State counsel to produce before this Court the said letter. Learned State counsel has produced the letter dated 04.09.2017 issued by the General Administration Department, which has been taken on record without any objection from learned counsel for the petitioner.

7. I have heard Mr. Prashant Sinha, learned counsel appearing on behalf of the petitioner and Mr. Asif Kalim, learned A.C. to AAG-12 and have given my anxious consideration to rival pleadings/materials on record and submissions made on behalf of the parties.

8. Any recruitment to a public post under the State is to be governed strictly in terms of statutory rules, if such rules have been framed and exist. The terms of advertisement cannot go contrary to or beyond the provisions of the statutory rules. On careful examination of the provisions of reservation as made under the rules read with the letter dated 04.09.2017 issued by the General Administration Department, Government of Bihar, I have



no hesitation in reaching a definite conclusion that the advertisement could not have provided for any horizontal reservation for candidates passing out from the Government Engineering Colleges in the absence of any such provision under the Rules. The rules do not provide any such reservation nor grants any scope for the respondents to allow preference on such basis.

9. Clause 3(ii) of the advertisement, in my view, being illegal for the aforesaid reason, deserves to be struck down and is accordingly struck down.

10. The respondents are directed to prepare a revised result without taking into account the provision of reservation as stipulated in Clause 3(ii) of the advertisement. I have kept in mind the fact that the persons provisionally selected in the provisional list dated 02.08.2019 do not have any indefensible right to be selected and in that background I did not feel it necessary for asking the petitioner to implead the provisionally selected candidates on that basis, as party respondents in the present writ application.

11. It has been stated at the bar that final merit list is yet to be published. Let the same be published and appointments be made expeditiously as the matter has remained pending for a considerable period of time.



12. This application is allowed.

13. Interlocutory applications stand disposed of.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.10.2019.
Transmission Date	N/A

