

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.912 of 2019

In
Civil Writ Jurisdiction Case No.2877 of 2019

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Ravi Kumar Jha Son of Sri Raman Kumar Jha, Resident of Ward No. 1, Jha
Tola Gauripur Singeshwar, P.S.- Singheshwar, District Madhepura.

... .. Appellant

Versus

1. The State of Bihar through the District Magistrate Madhepura.
2. The Bihar State Board of Religious Trusts Vidyapati Marg, Police Station
Vidyapati Marg, Police Station Kotwali Town, District Patna, through its
Administrator/Special officer.
3. The Chairman Bihar State Board of Religious Trust, Vidyapati Marg, Patna.
4. The Sub-Divisional Officer/Secretary Singheshwar Temple Trust
Committee, Madhepura.
5. The Chairman Singheshwar Temple Trust Committee, Singheshwar,
Madhepura.
6. The Exam Controller B.N.M.U., Madhepura.

...Respondents/Respondents

7. Amit Kumar Son of Sri Bipin Shankar Kumar Resident of Village and P.O.-
Baalam, Police Station-Madhepura, District- Madhepura.
-Petitioner/ Respondent

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Appearance :

For the Appellant	:	Mr. S. D. Sanjay, Sr. Advocate Ms. Priya Gupta, Advocate Ms. Parul Prasad, Advocate
For the State	:	Mr. G. P. Ojha, GA-7 Mr. Sushil Kumar Singh, AC to GP-7
For the Board	:	Mr. Ganpati Trivedi, Sr. Advocate Ms. Aishwarya Shree, Advocate.
For respondent no. 7	:	Mr. Swapril Kumar Singh, Advocate
For BNMU	:	Mr. Ritesh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 29-11-2019

Heard Mr. S. D. Sanjay, learned senior counsel for the appellant, Mr. Sushil Kumar Singh, learned assistant counsel to GA-7 for the State, Mr. Ganpati Trivedi, learned senior counsel appearing for Bihar State Board of Religious Trust (for short 'the Board') and Mr. Ritesh Kumar, learned counsel for B. N. Mandal University, Madhepura.

2. The present intra-court appeal under clause 10 of the Letters Patent of the Patna High Court Rules has been preferred by the appellant against the judgment dated 15.07.2019 passed by the learned Single Judge in CWJC No. 2877 of 2019 whereby he has set aside the order dated 28.09.2018 passed by the learned Administrator of the Board by which the appellant was appointed on the post of Manager of Singheshwar Temple Trust Committee, Singheshwar, Madhepura (for short 'Trust Committee').

3. Mr. S. D. Sanjay, learned senior counsel appearing for the appellant submitted that the learned Single Judge failed to consider the fact that pursuant to an advertisement for open selection, the appellant had applied to participate in the selection process and that he was a graduate and had also diploma in computer application and got certificate



of office automation and internet. He has further contended that the learned Single Judge also failed to appreciate that after inquiry by the respondent, the learned Administrator of the Board held that the appellant had appeared and passed his graduation in 2013 batch itself, but due to technical reason, he could not get his marksheet even though his result was known to him in the year 2014 itself. According to him, the learned Single Judge also failed to appreciate that due to laches on the part of the respondent B. N. Mandal University, Madhepura (for short 'the University') the marksheet was supplied to the appellant belatedly. Hence, the appellant could not have been disqualified from appointment on the post in question.

4. *Per contra*, learned counsel appearing for the State submitted that there is no illegality in the order impugned passed by the learned Single Judge. He contended that it is an admitted case of the appellant that he did not fulfill the criteria of the advertisement for appointment against the post of Manager of the Trust Committee in question. It was specifically stated in the advertisement for appointment that only a graduate on the date of filing of the application form would be eligible for appointment against the post. The appellant was not a graduate on the date of advertisement. His final result declaring



him to have passed in graduation was published on 05.03.2016. Therefore, there was no occasion for him to have the degree of graduation on the date of filing of the application form. He contended that in view of admitted case of the appellant, he was not eligible to be appointed against the post in question. Hence, the learned Single Judge rightly interfered with the order passed by the learned Administrator of the Board.

5. Mr. Ganpati Trivedi, learned senior counsel appearing for the Board has supported the case of the appellant. He contended that the learned Administrator had taken a sympathetic view of the matter as the appellant was discharging the duty of Manager in the Trust Committee for the last three years. He contended that merely because the result of the appellant was declared subsequent to the advertisement, he would not be disentitled to be appointed against the post in question.

6. Mr. Ritesh Kumar, learned counsel appearing for the University submitted that the appellant was a student of K. N. Degree College, Raghapur, Madhepura and passed B. A. History (Hons.) Examination in the year 2013 and was placed in second class. The final result of the appellant was pending since he was declared fail in B.A. Part-II History (Hons.) Examination



and due to some technical mistakes in admit card. After he cleared B.A. Part-II History (Hons.) Examination, his final result was published on 05.03.2016. He contended that the result of B. A. History (Hons.) was published on 22.08.2013, but since the appellant had not cleared B.A. Part-II History (Hons.), his result was withheld.

7. The admitted facts necessary for the present case are that on 22.06.2015, an advertisement was published in daily newspaper for appointment on the post of Manager in the Trust Committee whereby the applicants were required to send their application form along with duly self attested educational and experience certificates if they possess the requisite qualification of being a graduate from a recognized institution and has got an experience in office management and maintenance of account for a period of five years. The last date for submitting application was 20.07.2015. The Trust Committee took interview of the applicants on 17.01.2016 and the Chairman recommended the name of the appellant for appointment on the post of Manager whereafter the Chairman of the Board passed order dated 26.02.2016 for appointment of the appellant on the post of Manager in the Trust Committee.

8. The member of the Trust Committee,



however, felt that the Chairman of the Committee had shown undue favour to the appellant. They made a complain in this regard to respondent no. 4. Respondent no. 4 made an enquiry from the Controller of Examination of the University for verification of certificate of the appellant and inform as to whether the appellant had passed his graduation examination or not. On 04.03.2016, the Controller of Examination of the University wrote a letter to the respondent no. 4 that the appellant had not passed B.A. till date, as he had failed in B.A. Part-II History (Hons.) Examination and thus the result is pending. Thereafter, the respondent no. 4 informed the Chairman of the Board that the appointment of the appellant is illegal, as the appellant was not even eligible to apply against the post in question.

9. Since the respondent no. 4, who also happens to be Secretary of the Trust Committee was not allowing the appellant to join on the post of Manager, the appellant filed a writ petition before this Court vide CWJC No.6673 of 2016. The said writ petition was disposed of by the learned Single Judge directing the Administrator of the Board to take a decision within four weeks in respect of appointment of the appellant on the post of Manager in accordance with law.



10. The respondent no.7 had also approached this Court vide CWJC No. 16121 of 2016 challenging the appointment of the appellant, which was also disposed of in terms of the order passed in CWJC No. 6673 of 2016.

11. Pursuant to the order passed in CWJC No. 6673 of 2016 by the writ court the Administrator of the Board heard the parties and held that the appellant is a graduate of the year 2013. Hence, even if his result was not declared earlier and was declared on 05.03.2016 was eligible to be appointed on the post of Manager. Hence, the Trust Committee was directed to hand over charge of the post to the appellant by the learned Administrator vide order dated 28.09.2018.

12. The said order dated 28.09.2018 was challenged by the respondent no. 7 in writ petition vide CWJC No.2877 of 2019.

13. After hearing the parties, the learned Single Judge allowed the writ petition vide impugned judgement dated 15.07.2019 and set aside the order dated 28.09.2018 passed by the learned Administrator of the Board. The learned Single Judge in his order has given a clear finding that neither on the date of application nor on the date of interview nor on the date of appointment, the appellant was having his marksheet of



graduation and the certificate of passing the graduation examination. He has also noted that the result of the appellant was published on 05.03.2016.

14. The operative part of the order passed by the learned Single Judge reads as under:-

“Having heard learned counsel for the parties and on perusal of the records this Court finds that there are some admitted facts in this case. The advertisement (Annexure ‘1’) was published on 22.06.2015 calling upon the applicants to apply for the post of Manager if they possess the requisite qualification of being a graduate from a recognized institution and has got an experience of working in office management, and maintenance of account for a period of five year. The applicants had to submit their application together with all educational certificates and the experience certificates which were to be self attested. The last date for making the application was 20.07.2015. The applications were to be examined and interview was fixed on 02.08.2015 in the office of the Trust.

It is an admitted position that the respondent no. 7 was a student of Graduation in 2010-2013 batch, in the second year though he had failed in a paper but was promoted to IIIrd year. He had though passed out the



graduation third year examination of 2013 but because earlier he had failed in graduation second part examination, he sat in that examination in the year 2014. Because of some technical reasons his result was not published. From the counter affidavit of the private respondent it would appear that his marksheet of three year degree (Honors) course was issued vide Certificate No. 12767 on 05.03.2016 only. He, however, while filling up his application for the post of Manager in the Trust declared himself a graduate of the year 2013. It is evident that even on the date of his interview on 17.01.2016 and selection/appointment on 26.02.2016 the respondent no. 7 was not having his educational certificate of graduation. The advertisement talks of experience of five years in office management and maintenance of accounts in a recognized institution. Although this issue is not specifically pleaded, however, while considering the writ application this Court cannot be a totally oblivion or a sleep to the facts appearing from the records. If five years period of experience is counted from the date of making of the application (20.07.2015), it will relate back to 20.07.2010 meaning thereby that the candidate making application for the post must have got experience of five years working in a recognized institution in



office management and maintenance of account since 20.07.2010. The private respondent who claims to have passed his graduation third part in the year 2013 as a regular student being in the batch of the year 2010-2013, if claimed his five years experience as working in office Management, the impugned order at least nowhere take notes of that. This Court has indicated this only with a view to take note of the entire facts and circumstances of the case.

The fact remains that neither on the date of application nor on the date of interview or his appointment (26.02.2016) the petitioner was having his marksheet of the graduation and the certificate of passing graduation examination. The result was published only on 05.03.2016, therefore, this Court has reasons to believe that the private respondent no. 7 was shown undue favour by the Selection Committee and later on by the Administrator.

A sympathetic view of the matter could have led to a conclusion that petitioner being in possession of the graduation certificate now his appointment should not be interfered with. This Court has considered this aspect of the matter as well but in order to maintain the sanctity of the procedures of appointment and to avoid any chance of favouritism, the Court



is of the considered opinion that the terms of the advertisement are to be strictly adhered to. A large number of eligible unemployed youth are waiting for a fair chance to get an employment. Whenever an advertisement for appointment is published many eligible candidates or those who are about to be eligible go through the same but finding the terms of the advertisement which require submissions of the educational certificate many a prospective candidates who may become eligible after the date of interview fixed in the advertisement would restrain themselves under a bona fide belief that they are not eligible to apply as they do not possess the requisite educational certificate. If one candidate makes an application without the educational certificate and his application is entertained despite the fact that he was not able to produce his educational certificate with his application form and even at the time of interview, it would amount to altering the level playing field and thereby it would be a case of discrimination.

In the present case, this Court is convinced that the respondent No. 7 was not possessing the educational certificate such as Marksheet and the passing out certificate of Graduation because his result was not published until 05.03.2016, therefore,



acceptance of his application and consideration thereof for selection was not in accordance with the terms of advertisement and hence cannot be allowed to sustain. The impugned order dated 28.09.2018 as contained in Annexure '15' to the writ application is, therefore, set aside.

The concerned respondents are directed to consider the case of the petitioner for appointment on the post of Manager of Singheshwar Temple Trust Committee, Singheshwar, Madhepura.

The writ application is, thus, allowed.”

(emphasis mine)

15. The appellant does not dispute the fact that he was declared fail in B.A. Part-II History (Hons.) Examination and due to mismatch in his admit card his final result was published on 05.03.2016 after he cleared his B.A. Part-II History (Hons.) Examination. Thus, it is evident that till the dates of advertisement, the interview, the result etc. for appointment in question, the appellant had not passed his graduation examination.

16. On the facts and in the circumstances of the case, we are of the opinion that the learned Single Judge has rightly held that the appellant was not possessing the



educational certificate and the passing out certificate of graduation till the date of his appointment and, hence, he was not eligible to be considered for appointment against the post in question.

17. If a candidate was not eligible to be considered for appointment, no sympathetic view could have been taken by the learned Administrator on any ground much less the ground that subsequently, the appellant obtained passing out certificate.

18. In view of the discussions made above, no interference with the judgment passed by the learned Single Judge is warranted.

19. The appeal, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	NAFR
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