

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.210 of 2018

In

Civil Writ Jurisdiction Case No.609 of 2017

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Sudhir Kumar, Son of Late Saudi Singh, Resident of Village - Khanawan, P.S.
- Narhat, District - Nawada.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Labour Resources, Government of Bihar, Patna.
4. The Additional Secretary, Department of Labour Resources, Government of Bihar, Patna.
5. The Deputy Secretary, Department of Labour Resources, Government of Bihar, Patna.
6. The Bihar Public Service Commission through its Secretary, Bailey Road, Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 212 of 2018

In

Civil Review No.294 of 2017

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Sudhir Kumar, Son of Late Saudi Singh, Resident of Village - Khanawan, P.S.
- Narhat, District - Nawada.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Labour Resources, Government of Bihar, Patna.
4. The Additional Secretary, Department of Labour Resources, Government of Bihar, Patna.
5. The Deputy Secretary, Department of Labour Resources, Government of Bihar, Patna.
6. The Bihar Public Service Commission through its Secretary, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Appellant	:	Mr. Chittranjan Sinha, Senior Advocate Mr. Satish Chandra Mishra Md. Nurul Hoda, Advocate
For the B.P.S.C.	:	Mr. Sanjay Pandey, Advocate



For the State

Mr. Sushil Kumar Singh, A.C. to AAG-10

Mr. Parijat Saurav, A.C. to A.A.G.-10

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-02-2019

Heard Shri Chittranjan Sinha, learned Senior Counsel for the appellant and Shri Sanjay Pandey, learned counsel for the Bihar Public Service Commission and Shri Sushil Kumar Singh, learned counsel for the State of Bihar.

2. The matter had been adjourned on three occasions and after exchange of affidavits, it is evident that the issue relating to a decision being taken by the State Government stands foreclosed as per the communication dated 16th of March, 2018. The petitioner's representation was rejected but with a rider that he shall be considered if the post is advertised in future with the benefit of age relaxation. The fresh advertisement was issued thereafter on 13th April, 2018 and the last date of the application was 28th of May, 2018.

3. Learned counsel for the appellant Shri Sinha submits that the issue is with regard to the possession of the qualification by the appellant at the time when the first advertisement was made in the year 1998 in terms of the Bihar Labour Services (Technical) Rules, 1969. He contends that the



appellant did not suffer from any such deficiency and consequently, the denial of consideration of the candidature of the appellant on the ground of not possessing the qualification was unjustified.

4. This litigation was contested by the appellant earlier in C.W.J.C. No. 11643 of 2003 where it was prayed that his candidature will be considered in the light of the Advertisement No.97 of the year 1998. The writ petition came to be dismissed on 13th of September, 2004. The ground with regard to requisite qualification therefore was specifically turned down therein, against which L.P.A. No.1016 of 2004 was filed that was dismissed on 11th of October, 2004 by the following judgment:-

“This matter relates to the appointment of Boiler Inspectors by the Bihar Public Service Commission. The appellant and others applied but the Commission did not recommend their names on the ground that they did not possess the requisite qualification and experience. This court cannot sit as an appellate forum over the decision of the Commission.

Accordingly, we do not find any error in the order or the learned single judge and this appeal, is thus, dismissed.



However, it appears that the Commission has asked the state government to re-advertise the post and the matter is pending before the State government as such the State government is directed to take a decision as to whether the appointment should be made on the basis of earlier advertisement or the fresh advertisement be made. The decision has to be taken by the State government within six weeks from the date of receipt/production of a copy of this order. In case of fresh advertisement, the age factor will not come in the way of those candidates who had earlier applied.”

5. The appellant taking the help of inter departmental communication and file notings has attempted to demonstrate that the stand taken by the respondent for non-fulfillment of qualification was not correct and that the department itself had been deliberating upon the same.

6. We had called upon the respondents to file an affidavit and a supplementary counter affidavit has been filed by the State stating therein that file notings did not form the basis of taking any ultimate decision and therefore the ultimate decision of the State Government has to be complied and would not be governed by the file notings.



7. What we find is that the Division Bench while dismissing the appeal had observed that the Commission had asked the State Government to re-advertise the post and in that background, an observation was made that it was for the Government to take a decision as to whether the appointments should be made on the basis of an earlier advertisement or a fresh advertisement.

8. As noted above, the Government has already taken a decision to that effect but such a decision was not under challenge nor was the consequential advertisement challenged by the appellant. In the background of the previous round of litigation, it is therefore not appropriate for us to now reopen the issue on the question of qualification while delivering the judgment, the Division Bench on 11th October, 2004 has observed that the Court cannot sit as an appellate forum over the decision of the Commission.

9. The argument which has been advanced now virtually amounts to seeking a review of the said observations made which may not be possible in an inter party dispute as res judicata applies at every stage of the same proceedings. Consequently, it will not be open to this Court now to reconsider the issue of qualification as being possessed or otherwise by the



appellant vis-a-vis the advertisement of the year 1998.

10. Shri Sinha submits that in the new advertisement, since no appointments and selections have been made till date, he may also be permitted to participate in the same.

11. The issue of participation of the appellant under the fresh advertisement and the issue of relaxation of age is within the realm of the State Government and therefore this appeal is disposed of with liberty to the appellant to approach the State Government for any such relief provided the appellant is otherwise qualified to apply for the said post. The State Government may take a decision in this regard as expeditiously as possible.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.N.M./Saif

AFR/NAFR	
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