

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.822 of 2018

In

Civil Writ Jurisdiction Case No.1276 of 2015

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Pawan Kumar, son of Sri Charitar Prasad Yadav, resident of village Paharpur,
Police Station-Simri Bakhtiarpur, District-Saharsa.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
3. The Director, Panchayati Raj, Government of Bihar, Patna.
4. The Deputy Director-cum-Deputy Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
5. The District Magistrate, Saharsa.
6. The Deputy Development Commissioner, Saharsa.
7. The District Panchayat Officer, Saharsa.
8. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Jitendra Kumar Roy, Advocate
For the State	:	Mr. Manish Kumar, A.C. to A.A.G.-6
For the S.S.C.	;	Mr. Ashok Kumar Debey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-03-2019

Heard learned counsel for the appellant.

2. The appellant has come up questioning the correctness of the impugned judgment dated 30th of April, 2018 passed in C.W.J.C. No.1276 of 2015 on the ground that the appellant has been pursuing his remedy before this Court since the year 2006 seeking appointment and in



spite of the vacancies being available, the appellant was not accommodated. The learned single Judge has committed an error in proceeding to analyse the facts and has arrived at an incorrect conclusion that the appellant cannot be accommodated now as no posts are available.

3. Learned counsel submits that the respondents were granted time on 23rd July, 2018 to file a counter affidavit and in the absence of any response, this fact should be presumed that the vacancies were existing.

4. We have considered the submissions raised. Annexure 14 to the writ petition, which is a requisition by the Director, Panchayati Raj to the Secretary, Bihar Staff Selection Commission dated 29th June, 2013, records the sending of a requisition for 40 posts in the District of Saharsa. It is therefore evident that as in the year 2013 there were 40 posts vacant on the basis whereof the appellant came up before this Court in the writ petition giving rise to present appeal in the year 2015 contending that the vacancies were available, the appellant deserves to be considered in the light of the earlier litigation.

5. A counter affidavit to the same was filed on behalf of the respondents and the learned counsel for the appellant has invited the attention of the Court to



paragraph 37 of the counter affidavit to contend that the respondents have admitted the vacancies.

6. We have perused paragraph 37 and the said admission is in relation to the letter dated 30th of May, 2009 about the existence of the vacancies. Nonetheless, even assuming that the vacancies were tendered for being filled up in the year 2013, the question before the learned single Judge was as to whether on the date when the writ petition was being decided i.e. on 30th April, 2018, any vacancy was available or not or otherwise also when the writ petition was filed in the year 2015 any further vacancy was available or not.

7. From the grounds taken in the appeal and the averments made, we do not find any challenge having been raised with regard to the finding recorded by the learned single Judge on the non-availability of the vacancy. The said finding recorded by the learned single Judge of any contemporaneous vacancy being available either in the year 2015 or even thereafter in the absence of any such challenge raised or the ground taken, it will not be possible for this Court while sitting in this intra-Court appeal to examine any other fact inasmuch as the relief can be provided only if the vacancy is available.



8. The appeal accordingly lacks merit and is rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM/Saif

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CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

