

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14722 of 2017

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1. Prabhat Kumar son of Maheshwar Prasad, resident of Moh.- Mahavir Chowk, W.N.- 5, P.S.- Dumra, District- Sitamarhi.
 2. Ajit Kumar Sharma, son of Late Narendra Kumar Sharma, resident of Moh.- Paramhansh Nagar, W.No.- 21, Mela Road, Bhavdepur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Sitamarhi.
3. The District Development Commissioner-cum- Chief Executive Officer, Zila Parishad, Sitamarhi.
4. The District Education Officer, Sitamarhi.
5. The District Program Officer Establishment, Department of Education, Sitamarhi.
6. Zila Parishad, Sitamarhi through its Chairman.
7. Nitesh Kumar, son of Shri Kedar Prasad, resident of Gandhi Chowk, Ward No. 17, Mohalla- Bhavdepur, District- Sitamarhi.
8. Dharendra Kumar Yadav, son of Shri Shailendra Prasad Yadav, resident of Village- Dhekuli Dharmapur, Ward No. 09, P.O.- Kumhrauli, P.S.- Piprahi, District- Sheohar.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 18060 of 2017

Sarita Singh Wife of Ganesh Prasad Singh, resident of Village- Jogiyara, P.S.- Jale, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Sitamarhi.
3. The District Development Commissioner-cum- Chief Executive Officer, Zila Parishad, Sitamarhi.
4. The District Education Officer, Sitamarhi.
5. The District Programming Officer Establishment, Sitamarhi.
6. The Chairman, Zila Parishad, Sitamarhi.
7. Nitesh Kumar, Son of Kedar Prasad, resident of Gandhi Chowk, ward No. 17, Mohalla- Bhavdepur, District- Sitamarhi.
8. Dharendra Kumar Yadav, son of Shailendra Prasad Yadav, Resident of Village- Dekuli Dharampur, Ward No.- 09, P.O.- Kumarauli, P.S.- Piprahi,



District- Sheohar.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 14722 of 2017)

For the Petitioner/s : Mr Yogendra Mishra
Mr.Alok Kumar Jha

For the Respondent/s : Mr.Kameshwar Kumar-Gp17

(In Civil Writ Jurisdiction Case No. 18060 of 2017)

For the Petitioner/s : Mr.Binod Kumar

For the Respondent/s : Mr.Kameshwar Kumar – Gp17

Mr. S.K. Ranjan, GP-17

For Zila Parishad : Mr. Shailendra Kr. Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

8 09-07-2019 Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the private respondents as well as learned counsel for the Zila Parishad.

2. Two petitioners have approached this Court in C.W.J.C. No. 14722 of 2017 challenging the appointment of respondent nos. 7 and 8 in unreserved category. For the same relief C.W.J.C. No. 18960 of 2017 has been filed by the petitioner Sarita Singh.

3. Since both the writ applications involved similar question of fact and law, therefore, both the writ petitions are heard together and are being disposed of by this common order.

4. Shorn of unnecessary details, relevant fact for the purpose of deciding the present writ applications lies in narrow campus.

5. Large number of posts of Librarian was lying



vacant since long and in order to fill-up the vacancies, applications were invited.

6. In the district of Sitamarhi 39 posts were vacant. The applications were invited for appointment of Librarian in which 19 posts were earmarked for unreserved category. There is chequered history of scrutiny of certificates as to the validity of the degree obtained from Aligappa University which led to litigation up to the Supreme Court and after decision of the Supreme Court, the selection process with regard to Librarian commenced and completed. In the district of Sitamarhi as against 39 posts 19 posts as stated above were earmarked for unreserved category and the remaining 20 posts were earmarked for reserved category 7 for OBC, 6 for SC, 1 for ST and 1 post was reserved for female.

7. Appointment in Sitamarhi was made in four phases. In the first phase on 8.3.2010, 10 candidates were offered appointment as Librarian. Out of seven belongs to unreserved category out of them Samir Abhishek resigned and appointment of Richa was subsequently cancelled as her certificate was found to be forged in the unreserved category and therefore, in the unreserved category five persons were appointed and continued on the basis of appointment in first



phase.

8. In second phase 7 candidates were recommended for appointment as Librarian on 16.12.2011. Out of seven, three belong to SC category, three EBC and one unreserved category. Rakesh Kumar who belong to BC category but on account of his merit position he was accommodated against unreserved category.

9. In the third phase dated 5.8.2014 total 10 were offered appointment. Nitesh Kumar was offered appointment in the unreserved category, Arbind Kumar Singh was offered appointment in the unreserved category and Jitendra Kumar, Rajeev Kumar, Dharendra Kumar Yadav, Rekha Kumari, Mukesh Jha and Binod Kumar were offered appointment under the unreserved category. Out of 10, 8 were offered appointment in the unreserved category, one in the BC category and one BC (female) category. Out of 8 in the unreserved category, Rekha Kumari subsequently resigned. Bharti Kumari also resigned.

10. The last fourth phase selection and appointment was done on 17.10.2014. All the six posts were offered to unreserved category. Out of six unreserved category two were from the B.C. category on account of their higher position have been adjusted against unreserved category.



11. Mr. Yogendra Mishra, learned counsel appearing on behalf of the petitioners has challenged the action of the respondents as mala fide on account of the fact that once the respondents appointed Nitesh Kumar, Jitendra Kumar Yadav in the BC category their subsequent adjustment against unreserved category is mala fide. He submitted that once Nitesh Kumar and Jitendra Kumar Yadav was granted the benefit of reservation and they accepted appointment in the BC category subsequent adjustment against unreserved category is design to defeat the resultant vacancies in the unreserved category. Such action is illegal, arbitrary and against principle of fairness.

12. He next submitted that once vacancy in the unreserved category is available on account of resignation of Rekha Kumari, referring to counter affidavit filed by the respondents in the earlier round of litigation i.e. C.W.J.C. No. 2704 of 2016 the writ petition should have been offered appointment.

13.Mr. Mishra submitted that the respondents themselves admitted in the counter affidavit that there exist one vacancy on account of resignation of Rekha Kumari on 7.10.2014.

14. The relevant para of the counter affidavit filed in



C.W.J.C. No. 7704 of 2016 is quoted below:-

“4. That at the very outset, it may humbly be stated that in Zila Parishad, 39 posts/seats of Librarian were published for appointment out of which 19 seats were carved out for UR Category by the then D.E.O., Sitamarhi according to roster of 2008 based on 100 points model roster described in Chapter-VI of Bihar Teacher’s Employment and Service Condition Book.

5. That it may further be humbly stated in the year 2008, a final merit list of 241 candidates was published by the then DEO, Sitamarhi who was officiating as Secretary of Panel Nirman Samiti. It is relevant to mention herein that on 8.3.2010 , 08 candidates of UR category namely Smt. Pankhuri Priya, Sweta Kumari, Ranjita Priyadarshini, Shobha Kumari, Youvraj Narain Jha, Richa, Mukesh Kumar and Samir Abhishek were appointed. On 16.12.2011, another candidate namely Rajesh Kumar was appointed against UR Category. However, out of them three candidates namely Richas, Mukesh Kumar and Samir Abhishek were resigned from their respective seats as a result of this, three seats became vacant under UR Category.

6. That it may also be humbly stated that in the year 2012, new notification was issued by the State of Bihar and the D.D.C. was nominated as Secretary of Panel Nirman Samiti. And on 5.8.2014,



6 candidates namely Arvind Kr. Singh, Jitedera Kumar, Rajeev Kumar, Mukesh Jha, Vinod Kumar and Rekha Kumari were appointed for the post of Librarian under UR category.

7. That the Government had issued instructions to make appointment against the rest of the seats by 11.10.2014 and in that light appointment process was carried out by Zila Parishad Sitamarhi whereunder, 43 candidates appeared. Out of these 43 candidates, 7 candidates did not submit their declarations hence, their names were struck off and the list of remaining candidates (36 candidates) were prepared. Out of them, 6 candidates namely Sanstosh Kumar, Chandra Bhushan Prasad Singh, Manish Kumar, Ravindra Kumar, Pankaj Kumar and Archana were selected as per their merit list and were given their appointment letter on 17.10.2014. Thus, it is clear that the total 18 candidates were appointed under UR category.

8. That subsequently, one Rekha Kumari who was appointed on 5.8.2014, resigned from the post on 07.10.2014 which was communicated to the Zila Parishad Sitamarhi on 14.7.2015 as a result of which one more post declared vacant which is vacant up till now. Thus, it may humbly be stated that total two posts (UR) are vacant at present. Out of which one post shall be filled against the handicapped candidate of eye sight under UR Category.



9. That petitioner has wrongly stated in para no.10 of the petition that out of 39 seats 20 posts were under UR category as per rotation which is evident from Annexure-A. It has also been stated that in 1st phase out of 20.08 candidates were appointed in UR category, but 03 candidates resigned. It has also been wrongly stated that on 11.10. 2014, 07 persons were appointed. It is quite clear that in UR category only 06 candidates were appointed. Calculation of vacant seats as given in this very para is also not correct.

10. That facts stated in para no.11 of the writ petition is true to the extent that 06 candidates from the merit list were appointed. But it is false to say that 03 seats were left vacant. Petitioner has wrongly interpreted Annexure-6 to 6/A. So far the question of vacant seats of Sri Madan Kumar and Smt. Patli Kumari are concerned, they come from BC and SC category respectively. So question of vacant seats in UR category does not arise.

15. There is no dispute that respondent nos. 7 and 8 on account of their merit position are above the writ petitioners. The writ petitioner no.1 has scored 64.98 whereas petitioner no.2 has scored 64.81. Whereas petitioner of C.W.J.C. No. 18060 of 2017 has scored 64.62 whereas the respondent Nitesh Kumar has scored 66.87 and respondent Dhirendera Kumar Yadav has scored 66.67 on merit.



16. There is no dispute that these petitioners in both writ application stands below in the merit list. The only contention of Mr. Mishra for the purpose of this case is that these two respondents Nitesh Kumar and Dhirendra Kumar Yadav were initially appointed on the reserved category i.e. BC category and once they have been appointed they cannot be adjusted against unreserved category.

17. As discussed hereinabove, the appointment against 39 posts of Librarian was taken into fourth phase. The final transaction was completed in the fourth phase on 17.10.2014. This factual points is disputed by Mishra with reference to the information received under Right to Information Act.

18. The earlier affidavit which was filed in C.W.J.C. No. 7706 of 2016 contains the details facts as to the breakup of the four phases. This is also mentioned in the document enclosed in the present proceeding it is on record that fourth phase was completed on 17.10.2014 when the selection was taken in fourth phases, the court is of the view that in ultimate selection process, the merit list has to be seen and in the merit list respondent nos. 7 and 8 are falling in the order of merit in unreserved category and therefore, the court is of the view that adjustment of respondent nos. 7 and 8 against unreserved



category though they joined in BC category does not suffer from any infirmity for the reason that ultimately the selection was made in fourth phases when total 39 posts were filled up and in third phase on account of merit position the respondent nos. 7 and 8 were adjusted in the unreserved category and other candidates who were below in the merit list even in the BC category were adjusted against unreserved category in fourth phases.

19. Under the aforesaid circumstances, the Court does not find any infirmity in the adjustment of the respondent nos. 7 and 8 in the unreserved category.

20. Accordingly, the writ petitions are dismissed being devoid of merit.

(Anil Kumar Upadhyay, J)

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