

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2827 of 2019

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Bijay Prasad Rajak, S/o Narsingh Rajak, Mohalla-Naya Bazar, Sakhichand Ghat Road, P.S.-Tatarpur (Kotwali), Distt.-Bhagalpur, presently posted as an Assistant in the office of LIC of India at Branch-II, Bhagalpur

... .. Petitioner/s

Versus

1. The Life Insurance Corporation of India through the Zonal Manager, East Central Zone, Jeevan Deep Building, Exhibition Road, Vth Floor, Govt. of Bihar, Patna
2. The Senior Divisional Manager, Life Insurance Corporation of India, Divisional Office, Bhagalpur
3. The Manager (P and IR), Life Insurance Corporation of India, Divisional Office, Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Dr. Anand Kumar, Advocate

For the Respondent/s : Mr.Abhimanyu Vatsa, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 11-06-2020

This matter was mentioned for listing on urgent basis, which was allowed by Hon'ble the Chief Justice.

2. Accordingly, the same has been listed today for consideration through video conferencing in view of the nationwide lockdown on account of COVID-19 pandemic.

3. The learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual Court proceedings from their homes, all with the aid of audio visual technology.



4. Heard learned counsel for the petitioner and the learned counsel appearing on behalf of the Life Insurance Corporation.

5. The petitioner is aggrieved by the order dated 30.01.2016. The same is a composite order, whereby he was promoted as Higher Grade Assistant (HGA) and transferred from his present place of posting from Bhagalpur to Araria as Higher Grade Assistant. The petitioner's posting at the time of grant of Higher Grade Assistant in 2016 is sought to be assailed by the instant writ petition filed on 13.02.2019.

6. The claim of the petitioner is based on one Circular of the Life Insurance Corporation dated 05.11.1990 (Annexure 3). The petitioner has placed reliance on the said Circular by virtue of being a member of the Scheduled Caste category. It is his claim that since he was a member of the Scheduled Caste category, he was entitled to be posted near his native place i.e., Bhagalpur in terms of the Circular dated 05.11.1990. The petitioner has also alleged *mala fides* and discrimination. The said submission has been made referring to the order of promotion round 2015-16 (Annexure 1 series), including the office order dated 30.01.2016.

7. The counsel for the petitioner submits that one vacancy was available at Sahebganj near the petitioner's posting at



Bhagalpur. However, by the office order dated 30.01.2016, he has been sent to the new place of posting as HGA at Araria Branch.

8. Learned counsel for the petitioner has laid emphasis on the 2nd and 3rd paragraphs of the Circular dated 05.11.1990 (Annexure 3). The same takes note of the fact that as far as possible, the requests for transfers, from the employees belonging to the S.C/S.T. categories are to be sympathetically considered. It also contemplates obtaining three choices from such category employees at the time of their transfer/promotion.

9. Petitioner's Counsel has also submitted that the petitioner has been subjected to discrimination as continued posting of another person, namely, Mr. B.K. Tiwary has been allowed in the same Branch where he was earlier posted, while promoting him as HGA by the same composite order dated 30.01.2016. The petitioner, however, has chosen not to implead Mr. B.K. Tiwary as a party-respondent in the instant proceedings.

10. Learned counsel representing the respondent-Corporation submits that the petitioner cannot be permitted to claim any right to choice posting by referring to one or two paragraph of the Circular dated 05.11.1990. He has placed the entire document and submitted that the same does not create any indefeasible right in the petitioner's favour to claim a choice



posting. The Circular in the same breath in the fourth paragraph makes it very clear that the claim for posting is to be considered so as to ensure that S.C./S.T communities do not suffer any social discrimination, subject to the availability or non-availability of vacancies or any other administrative constraints.

11. The respondents in the counter affidavit have clearly dealt with the claim of the petitioner. The practice and procedure for grant of choice in the matter of posting has clearly been specified in paragraph 3 of the counter affidavit. The respondents have stated that if there is any vacancy in a Branch, the first preference or posting will be given to those candidates, who were of the earlier batch and are claiming posing at the Branch. If there is no claimant of the earlier batch for a particular Branch, then a person posted in the same Branch will be given an opportunity of continuing on his posting against the vacancy. It is only if neither of the two claimants are available, then the vacancy is filled by the candidate from newly promoted employee such as the petitioner.

12. It is not the case of the petitioner that he falls under either of the first two aforesaid categories. His claim is on the basis of being a member of the SC/ST category. The posting of Mr.B.K.Tiwary has been justified by the said practice and procedure as there was no HGA from the earlier batch claiming



against the vacancy. Thus, Mr. B.K. Tiwary has been continued to be posted at Sahebganj, where he was posted since before he was promoted as HGA. The aforesaid reasons assigned in the counter affidavit have not been denied till date, as no rejoinder has been filed by the petitioner.

13. This Court has also gone through the Circular dated 05.11.1990. When read as a whole, the Circular is very clear in its intent. The same contains instructions regarding consideration of representations of S.C./S.T. employees belonging to Class III and IV, for posting near their native places sympathetically.

14. The Circular is however explicit to the extent that such representations are to be considered, subject to availability/non-availability of vacancies or any other administrative constraints. It is also clear that the representation for choice posting is to be considered having regard to social disabilities, such as non-availability of accommodation, difficulties in getting admissions to Schools, etc. due to their social origin. In the circumstances, the Circular mandates that “as far as possible” posting of S.C./S.T candidates is to be avoided to “such stations”. No such social disabilities have been claimed by the petitioner at Araria where he has been posted upon promotion as HGA. The



claim of the petitioner is based on his being a member of the Scheduled Caste community, simpliciter.

In absence of any such social disabilities, the petitioner has no right to a choice posting or posting at his native place on basis of Circular dated 05.11.1990.

15. The petitioner is not in a position to assail the order on the basis of any other statutory rule, procedure or executive instructions having any mandatory force. No indefeasible right is made out by virtue of being a member of the Scheduled Caste category to claim posting of his choice. The respondents have clarified the issue regarding continued posting of Shri B.K. Tiwary at Sahebganj Branch even after his promotion as HGA. Since no HGA from earlier batch was claiming posting at Sahebganj, he has been continued there. Also Mr. B.K.Tiwary has not been impleaded as a party to the instant proceedings. No case of discrimination or *mala fide* is made out.

16. In the aforesaid circumstances, this Court does not find any right in favour of the petitioner to claim choice posting at his native place, or near his native place merely by virtue of being a member of the S.C./S.T. community, sans the social disabilities contemplated in the Circular dated 05.11.1990, under which he is asserting his claim for choice posting.



17. The writ petition being devoid of any merit is,
accordingly, dismissed.

(Madhuresh Prasad, J)

PNM

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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