

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 580 of 2019

In

Civil Writ Jurisdiction Case No. 5675 of 2019

Ramesh Kumar Singh, aged about 34 years, Gender – Male, S/o Late Ramadhar Singh, Resident of Village - Sarfagar, P.S.- Udwant Nagar, District – Bhojpur

... .. Appellant/Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary Home, Govt. of Bihar, Patna
3. The Director General of Police Bihar, Patna
4. The Inspector General of Police, Central Zone, Patna
5. The Chairman, Central Selection Board (Constable Recruitment), Bihar, Patna
6. The Deputy Inspector General of Police, Central Range, Patna
7. The Senior Superintendent of Police, Patna
8. The Officer on Special Duty, Central Selection Board (Constable Recruitment), Bihar, Patna

... .. Respondents

Appearance :

For the Appellant	:	Mr. Bindhyachal Singh, Advocate Mr. Ram Binod Singh, Advocate
For the Resp./State	:	Mr. P.K.Verma, AAG-3 Mr. Suman Kumar Jha, AC to AAG – 3

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

**HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
C.A.V. JUDGMENT**

(Per: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH)

Date : 04-02-2020

Heard Sri Bindhyachal Singh, learned counsel for the appellant and learned A.C. to Addl. Advocate General – 3 for the respondent/State.

2. This Letters Patent Appeal has been preferred against the order dated 11-04-2019 passed in writ application i.e. C.W.J.C. No. 5675 of 2019, whereby and whereunder, the writ application,



preferred by the appellant against his removal from the service, as contained in Memo No. 150 dated 12-01-2019, was dismissed.

3. The short fact, as narrated in the memo of appeal, is that an advertisement dated 25-08-2016, bearing Advertisement No. 01 of 2010, was published by the office of Central Selection Board (Constable Recruitment), whereby online application for the post of Constable/Driver was invited and in the said advertisement, the educational qualification was prescribed as Intermediate on or before 1st August, 2016. The last date for submission of application forms was on 28-09-2016. In lieu thereof, the petitioner (appellant) also applied online for the said post on 24-09-2016. Subsequently, after physical eligibility test and verification of documents, final result was published, in which, the petitioner was selected and he was allowed to join the post on 25-09-2017. Thereafter, his service book was also opened, however; subsequently the Officer on Special Duty, Central Selection Board (Constable Recruitment) {hereinafter referred to as the 'Board'}, Patna, vide his Memo No. 871 dated 12-06-2018, informed the Superintendent of Police, Jehanabad that the petitioner did not pass Intermediate examination on 01-08-2016 and as such, he was not eligible to participate in the selection process and further he directed to take action against the petitioner after initiating a departmental proceeding. Thereafter, on the basis of aforesaid letter, a



departmental proceeding was initiated against the petitioner for the charge of not possessing the requisite qualification for the appointment to the post of Constable/Driver on the date, as prescribed in the advertisement i.e. 01-08-2016. Thereafter, after completing all the formalities of departmental proceeding i.e. show cause notices, submission of inquiry report etc., the petitioner was removed from the service, vide order, contained in Memo No. 150 dated 12-01-2019 issued by the Superintendent of Police, Jehanabad, which was under-challenge before the Writ Court.

4. During pendency of this appeal, an interlocutory application, vide I.A. No. 1 of 2019, was also filed by the appellant with an alternative prayer, which is as follows:

“For alternatively issuance of writ in the nature of mandamus or any other appropriate writ/order/direction to the respondent authorities for a direction to allow the petitioner/appellant to continue to work on the post of police driver on contractual basis as earlier on the basis of his initial appointment.”

5. Learned counsel for the appellant, while assailing the impugned order, submitted that since the appellant (petitioner) was working on contract basis since 2009 and at that very time, the minimum educational qualification was Matriculation, the case of the appellant was required to be considered against the vacancy of 2009, since the vacancy of 2009 has been clubbed. In support of



his aforesaid submission, learned counsel for the appellant has placed reliance on paragraph – 9 of a decision of the Hon'ble Supreme Court reported in **1983 (3) SCC 284 (Y.V. Rangaiah vs. J. Sreenivasa Rao)**.

6. It was further submitted by learned counsel for the appellant that once the petitioner has been selected, after consideration of his entire documents, at subsequent stage, he cannot be removed from the service on the ground that he does not possess requisite qualification i.e. Intermediate on the prescribed date, since all the documents were supplied by the petitioner at the time of verification of documents and as such, the respondents authorities are debarred from taking any action against the petitioner. In support of the above-referred submission, the counsel for the appellant has relied upon a decision of the Supreme Court, which has been reported in **1976 (1) SCC 311 (Shri Krishnan vs. Kurukshetra University)**.

7. *Per contra*, on behalf of the respondent, it was submitted that it is an admitted case that petitioner/appellant did not have the requisite qualification, as mentioned in the advertisement, on or before cut-off date i.e. 01-08-2016, rather the petitioner himself has admitted in paragraph – 15 of the writ petition as also in paragraph – 8 of the memo of appeal that he passed the Intermediate examination on 30-09-2016 and therefore,



the learned Single Judge has rightly passed the order. As such, it was submitted on behalf of respondent/State that the order of the learned Single Judge may not be interfered with and this appeal deserves to be rejected outrightly.

8. Having heard learned counsel for the parties and having gone through the materials on record, I do not find any irregularity or illegality in the impugned order. The learned Single Judge has rightly, after considering all the facts and circumstances, dismissed the writ application. But before coming to the conclusion, it would be necessary to deal with some necessary facts.

9. As per aforesaid advertisement, it is manifest that a person for appointment to the post of Constable/Driver in the Board was required to possess the requisite qualification i.e. Intermediate on or before 1st August, 2016. The aforesaid fact has not been disputed by the appellant also. It is also admitted that the petitioner did not pass the Intermediate examination prior to the cut-off date i.e. 01-08-2016. Law is settled in this regard that a person, having no requisite qualification before the cut off date, cannot have any claim or right for appointment and respondent authorities have rightly passed the order of removal.

10. So far as contention raised by the petitioner with regard to vacancy is concerned, the same is noted to be rejected for



more than one reason. This new plea is being taken for the first time in L.P.A. without there being any foundational fact and without any supporting documents. It is further noted that no such issue was raised before the writ court and therefore, whether the vacancy of Advertisement No. 01 of 2010 also includes the vacancy of 2009 is a debatable question and the same cannot be considered at this belated stage and more-so, in absence of supporting materials, law is well-settled in this regard and in this connection, reference can be made on paragraph – 12 of a Division Bench judgment of this Court reported in **2007 (1) PLJR 51 (State of Bihar vs. Anita Kumari)**, which is as follows:-

“12. In the light of the above facts it is well settled that a new plea taken up for the first time in the Letters Patent Appeal which is not supported by foundational facts cannot be urged in the appeal. This view is supported by Division Bench judgments of this Hon’ble Court in the case of **Gopaljee Jha vs. State of Bihar** [1996(1) PLJR 755} and in the case of **Madan Mohan Choudhary vs. Patna High Court** as reported in 2003(3) PLJR 341. The appellants and the intervenors therefore cannot assail the judgment of the learned single Judge on this ground.”

11. The Apex Court also in a decision reported in **AIR 1988 Supreme Court 2181 (Bharat Singh vs. State of Haryana)**



held that the writ petition must contain the pleadings with evidence and in absence thereof, the court will not be in a position to make any statement on assertion.

12. Secondly, in the present case, the appellant, after knowing all the terms and conditions mentioned in the advertisement, had submitted his application form, without protest and got appointed and after being removed from the service, he (appellant) cannot be allowed to question the terms and conditions of the advertisement. It is settled law that a candidate, who consciously takes part in an examination and got appointment, at subsequent stage, the same candidate cannot question terms and conditions of the selection process. The Apex Court, in the case of *Manish Kumar Shahi vs. State of Bihar & Ors.*, reported in **2010 (12) S.C.C. 576**, has reiterated the principle and observed that a candidate after having taken part in the process of selection knowing fully well the terms and conditions, at subsequent stage, he/she is not entitled to challenge the process of selection.

13. So far as judgment of the Supreme Court, on which the appellant has placed heavy reliance i.e. *Y.V. Rangaiah's* case (*supra*), is concerned, the same is distinguishable of the facts inasmuch as in that case, seniority and promotion issues were involved and as such, that judgment is not applicable in the instant case.



14. So far as second ground of attack is concerned, same is also not acceptable for the reason that the principle of promissory estoppel is based on equitable principles. A person, who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision, which on discovery of the misrepresentation is sought to be cancelled. In this connection, learned counsel for the appellant has placed reliance on ***Shri Krishnan's*** case (*supra*). In that case, no wrong fact or misrepresentation was given by the petitioner. Moreover, the same is no more relevant, as the said decisions has subsequently been considered and distinguished by the Supreme Court in a case reported in **(2003) 1 Supreme Court Cases 152 (Central Airmen Selection Board and Another vs. Surender Kumar Das)**.

15. In this instant case also, from perusal of Annexure – 4 to the writ petition, it is evident that petitioner has declared himself Intermediate pass on the date of filling-up application form, whereas, the result of the Intermediate examination of the petitioner was declared much after the cut-off date and it was factually incorrect and a clear misrepresentation and as such, the appellant cannot be permitted to invoke the principle of promissory estoppel



16. It is further held that even in absence of any misrepresentation, in a case of this nature where a candidate, not eligible for appointment, is selected by mistake contrary to the terms & conditions of the advertisement and rules, the authority concerned is bound to correct the mistake and recall the order of the appointment.

17. Hence, considering the aforesaid facts and circumstances and the position of law on the issues, as discussed above, I am of the considered view that the learned Single Judge has rightly dismissed the writ petition. Accordingly, this appeal is devoid of merit. As such, the appeal as well as the interlocutory application i.e. I.A. No. 1 of 2019, which was filed with an alternative prayer, are dismissed.

(Prabhat Kumar Singh, J.)

**(Hemant Kumar
Srivastava, J.): I agree.**

(Hemant Kumar Srivastava, J.)

Anay

AFR/NAFR	AFR
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