

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20057 of 2019

Indeshwar Singh, Son of Late Madhu Nandan Singh, Resident of Village-Narar, Ward No. 4, Pachwari Tol, Near Pokhar, Police Station-Kaluahi, District-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
3. The Inspector General of Registration, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
4. Assistant Inspector General of Registration, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
5. The District Magistrate cum District Registrar (Registration), Madhubani.
6. The District Sub Registrar, Madhubani.
7. The Sub Registrar (Registration), Jainagar, Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Jha 3, Adv. Mr. Shambhoo Kumar 'Suman', Adv.
For the Respondent/s	:	Mr. Mritunjay Kumar, AC to AAG-6

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 06-01-2020

A reasoned order dated 27.05.2019, passed by the Assistant Inspector General, Registration, Bihar, Patna in compliance of an order dated 07.05.2018, passed in CWJC No. 19101 of 2017, has been put to challenge in the present writ application whereby petitioner's claim for appointment as Temporary Clerk has been turned down.

2. The petitioner claimed that he was engaged as an Extra Clerk and he deserved to be appointed as Temporary Clerk



under the policy of the State government. It is noticeable at the very outset that the petitioner has described his age as 74 years in the writ application. A copy of his Aadhar Card is also there on record, from which it appears that his date of birth is 01.01.1945. In the reasoned order, however, it has been mentioned that the petitioner attained the age of 60 years as on 31.01.2017, whereas it is the petitioner's own case that he completed the age of 60 years on 31.12.2004. This aspect has been taken note of at the very outset considering its significance.

3. The petitioner has sought for following reliefs :-

“(i) To quash reasoned order bearing Memo No. 1922 dated 22.05.2019 (Annexure-1) passed by Respondent no. 4, whereby and whereunder, the detailed representation dated 18.05.2018 (Annexure-) filed by the petitioner in compliance to the order dated 07.05.2018 (Annexure-) passed in C.W.J.C. No. 19101 of 2017 has been rejected in a most mechanical manner, without considering the points raised in the representation as well as settled principle of law, as such said reasoned order is not sustainable in the eye of law.
(ii) To direct the respondents to consider the case of the petitioner and appoint him as temporary clerk in the scale of Rs. 3050-4590 notionally which was existing at the relevant point of time, as several junior persons to the petitioner had already been appointed as



temporary clerk vide office order bearing memo no. 2980 dated 19.12.2003 (Annexure-5) and case of the petitioner was kept pending due to proceeding pending against him, however petitioner has been exonerated/ acquitted for the alleged charges levelled against him as such he is legally entitled to get similar relief as has been given to several similarly situated employees, including junior to the petitioner.

(iii) To direct the respondents to make payment all consequential monetary benefit to the petitioner w.e.f. the date when his immediate junior has been temporarily appointed as temporary clerk and paid all consequential monetary benefit including pensionary benefits.”

4. It is the petitioner's case that he was initially appointed as an Extra Clerk vide letter No. 32 dated 02.06.1982 and was deputed in the office of Sub-Registrar, Benipatti. In support of this fact the petitioner has brought on record an order dated 02.06.1982, issued by the District Sub-Registrar, Madhubani. It is his further case that a State level seniority-list was prepared on 26.06.2003 in which his name figured at serial No. 154. He was placed under suspension by an order dated 26.08.2003 on the allegation of corruption. The Government of Bihar had considered the cases of other extra clerks for their



regularisation and by office order bearing Memo No. 2980 dated 19.12.2003, altogether 240 extra clerks of different categories were appointed as Temporary Clerks in the scale of Rs. 3050-4590. His case was not considered because he was under suspension though persons below him in the seniority-list were appointed as Temporary Clerk. It is also the petitioner's case that he was not allowed to enter into the office of the District Sub-Registrar, which made him approach this Court by filing a writ application giving rise to CWJC No. 10745 of 2003. It was in the light of this Court's order, according to the petitioner, that he was allowed to join in the office of Sub-Registrar, Jainagar vide office order bearing Memo No. 573 dated 25.05.2004. A show cause reply was issued to the petitioner. It is the further case of the petitioner that he was exonerated of the charge of corruption by the competent authority i.e. the District Magistrate cum District Registrar, Madhubani by order dated 14.01.2005 and he was allowed to work, as earlier, in the Sub-Registrar Office, Jainagar. It is peculiar to note that it is the petitioner's own case that his date of birth is 01.01.1945. That being so, had he been holding a post under the State Government he would not have been allowed to continue after completion of 60 years of his age. It is apparent, however, that the petitioner was not, in fact, discharging his duties as Extra Clerk on the date when



the case of other persons for their engagement as Temporary Clerk was being considered by the State Respondents.

5. It is the further case of the petitioner that he filed detailed representations for his appointment as Temporary Clerk on 03.02.2005 and 18.02.2005 with effect from the date when his immediate junior was appointed. In 2007, the petitioner claims, the Sub-Registrar, Jainagar had again forwarded the details of the petitioner to the District Registrar, Madhubani on 22.10.2007 with reference to Memo No. 1074 dated 12.11.2007. The said letter No. 120 dated 22.10.2007 has been brought on record by way of Annexure-8 to the writ application. I fail to understand as to how a communication dated 22.10.2007 could be made with reference to a subsequent letter of 12.11.2007. Even if it is presumed that there is an error in the aforesaid communication dated 22.10.2007 while mentioning the date of Memo No. 1074, there is yet another glaring aspect in the same Annexure. Page-42 of the writ application contains the report of the Sub-Registrar, Jainagar in respect of the petitioner as Extra Clerk working in the said office. His date of birth in Column-3 has been described as 02.01.1957. It has already been noticed at the very outset that it is the petitioner's own case that his date of birth is 01.01.1945. Possibly in the light of the said document at page-42, the Assistant Inspector General,



Registration, Bihar in his impugned order has mentioned that the petitioner attained the age of superannuation on 31.01.2017. The fact is that the petitioner had attained the age of 60 years on 31.12.2004 itself. The fact, as contained in Annexure-8 of the writ application, is apparently based on falsehood. The Court deprecates the conduct of the petitioner, inasmuch as, he has not explained the circumstance in which his date of birth has been mentioned as 02.01.1957 in the said report, rather the petitioner has attempted to take advantage of the report.

6. It is noteworthy that after the petitioner was allowed to join after passing of the order dated 22.01.2005, a criminal case was lodged against him registered as Jainagar P.S. Case No. 47 of 2005 for the offence punishable under Section 9 of the Prevention of Corruption Act. He, however, came to be acquitted by the trial court by an order dated 26.08.2017.

7. After acquittal in the vigilance case, the petitioner filed writ application giving rise to CWJC No. 19101 of 2017 before this Court, which was disposed of by an order dated 07.05.2018 with a direction to the petitioner to file a representation before the Inspector General Registration, Excise and Prohibition Department, Government of Bihar who was in turn directed to dispose of petitioner's representation within specified time. It is in



the background of the said order of this court dated 07.05.2018 that the impugned order has been passed.

8. Mr. Satish Chandra Jha, learned counsel appearing on behalf of the petitioner has submitted that there was no material on the basis of which he could not have been given the same treatment which was given to 240 extra clerks by giving them appointment as Temporary Clerk with scale by order dated 19.12.2003, issued by the Registration Department, Government of Bihar. He has referred to a resolution dated 22.07.2003 of the Finance Department, Government of Bihar to submit that the period spent as Extra Clerk is to be counted as pensionable service for grant and determination of pension under the Bihar Pension Rules. He has accordingly submitted that the petitioner was not only entitled to be appointed as Temporary Clerk with effect from the date his juniors were appointed but he was also entitled for all consequential benefits after having attained the age of superannuation in terms of pension etc. He has submitted that the petitioner's representation has not been disposed of in correct perspective by the impugned reasoned order, which requires interference by this Court.

9. There are certain facts which have been indicated in the reasoned order. The petitioner was not a Government servant



and his initial engagement was on payment of wages at the rate of 'Rs. two per page'. Since he was not a Government servant, there was no question of placing him under suspension by the order dated 26.08.2003. For the said reason, the order was modified and considering his conduct of having accepted bribe, he was restrained from entering into the office of Sub-Registrar. In the light of an order of this Court dated 10.03.2004, passed in CWJC No. 10745 of 2003, the petitioner was allowed to work as Extra Clerk in Sub-Registrar Office, Jainagar. It appears that the petitioner was put to a show cause notice for his conduct, in response to which he had filed his reply. Since the complainant refused to recognise the petitioner as the person who had demanded the bribe money, he was exonerated of the charge and he was allowed to continue in Sub-Registrar Office, Jainagar by an order dated 22.01.2005.

10. It is evident, thus, that when the petitioner was exonerated of the charge of corruption by the District Magistrate, he had already attained the age of superannuation of a Government servant. After he attained the age of superannuation, he was again found indulging in taking bribe for obtaining finger prints on the documents presented for registration, leading to lodging of a criminal case. The petitioner, admittedly, did not work from



30.07.2005. The petitioner has not been able to establish his legal right to be appointed as Temporary Clerk. Further, he has not approached this Court with clean hands while invoking extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, as has been noticed above. His failure to point out the discrepancy in his actual date of birth, as mentioned in the Aadhar Card and the impugned reasoned order as well as date of birth, as mentioned in Annexure-8 of the writ application, in Court's opinion is deliberate. A litigant, who approaches the Court for exercise of power of judicial review under Article 226 of the Constitution of India with tainted hands is not entitled to any relief.

11. For the aforesaid reasons, I do not find any merit in the writ application, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.01.2020
Transmission Date	NA

