

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4618 of 2012

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Umesh Mochi S/O Sri Saukhi Mochi R/O Village and Post- Kosla, P.S.-
Nardiganj, District- Nawada

... .. Petitioner

Versus

1. The State of Bihar through Secretary Law Department Bihar Patna
2. Chairman, Bihar State Legal Service Authority, Govt. Of Bihar, Patna
3. Member Secretary Bihar State Legal Service Authority, Govt. Of Bihar,
Patna
4. District and Sessions Judge Cum Chairman District Legal Service Authority,
Public Utility Services (Asthai Lok Adalat), Nawada, District- Nawada
5. Members, Selection Committee (Inter View) District Legal Service
Authority, Public Utility Services, Nawada, District- Nawada
6. Secretary, District Legal Service Authority, Public Utility Services, Nawada,
District- Nawada
7. Abhijit Kumar Asthai Lok Adalat, Nawada Stenographer.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jayram Sharma, Adv
For the Respondent/s	:	Mr.Yogendra Pd. Sinha AAG-7
For Res. No.7	:	Mr. Surendra Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 27-02-2020

Heard learned counsel for petitioner, learned counsel for
the Respondent-State and counsel for the respondent no.7.

In the instant writ proceedings, a direction/command in
the nature of writ of *Mandamus* has been sought for appointing



the petitioner on the post of Stenographer in Public Utility Service (*Asthai Lok Adalat*). The petitioner has also sought stay of further joining of the selected candidates. Insofar as the prayer for stay of joining of the selected candidates in the process of selection, this Court would take notice of the fact that ever since filing of the writ petition in the year 2012, till date there is no order of stay. Since the matter today is being finally decided, there is no relevance of the prayer seeking stay of joining of the other candidates selected on 29.05.2011.

An advertisement was published inviting applications for the appointment in question. The same was published throughout the State of Bihar, but on different dates. The petitioner, who was suitable for the post, has made his application on 29.05.2011. The petitioner appeared at the written examination, shorthand test and typing test. On 16.12.2011, the successful candidates were called for interview. The petitioner was also called for interview by Annexure-5 dated 03.12.2011. He was subjected to the interview on 16.12.2011 by the 'Three Man Committee'. It is his case that he was declared successful and that he was informed that he has been selected.

The admitted position is that the petitioner was placed at



Sl. No. 5 in the result. The total six persons were declared as successful. The result of the Appointment Committee is dated 07.01.2012. The entire case of the petitioner hinges on his position in the result.

This Court would, therefore, considers it useful to reproduce the list of selected candidates issued by the Appointment Committee on 07.01.2012 which was as follows:-

1	2	3	4	5	6
S. No.	Roll No.	Name of the Candidate	Marks in written test	Marks obtained in interview	total
1	50	Ali Sabir Hussain	80	[18+20+18] =56/3=18.6	98.6
2	94	Abhijeet Kumar	60	[20+22+17] =59/3=19.6	79.6
3	20	Raju Kumar	55	[15+16+14] =45/3=15	70
4	37	Md Irshad Ahamad	55	[14+15+14] =43/3=14.3	69.3
5	96	Umesh Mochi	55	[12+15+14] =41/3=13.6	68.6
6	106	Rama Shankar Giri	50	[13+16+13] =42/3=14	64

The case of the petitioner is that as per the roster point contained in the communication of the Personnel and Administrative Reforms Department dated 30.09.2002, he has no grievance insofar as appointment to the first post is concerned. Referring to Annexure- A to the counter affidavit filed on behalf of Principal Secretary dated 30.09.2002, he



submits that since the first post, as per roster point, was meant to be filled up by unreserved/ general category he is not disputing or challenging the selection of the Ali Sabir Hussain on the first post.

Selection was to be made only on two posts. It is the selection of Abhijeet Kumar member of the Backward class category against the second post that has been challenged by the petitioner. It is his submission that since in the roster point the second post was reserved for extremely backward class candidates, selection from the backward class candidate was wholly impermissible. The vacancy was to be carried forward and made available to the petitioner, a member of the Scheduled Castes category.

During pendency of this case since 2012, various counter affidavits were filed increasing the volume and bulk of the brief. To bring the issue to finality earlier this Court had directed the Principal Secretary, General Administration Department to specify as to how the unfilled post of extremely backward class category was to be filled up and from which category. The Principal Secretary of the General Administration Department has filed an affidavit on 02.09.2015. This Court would consider it useful to reproduce the relevant paragraphs of the affidavit



filed on behalf of the Principal Secretary. Paragraph No.12 specifically deals with the issue which falls for consideration in the instant writ proceedings. Paragraph no. 12 reads as follows:-

12. That the relevant provision of the aforesaid Act reads as follows:-4-6(a) in case of non-availability of suitable candidates from the Scheduled Castes and Scheduled Tribes for appointment and promotion in vacancies reserved for them, the vacancies shall continue to be reserved for three recruitment years and if suitable candidates are not available even in the third year, the vacancies shall be exchanged between the Scheduled Castes and Scheduled Tribes and the vacancies so filled by the exchange shall be treated as reserve for the candidates for that particular community who are actually appointed.

4-6(b) In case of non-availability of suitable candidates from the Extremely Backward Classes and Backward Classes the vacancies so reserved shall continue to be reserved from them for three recruitment years and if suitable candidates are not available even in the third year also, the vacancies shall be filled by exchange between the candidates from the extremely backward and backward classes and the vacancies so filled by Exchange shall be treated as reserved for the candidates of the particular community who are actually appointed.

6-(d) if in any recruitment year, the number of candidates of Scheduled Castes/Scheduled Tribes, Extremely backward and Backward Classes are less than the number of vacancies reserved form them even after exchange formula the remaining backlog vacancies may filled by general candidates after dereserving them but the vacancies, so dereserved shall be carried forward for three recruitment years.”

Such submissions have been made referring to the



relevant provisions of the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991 (Bihar Act 3 of 1992). Section 4-6(b) referred to in the affidavit is relevant for the petitioner's case. The same clearly provides that the vacancy which has been kept reserved for extremely backward class category could have been kept reserved for such category for three years and if suitable candidate was not available even in the third year then the vacancy shall be exchanged between the candidates from the extremely backward and backward class.

The exchange referred to in the Act is with the backward class and not with the scheduled Caste class candidate. Since there was none available in the extremely backward class category the respondent no.7, namely, Abhijeet Kumar member of backward class category has rightly been offered the selection by exchanging him in place of the extremely backward class category. Such Exchange between extremely backward class and backward class was in accordance with the provisions contained in Section 4-6(b) of Bihar Act 3 of 1992.

Petitioner's challenge on account of any improper apportionment in the matter of reservation, therefore is clearly unsustainable.



The writ application, therefore, is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
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