

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.22444 of 2019**

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Bhairo Yadav @ Bhairav Yadav Son of Jharu Mahto, resident of Village-  
Bishunpur, P.S. - Chandan, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Home and Appointment, Government of Bihar, Patna.
2. The District Magistrate, Banka.
3. The Officer-on-duty cum Officer-in-charge, District General Branch, Banka.
4. The Circle officer, Chandan, District- Banka.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Ashok Kumar Sinha with Mr. Shyam Sunder Pandey, Advocates. |
| For the Respondent/s | : | Mr. Anil Kumar AC to SC-8                                      |

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 21-01-2020**

Heard learned counsel for the petitioner and learned AC  
to SC-8 for the State.

The petitioner is a claimant for appointment to the post of *Choukiar/Dafadar* under an existing provision which enable the outgoing incumbent of the post to nominate his qualified son within the specified time frame for the appointment in-question. In respect of the same relief, the petitioner had earlier approached this Court in the writ proceedings (Annexure-1). In C.W.J.C. No. 189 of 2017 after detailed consideration of the issue, the Authorities were directed to take necessary steps for appointment of the petitioners in accordance with law in terms the request made by his father within a specified time frame.



The admitted position is that the petitioner, as per the existing provisions was required to be a 'Matriculate' for the purposes of appointment. The petitioner has submitted a certificate issued by the Hindi *Vidyapith Deoghar*, certifying that he passed the examination on 27.03.2015. The claim of the petitioner has been rejected by the Authorities by Annexure-4 by assigning a reason that the principal Secretary, Personnel and Administrative Reforms as well as *Rajya Bhasha* Department under order dated 26.02.2015 has de-recognized the degree issued by the *Hindi Vidyapith* w.e.f. 26.06.2014. The petitioner's degree issued by the said institution is much subsequent thereto i.e. dated 27.03.2015. The degree, therefore, was not recognized for the purposes of the selection in-question. The claim of the petitioner has, accordingly, been rejected.

Learned counsel appearing for the petitioner submits that in spite of such order to the extent that degree issued by the *Hindi Vidyapith Deoghar*, are not recognized w.e.f. 26.06.2014, the others, namely, Pandu Turi, whose case has been cited in the paragraph no. 14 of the writ petition, had obtained a degree from the said *Hindi Vidyapith, Deoghar*, after 26.06.2014, however, he has been appointed and continues to be working as *Dafadar/choukidar*, the allegation is of discrimination. Reliance



is placed in the case of *Sattan Das vs. The State of Bihar & Ors.* reported in **2019 (3) PLJR 41**, to submit that the Authorities were required to maintain parity. If they have offered appointment to Pandu Turi, who also obtained a degree after the cut-off date or the date on which the degree stood de-recognized. The petitioner's claim also has been considered favourably.

The submission claiming parity has to be considered by this Court keeping in mind that the petitioner has never assailed the de- recognition of the degree with effect from 26.06.2014 by the Department of Personnel and Administrative Reforms and *Rajya Bhasha*, both of which have been referred to in the impugned order rejecting the petitioner's claim.

The petitioner therefore cannot be heard to say that such de- recognition should not be considered for the purposes of his selection. The second aspect is claim of parity with that of one Pandu Turi, who is not a party respondent in the instant proceedings. It is specific assertion of the petitioner's counsel that he has not sought any relief against him in the instant writ petition, therefore, he has not been impleaded as a party respondent.

The claim, on account of parity, is a positive concept.



The law in this regard is well-settled. Parity can only be claimed for furtherance of the equality concept; it is not a negative concept. Just because one has been allowed contrary to the rule or contrary to the decision of the Personnel and Administrative Department dated 26.02.2015, the petitioner cannot claim issuance of a direction so as to consider his claim also for the purposes of the appointment on the basis of a de-recognized degree. The equitable jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked by the petitioner for perpetuation of an illegality.

In this connection, this Court considers it useful to reproduce para 14.2 of the decision of the Apex Court in the case of *Usha Mehta Vs. Government of Andhra Pradesh and Ors* reported in (2012) 12 SCC 419 which reads as follows:

14.2. The plea of discrimination raised by the appellant was wholly misconceived and the High Court rightly declined to entertain the same. Article 14 of the Constitution declares that:

“14. Equality before law.- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

The concept of equality enshrined in that article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or



irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities. In other words, Article 14 cannot be invoked for perpetuating irregularities or illegalities.”

On basis of consideration above rejection of petitioner's claim for appointment does not require any interference.

Writ petition is devoid of merit and dismissed.

**(Madhuresh Prasad, J)**

shyambihari/-

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