

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2326 of 2018

Chandan Kumar Choudhary S/o Late Suresh Choudhary, resident of Phakrabad, Post + P.S.- Sonpur, District- Saran (Bihar).

... .. Petitioner/s

Versus

1. The State Of Bihar through Law Secretary, Bihar, Patna.
2. The High Court of Judicature at Patna through its Registrar General.
3. The Registrar General, the High Court of Judicature at Patna.
4. The Registrar (Administration), the High Court of Judicature at Patna.
5. The District and Sessions Judge, Civil Court, Siwan.
6. The Registrar, Civil Court, Siwan.
7. Incharge Judge, Administration, Civil Court, Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Baxi S.R.P. Sinha, Sr. Adv. Mr. Sandeep Jha, Adv.
For the Respondent/s	:	Mr. Piyush Lall, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 07-01-2021

Heard Mr. Baxi S.R.P. Sinha, learned senior counsel assisted by Mr. Sandeep Jha, learned Advocate on behalf of petitioner and Mr. Piyush Lall, learned Advocate representing Respondent Nos. 2 to 7, who are the contesting respondents.

2. Petitioner in the present case is seeking a direction to the contesting respondents to appoint him on the post of 'Typist' on compassionate ground.

3. It is the case of the petitioner that after death of his father, who was working as a typist in the Civil Court, Siwan, he made an application for appointment on compassionate ground in the



year 2012-2013. The claim of the petitioner was enquired into and a report vide Letter No. 273 dated 07.06.2011 (annexed with the writ application) was submitted by the Circle Officer, Sonpur (Saran) confirming the genuineness of the claim of the petitioner.

4. It is further pleaded that the Judge Incharge (Administration) Civil Court, Saran examined the application submitted by the petitioner and vide letter dated 10.12.2014, the Judge Incharge (Administration) Civil Court, Siwan directed the petitioner to appear in the written examination held on 13.12.2014.

5. It is stated that the petitioner appeared in the said examination, he was declared pass and then a date for interview was also fixed. The petitioner appeared in the interview and he was again declared pass but for a long time when the petitioner did not hear anything about his appointment, he raised a grievance by submitting an application (Annexure-12) before Respondent No. 4.

6. It is the case of the petitioner that his application before Respondent No. 4 was unable to draw the attention of the authorities/respondents, therefore, the mother of the petitioner applied for certain information under Right to Information Act and at this stage, the Public Information Officer (Civil)-cum- Sub Judge I, Civil Court, Siwan supplied information, as contained in Annexure-13 series, dated 10.10.2017. According to the information furnished to the mother of this petitioner, the name of this petitioner was



recommended/forwarded for purpose of appointment pursuant to the decision taken by the competent committee in the meeting held on 27.05.2015. The communication as contained in letter no. 323 dated 04.06.2015 was forwarded to the Hon'ble Patna High Court, Patna. Petitioner has enclosed Annexures with the writ application in support of his statements.

7. Learned senior counsel for the petitioner submits that from the counter affidavit filed before this Court, now it appears that a policy decision was taken by the respondent High Court whereunder it was resolved that total strength of compassionate appointment would not exceed 3% of the sanctioned strength of the cadre in which such appointment is being considered. The decision of the Court was communicated to all Judgeships of the State vide letter no. 373-408 dated 04.01.2016 of the Court. A copy of the said communication is on record (Annexure-A to the counter affidavit).

8. Learned senior counsel has further pointed out that subsequently the policy decision was modified to the effect that the limit of 3% has been increased to 5% subject to the condition that compassionate appointment shall only be made on Class IV posts. The subsequent communication in this regard is letter no. 1211-47 dated 10.01.2017, as contained in Annexure- 'C' to the counter affidavit.



9. The contention on behalf of the petitioner is that at the time of the recommendation of the name of the petitioner for his appointment on compassionate ground, the policy decision restricting the appointment on compassionate ground to the extent of 3% of the sanctioned strength was not in existence, therefore, the said policy decision cannot come in the way of petitioner for consideration of his name for compassionate appointment.

10. Learned senior counsel has drawn the attention of this Court towards the judgment of the Hon'ble Division Bench of this Court rendered in ***LPA No. 2390 of 2016 (Anil Kumar Chaudhary and Others Vs. the High Court of Judicature at Patna & Ors.)*** decided on 18.07.2017. It is pointed out that in identical facts when the appointment of the three petitioners/ appellants in the Letters Patent Appeal were refused and Hon'ble Writ Court dismissed the representation, the Hon'ble Division Bench of this Court held that the policy decision would have a prospective application only and the same could not have been applied in case of the petitioners. The relevant part of the judgment have been read over by the learned senior counsel for the petitioner.

11. Mr. Piyush Lall, learned counsel representing respondent nos. 2 to 7 has, though, initially attempted to oppose the writ application but very soon learned counsel realized that on the face of the judgment of the Hon'ble Apex Court in ***Canara Bank and***



another Vs. M. Mahesh Kumar reported in (2015) 7 SCC 412 followed by our own Hon'ble Division Bench in the case of *Anil Kumar Chaudhary & Ors.*, it would be difficult to defend the grounds for rejection of the petitioner.

12. Learned counsel submits that the only submission which may be made is that the judgment of Hon'ble Supreme Court rendered in the case of *M. Mahesh Kumar* (supra) has been referred to a Larger Bench in the case of *State Bank of India & Ors. Vs. Sheo Shankar Tewari* in SLP © No. 30335 of 2017. Mr. Lall has, however, admitted that the judgment of the Hon'ble Supreme Court in the case of *M. Mahesh Kumar* (supra) still holds the field and that the judgment of Hon'ble Division Bench of this Court in LPA No. 2390 of 2016 has attained finality and stands complied with.

13. After hearing learned senior counsel for the petitioner and learned counsel representing the contesting respondents, this Court finds that on facts it is not denied that this petitioner had passed the written test and interview by 27th of May, 2015. It is an admitted position that the name of petitioner was recommended and immediately thereafter forwarded to the Hon'ble High Court vide letter No. 323 dated 04.06.2015 (Annexure-13 series). Thus, on the date the name of the petitioner was recommended, the policy decision of the Hihg Court was not in existence. The said policy



decision was communicated to the judgeships of the State of Bihar only on 04.01.2016.

14. In the case before the Hon'ble Division Bench of this Court, the name of the appellants were recommended prior to the change of the policy in the year 2016 and after noticing this fact, the Hon'ble Division Bench observed, interalia, as under:-

“However, in this case, the question would be as to whether after the interviews and tests were held and when the petitioners were found eligible and their cases were referred to for appointment in the year 2014, could, their claim, be rejected on the basis of change of policy in the year 2016. We find that neither the High Court, nor the Writ Court have examined this issue in right perspective, therefore, it is a fit case where the matter should be remanded to the High Court for reconsideration in the background of principles of law discussed hereinabove, particularly in the case of M. Mahesh Kumar (Supra)”.

15. This Court has no iota of doubt that the case of petitioner is fully covered by the judgment of Hon'ble Division Bench of this Court in LPA No. 2390 of 2016.

16. Mr. Lall, learned counsel representing respondent nos. 2 to 7, has pointed out from Annexure-B to the Counter Affidavit that in fact the Registrar (Administration) of this Court had informed the District & Sessions Judge, Siwan that the Court has not approved the appointment of this petitioner in view of the Court's letter no. 373-408 dated 04.01.2016. However it is admitted at bar that no such



communication was sent to the petitioner. This Court finds that the reasoning and rationale provided in the letter as contained in Annexure ‘B’ to the counter affidavit are in the teeth of the judgment of the Hon’ble Division Bench of this Court in the case of *Anil Kumar Chaudhary and Ors.*, this being the position, this Court for the purpose of granting appropriate relief to the petitioner would mould the relief by setting aside the communication, as contained in Annexure- ‘B’ to the counter affidavit. The same is hereby set-aside.

17. This Court, therefore, allows this writ application and directs the respondents to consider the case of the petitioner for appointment on a suitable post within a period of three months from the date of receipt/production of copy of this order.

18. This application stands disposed of.

(Rajeev Ranjan Prasad, J)

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CAV DATE	
Uploading Date	
Transmission Date	

