

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.402 of 2019

In
Civil Writ Jurisdiction Case No.14533 of 2019

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Sudhir Kumar, son of Arjun Singh, resident of Village- Subhanpur, P.O.-
Bhatta, District- Nawada, Pin Code- 805130.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Revenue and Land Reforms Department,
Government of Bihar, Patna.
3. The Principal Secretary, General Administrative Department, Government of
Bihar, Patna.
4. The Director of Land Records and Survey Department of Revenue and Land
Reforms Department, Government of Bihar, Patna.
5. Amit Kumar Azad, son of Sri Shiv Shankar Yadav, Resident of Mohalla
Laxmipuri, Ward No. 14, P.S. and Town and District- Madhepura.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocate Mr. Raushan, Advocate Mr. Ujjwal Bhushan, Advocate
For the Opposite Party/s :		Mr.Md. Khurshid Alam (AAG-12)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 25-03-2021 The petitioner seeks review of the judgment and order
dated 17.10.2019, passed by this Court in CWJC No. 14533 of
2019(Amit Kumar Azad vs. The State of Bihar & Ors.).

2. The controversy relates to recruitment for the post
of Special Survey Assistant Settlement Officer on the basis of an
advertisement issued by the Directorate of Land Records and
Survey, Department of Revenue and Land Reforms,
Government of Bihar, Clause 3(ii) of which provided for 50%



horizontal reservation for such engineering graduates who had passed out from the government engineering colleges of the State of Bihar.

3. The Bihar Special Survey Honorarium Based Contractual Appointment Rules, 2019 (hereinafter referred to as 'the Rules') governs recruitment to the posts in question. The term as contained in Clause 3(ii) of the advertisement was put to challenge in Amit Kumar Azad (supra) on the ground that the statutory Rules framed under Article 309 of the Constitution of India did not permit reservation.

4. It was specific case of the petitioner in CWJC No. 14533 of 2019 (Amit Kumar Azad, supra) that in accordance with Rule 5 of the Rules, the provisions for reservation in service and posts (including horizontal reservation) as notified by the General and Administration Department, Government of Bihar were applicable and further, that there was no decision qua posts in question of the General Administration Department providing horizontal reservation for engineering graduates who had passed out from government engineering colleges.

5. It being the case of the State of Bihar that the decision to provide for 50% horizontal reservation was taken in the light of letter No. 11364 dated 04.09.2017, issued by the



General Administration Department, which was not there on record, the same was called for and was directed to form part of the record of the writ petition with the consent of the parties.

6. The Court after examining letter dated 04.09.2017 recorded in paragraph 8 of the order under review as under :

“8. Any recruitment to a public post under the State is to be governed strictly in terms of statutory rules, if such rules have been framed and exist. The terms of advertisement cannot go contrary to or beyond the provisions of the statutory rules. On careful examination of the provisions of reservation as made under the rules read with the letter dated 04.09.2017 issued by the General Administration Department, Government of Bihar, I have no hesitation in reaching a definite conclusion that the advertisement could not have provided for any horizontal reservation for candidates passing out from the Government Engineering Colleges in the absence of any such provision under the Rules. The rules do not provide any such reservation nor grants any scope for the respondents to allow preference on such basis.”

7. After having held as above, this Court struck down Clause 3(ii) of the advertisement and issued following direction in paragraph 10 of the order under review :-

“10. The respondents are directed to prepare a revised result without taking



into account the provision of reservation as stipulated in Clause 3(ii) of the advertisement. I have kept in mind the fact that the persons provisionally selected in the provisional list dated 02.08.2019 do not have any indefensible right to be selected and in that background I did not feel it necessary for asking the petitioner to implead the provisionally selected candidates on that basis, as party respondents in the present writ application.”

8. The petitioner was an applicant pursuant to the said advertisement. According to him, he was provisionally selected for appointment against the post of Special Survey Assistant Settlement Officer, which stood cancelled with the publication of revised result under the orders of this Court in case of Amit Kumar Azad (supra). He is seeking review of the said order of this Court mainly on the ground that a resolution issued vide Memo No. 12535 dated 17.09.2018, issued by the General Administration Department, Government of Bihar prescribes that benefit of horizontal reservation to the extent of 50% of all categories would be applicable in the cases of such candidates who have completed their Bachelor of Engineering courses from engineering colleges situate in the State of Bihar. A copy of the said letter dated 17.09.2018 has been brought on record by way of Annexure-R/2 to this application.



9. It is the petitioner's case that since the post of Special Survey Assistant Settlement Officer is equivalent to that of an Assistant Engineer (Civil), which would be manifest from Clause (4) of the resolution dated 10.11.2018, issued vide Memo No. 1730 by the authorities under Revenue and Land Reforms Department of the State Government, there was no illegality in Clause 3(ii) of the advertisement in question which had provided for horizontal reservation for aspirants who acquired degree in engineering from institutions located in the State of Bihar.

10. Mr. Abhinav Srivastava, learned counsel appearing on behalf of the review petitioner has submitted that had the said letter of the General Administration Department dated 17.09.2018 been noticed by this Court, the result would have been different, as this Court might not have held Clause 3(ii) of the advertisement to be illegal and in breach of the Rules. He has submitted that examination of the said letter dated 17.09.2018 of the General Administration Department was crucial to determine sustainability of Clause 3(ii) of the advertisement and since the same stood overlooked, the order under review needs to be recalled and CWJC No. 14533 of 2019 be re-heard.



11. Mr. Khurshid Alam, learned AAG-12 appearing on behalf of the State of Bihar has submitted that scope of review of an order is limited. According to him, the letter of the General Administration Department, which is being referred to by the petitioner in the present review application was available on record by way of Annexure-11 to I.A. No. 01 of 2019 filed by the petitioner in the writ proceeding and, therefore, it cannot be said that the order was passed in ignorance of the said letter. He has relied on Supreme Court's decision in case of ***Kamlesh Verma vs. Mayawati and others (AIR 2013 SC 3301)*** on the scope of power of review.

12. On careful examination of the materials on record, order under review and on consideration of rival submissions advanced on behalf of the parties in the present review application, the only question which has emerged is as to whether the order can be said to have been passed in ignorance of the resolution of the General Administration Department dated 17.09.2018 and whether the said resolution makes provision for 50% horizontal reservation for appointment against the posts in question for those who having engineering qualification obtained from institutions situate within the State of Bihar.



13. The said resolution of the General Administration Department dated 17.09.2018 was available on record of the writ proceeding by way of Annexure-11 to I.A. No. 01 of 2019, which was filed on behalf of the petitioner. On perusal of the said resolution dated 17.09.2018, it can be easily culled out that the same relates to the posts of 'Medical Officers', 'Assistant Engineers' and 'Veterinary Officers'. The posts of Special Survey Assistant Settlement Officer were advertised in Advertisement No. 03 of 2019. The case of the review petitioner that the said post is equivalent to and has been treated to be that of Assistant Engineer (Civil) in the light of resolution of the Revenue and Land Reforms, Government of Bihar dated 10.11.2018 and, therefore, the resolution of the General Administration Department dated 17.09.2018 was rightly applied and Clause 3(ii) was rightly incorporated in the advertisement, is not acceptable to this Court for the purpose of present case.

14. On the basis of materials available on record, it can not be conclusively held by this Court in the present proceeding that the post of Special Survey Assistant Settlement Officer is to be treated to be that of Assistant Engineer(Civil) so as to attract the provision of reservation, as stipulated in the



resolution of the General Administration Department dated 17.09.2018 (supra).

15. In my view, Mr. Khurshid Alam, learned AAG-12 appearing on behalf of the State of Bihar has rightly relied on Supreme Court's decision in case of *Kamlesh Verma* (supra) which lays down the scope of power of review of an order passed by a Court of law.

16. This application is accordingly dismissed.

17. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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