

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17714 of 2015

-
-
1. Deputy Commissioner, Jawahar Navodaya Vidyalaya Samiti and Anr
 2. Principal, Jawahar Navodaya Vidyalaya, Kharonadih, Muzaffarpur 843113, Bihar

... .. Petitioner/s

Versus

1. Ankur Kumar and Anr Son of Prakash Kumar Singh Resident of Mohalla - Mithanpura, Ward No. 35, Holding No. 521-A, P.S. - Mithanpura Town, District - Muzaffarpur
2. Union of India through the Secretary, Ministry of Human Resources Development Department, School Ex

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Siddhartha Prasad Adv.
For U.O.I.	:	Mr.Abhay Shankar Jha C.G.C

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 02-11-2022

In the instant petition Deputy Commissioner, Jawahar Navodaya Vidyalaya Samiti, and another have questioned the validity of the order dated 4th September 2015 passed in O.A No. 050/00844 of 2014 on the file of Central Administrative Tribunal, Patna Bench Patna (for short Tribunal). Principal, Jawahar Navodaya Vidyalaya, Muzaffarpur issued a notification to fill up one post of Electrician-cum-plumber and it was notified through Employment Exchange. Respondent-Ankur Kumar and 21 others names were forwarded for the purpose of selection and appointment to the post of Electrician-



cum-Plumber. Ankur Kumar is stated to have undergone test among others and he has passed the test. When the matter was at the stage of approving Ankur Kumar's appointment, the Deputy Commissioner, Jawahar Navodaya Vidyalaya Samiti, did not approve the appointment of Ankur Kumar on the sole ground that principal, Jawahar Navodaya Vidyalaya Samiti, Muzaffarpur failed to follow the order dated 1st August 2005 the order mandate as under:-

“ further the employment notice clearly indicating the vacancies and reservation category should also be displayed on the office notice board of the concerned Vidyalaya for wider publicity. Sponsorship of names from employment exchange will continue to be essential however, application of bonafide residents of concerned District may also be considered along with others on merit without being sponsored from employment exchange.”

The aforesaid instructions have not been carry forwarded by the Principal, Jawahar Navodaya Vidyalaya



Samiti, Muzaffarpur and he has failed to notify the advertisement in respect of filling up of one post of Electrician-cum-Plumber on the notice board. On this trivial issue, the Deputy Commissioner has not approved the order of appointment of Ankur Kumar. Therefore, Ankur Kumar-respondent has invoked section 19 of the Central Administrative Tribunal Act and filed Original Application.

Original Application No. 050/00844 of 2014 was allowed in his favour on 4th September 2015. Hence, the present petition by the department/Deputy Commissioner, Jawahar Navodaya Vidyalaya Samiti, regional office, Patna and Principal, Jawahar Navodaya Vidyalaya Samiti, Kharonadih, Muzaffarpur.

Learned counsel for the petitioner submitted that in not following the order dated 1st August 2005, by the principal, Jawahar Navodaya Vidyalaya Samiti. The Deputy Commissioner has communicated on 26th/27th July 2010 therefore, the same has not been apprised by the learned Tribunal. It is submitted that there is lacunae in the process of selection at the behest of principal which is sought to be rectified in not approving the appointment of Ankur Kumar.

Learned counsel for the petitioner further



submitted on instruction that certificate produced by Ankur Kumar was a forged document. Even, on this count, he is not entitled to relief of appointment.

Before declaring whatever the certificate produced by Ankur Kumar that it is a fake and he has not been heard in the matter and that is not the reason to stall further process of appointment in respect of Ankur Kumar.

The aforesaid contentions cannot be appreciated in writ court for the reasons that such reasoning is not part and parcel in not approving the appointment of Ankur Kumar.

None appears for the respondent despite service of notice is undertaken through the paper publication on behalf of the petitioner. Matter is of the year 2015 and selection and appointment process is of the year 2005 read with the Tribunal order is of the year 2015. Therefore, we are constrained to dispose this matter in the absence of respondent's presence.

Principal, Jawahar Navodaya Vidyalaya Samiti, Muzaffarpur notified one vacancy of Electrician-cum-Plumber and it was process through employment exchange. It is stated that 22 names were stated to have been sponsored by the employment exchange. Ankur Kumar was subjected to training among others and he was successful in the training.



At the stage of issuance or order of appointment the Deputy Commissioner, Jawahar Navodaya Vidyalaya Samiti, was competent to approve the order of appointment. At the stage of approving order of appointment of Ankur Kumar, the Deputy Commissioner has noticed that Principal-second petitioner failed to comply portion of the order dated and 1st August 2005 in not notifying the process of selection/advertisement in displaying on the office notice board of the concerned Vidyalaya for wider publicity. Such non-compliance of the instruction resulted in not approving the order of appointment of Ankur Kumar is too trivial in nature. For the reasons that Employment Exchange forwarded 22 names and Ankur Kumar was successfully passed in the training test among others. Therefore, decision of the Deputy Commissioner in not displaying process of recruitment on the office notice board of the concerned Vidyalaya is too technical. The process of not approving the appointment of Ankur Kumar is not fair. In fact, the Deputy Commissioner has not taken any action against the principal except issuing certain warning. For no default on the part of Ankur Kumar, he should not be penalized. Moreover, it is too technical in not approving the order of appointment of Ankur Kumar, merely the second



petitioner-Principal, Jawahar Navodaya Vidyalaya, Kharonadih, Muzaffarpur filed to affix the advertisement in the office notice board of the concerned Vidyalaya. In fact order dated 01.08.2005 which mandates the concerned authority to display on the office notice board of the concerned Vidyalaya for wider publicity. Such clause itself is incorrect for the reasons that each and every eligible candidate will not visit now and then in order to ascertain whether vacancies were notified or not? So as to understand the order dated 1st August 2005 that advertisement to any of the post which is required to be notified in the notice board of the concerned Vidyalaya is in the interest of wider publicity. On the other hand 22 persons names have been forwarded by the Employment Exchange.

In the light of these facts and circumstances the petitioners have not made out a case so as to interfere with the order of the Tribunal dated 04.09.2015. Accordingly, writ petition stands rejected.

At this stage, the other contentions of the petitioner that respondent had produced fake certificate cannot be accepted and it is newly created ground and in order to prejudice this court. Moreover, in order to hold that respondent had produced fake certificate, he has not been heard in the



matter. Therefore, the aforesaid contention of the petitioner stands rejected.

Further, learned counsel for the petitioner relied on a decision passed in C.W.J.C No. 10542 of 2013-***Principal, Jawahar Navodaya Vidyalaya, Thawe, Gopalganj Vs. Shabana Yasmin and Ors.*** This Court passed following order (at page 6 of the order):

“ Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we are of the considered opinion that the order under challenge cannot be sustained. The settled law is that public employment has to be made in a transparent manner for which the basic requirement is public knowledge by way of open advertisement. For such proposition, we are also in agreement with the principle laid down by the Division Bench of this Court in **CWJC No. 10478 of 2003** (supra) that public employment, to which every citizen should have unrestricted access, is possible only if the vacancy is widely advertised. Further, in the present case despite there being specific instructions with regard to at least there being display on the office notice board with regard to the employment indicating the vacancy and reservation category was also not complied with. We are also in agreement with the contentions of learned counsel for the Vidyalaya that no right can be claimed by the respondent no. 1 on the basis of recruitment procedure which was fatally flawed from the beginning”.

The aforesaid observation is very much mandatory in



nature. However, the aforesaid citation is not assisting the petitioner for the reasons that 1st August 2005 order at Annexure- 6 reads as under:-

NAVODAYA VIDYALAYA SAMITI

(An autonomous Organization under Ministry of Human Resource Development, Department of Secondary & Higher Education, Government of India)

A-28, Kailash Colony
New Delhi – 110048

F.No.8-20/2005-NVS(Estt.)
01,2005

August

Order

In partial modification of Samiti's order No.2-1/02-NVS(Estt.) dated 07.05.2003 and No.1-1/01-NVS(Estt.) dated 29.03.2004 the merit criteria for short listing of candidates for appointment to the various posts in the Vidyalaya is revised as under:-

S.No.	Qualification	Weightage	Scoring pattern
I)	Essential educational qualifications Sponsorship of names from prescribed under the recruitment rules.	10 marks	Marks equal to one tenth of the percentage of marks in the final exam upto 2 decimal points. For example 50% marks will score 5.00 and 66.70 will score 6.67% marks etc.
II)	For one next higher educational qualification	1 marks	Weightage for only next higher exam will be given.



	only.		
III)	For experience (only relevant experience)	5 marks	Weightage for relevant experience in a Govt./autonomous organization will be given at the rate of 1 point for each completed year of experience in the same field and relevant for the duties and responsibilities of the post for which being considered.

Further the employment notice clearly indicating the vacancies and reservation category should also be displayed on the office notice board of the concerned Vidyalaya for wider publicity. Sponsorship of names from employment exchange will continue to be essential. However, applications of bonafide residents of concerned district may also be considered along with others on merit without being sponsored from employment exchange.

All other conditions for appointment stipulated in Samiti's office Orders referred to above will remain unchanged. These orders will take effect from the date of issue.

In terms of the order dated 1st August 2005 the competent authority is required to notify the vacancies and reservation category and it should be displayed on the notice board of the concerned Vidyalaya for wider publicity and further he should be informed to the concerned Employment



Exchange to forward the eligible candidates. These two methods were required to be adhered by the competent authority in respect of filling up of any of the post. Apex Court's decision in the case of *Nair Service Society Vs. Dr. T. Beermasthan & Ors.* reported in (2009) 5 SCC 545 at para 48 held as under.

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

In terms of the aforesaid decision of the Hon'ble Supreme Court what is required to be examined is relevant statute or rule. In the present case order dated 07.05.2003 read with 1st August 2005 vide Annexure-6 are required to be followed at the relevant point of time. No doubt wider publicity is required to be given like through local newspaper/vide publication newspaper however that is not mandated in the aforesaid order dated 07.05.2003, 29.03.2004 and 1st August 2005. Therefore, the cited decision on behalf of the petitioner is



distinguishable in the light of the Apex Court’s decision in the
case of *Nair Service Society Vs. Dr. T. Beermasthan & Ors.*

(P. B. Bajanthri, J)

Shoaib/-

(Purnendu Singh, J)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

