

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5084 of 2012

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Pappu Kumar, Son of Jagdish Choudhary, Resident of Kamalpur, P.O., P.S.
and District-Khagaria

... .. Petitioner

Versus

1. The State of Bihar through Secretary, Department of Law, Govt. of Bihar, Patna.
2. The Bihar State Legal Services Authorities, Budh Marg, Patna
3. District Legal Services Authorities through its Secretary, Khagaria
4. District and Sessions Judge-Cum-Chairman, District Legal Service Authorities, Khagaria
5. Pragati Kumari Daughter Of Sachchida Nand Rajak Resident Of Aawas Board, Khagaria, P.S.-Chitragupta Nagar, District-Khagaria
6. Nitin Kumar Son Of Not Known To Petitioner Working As Branch Clerk In Permanent Lok Adalat, Khagaria, P.S. Khagaria, District-Khagaria
7. Mr. Nishikant S/o Not known to the petitioner, Bench Clerk/Office Clerk in Permanent Lok Adalat, Madhepura, District- Madhepura
8. Krishan Kumar Bhargava, S/o Not known to the petitioner, Bench Clerk/Office Clerk in Permanent Lok Adalat, Madhepura, District- Madhepura
9. Navin Kumar, S/o Not known to the petitioner, Bench Clerk/Office Clerk in Permanent Lok Adalat, Gopalganj, District- Gopalganj
10. Rajiv Kumar, S/o Not known to the petitioner, Bench Clerk/Office Clerk in Permanent Lok Adalat, Gopalganj, District- Gopalganj
11. Ranjit Kumar Dubey, S/o Not known to the petitioner, Bench Clerk/Office Clerk in Permanent Lok Adalat, Siwan, District- Siwan
12. Atul Kumar, S/o Not known to the petitioner, Bench Clerk/Office Clerk, Permanent Lok Adalat, Siwan, District- Siwan
13. Mukund Madhav, S/o Not known to the petitioner, Bench Clerk/Office Clerk, Permanent Lok Adalat, Nalanda at Biharsharif, District- Nalanda
14. Astif Ahmad, S/o Not known to the petitioner, Bench Clerk/Office Clerk in Permanent Lok Adalat, Nalanda at Biharsharif, District- Nalanda
15. Sushil Kumar, S/o Not known to the petitioner, Bench Clerk/Office Clerk in Permanent Lok Adalat at Nawada, District- Nawada
16. Kumal Kumar, S/o Not known to the petitioner, Bench Clerk/Office Clerk Permanent Lok Adalat at Nawada, District- Nawada
17. Md. Wasim, S/o Not known to the petitioner, Bench Clerk/ Permanent Lok Adalat at Bhabhua, District- kaimur
18. Md. Meraz Ansari, S/o Not known to the petitioner, Bench Clerk Permanent Lok Adalat at Bhabhua, District- kaimur

... .. Respondents



Appearance :

For the Petitioner	:	Mr. Dronacharya, Sr. Adv.
For the State	:	Mr. Satya Vrat, AC to GP-10
For Respondent No. 09-13 & 15&16	:	Mr. Sunil Srivastava, Adv.
For Respondent No. 6	:	Mr. Pramod Kumar, Adv.

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT****Date : 19-12-2022**

Heard learned counsel for the petitioner, learned counsel for the Respondent Nos. 09 to 13 & 15 to 16, learned counsel for the Respondent No. 6 and learned counsel for the State.

2. For Appointment of peon, driver, stenographer and bench clerk in the permanent lok Adalat, the District Legal Services Authority, Khagaria, issued employment notice No. 2. After going through the written examination, the petitioner was interviewed on 13.12.2011. He, thereafter, came to know that only two candidates namely, Pragati Kumari (Respondent No- 5) and one Nitin Kumar were appointed for the two posts of Bench Clerk in the permanent Lok Adalat, Khagaria.

3. The petitioner, in the writ petition, has raised a plea that initially 28.11.2011, was fixed as the date of interview. This date has, subsequently, been postponed till further orders by a notice dated 28.11.2011, (Annexure-4), and interview directed to be held on 13.12.2011. The petitioner has asserted that Respondent No. 6 has originally not been declared successful. The date of interview



was postponed to some how accommodate her. She has, accordingly, been favoured in the matter of selection; and selected, ignoring the legitimate claim of the petitioner.

4. The Respondent Nos. 3 and 4 have filed counter affidavit. It is their case that a particular condition in the process of selection regarding disqualification of examinees for mentioning their name or identity in the answer book was clarified under letter dated 28.11.2011, bearing Letter No. 1605 by the Bihar State Legal Services Authority (for brevity 'BSLSA'). After receiving the said letter, containing binding clarifications/instructions by the BSLSA, the interview was postponed till further order to ensure compliance with the instructions received from the BSLSA. Accordingly, 15 days time was granted for completing the process of appointment. Re-tabulation work was completed after implementing the clarification/instructions of the BSLSA dated 28.11.2011, and a fresh result for interview was thus prepared. Three candidates were declared qualifying for interview, including, the instant petitioner. All the three candidates were applicants under the reserved categories as none have obtained 40% cut-off marks to come in the general category.



5. On 18.01.2012, the District Legal Services Authority has sent copy of the fresh final result of selected candidates, namely, Nitin Kumar (Respondent No.6) and Pragati Kumari (Respondent No.5) for the post of Office Clerk and Bench Clerk respectively. These two candidates have thus been appointed.

6. The petitioner's counsel submits that the letter dated 28.11.2011, bearing Memo No. 1605 introduced a change in the disqualification clause in the midst of the process of selection. The same has resulted in Respondent No. 6 emerging successful and ultimately being offered appointment. The respondents could not be permitted to change the rules of the game in the midst of the selection process. It is submitted that the Respondent No. 6, being a beneficiary of such change, cannot be permitted to continue in employment. The petitioner has, thus, assailed the appointment of Respondent No. 6.

7. Earlier, in the course of instant writ proceedings, when the matter was being heard on 26.08.2019, this Court made a specific query that if the petitioner was aggrieved by the so-called change of rules in the midst of selection process by letter dated 28.11.2011, bearing Memo No. 1605, by the BSLSA and notice of the same day, whether he had objected to the same? The petitioner, thereafter, filed Interlocutory Application No. 3 of 2019,



seeking quashing of the letter bearing Memo No. 1605 dated 28.11.2011 of the BSLSA. Challenge to the said letter now at this belated stage, about 8 years after the same was issued, does not in any way improve the petitioner's case. The fact remains that he did not assail this decision when it was taken on 28.11.2011, or at any time within the last 8 years. Having participated in the selection process without assailing the letter dated 28.11.2011, bearing Memo No. 1605 or notice dated 28.11.2011, postponing the date of interview, the petitioner, on being unsuccessful, cannot be permitted to turn around, and question the result of the selection process at a later stage by alleging that these letters introduced an impermissible change in the selection criteria during midst of the selection process. Petitioner is estopped from raising such plea.

8. Another and more important aspect of the matter is that petitioner has not challenged the entire selection process. Even if appointment of Respondent No. 6, which is assailed by the petitioner is set aside by this Court, then admittedly the petitioner would not as a result be appointed against the said post. It is not in dispute that the petitioner and Respondent No. 5 belongs to Scheduled Castes category as per reservation policy. It is also not in dispute that neither petitioner nor Respondent Nos. 5 or, 6 have secured more than 40% marks so as to place them in general



category. Their claim, therefore, has to be considered in their respective reservation category as per reservation policy under the Bihar Reservation of Vacancies in Post and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991, (hereinafter referred to as the Bihar Reservation Act for brevity).

9. In this connection, Respondent No. 2 has filed a supplementary counter affidavit. In paragraph no. 6 they have taken a stand that as per reservation policy if there are two posts of the same category vacant then one will go to the unreserved category and second to OBC as per roster policy. Any candidate of any category will be entitled to unreserved category post if he/she has the marks above cut-off for unreserved category. The second post is to go to the OBC category; and thereafter, again to unreserved category. If there are more than three post of the same category, then only fourth post would go to the candidate of Schedule caste category, to which the petitioner belongs. Such roster schedule and the Roster Policy is based on the Bihar Reservation Act which has to be followed. In para 14 of the writ petition it has been admitted that respondent No. 6 is an OBC category candidate. The petitioner could claim appointment as an SC candidate only if there were four vacancies.



10. Respondent No. 5 has secured highest marks therefore un-reserved post went to respondent No. 5 and the second post as per roster went to OBC category (Respondent No.6). There being only two posts, the petitioners who was claiming appointment against post reserved for SC had no claim.

11. The learned senior counsel for the petitioner does not dispute or deny these averments. He, however, submits that this Court should consider the validity of selection and appointment of Respondent No. 6. On account of favouritism being extended to the Respondent No. 6 and his appointment being founded on a change of criteria in the midst of selection process, which as per settled law is impermissible.

12. Since the petitioner does not have any claim or legitimate right or expectation to be appointed, even if the selection/appointment of Respondent No. 6 was to be interfered with by this Court, this Court would find that exercise of writ jurisdiction would be nothing more than a futile exercise and an academic discussion, as a consequence of which, the petitioner would not get any relief by way of appointment.

13. This Court is thus disinclined to exercise and invoke the extraordinary, discretionary and equitable writ jurisdiction in favour of the petitioner.



14. The writ petition is dismissed.

(Madhuresh Prasad, J)

Raj kishore/-

AFR/NAFR	AFR
CAV DATE	12.12.2022
Uploading Date	.12.2022
Transmission Date	

