

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.208 of 2020

Arising out of

Civil Writ Jurisdiction Case No.22444 of 2019

=====

Bhairo Yadav @ Bhairav Yadav, aged about 28 years, Male Son of Jharu Mahto, resident of Village- Bishunpur, P.S. - Chandan, District- Banka.

... .. Appellant/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

=====

Appearance :

For the Appellant/s : Mr. Ashok Kumar Singh, Advocate with
Mr. Shyam Sunder Pandey, Advocate

For the Respondent/s : Mr. Sanjay Kumar Ghosarvey, AC to AAG 3

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date : 24-01-2023

Heard Mr. Ashok Kumar Singh, learned counsel for the appellant and Mr. Sanjay Kumar Ghosarvey, learned AC to AAG 3 for the State.

2. The appellant being aggrieved by the judgment dated 21.01.2020 passed by the learned Single Judge in CWJC No. 22444 of 2019 has preferred the present appeal by which the writ petition filed by him for being appointed on the post of *Choukidar* in place of his father has been dismissed.



3. The only point for consideration before the Court was as to whether the appellant fulfills the minimum criteria for being appointed to the post i.e., whether he had passed the Class-10 examination.

4. Learned counsel for the appellant submitted that at the time of application, he had given the *Madhyama* certificate of *Hindi Vidyapith, Deoghar* dated 27.03.2015 but the same has been found to be unacceptable for the reason that the State Government has de-recognized such qualification with effect from 26.06.2014. However, learned counsel pointed out that one similarly situated person namely Pandu Turi in the District of Banka, who had passed *Parveshika* examination on 16.09.2014, from the same institution has been appointed on the post of *Choukidar/ Dafadar* as is claimed by the appellant.

5. Learned counsel for the State submitted that the appellant at the time of applying had submitted *Madhyama* certificate which is equivalent to 10th from *Hindi Vidyapith, Deoghar* but the same was after the date on which the degree has been derecognised by the State Government, hence it cannot be accepted for employment in the State of Bihar.

6. Having considered the rival contentions, the Court does not find any reason and occasion to interfere. Paragraph 9 of



the writ petition itself is an admission that the appellant had submitted his *Madhyama* examination certificate dated 27.03.2015 which according to him is as per the requirement. In view of the admitted position that certificate issued by the *Hindi Vidyapith, Deoghar* has not been recognized by the State of Bihar for the purposes of employment, the cut-off date being 26.06.2014, the certificate of *Madhyama* produced by the appellant before the authorities for consideration for appointment to the post of *Choukidar*, not being accepted, cannot be said to be illegal or arbitrary. Rightly, the eligibility criteria has been applied in the case of the appellant, that too, based on his own admission, as would be clear from the aforesaid statement made at paragraph 9 of the writ petition.

7. Coming to the contention of learned counsel for the appellant that Pandu Turi being similarly situated has been appointed on the said post, the Court would only observe that right to equality does not have a negative connotation and if there has been a wrong committed in the past, the same cannot be a ground to commit another wrong, even though it may be a ground to correct the earlier mistake.

8. Be that as it may, the said issue is not before the Court and, thus, the Court would not dwell on it any further. However,



at the cost of repetition, the Court would only state that such consideration on the basis of what may have been wrongly done cannot be a ground to issue a mandamus to commit the same illegality which would amount to giving premium to such illegality and even perpetuating the illegality. Reliance in this regard on a decision of the Hon’ble Supreme Court in **Usha Mehta vs. Government of Andhra Pradesh and Ors., (2012) 12 SCC 419**, has rightly been made by the learned Single Judge in the judgment impugned.

9. For reasons aforesaid, the appeal stands dismissed.

(Ahsanuddin Amanullah, J)

(Harish Kumar, J)

Arish/- P. Kumar

AFR/NAFR	
U	
T	

