

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5289 of 2023

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Raj Nath Ray, Son of Ram Nigan Ray, Resident of Village-Minapur, P.O.-
Gohpur, P.S.-Garkha, District-Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through its Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
2. The Secretary, department of Agriculture, Government of Bihar, Patna.
3. The Joint Secretary, Department of Agriculture, Government of Bihar, Patna.
4. The Director, Agricultural Directorate, Government of Bihar, Patna.
5. The Joint Director (Crop), Saran Division, Chapra.
6. The District Magistrate, Saran at Chapra.
7. The Sub-Divisional Agricultural Officer, Saran Sadar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Kishore Singh, Advocate
For the Respondent/s : Mr. Dhurjati Kr. Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 10-07-2023

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner has approached this court for issuance of a direction to the respondents to consider his claim for contractual re-employment in light of resolution dated 10.07.2015 contained in Memo No.10000 issued by the General Administration Department (Annexure-1).

3. The petitioner, as per averments in the writ petition, has superannuated from the post of Range Assistant in the Government Seed Production Range of Saran Sub-Division. It is



his case that the Sub-Divisional Agriculture Officer, Saran, had recommended petitioner's contractual re-employment by his letter dated 19.02.2022 as the work of seed production was being hampered because of his retirement. Similar recommendation is stated to have been made by the Joint Director (Crop), Saran Division, Chapra, on 03.06.2022. The case of the petitioner is that in spite of such recommendations, he has not been considered for the contractual re-employment, though he is otherwise fit in terms of the resolution dated 10.07.2015 (supra).

4. This court called upon the learned counsel for the petitioner to show as to under which clause of resolution dated 10.07.2015, the petitioner has a right to be considered/appointed for contractual re-employment, post retirement. He has placed reliance on Clause 2(kha)(iii).

5. Learned counsel for the State on the other hand has submitted that the petitioner has not approached this court with clean hands. The recommendations made in his favour, post his retirement, have thrice been rejected. The petitioner has suppressed these rejections and approached this court with a false plea that the recommendations in his favour have not been considered.



6. Learned counsel for the petitioner thus submits that in view of such averments in the counter-affidavit, he would be required to take instructions from his client and file a rejoinder.

7. This court is conscious of the fact that the alleged misrepresentation or suppression of material fact raised in the counter-affidavit cannot be relied upon without giving an opportunity to the petitioner to meet the said allegations and respond to the same. Therefore, the court is not inclined to go into this issue raised in the counter-affidavit.

8. The court, however, finds that Clause 2(kha)(iii), relied upon by learned counsel for the petitioner, does not create any vested right of consideration for contractual re-employment, post retirement, in favour of the petitioner. The resolution dated 10.07.2015, being relied upon, has been issued taking note of the fact that there are large number of vacancies existing. The process of regular appointment through the Commission/s takes a long time. The General Administration Department, therefore, resolved that services of retired government servants may be taken on contractual basis in the various Departments and Regional Offices of the State Government. Clause 2(kha)(i) is relevant to answer the query of the court whether any retired government servant can claim a



right to consideration/re-employment on contractual basis.

Clause 2(kha)(i) reads as follows:-

“(2)(ख)(i) संलग्न अनुसूची में उल्लिखित पदों पर पूर्व से सेवानिवृत्त सरकारी सेवकों के संविदा नियोजन के लिए अनुरोध प्राप्त होने पर उनके चयन हेतु संबंधित विभाग / प्रमंडल / जिला द्वारा अपने विभागीय / प्रमंडलीय / जिला के website में तथा समाचार पत्रों के माध्यम से आम विज्ञापन निकालकर आवेदन आमंत्रित किये जायेंगे और इस प्रकार प्राप्त आवेदन इस संकल्प की कंडिका 3(3) के तहत गठित संबंधित चयन समिति के समक्ष विचार हेतु उपस्थापित किए जायेंगे। संबंधित चयन समिति की अनुशंसा पर संबंधित विभाग / कार्यालय के सक्षम नियुक्ति प्राधिकार द्वारा संविदा के आधार पर नियोजन किया जा सकेगा। ”

English translation:-

“(i) On receipt of request for contractual employment from the government servants retired previously, on the posts mentioned in the attached schedule, for their selection, the concerned department/division/district shall make general advertisement on its departmental/divisional/district website and through newspapers and applications will be invited and the applications thus received will be presented for consideration before the concerned selection committee constituted under Clause 3 (3) of this resolution. Upon the recommendation of the concerned selection committee, the employment on contractual basis shall be made by the competent authority of the concerned department/office.”

9. It is obvious from reading of the relevant clause extracted above that when a request is received for re-employment of retired government servant on contractual basis on any of the posts specified in the list appended with the



resolution, then the concerned Department/Division/District is required to publish a general advertisement on its website and newspaper, inviting applications for contractual re-employment. The applications which are received are required to be considered by a Selection Committee, as contemplated in Clause 3(3) of the same resolution. It is only on recommendation of the Selection Committee that the Competent Authority in the Department/Office may re-employee on contractual basis.

10. It is not the petitioner's case that any advertisement has been published on the website or a newspaper inviting applications for contractual re-employment of retired government servants, against which he has made any application. There being no advertisement as per resolution under which the petitioner is claiming consideration, the petitioner cannot claim any right to be considered or appointed. It is trite law as per decision of the Hon'ble Apex Court in the case of ***Oriental Bank of Commerce vs. Sunder Lal Jain and Anr.*** reported in ***(2008) 2 SCC 280*** that existence of a right is prerequisite to issuance of a writ for enforcement of the right. The petitioner has not been able to show that there was any duty or obligation cast upon the respondent-State Authorities to



consider the petitioner’s claim for re-employment on contractual basis, post retirement. Had there been an advertisement in terms of Clause 2(kha)(i) of the resolution, the situation may have been different, but that is not so. When there is no advertisement issued by the respondent-Authorities, the petitioner cannot invoke the writ jurisdiction of this court under Article 226 of the Constitution of India to compel the respondents to fulfill their obligation/duty to consider/re-employee the petitioner.

11. The above noted circumstance is sufficient for this court to conclude that the petitioner has not come to this court for enforcement of any right arising out of any corresponding duty/obligation of the State Authorities. This court is, therefore, of the opinion that there is no occasion to issue any direction to the respondent-Authorities.

12. The writ application is devoid of merit and is dismissed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	AFR
CAV DATE	NA
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