

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7786 of 2022

Virendra Kumar Singh Son of Late Babulal Singh through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
3. The Chairman, the District Level Selection Committee (Supply), Gopalganj.
4. The District Magistrate-Cum-Collector, Gopalganj.
5. The Sub-Divisional Officer, Hathua, District-Gopalganj.
6. The District-Supply Officer, Gopalganj.
7. The Block Development Officer, Bhore, District-Gopalganj
8. The Block Supply Officer-Cum-Marketing Officer, Bhore, District-Gopalganj
9. Munna Kumar Ram Son of Sri Nemi Ram Resident of Village Bagahwan Mishra, P.S. Bhore, District-Gopalganj

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Naresh Prasad, Adv. Mr. Vyas Kr. Mishra, Adv.
For the Private Respondent	:	Mr. Ranjeet Kr. Pandey, Adv.
For the State	:	Mr. Upendra Pratap Singh, AC to SC 4

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 13-03-2023

1. The petitioner by way of this writ petition assails the order dated 12.04.2022 passed by the Secretary who has set aside the allotment of PDS shop to the petitioner and has held the Respondent No. 9 to be eligible for awarding of the license.

2. The petitioner has challenged the placement of the Respondent No. 9 in the provisional merit list at No. 1 and claims that he was entitled for being placed at No. 1 in the merit



and was accordingly placed in the merit in the final order passed by the District Supply Officer vide his order dated 31.08.2020 and PDS shop was allotted to him. Learned counsel submits that the petitioner possesses better qualifications than the Respondent for the purpose of issuing of license in terms of the Bihar Targeted PDS (Control) Order 2016.

3. On the other hand, learned counsel appearing for the Respondent No. 9 submits that he had preferred a writ petition challenging the order of allotment of PDS shop to the petitioner and this Court vide its order dated 06.12.2021 directed the Secretary (Food) Government of Bihar to decide the issue. The Secretary has thereafter examined the respective qualifications of both the parties and has reached to the conclusion and held the Respondent No. 9 to be entitled for allotment of PDS. Learned counsel submits that the impugned order does not suffer from any perversity. He has taken this Court to the provisions of **Rule 9 (v)** proviso to submit that the Respondent No. 9 was possessing higher qualification of Post Graduation and was therefore entitled for the selection. He asserts that he was rightly placed at No. 1 in the provisional merit list and was therefore required to be allotted the said license. In view of order passed by the Commissioner, he has



already been allotted the same and is now presently running it. Learned counsel appearing for the State adopts the submissions of the Counsel appearing for the Respondent No. 9.

4. I have considered the respective submissions.

Rule 9 (v) proviso of the **Bihar Targeted PDS (Control) Order 2016** reads as under:-

“9.(v) The applicant of a fair price shop’s license must be matric pass and an adult:

Provided that the applicant having computer knowledge shall be given priority. In case of equality in computer knowledge, the applicant having highest qualification and in case of equality in highest qualification also the applicant of older age shall be given priority.”

5. In the provisional merit list prepared by the Respondents for allotment of the shop, the name of the Respondent No. 9 was placed at No. 1 and he was shown to be recommended for the purpose of allotment of the shop. It is to be noticed that the concerned shop was unreserved. The Respondent No. 9 had applied as an unreserved category candidate while the petitioner applied under the EBC Category. In the educational qualifications column, the Respondent No. 9 is shown to possess Diploma in Computer Application (D.C.A.) and Post Graduate while the petitioner is shown to possess the



qualification of B.Sc. (IT). The question which was required to be examined by the Secretary was who is to be treated as more meritorious. However, he has failed to examine the issue and proceeded on an assumption that the Respondent No. 9 (appellant before him) was placed at No. 1 in the merit list although the merit list was provisional.

6. Upon plain reading of the proviso to **Rule 9 (v)**, it is apparent that an applicant having computer knowledge has to be given priority and if there is equality in computer knowledge, then the applicant having highest qualification would be considered and if all the applicants have equal highest qualification then their age would be a factor for the purpose of grant of the license for PDS shop. The *seriatim* has to be followed. In other words, the first aspect which is to be examined is knowledge of Computer and if they are equal then the second aspect shall be examined. In the present case, it is noticed that while the Respondent No. 9 possesses a Diploma in Computer Application, the petitioner possesses qualification of B.Sc. (IT) which is a higher qualification in computer knowledge. In view thereto, the question of examining the other highest qualification would not arise, and it is at that stage only that the petitioner marches over the Respondent.



The said aspect having not been considered by the Secretary vitiates the order passed by him dated 12.04.2022. The petitioner therefore is found to have been rightly treated as higher meritorious while issuing the license for PDS shop by the District Supplier Officer's order dated 31.08.2020 and there was no occasion to set aside the said order with respect to the petitioner by the Secretary. The order passed by the Secretary therefore suffers from perversity and cannot be sustained in law.

7. Accordingly, this writ petition stands allowed. The order passed by the Secretary dated 12.04.2022 is quashed and set aside. The petitioner shall be entitled for the grant of license of PDS shop in terms of the order passed by the District Supplier Officer dated 31.08.2020 for the region as mentioned there.

No cost.

(Sanjeev Prakash Sharma, J)

Sachin/-
Item No. 39

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

