

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.501 of 2019

In
Civil Writ Jurisdiction Case No.11562 of 2014

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1. Nand Kumar Thakur Son of Ram Ashish Thakur R/o - Village/Mohalla - Rais, P.S. - Pandarak, District - Patna.
 2. Sunil Kumar S/o Late Tilo Prasad R/o Village-Pandarak, P.S. Pandarak, District-Patna

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Department of Welfare, Bihar, Patna
2. The Director Department of Welfare, Patna
3. The Deputy Director Department of Welfare, Darbhanga Commissioner, Darbhanga
4. The Headmaster Scheduled Caste residential Girls School, Ram Nagar, District-Madhubani
5. The Headmaster Scheduled Caste residential Girls School, Bathnaha, District-Madhubani
6. The District Employment Officer Samastipur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajendra Prasad, Sr. Advocate. Mr. Pramod Kumar, Advocate.
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA-7.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-02-2023

Heard the learned counsel for the parties.

The appellants have challenged the order dated
18.02.2019, passed in CWJC No. 11562 of 2014,
dismissing their claim for interfering with their order of



termination of their engagement.

The appellants are cooks whose services were engaged in residential hostels meant for scheduled caste students. Later, their engagement was terminated on the ground that the Regional Deputy Director who had given the employment had no authority to appoint them.

This was questioned by the appellants firstly in CWJC No.4011 of 1997 along with others when the stand of the respondent was that the Regional Deputy Director had no authority to engage such persons as cooks was not accepted and the termination on that ground did not find favour.

However, while parting with the order, the Hon'ble Judge recorded that the vacancies would be required to be advertised for attracting larger participation by desirous candidates. In the case of appellants, it was found that a different process had been adopted, namely, calling for names from the local employment exchange and not by making advertisement.

Under the aforesaid circumstances, it was



directed that the Director of Welfare ought to consider the case of the appellants, taking into account the number of vacancies available till May 1992 and find out whether the appellants have been appointed against those vacancies. The Bench clarified that the appointments ought to have been made against specified vacancies. The order terminating the employment of the appellants was made subject to the result of the inquiry.

It appears that thereafter an inquiry was made, but no change was made in the order terminating the engagement of the appellants. They again preferred a writ petition before this Court vide CWJC No. 12202 of 2000, which was disposed of on 30.04.2004 directing that in case the vacancies were notified and appointments made, the appellants who had been working for such long time ought to be given weightage.

The posts of cooks appear to have been advertised, but the appellants never participated in the selection process; rather they approached the High Court again vide CWJC No. 11562 of 2014 which was dismissed



by order dated 18.02.2019, which order is under challenge in the present appeal.

The only ground on which the case of the appellants have been rejected is that when an option was given to the appellants to participate in the selection process, in which they would have been given weightage for their experience, they had not done so. It would therefore not be available to the appellants to agitate against the order of termination afresh after 19 years. The writ petition preferred by the appellants was thus, dismissed.

Mr. Rajendra Prasad, the learned senior Advocate assisted by Mr. Pramod Kumar, Advocate, for the appellants has submitted that the first order passed in CWJC No. 4011 of 1997 actually protected the engagement of the appellants. The grounds raised by the respondents in justification of their termination was not accepted. A distinction was made in that instance with respect to mode of appointment / engagement of the appellants. The posts are definitely to be notified for



attracting more participants but in the case of the appellants, their names were supplied by the local employment exchange, whereupon, they were engaged. In that case, they ought to have been retained as cooks.

This argument would not take the appellants to anywhere for the reason that the posts were advertised later. Even before the same was advertised, the matter was scrutinized by another Bench later in CWJC No. 12202 of 2000 wherein a positive direction was given by the Bench to notify the vacancies and in case of participation of the appellants, to give them weightage over the other participants for their experience as cooks.

It appears from the tenor of the argument as also from the memo of appeal that the posts were advertised and appointments were made but for reasons which cannot be explained, the appellants never participated in the same.

Now the termination order of 2000 was questioned again in the year 2014 which writ petition was dismissed on 18.02.2019.



The premise on which the writ petition of the appellants was dismissed is absolutely justified. For the appellants not having participated in the selection process, they cannot be permitted to question the order of termination which was passed about 19 years ago.

There is no merit in this appeal and, therefore, the same is dismissed.

(Ashutosh Kumar, J)

(Harish Kumar, J)

SunilKumar
manoj/-

AFR/NAFR	NAFR
CAV DATE	NA
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