

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3209 of 2020

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Sudhir Kumar, S/o Late Dwarka Ram, resident of behind Sales Tax Office,
Kalyanpur, Ward No. 20, Jamui, P.S. and Dist.- Jamui.

... .. Petitioner

Versus

1. District Selection Committee through District Magistrate, Jamui.
2. Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. Divisional Commissioner, Munger Division, Munger.
5. District Magistrate cum Chairman, District Selection Committee, Jamui.
6. Nazarat Deputy Collector, Jamui.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan Singh, Advocate
For the Respondent/s : Mr. Sajid Slaim Khan, SC-25

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 25-11-2024

Heard Mr. Prabhat Ranjan Singh, learned counsel for the petitioner and Mr. Sajid Salim Khan, learned counsel for the State.

2. This is the second round of litigation, as earlier the petitioner had approached this Court in C.W.J.C. No. 12165 of 2015, which came to be disposed off vide order dated 25.06.2018, with a direction to the District Magistrate to take a final decision on the representation filed by the petitioner and dispose off the same by a reasoned and speaking order with an observation that such disposal shall take into consideration the



petitioner's right to avail the benefits under the existing policy for reservation of handicapped employees.

3. Pursuant thereto, the claim of the petitioner was duly considered but it came to be rejected vide order dated 15.02.2019 on the ground that the disability certificate of the petitioner is not in consonance with the proforma prescribed in Resolution No. 62 dated 05.01.2007. It is this order which is put to challenge in the present writ petition.

4. While assailing the order impugned as contained in Annexure-8 to the writ petition, learned counsel for the petitioner contended that the impugned order is in the teeth of Section 72 of the Persons with Disability Act, 1995 (for short 'the Act, 1995'). In order to substantiate his claim, the petitioner again appeared before the Medical Board and the Board corroborated the earlier report and affirmed the disability certificate issued in favour of the petitioner.

5. Learned counsel for the petitioner also contended that while negating the claim of the petitioner, the respondent authorities failed to consider the decision of the Hon'ble Supreme Court in the case of **Union of India v. National Federation of Blind [(2013) 10 SCC 772]**. In pursuant to which decision, Resolution No.62 dated 05.01.2007 has been



directed to be modified, inasmuch as the Hon'ble Court observed that the provisions thereof is not in consonance with Section 33 of the Act, 1995. Referring to Section 72 of the Act, 1995, it is submitted that it clearly speaks that any provision if added in this Act shall be in addition to and not in derogation of earlier provisions. In view of the observations and the liberty granted by the Hon'ble Supreme Court, the petitioner got himself examined afresh from a Board of Doctors and obtained new disability certificate in prescribed proforma on 20.08.2019 and again approached before the respondent no.5 on 19.09.2019 to reconsider his claim on account of he being disabled and falls under consideration zone for disabled person; all the more, the quota of disabled person is still vacant. The hyper technical objection that the proforma of the certificate is not in consonance with the Resolution of the State Government, is quite discriminatory and violative of Article 14 of the Constitution of India, when in the case in hand, there was no such prescriptions in the advertisement.

6. On the other hand, learned counsel for the State referring to the averments made in the counter affidavit, primarily contended that the petitioner being handicapped candidate ought to have applied with duly filled up application



annexing disability certificate in prescribed proforma issued by the Personnel and Administrative Reforms Department, Bihar, Patna as contained in Letter No. 62 dated 05.01.2007, which also contemplates that if no disabled candidate is available for appointment, then other eligible candidate(s) will be appointed in terms of para-14 of the said letter. Moreover, it is not mandatory to reserve vacancy for disable candidate, in fact, it is horizontal reservation for disable candidate(s). The petitioner has secured merit position at serial no. 1538 being the EBC Candidate whereas the District Selection Committee, Jamui has appointed the EBC Candidate within serial no. 215 and General Candidate to serial no. 144 and thus the petitioner could not be appointed. It is also the contention of the learned counsel for the State that much water has flown under the Ganga and now the new process of selection of appointment would be conducted through the Bihar Karmchari Chayan Aayog, Patna and all the previous panel prepared, wherein the petitioner and others were shown to be empanelled also ceased to exist.

7. Reliance has also been placed on a decision passed by this Court in the case of **Kapil Kumar v. State of Bihar and Others [C.W.J.C. No. 18612 of 2019]**, wherein the learned Court has directed the Additional Chief Secretary, Principal



Secretary and all the higher authorities of the State to ensure that the process of selection through the advertisement in question is completed by adopting a fair procedure, which includes written examination of the candidate(s), who have applied against the said advertisement, would be a fair procedure for preparation of merit-list, in the absence of any provision in the Rules. The respondents are further directed to ensure that a fair process of selection, strictly in accordance with statutory rules and in conformity with the mandate of Articles 14 and 16 of the Constitution is undertaken on regular basis, after advertising number of post, so that the persons acquiring eligibility after the initiation of one selection process have a chance to seek and participate in subsequent selection processes. This practice of fairness in the process of selection for filling up public posts generates faith in the hearts and minds of the citizen in the governance, laws and the Constitution.

8. To sum up the afore-noted submissions, learned counsel for the State has drawn the attention of this Court to an order of the learned Division Bench of this Court in the case of **Jitendra Ram v. The State of Bihar and Others [L.P.A. No. 2044 of 2016]**, wherein in identical facts and situation, the learned Division Bench while affirming the order of the learned



Single Judge held that the certificate produced by the petitioner in the said case, does not meet the requirement of Resolution dated 05.01.2007 and, as such, it is not the proforma prescribed for seeking appointment in the appropriate category and therefore in refusing to interfere into the matter on such consideration, the learned Court held that the writ court has not committed any error.

9. At this juncture, learned counsel for the petitioner submitted at the Bar that the appellant being dissatisfied with the decision in L.P.A. No. 2044 of 2016, preferred Civil Review No.525 of 2018, seeking review of the afore-noted order on the ground that there was no such proforma made available wherefrom the applicant had sought the certificate and, therefore, the stand taken by the State was incorrect and hence, there being an error apparent on the face of the record of the judgment. Admittedly, the review application did not find favour but the learned Division Bench categorically observed that if the applicant was desirous, he could have again applied for a certificate under the proforma, the copy whereof was filed along with the counter affidavit before the writ court, but the applicant instead of applying for a certificate under the said proforma, has relied on the information given under the Right to Information



Act after the order was passed by the Division Bench. The applicant had an opportunity of getting a certificate under the proforma of the Government of Bihar appended along with 2007 resolution but no attempt appears to have been made by the applicant to that effect.

10. On the strength of the aforesaid observation made by the learned Division Bench of this Court, learned counsel for the petitioner tried to impress upon this Court that in the case in hand, the petitioner has obtained the disability certificate in a duly prescribed proforma and had approached before the competent authority but his claim was not considered.

11. This Court has heard learned counsel for the respective parties and also meticulously perused the materials available on record.

12. From the materials available on record, it appears that the petitioner along with others had submitted their application along with their educational and disability certificate in terms of the advertisement as contained in Memo No. 490/Estb. Dated 19.10.2012 for empanellement against the vacant and sanctioned post of Group-D. The petitioner secured 1538 position in the panel. Out of the empanelled candidates, 253 empanelled persons were duly appointed in different



offices. However, the claim of the petitioner was not considered under the disability quota on account of the fact that he failed to submit their disability certificate in prescribed proforma as required under the Government Resolution No. 62 dated 05.01.2007.

13. In identical facts and situation where one of the candidates, namely, Jitendra Ram, whose application under the disability quota has not been accepted on account of the same being not filed under the prescribed proforma; the action of the respondents was questioned by the said candidate before the learned Single Judge of this Court in C.W.J.C. No. 5811 of 2015, it came to be rejected. On being aggrieved, the said candidate approached before the learned Division Bench of this Court in L.P.A. No. 2044 of 2016, wherein the learned Division Bench taking note of the prescription of the advertisement held that even though in the advertisement issued on 20th October, 2012, it is only stated that the disablement certificate should be produced but since the resolution has been passed by the State Government with regard to considering the cases of disabled persons for employment in Government service in terms of the Resolution No.62 dated 05.01.2007, contemplating proforma of the disablement certificate, the same is required to be followed.



The proforma in two pages mandates the Medical Board to conduct various examinations and submit the certificate in the prescribed proforma. The learned Court find that the certificate produced by the petitioner does not meet the requirement of resolution and thus did not interfere in the order of the learned Single Judge. The learned Division Bench also observed that merely because in the advertisement there was no stipulation with regard to the certificate being in any particular form ignoring the requirement of the State Government Policy and Statute, no relief could be granted to the petitioner.

14. Suffice it to observe that once the Government has come out with a resolution prescribing the prescription under the disability certificate is to be prepared and obtained from the authority concerned, any defiance of such prescriptions would certainly invalidate the certificates and on the basis of such invalid certificate(s), no person can make a rightful claim either for appointment or any other benefits under the State.

15. It would be worth noticing that the observation(s), if any, while parting with the case, cannot be treated as ratio of the decision, once it does not decide any issue.

16. The reliance of the petitioner on the observation made in the order passed in Civil Review No. 525 of 2018,



which finally came to be dismissed, does not decide an issue rather it is a concern expressed by the learned Court in favour of the petitioner that in the facts of that case, he ought to apply for a fresh certificate in the prescribed proforma in order to sustain his claim for disablement.

17. Admittedly, the advertisement for empanellement was issued way back in the year 2012 and now the new rule came into effect with a clear prescription that all the appointments even for the Group-D post shall be held through a written examination; all the panels prepared earlier cease to exist.

18. In view of the discussions made hereinabove and the decision of the learned Division Bench of this Court, this Court does not find any merit in the present writ petition. Accordingly, it stands dismissed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04-11-2024
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