

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5513 of 2020

Abhay Kumar Singh S/o Mohan Singh R/o Village- Brahumpura, P.O.-
Rajajan, P.S.- Mohiuddin Nagar, District- Samastipur.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Shipping, Govt. of India, Transport Bhawan Sansad Marg, New Delhi- 110001.
2. The Chairperson Inland Waterways Authority of India at A-13, Sector-1 Noida (Uttar Pradesh)- 201301.
3. The Secretary, Inland Waterways Authority of India at A-13, Sector-1 Noida (Uttar Pradesh)- 201301.
4. Nirala Nirala Son of Surendra Rai Presently posted as Inland Dredge Master, Inland Waterway Authority of India, Post - Gulzarbagh, Gaighat, P.S. - Alamganj, District- Patna.
5. Ramdev Mandal Son of Jawahar Mandal, Resident of Barfani Bhawan, Sammatpalli, Near Durga Mandir, Rashdanga, P.O.- Asansol, State - West Bengal.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Advocate Mr. B.S. Pandey, Advocate
For the Resp.No.2 & 3	:	Mr. Ray Saurabh Nath, Advocate
For the Respondent No.4:	:	Mr. Sanjay Kumar, Advocate
For the UOI	:	Mr. Awadhesh Kumar Tiwari, C.G.C.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

18 10-05-2024 The petitioner has invoked the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India for the following reliefs :-

“(i) For issuance of writ of mandamus to the respondent concern to set aside the final result published vide Notification No.IWAI/Rech.01/2020 dated 14.02.2020 issued by Inland Waterways Authority of India [Ministry of Shipping, Govt. of India], A-13, Sector-1 Noida (U.P.) (hereinafter



referred as IWAI) in respect to the post Inland Dredge, Master (Post Code-F7) which is against the guidelines mentioned in Inland Waterways Authority of India Recruitment, Seniority and Promotion (Sixteenth Amendment) Regulation 2017 (hereinafter referred as Recruitment Regulation).

(ii) For issuance of direction to the respondent to consider the case of petitioner for appointment on the post of Inland Dredge Master, who has been working on the post on contract basis since 15 December, 2010 to till date and he was also allowed to participate in the said direct recruitment against the said advertisement and finally rejected in final publication of result of successful candidate without any cogent reason.

(iii) For any other relief/reliefs as your Lordships deem fit and proper.”

2. Indisputably, petitioner is an Ex-servicemen. He retired from Indian Navy on 31.08.2010 on completion of 15 years service. After retirement he joined as Dredge Master under Inland Waterways Authority of India on contractual basis in terms of notification dated 15.12.2010. The said notification dated 15.12.2010 clearly stipulated that the appointment of the petitioner on the post of Dredge Master would be purely on contractual basis and initially he was appointed for six months. He was also directed to execute an agreement of contractual



nature of his employment on the Non Judicial Stamp Paper with IWAI before joining his post. Subsequently, his service was extended time to time and lastly by a letter dated 13.01.2020 for a period of one year. In the meantime, IWAI issued a notification dated 15.01.2018 for direct recruitment of Inland Dredge Master and other posts on regular basis. In the said notice, it is clearly mentioned that Inland Dredge Masters would be appointed in four posts amongst which three posts were reserved for unreserved candidates and one post was reserved for OBC candidate.

3. The petitioner approached the authority to allow him to appear in the said Selection Test on the ground that he has been continuously serving the authority as Dredge Master on contractual basis. Therefore, he should be allowed to compete with other candidates in the examination and selection test. The authority allowed him to compete the examination.

4. Indisputably, he was selected in the written examination and his name appeared in serial No.3 of the merit list.

5. It is pertinent to mention here that at the time of examination notification along with the list of eligible candidates, the respondent authority revised the vacancies of



floating posts for which selection process would be under taken and the number of vacancies for the post of Inland Dredge Master, which was notified in employment notice dated 15.11.2018 as 04 candidates, was revised to only 02 candidates, both unreserved.

6. It is contended on behalf of the petitioner that employment procedure starts with the advertisement of employment notice. After publication of employment notice and inviting application for selection to the posts as per employment notice, the number of posts cannot be reduced.

7. Next, it is contended by the learned advocate for the petitioner that in the Employment Notification dated 15.11.2018 essential qualification of the candidates was written and these are :-

I) Matriculation Pass Certificate or equivalent from a recognized Board/University.

II) Having 5 years experience in operation of Dredgers with certificate of competency as Driver 1st Class or as License Engine Driver or as Master 1st class; OR

Petty Officer from Technical Branch of India Navy or equivalent with 2 years experience in operation & maintenance of the dredgers; OR

SR II certificate holders with a minimum of 3 years experience in operation & maintenance of Dredgers



OR

Diploma in Mechanical Engineering with 05 years experience in operation and maintenance of Dredgers.

8. Thus, the Petty Officers of Indian Navy were qualified for selection. The petitioner was a Petty Officer in Indian Navy before his appointment and Dredge Master under IWAI on contractual basis. However, on 01.11.2019, the Director (A & V) of Inland Waterways Authority of India wrote a letter to the Secretary to the Government of India, Ministry of Defence, New Delhi that in order to ensure transparency, fair selection and to provide equal and fair opportunity, special committee has examined all the application forms. On examination it has emerged that clarification is required whether Ex-servicemen/Petty officers in the absence of possessing experience certificate of one year/ two years in the operation and maintenance of Dredgers are eligible or not as per the eligibility criteria for the post of Dredge Control Operators and Inland Dredge Master as per IWAI Recruitment Rules attached as Annexure-3 and thus, he solicited a response in the said matter from the Secretary, Government of India, Ministry of Defence. A reply was received on 16.01.2020 from the Directorate of Ex-servicemen affairs regarding the experience/ suitability and it



was stated that ex-servicemen (Technical Sailors) have adequate experience with regard to operation of machinery of Dumb Barges. Further, as per Directory of Equation of Service Trade and guide to registration of 'Defence Service applicants for employment' Technical Sailors are fit to carry out duties as Technical Assistant, Crane Hoist Operator, Fitter Marine, Boiler Tendel, Boiler Attendant etc.

9. It is also submitted by the learned advocate for the petitioner that none of the selected candidates has requisite work experience as per the eligibility qualification mentioned in the examination notification.

10. It is the grievance of the petitioner that after initiation of selection process the respondent authority cannot change the number of vacancies, even if the number of vacancies were changed, in the selection-cum-merit list the petitioner was selected in third position.

11. The learned advocate for the petitioner submits that one Ram Deo Mandal whose name was appearing in the selection-cum-merit list in Serial No.2 just above the petitioner, did not join the post of Dredge Master. Therefore, as per the penal the petitioner is entitled to join as a regular employee of IWAI as Dredge Master.



12. The learned advocate on behalf of IWAI, official respondents submits that the authority may not have any objection if without violating merit list, the petitioner gets chance to be regularized.

13. However, it is submitted by the learned advocate on behalf of the respondents that the life of the penal has already been expired and at this stage the petitioner cannot be directed to be observed in regular appointment.

14. It is needless to say that the final result was published on 14.02.2020, ordinarily life of penal exists for one year. Therefore, the penal can be said to be expired from 15.02.2021. The petitioner approached this Court in writ jurisdiction on 26.02.2020, when the penal was enforce. When the authority found that the selected candidate in final selection list in Serial No.2 did not join, the authority ought to have given an opportunity to the candidate in Serial No.3 i.e. the petitioner to join in the regular post on the basis of his averment made in the writ petition before expiry of the penal. Without giving opportunity to the petitioner to join as a regular employee as Dredge Master under IWAI when the selected candidate as per merit in serial No.2 did not join the service. The authority acted in manifest arbitrary manner.



15. When there is manifest arbitrariness of the respondents is established it is open for the Court to verify the entire process of selection. In other words, in such case of illegality, manifest arbitrariness and denial of opportunity to a deserving candidate, writ Court has the power of judicial review under Article 226 of the Constitution of India.

16. The Hon'ble Supreme Court in *St. Mary's Education Society & Anr. Vs. Rajendra Prasad Bhargava & Ors.* reported in (2023) 4 SCC 498, quoted paragraph nos. 29 and 32 of *Binny Ltd. & Anr. Vs. Sadasivan & Ors.* reported in (2005) 6 SCC 657, which are reproduced hereinbelow:

“29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over



administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies.

32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not “State” within the meaning of Article 12 of the



Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.”

17. Under the facts and circumstances of the case, this Court is of the view that the respondent authority specially the respondent Nos.2 & 3 are under legal obligation to consider the case of the petitioner and to come to a decision if the petitioner can be appointed as Dredge Master in place of selected candidate, namely, Ram Deo Mandal as per merit if his position in the merit list appears to be immediately below Ram Deo Mandal, so far as disqualification with regard to age of the petitioner, this Court is of the view that when authority permitted him to appear in the selection test as well as interview, disqualification on the ground of age cannot be treated as a ground of rejected the eligibility of the petitioner.

18. The case of the petitioner shall be decided within three months from the date of communication of this order.



After taking decision, the above named respondents shall pass a reasoned order with regard to appointment of the petitioner either allowing him to join in place of Ram Deo Mandal or otherwise.

19. It is also clarified that appointment of Niraj Nirala-respondent no.4 cannot be called in question while disposing of the case of the petitioner.

20. With the above order, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

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