

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.606 of 2019

In
Civil Writ Jurisdiction Case No.22952 of 2013

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Saurabh Kumar Son of Devendra nath Sinha Resident of Mohalla Satyarganj
(Near Shiv Mandir), Police Station- Islampur, District- Patna.

... .. Appellant/s

Versus

1. The Madhya Bihar Gramin Bank Through Chairman- Cum-managing Director, meena Plaza, South, South of Patna museum, Patna.-1
2. The Chairman-Cum-Managing Director, The Madhya Bihar Gramin bank Meena Plaza, South of patna museum, Patna.
3. The General Manager, The Madhya Bihar Gramin bank, meena Plaza, South of Patna Museum, patna-1
4. The Senior Manager, The Madhya Bihar Gramin Bank, Meena Plaza, South of Patna Museum, Patna.
5. The Indian Banking Personnel Selection Board Through its Chairman, Mumbai

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Rajesh Kumar Singh, Advocate Mr. Anil Kumar Singh, Advocate Mr. Sumit Kumar Singh, Advocate
For the Respondent/s	:	Mr.Suresh Pd Singh No.1, Advocate Ms. Kumari Reshmi, Advocate
For IBPS	:	Mr. Siddhartha Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 05-03-2024

Re: I.A. No. 01 of 2019

Heard I.A. No. 01 of 2019 for condonation of delay
in filing L.P.A. No. 606 of 2019 for the reasons stated in the
application read with affidavit and the fact that respondents have
no objection to condone the delay. Accordingly, delay of 269



days in filing L.P.A. stands condoned.

2. In the result, I.A. No. 01 of 2023 stands allowed.

3. With the consent of the learned counsels for the respective parties, the present LPA is taken up for final disposal.

4. Appellant has assailed the order of learned Single Judge dated 18.07.2018 passed in C.W.J.C. No. 22952 of 2013. Brief facts of the case are that appellant is one of the candidate for recruitment to the post of Office Assistant (Multipurpose), pursuant to the advertisement issued in the year 2012. He was successful in written examination and secured 64 marks out of 70. Consequently, he was invited for interview on 25.06.2012. He was called for interview on 14.07.2012 by communication dated 25.06.2012 and it is learnt that he has secured 15 marks in the interview. The overall marks is 79. Whereas the cut-off marks under OBC category is 78 marks. Therefore, his name should have been considered for selection and appointment to the post of Office Assistant (Multi-purpose).

5. Appellant's name was not considered on the issue that he was suspected to be involved in malpractice in the written examination. In this regard, there was internal communication dated 08.06.2012 produced as R/A alongwith counter affidavit. The concerned authority is stated to have taken



note of to the extent that there was suspected malpractice among the appellant Saurabh Kumar and Vikash Kumar with reference to the fact that both of the candidates have attempted eleven questions which were identical and answered by them was wrong. It is to be noted that before the date of interview notice dated 25.06.2012, the concerned authority has already determined that appellant was involved in malpractice to that extent that there was a communication on 08.06.2012. In other words, appellant should not have been called for interview on 14.07.2012 pursuant to the notice dated 25.06.2012. There may be bonafide mistake in inviting the appellant for interview.

6. Be that as it may, question for consideration in the present lis is whether before declaring that appellant was suspected in malpractice in the written examination, whether has he been heard in the matter or not? Such finding given by the concerned authority to the extent that appellant and Vikash Kumar are involved in suspected malpractice has not been communicated to the appellant and seeking his explanation. Further, holding of a domestic inquiry if it is a disputed issue, these steps have not been taken by the respondents. Learned Single Judge proceeded to dismiss the CWJC on the score that there are certain disputed facts. No doubt, it is a disputed facts



in respect of whether appellant was suspected to be involved in malpractice during the written examination or not. Be that as it may, there is violation of Principle of Natural Justice to the extent that appellant was involved in alleged suspected malpractice. Such decision is behind the back of the appellant. In the other words, minimum requirement is he should have been heard by issuing necessary notice and seeking explanation with necessary material to the extent that such of those question which were attempted by both Saurabh Kumar and Vikash Kumar and further they were sitting adjacent to each other so as to come to conclusion that they had a discussion in answering the eleven question which were stated to be wrong. On this score, the appellant is entitled to have relief. Therefore, the learned single judge has committed error in dismissing the writ petition. Accordingly, order of the learned Single Judge dated 18.07.2018 is set aside and CWJC No. 22952 of 2013 filed on behalf of the appellant stands allowed.

7. Matter is remanded to the concerned authority/respondent. They are hereby directed to issue a show cause notice to the appellants with necessary materials on the alleged allegations relating to the fact that he is suspected to be involved in malpractice during the written examination. If such



material alongwith the notice is furnished to the appellant, thereafter he is hereby directed to furnish his explanation within a period of one month from the date of receipt of the notice. Thereafter, the concerned authority is hereby directed to pass detail speaking order and communicate the same to the appellant. If the appellant is otherwise eligible for selection and appointment in such circumstances, the concerned authority/ appointing authority is hereby directed to issue order of appointment, if he is otherwise eligible. The appellant is not entitled to arrears of salary from the date of his junior was appointed. However, he is entitled to other consequential service benefits on par with his immediate junior who is stated to have been appointed.

8. The above exercise shall be completed within a period of three months from the date of receipt of this order.

9. The present L.P.A. No. 606 of 2019 allowed in part.

10. If the vacancies are not available, in that event appellant shall be accommodated against a future vacancy. For no fault of the appellant, he shall not be punished.

11. At this stage, the learned counsel for I.B.P.S. on instruction submitted that they are only recruitment agency and



their duty is to conduct recruitment process. The alleged allegations relating to appellant was involved in suspected malpractice has been informed to the concerned Bank. Consequently, I.B.P.S. has become functus-officio. Therefore, the concerned bank has to take further steps in the matter. It is learnt that concerned bank has already in receipt of such document, therefore, the respondent / bank is hereby directed to undertake the above exercise.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

alok/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

