

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.90 of 2018
In
Civil Writ Jurisdiction Case No.9550 of 2014

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Amit Shrivastava @ Amit Kumar Srivastava, Son of Late Kanahiya Prasad Shrivastava, Resident of Mohalla-Raniganj, Post and P.S. Chakiya, District-East Champaran.

... .. Appellant.

Versus

1. The State of Bihar through the Principal Secretary, Nagar Vikas and Awas Department, Bihar, Patna.
2. The Collector, East Champaran, Motihari.
3. The Executive Officer, Nagar Panchayat, Mehasi, East Champaran.
4. The Chief Counsellor-Cum-Chairman, Nagar Panchayat, Mehasi.
5. Saurabh Kumar, Son of Ashok Kumar, Resident of Village-Kasba Mehasi, P.O. Mehasi, P.S. Mehasi, District-East Champaran.

... .. Respondents.

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Appearance :

For the Appellant	:	Mr. Abhinav Srivastava, Advocate.
For the State	:	Mr. Yogendra Pd. Sinha, AAG-7.
For the Nagar Panchayat :		Mr. Sanjay Kumar, Advocate.
For the Respondent No.5:		Mr. Prince Kumar Mishra, Advocate.
		Mr. Vikas Kumar Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-10-2024

In the present L.P.A., the appellant has assailed the order of the learned Single Judge dated 23.11.2017 passed in C.W.J.C. No.9550 of 2014.

2. The appellant and the 5th respondent-Saurabh Kumar were candidates for recruitment to the post of Head Clerk among 6 other posts in the light of the Advertisement dated 19.05.2012. The method of recruitment is shortlisting the



merit list and, thereafter, inviting candidates in the ratio of 1:10. Head Clerk post advertised is only one post. Therefore, 10 candidates were required to be invited for interview. Undisputedly, appellant is at serial no.11.

3. Be that as it may, appellant was permitted to participate in the process of selection and appointment and he was appointed and he has discharged the duties to the post of the Head Clerk for about five years. 5th respondent-Saurabh Kumar has assailed the selection and appointment of the appellant in C.W.J.C. No.9550 of 2014. The same was allowed on 23.11.2017. Hence, the present L.P.A on behalf of the appellant.

4. Learned counsel for the appellant submitted that the appellant was already working with the official respondents. Therefore, he is entitled for preference in the light of Clause-2 of the Advertisement dated 19.05.2012 and further contended that he was already selected and appointed and discharged the duties of the post of Head Clerk for about five years and, therefore, displacing him at this distance of time would be harsh. To that extent, order of the learned Single Judge dated 23.11.2017 passed in C.W.J.C. No.9550 of 2014 is error.

5. Per contra, learned counsel for the respondents resisted the aforementioned contention of the appellant and supported the order of the learned Single Judge dated 23.11.2017 passed in C.W.J.C. No.9550 of 2014. Further



contended that 5th Respondent is more merited.

6. Heard the learned counsel for the respective parties.

7. Core issue involved in the present lis is whether the appellant is eligible to be called for interview to the post of Head Clerk or not? Further, he has vested legal or statutory right over the post or not?

8. Having regard to the language employed in the Advertisement dated 19.05.2012 read with the fact that the process of selection and appointment to the post of Head Clerk is after shortlisting the candidates and inviting for interview in the ratio of 1:10, only one post of Head Clerk was notified. Therefore, 10 candidates were required to be invited for interview. On the other hand, appellant was also invited for interview even though he was at serial no.11.

9. Question of preference to such of those candidates, who have worked for some time in the department, and giving preference to such person would arise as and when he was within the zone of consideration for the purpose of interview. In other words, he should have been within serial no.1 to 10. In other words, appellant was not at all within the zone of consideration for the purpose of inviting him for interview. Therefore he would not fit into zone of consideration.

10. Learned counsel for the appellant submitted that having regard to the fact that appellant has discharged the duties



to the post of Head Clerk for about 5 years, he is claiming equity. The same cannot be extended for the reasons that once his selection and appointment itself is contrary to the law, in that event he is not entitled to have any benefit of equity. In identical matter, the Hon'ble Supreme Court in the case of **M.S. Patil (Dr.) Versus Gulbarga University and others**, reported in **(2010) 10 Supreme Court Cases 63**, wherein in the said case even the selected and appointed candidate worked for about 17½ years, despite that the Hon'ble Supreme Court has held that selection and appointment was contrary to the law.

11. In the light of these facts and circumstances, the appellant has not made out a case so as to interfere with the order of the learned Single Judge dated 23.11.2017 passed in C.W.J.C. No.9550 of 2014. Accordingly, the present L.P.A. stands dismissed. Pending Interlocutory Application(s), if any, stands disposed of.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

P.S./-

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