

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.621 of 2019

In

Civil Writ Jurisdiction Case No.13730 of 2018

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Md. Muzaffar Iqubal @ Md. Mujafafar Ikabal, Son of Late Md Ali Rahman @
Md Mannan Ali Rahamani, Resident of Village- Mazharpatti, P.S.- Udak-
ishunganj, District- Madhepura.

... .. Appellant/s

Versus

1. The State of Bihar through Secretary, Department of Health and Family Wel- fare, Government of Bihar, Patna.
2. Executive Director, State Health Society, Pariwar Kalyan Bhawan, Sheikh- pura, Patna. -14.
3. The Deputy Director, Health Services-cum-State Programme Officer (Tuber culosis) Bihar, Agam Kuan, Patna.
4. The Regional Deputy Director, Health Services Koshi Division, Saharsa.
5. The District Magistrate-cum - Chairman District health Society, Madhepura.
6. That District Health Society, Madhepura through Civil Surgeon cum Member Secretary.
7. Md Jubair Shafi, Son of Md Yakub Shafi, Resident of Village and P.O. - Bhavni, P.S. - Gamharia, District - Madhepura.
8. Mayank, Son of Naveen Kumar Singh Resident of Village- Tilakpur, P.O.- Mahmooda, P.S- Alamnagar, District- Madhepura.

... .. Respondent/s

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Issue in consideration : The appellant has assailed the order of the learned Single Judge - appellant was candidate for the post of Senior Treatment Supervisor and was more merited candidate under unreserved category, therefore, his name should have been considered for vacancy under unreserved category

Was the order of the learned Single Judge liable to be set aside regarding not considering the candidature of the appellant

Held: From Perusal of the records, it is evident that Respondent even though their claim was under certain reservation, having regard to their merit that they are more merited than the appellant, they have been accommodated against unreserved category posts. Remaining one post has been filled up while appointing non-impealed candidate Moni Kumari under woman reservation. It is also submitted that, even though, sub-classification in the Advertisement under unreserved category is silent. whatever the reservation policy is in vogue, it is required to be followed.

That apart, the appellant has not assailed the selection and appointment of non-impealed candidate so as to claim against third unreserved post to the extent that Appellant is more merited than non-impealed candidate. The appellant cannot compete with the Respondents no. 7 and 8 having regard to the merit. In the light of these facts and circumstances, there is no infirmity in the order of the learned Single Judge and the appellant has not made out a case so as to interfere with the official Respondents' decision to not to select him.

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... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ajay Kumar Jha, Advocate
For the Respondent/s : Mr. S.D. Yadav, AAG-9
Mr. Anil Kumar Verma, AC to AAG-9

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 08-05-2024

The appellant has assailed the order of the learned
Single Judge dated 05.11.2018 passed in C.W.J.C. No. 13730 of
2018.



2. Appellant - Md. Muzaffar Iqbal @ Md. Mujafafar Ikabal, 7th Respondent – Md. Jubair Shafi and 8th Respondent - Mayank and non-impealed candidate Moni Kumari were candidates among others for the post of Senior Treatment Supervisor pursuant to the Advertisement dated 23.06.2016. Respondent Nos. 7 and 8, even though, they have claimed their candidature under reservation. Having regard to the merit they have been adjusted against unreserved category of two posts. The remaining one post under unreserved category, Moni Kumari has been adjusted under woman reservation.

3. Learned counsel for the appellant submitted that appellant was more merited candidate under unreserved category, therefore, his name should have been considered for one of the vacancy under unreserved category (among three posts). It is submitted that among the unreserved category of three posts there is no sub-classification of reservation so as to accommodate Moni Kumari against the third post like woman reservation. To that extent, learned Single Judge has not appreciated. Therefore, order of the learned Single Judge is liable to be set aside while allowing the writ petition filed by the appellant.

4. *Per contra*, learned counsel for the Respondent-



State resisted the aforementioned contention and submitted that reserved category candidates, if they are more merited under unreserved category in that event such of those reserved categories, who are more merited, they should be accommodated against unreserved category post. In the present case both 7th and 8th Respondents are more merited than the appellant. Therefore, they have been accommodated against unreserved category of two posts. The remaining post (third post) it has been filled up by means of woman reservation while appointing Moni Kumari. The appellant has not assailed the selection and appointment of Moni Kumari. It is also submitted that, even though, sub-classification in the Advertisement under unreserved category is silent.

5. Clause-2 was required to be taken note of to the extent that whatever the reservation policy is in vogue and it is required to be followed. Taking note of such Clause, Moni Kumari has been selected under unreserved woman category. Therefore, there is no infirmity and there is no substance in the contention of the appellant's counsel.

6. Heard learned counsel for the respective parties.

7. Official Respondents notified to fill up Senior Treatment Supervisor, among six posts three were unreserved



the remaining post is for reservation under one-BC category, one EBC category and one ST category. We are concerned with three posts of unreserved category. Perusal of the records, it is evident that Respondent Nos. 7 and 8 even though their claim was under certain reservation, having regard to their merit that they are more merited than the appellant, they have been accommodated against unreserved category posts. Remaining one post has been filled up while appointing Moni Kumari under woman reservation. No doubt, Advertisement is silent about sub-classification of unreserved category of three posts to the extent that one post would be reserved for woman – unreserved category.

8. Be that as it may, Advertisement Clause-2 reads as under:

“2. आरक्षण का लाभ बिहार सरकार के मानक के अनुसार देय होगा।”

9. Taking note of the aforementioned condition, the official Respondents have rightly appointed Moni Kumari against third post. That apart, the appellant has not assailed the selection and appointment of Moni Kumari so as to claim against third unreserved post to the extent that Appellant is more merited than Moni Kumari. The appellant cannot compete with



the Respondents no. 7 and 8 having regard to the merit. In the light of these facts and circumstances, there is no infirmity in the order of the learned Single Judge and the appellant has not made out a case so as to interfere with the official Respondents’ decision to not to select him.

10. Accordingly, the present L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A
Uploading Date	14.05.2024
Transmission Date	NA

