

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13602 of 2015

Alok Kumar Jha S/o Sri Bilas Jha, Village and P.O. - Koriahi, P.S. - Sursand, District - Sitamarhi, At present Gramin Dak sevak Branch Post Master, Sujatpur, Branch Post Office, A/c with Chourat, S.O. - Sitamarhi Postal Division, Sitamarhi.

... .. Petitioner/s

Versus

1. The Union Of India and Ors
2. The Chief Postmaster General, Bihar G.P.O. Complid Circle, Patna.
3. The Postmaster General, Northern Region, Muzaffarpur.
4. The Director, Northern Region, Muzaffarpur.
5. The Superintendent of Post Offices, Sitamarhi Postal Division, Sitamarhi.
6. The Sub Divisional Inspector of Post East of Sitamarhi Postal Division, Sitamarhi.
7. Ganesh Kumar Choudhary, s/o Ram Lachan Choudhary, Resident of Village - Braribehta, Via - Choraut, P.O. - Braribehta, P.S. - Pupri, District - Sitamarhi.
8. The Bihar Sanskrit Shiksha Board, Patna through its Secretary.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pushkar Narayan Shahi, Sr. Adv
For Union of India	:	Mr. Ram Anurag Singh (CGC)
For C.B.I.	:	Mr. Bipin Kumar Sinha
For the Respondent no.8	:	Mr. Satyam Shivam Sundaram

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 17-01-2022

The petitioner has assailed the order dated 07.08.2015 passed by the learned CAT, Patna Bench in O.A. No. 797 of 2010, whereby and whereunder the appointment of the petitioner against the post of Garmin Dak Sevak Branch



Postmaster at Sujatpur Branch Post Office in account with Choraut Sub Post Office under Sitamarhi Division, dated 11.10.2010, has been set aside and a direction has been issued to consider respondent no.-7 for appointment against the same post.

The O.A. No. 797 of 2010 was filed by the respondent no.-7 of the instant proceedings seeking quashing of the appointment of the instant petitioner who was respondent no.-7 in O.A No. 797 of 2010, to the post of Garmin Dak Sevak and consideration of his case for the appointment on the post.

In this judgment, this Court would be referring to the party position as obtaining in this case.

The brief factual background is that the post of Garmin Dak Sevak, Branch Postmaster at Sujatpur Branch Post Office (hereinafter referred to as 'GDS BPM, Sujatpur') was notified by the Superintendent of Post Offices, Sitamarhi under letter dated 06.05.2008. The last date for application was 04.06.2008. Respondent no.-7 applied for the said post. However, he could not appear for interview on the date fixed, i.e., 05.07.2009, as the interview letter was, according to him, deliberately delivered to him late. He represented against the delay in delivery of interview letter and was allowed to appear



in the interview on 15.12.2009. He submitted all relevant documents and the same were verified.

The Superintendent of Post Offices, Sitamarhi Postal Division, directed the Sub Divisional Inspector of Post (SDI)(P) under letter dated 20.04.2010 to verify the certificates of the respondent no.-7 from the concerned school. The Headmaster of the concerned school authenticated the certificate as genuine under communication dated 22.04.2010. The Assistance Superintendent of Post Offices (HQ) also verified the register of the Bihar Sanskrit Siksha Board and found the certificate submitted by respondent no.-7 to be genuine.

In spite of verification of the various documents submitted by the respondent no.-7, the instant petitioner came to be appointed in a clandestine manner. Thereafter respondent no.-7 moved the learned CAT, Patna Bench. The authorities, before the learned CAT, Patna Bench, attempted to justify appointment of the petitioner by raising a doubt with respect to date of birth of the respondent no. 7. It has been stated before the Tribunal, that there was a difference of 10 years in the date of birth of the respondent no-7 in the two verification reports received through the Inspector of Posts and the Assistant Superintendent of Posts (HQ). On a purported difference of 10



years, in the date of birth of respondent no.-7 based on report dated 08.07.2010 issued by the ASP (HQ), merit list of 10 candidates was prepared. The candidates at serial nos. 1,2,4 and 6 were found fake. The respondent no.-7 was at serial no.- 3. In respect of respondent no.-7 and another candidate whose name figured at serial no.- 5, the authority had taken a stand that they were having two dates of birth and were thus not considered for appointment. In this way, authorities have excluded all the candidates from serial nos.- 1 to 6. Candidate at serial no.-7, that is, the instant petitioner thus came to be appointed on the post.

To clarify the issue regarding the date of birth, respondent no.-7 submitted;

(i) report of ASP (HQ) dated 08.07.2010,

(ii) report of Headmaster of the school from where he had passed the examination which was dated 03.07.2010, and

(iii) the certificate dated 04.05.2011 issued by the Bihar Sanskrit Siksha Board.

From the said documents, it is apparent that the date of birth of respondent no.-7 was 28.02.1976. Therefore, there was no basis for contending or concluding that there was any other date of birth of the respondent no.-7, much less 28.02.1986.



Being faced with these documentary evidences before the Tribunal, the petitioner raised another plea that respondent no.-7 had passed the matriculation examination in third-division and had thus appeared in the examination conducted by the Bihar Sanskrit Siksha Board, subsequently. He has submitted before the tribunal that having passed the matriculation examination, respondent no.-7 was debarred from taking the *Madhyama Examination* later and that marks of the first examination (matriculation examination), which was lesser was to have overriding effect and the petitioner could claim appointment on the basis of the lesser marks only. These grounds, however, were never raised before the authorities or considered by them to disqualify the respondent no.-7. The authorities, however, were allowed time to bring on record any material to show, whether there was any departmental rule or instruction with respect to such candidates having two degrees. Neither the petitioner nor the official respondents have placed any material before the learned Tribunal to show that the petitioner's claim was liable to be considered on the basis of the earlier degree (matriculation degree), wherein he had obtained lesser mark. They have also not brought any material before the Tribunal to show that the respondent no.-7 was having two dates



of birth which were at a variance of 10 years. There was no material before the learned Tribunal to conclude that the respondent no.-7, who was at serial no. 3 at the merit list, was in any way disqualified for consideration, or appointment as GDS BPM, Sujatpur. Since the candidates at serial nos. 1 and 2 were found to be fake, respondent no.-7 was therefore entitled to be appointed. The instant petitioner was much below, at serial no. 7 and therefore he had no claim for the appointment in question.

On a thorough examination of the aforesaid facts based on evidence placed on record before the Tribunal, the appointment of the petitioner which was done ignoring the legitimate claim of the respondent no.-7, was found to be illegal and quashed by the learned Tribunal. As a consequence of question of the appointment of the petitioner, the Tribunal has rightly directed the authorities to consider the respondent no.-7 for appointment on the post in question.

The learned senior counsel representing the petitioner has referred to an order dated 01.07.2009 issued by the Chief Postmaster General, Bihar Circle, Patna, whereby alternative appointment to any vacant post has been directed to ensure compliance with an order passed in favour of the applicant of one O.A. No. 23/2006.



We have considered the same. Direction for alternative appointment in favour of the applicant in O.A. No. 23/2006 has been issued, having regard to the fact that the requirement of holding property in the name of the candidate; and being resident of the concerned village Post Office, was an essential qualification at the time of the selection of said applicant, and was subsequently declared unconstitutional. It was as a consequence of such declaration that the applicant at O.A. No. 23/2006 was terminated. The applicant of O.A. No. 23/2006 as per requisite essential qualifications was eligible, and duly appointed. The requisite qualifications, however were declared unconstitutional after his appointment. Thus, the department directed for giving an alternative appointment. Such are not the facts and circumstances in the instant case.

In the instant case, as noted above, the appointment of the petitioner was done illegally and ignoring the legitimate claim of the respondent no.- 7. Under these circumstances, no case is made out for directing the authorities to consider any alternative appointment for the petitioner to any other vacant post. We do not find any reason to interfere with the order dated 07.08.2015 passed by learned CAT, Patna Bench in O.A. No. 797 of 2010.



The writ petition is devoid of merit and the same is
dismissed.

(Madhuresh Prasad, J)

Chakradhari Sharan Singh, J: I agree

(Chakradhari Sharan Singh, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	22.12.2021
Uploading Date	01.02.2022
Transmission Date	NA

