

(2023) 11 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 23624 Of 2019

Kamlesh Kumar Singh

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 09-11-2023

Acts Referred:

Citation : (2023) 11 PAT CK 0022

Hon'ble Judges : P. B. Bajanthri, J; Ramesh Chand Malviya, J

Bench : Division Bench

Advocate : Munna Pd Dixit, S.K.Dixit, S.K.Choubey, Swastika, Rabindra Nath Tiwari, Kanak Verma

Judgement

1. Petitioner and Respondent No. 7 and others were participated in the process of selection and appointment to the post of GDS MD/MC, Majhari Kishun, Branch Office account with Jagdishpur Sub-Post Office, West Champaran Division, Bettiah.

2. One Sri Dhananjay Kumar was selected and appointed on 01.05.2015. He had reported for duty on 05.05.2015, within a week he has resigned to the post on 11.05.2015 resulted in filling up of the aforementioned post while appointing Respondent No. 7 – Sri Prem Chandra Yadav under OBC category.

3. Perusal of the comparative chart of candidates of OBC category vide Annexure-A/2 to Original Application. OBC vacanciess were required to be filled up with reference to second point. The second point was allotted to Sri Dhananjay Kumar and next third vacancy was allotted to Sri Prem Chandra Yadav. But the petitioner – Kamlesh Kumar Singh's name is reflected in the comparative chart at Serial No. 50 against column of remarks it has been indicated No SLC and Mark-sheet attached.

4. In this backdrop, the petitioner has assailed the order of appointment in favour of Respondent No. 7 dated 30.06.2015 before the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 050/00241/2016. The Tribunal rejected

the petitioner's petition. Hence, the present petition.

5. Learned counsel for the petitioner submitted that once the post is filled up and post was vacant on account of resignation in such an event official respondents were not required to operate comparative merit list while appointing next merited candidate. In order to ascertain what is the criteria for filling up of vacant post on resignation of the selected and appointed candidate. On this issue on 21.08.2023, the following order was passed:-

"Learned counsel for respondent No. 7 has filed counter affidavit, the same is taken on record.

2. Learned counsel for respondents are hereby directed to produce copy of letters No. STA/22-12/BG-West/III dated 12.03.2013 and 26.06.2013 and Directorate letter No. even dated 25.06.2010 so as to verify as to whether circumstances of the present case would fit into policy decision of the respondents or not?

3. Re-list this matter on 18.09.2023."

6. Thereafter, matter was adjourned from time to time, even to this day respondents have failed to produce. Later on Directorate Letter No. even dated 25.06.2010 was placed on record. However, the aforementioned document is not relevant for the purpose of examining the present case. The relevant documents are of the year 2013, having regard to the fact that process of recruitment has commenced in the year 2014. Thereafter, as on 2014 whatever the instructions for the purpose of filling up of vacancies were required to be taken note of. However, Letter No. STA/22-12/BG-West/III dated 12.03.2013 and 26.06.2013 has not been placed on record. Be that as it may, the petitioner has not questioned the validity of select list. Further, it is evident from the assessment – comparative chart of OBC for the purpose of appointment to the post of GDS/MD/MC Majhari Kishun B.O. account with Jagdishpur SO. It is evident that against the petitioner name at Serial No. 50 in the remarks column it is stated that No SLC and Mark-sheet attached. In other words, petitioner was not eligible to be considered for appointment. Consequently, he has no locus so also there cannot be Public Interest Litigation on behalf of the petitioner that too in a service matter and before the Central Administrative Tribunal.

7. Further, it is to be noted that the post of GDS is not regular cadre in the postal department. Such cadre has been created only to facilitate the concerned villagers to have the benefit of postal service. Respondent No. 7 – Sri Prem Chandra Yadav is already working from 30.06.2015 and we are in the year 2023. Further, there is no interim order before the Central Administrative Tribunal or before this Court. Therefore, it is not appropriate to displace him or disturb at this distance of time.

8. Accordingly, the present writ petition stands dismissed.

9. At this stage, learned counsel for the petitioner intends to apprise this Court

by later judicial pronouncement in respect of filled vacancy read with resignation by appointment in such circumstances vacancy is required to be re-notified. The aforesaid principal would be depending upon the relevant provisions of law or post governed in respect of particular department. Further, in the present case despite our asking the postal authorities have failed to produce the cited letters. Therefore, the aforementioned principle laid down by the Apex Court cannot be straight away apply. In view of the Apex Court decision in the case of Nair Service Society Vs. Dr. T. Beermasthan & Ors. reported in (2009) 5 SCC 545 at Para 48 it is held as under:

"48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block."