

, &

ITEM NO.8

COURT NO.6

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).29041/2008

(From the judgement and order dated 25/08/2008 in L.P.A. No.839/2006 of
The HIGH COURT OF PATNA)

RABINDRA NATH

Petitioner(s)

VERSUS

BIHAR STATE ELECTRICITY BOARD & ORS.
(With prayer for interim relief)
(For Final Disposal)

Respondent(s)

Date: 31/07/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. PATNAIK
HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

For Petitioner(s) Mr. S.B. Sanyal, Sr. Adv.
Mr. Subhro Sanyal, Adv.

For Respondent(s) Mr. Mohit Kumar Shah, Adv.
Mr. Rituraj Choudhery, Adv.

UPON hearing counsel the Court made the following
O R D E R

The petitioner appeared in the competitive examination for selection to the post of Assistant Executive Engineer (Telecom). He belongs to the Scheduled Caste community and was required to obtain a minimum of 78.75 marks out of 225 marks in the written examination. The respondents case is that he secured only 22.25 marks out of 225 marks in the written examination and hence, he was not selected. Aggrieved, the petitioner filed writ petition C.W.J.C. No. 6615 of 1998 before the Patna High Court which was allowed by the learned Single Judge of the Patna High Court by Order dated 15.09.2006. The respondents filed Letters Patent Appeal No. 839 of 2006 before the High Court. By the impugned Order, the Division Bench disposed of the appeal with a direction to the respondents to hold a similar test as was held earlier for the writ-petitioner on 15.12.2008 at 11.00 a.m. and in the event the petitioner secures the minimum qualifying marks, he shall be appointed to the post. Aggrieved, the petitioner filed this special leave petition under Article 136 of the Constitution of India.

Learned Senior Counsel for the petitioner submitted that the Division Bench of the High Court has passed the order ex-parte without hearing the petitioner. He further submitted that the answer scripts have been destroyed and since the petitioner was called for an interview, it should be presumed that the petitioner had passed the qualifying written examination with the requisite qualifying marks.

We have been taken through the reply filed by the respondents to the writ petition before the learned Single Judge in which it has stated that all the persons who appeared in the written examination had been called for the interview and the final results were prepared on the basis of the total marks

secured both, in written test as well as interview. Hence, the presumption that the petitioner had qualified in the written examination and, therefore, called for the interview stands rebutted by the reply filed by the respondents. There is no rejoinder to this.

Learned Senior Counsel for the petitioner, however, submits that, as per the advertisement, the interview was to take place for those candidates who have been declared successful in the written examination.

That may have been the text of the advertisement but the fact remains that all candidates were called for the interview whether they qualified in the written examination or not, as has been stated in the reply of the respondents before the High Court. Even otherwise, for grant of any relief to the petitioner, it was for the petitioner to plead and prove the facts on the basis of which he is entitled to relief. He has not been able to produce any material before the High Court to show that he has actually passed the written examination.

For the aforesaid reasons, we do not find any merit in this special leave petition. The special leave petition is dismissed accordingly.

| (S.K. Rakheja)
| Court Master

| |(Sharda Kapoor)
| |Court Master

|