

CWJC No.12421 of 2008

ALOK KUMAR

Versus

THE STATE OF BIHAR & ORS

For the petitioner : Mr.Praveen Kumar, Advocate
Mr. Rajiv Shekhar, Advocate

For the respondents

No.1 & 2 : Mr. Chandra Bhushan Prasad,
Junior Counsel to Standing Counsel XXIII

For the respondent no.3: Mr.Ranjit Sinha, Advocate

For the respondent no.4: Mr.Lalit Kishore,
Additional Advocate General-III

PRESENT

Hon'ble the Chief Justice

&

Hon'ble Mr. Justice Kishore K. Mandal

Dated, the 10th September, 2008

The petitioner has approached this court for direction to the respondents to make appointment from the waiting list prepared by the Bihar Public Service Commission to the posts of Civil Judge (Junior Division) as advertised under the 26th Bihar Judicial Service Competitive Examination, 2005, due to non-joining of the candidates or the vacancies that occurred because some of the candidates left the service after joining.

2. According to the petitioner, he appeared in the 26th Bihar Judicial Service Competitive Examination, 2005 and after having passed the written examination, he was called for interview,

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but his name did not appear in the list of select candidates. By referring counter affidavit filed by the respondents in the writ petition filed by Archana Tiwari, the petitioner has stated that 83 seats are still to be filled for Civil Judge (Junior Division).

3. The counsel for the petitioner relied upon the provisions contained in the Bihar Civil Services (Judicial Branch) Recruitment Rules 1955. He also relied upon a decision of this Court in the case of Ranjit Kumar Singh Vs. The State of Bihar & others, 1997 (2) PLJR 960. He also referred to another decision of this court in the case of Secretariat Assistant Successful Examinees Union through its Secretary Shri Umesh Kumar Vs. The State of Bihar & Ors., 1998(1) PLJR 905.

4. In our considered view, the writ petition is wholly misconceived and devoid of any substance. As a matter of fact, in the case of Ranjeet Kumar Singh, the Single Judge has referred to a government resolution (circular dated 17th June, 1977). One of the clauses in the said circular is thus:

“(xiv) Vacancies remaining unfilled due to candidates not joining the post or for any other reason shall be carried forward to the next year.”

5. There is, thus, a decision by the government that vacancies, that remained unfilled due to the candidates not joining the post or for any other reason, shall be carried forward to the next year. In the light of the government circular dated 17th June, 1977, the petitioner cannot claim that the candidates from the waiting list must

be recommended if the vacancies remained unfilled due to candidates not joining the post or for any other reason.

6. The ultimate order in Ranjit Kumar Singh has to be confined to the facts obtaining therein. The legal position is no more res-integra that a candidate who is in waiting list, is not entitled to be offered unfilled vacancies because of non-joining of the candidates or leaving the service after joining. The Supreme Court in the case of Bihar State Electricity Board Vs. Suresh Prasad and others, (2004) 2 Supreme court Cases 681 held thus:

“6. We find merit in this appeal preferred by the Board. In the case of Shankarsan Dash V. Union of India it has been held by this Court that even if number of vacancies are notified for appointment and even if adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. That ordinarily such notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. It was further held that the State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules indicate. In the present case we are not shown any such relevant recruitment rules. Moreover, there is no merit in the contention advanced on behalf of Respondents 1 to 7 that the appellant had violated the order of the High Court dated 23.3.1994 by preparing a list of only 22 candidates instead of filling up 50 % of the alleged 161 vacancies. In this connection, the impugned judgment of the High Court has recorded a finding of fact that the Board has rightly reduced the number of vacancies to 50 and to that extent claim of the writ petitioners was rejected. In the impugned judgment, the High Court found that 50 vacancies were required to be filled up, 25 against the advertisement dated 15.12.1986 and 25 against advertisement dated 15.11.1992. However, according to the impugned judgment, the appellant ought to have made appointments by preparing a further panel for 18 vacant posts which became vacant when the earlier 18 selected candidates opted out. It is this part of the reasoning of the High Court, which is fallacious.”

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7. The Bihar State Electricity Board has been followed recently by the Division Bench of this Court in the case of Sati Ranjan Jamaiyar Vs. The State of Bihar & Ors, 2006 (4) PLJR 206, wherein the Division Bench held thus:

“2. This Letters Patent Appeal under clause 10 of the Letters Patent, is against order dated 27.4.2005 passed by learned Single Judge in CWJC. No. 12314 of 2003, whereby the writ petition has been dismissed, mainly on the ground that the petitioner has no legal right to claim appointment and he is indulging only in legal jugglery to plead that somehow the State of Bihar should agree that more vacancies were available for the applicants like the petitioner, who had taken recruitment examination pursuant to advertisement no. 1/1993 for recruitment of Assistants for the Secretariat and attached offices of Bihar. The Writ Court also took notice of the fact that another candidate similarly situated as the petitioner, had preferred C.W.J.C. No. 10627 of 2001 and pursuant to direction in that writ petition and decision of the Division Bench in connected LPA No. 109 of 2002, the State Government calculated the vacancy to be 161 for which requisition was sent to the Bihar Public Service Commission, which recommended names of further 153 candidates but no recommendation was made for 8 remaining posts on account of non-availability of any candidate against those posts reserved for scheduled caste category. This exercise of identifying 161 further posts at the instance of similarly situated candidate was undertaken after a list of 483 candidates out of advertisement no. 1/1993, had been published against 591 vacancies notified in the advertisement. Thus, already recommendations have been made for more than 591 advertised vacancies (483 + 153) and no recommendation has been made against 8 posts reserved for scheduled caste category due to non-availability of suitable candidate from that category.

3. The learned Single Judge rightly placed reliance upon the judgment of the Supreme Court in the case of Bihar State Electricity Board vs. Suresh Prasad & Ors., (2004) 2 SCC 681 [2004(2) PLJR (SC) 137], to hold that there was no right in the other examinees to claim that posts remaining vacant due to non-joining etc., must be filled up by the employer even in absence of

any statutory rule to that effect. The learned Single Judge also expressed its feelings that the vacancies had already been apportioned subsequently between the State of Bihar and the State of Jharkhand due to bifurcation of old State of Bihar, which happened in the year 2000 and in such a situation, the writ petition deserved to be dismissed. It is also admitted at the Bar that another recruitment exercise of the year 1999 has already taken place.

4. On giving anxious consideration to all the relevant facts, circumstances and the absence of any legal right in the petitioner to claim appointment only because he had taken recruitment test pursuant to advertisement no. 1/1993, when he could not find place in the merit list of earlier selected list of 483 candidates as well as 153 candidates prepared pursuant to order in a writ petition, we are of the considered view that the judgment and order of the Writ Court suffers from no illegality warranting interference and this Letters Patent Appeal is without any merit."

8. In view of the aforesaid legal position, we do not intend to deal with the decision of this court in the case of Secretariat Assistant Successful Examinees Union through its Secretary Shri Umesh Kumar (supra). The petitioner cannot be said to ^{have} indefeasible right to be appointed against existing vacancies.

9. Writ petition does not deserve to be admitted. It is dismissed in limine.

Sdf- R. M. Lodha, C.J.

Sdf- Kishore K. Mandal, J.

CERTIFIED TO BE TRUE PHOTOCOPY

For Joint Registrar (J)
Patna High Court

Authorised 11-76

Srinivas
Tanuj
25.9.2008
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