

In the matter of an application under Article 226 of the Constitution of India.

Hridayal Kumar and others Petitioners

Versus

The State of Bihar & Others... Respondents.

For the Petitioners : M/s. Ravi Shanker Frasad & Sujit Kr.

For the B.P.S.C. : Mr. Anil Kumar Tiwary.

For the Intervenor : M/s. Rajendra Pd. Singh, Sr. Adv.,
Arbind Kumar Singh & Sunil Kr. Singh.

For the State : M/s. Ashok Kr. Singh, S.C. III & Prabhat
Kumar Singh, J.C. to S.C. III.

P R E S E N T

THE HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHYA.

S.J. Mukhopadhyaya, J. This case relates to appointment against different Graduate Level Class-III posts in different Departments of the State of Bihar. The petitioners have prayed for direction on the Respondents to fill up all the vacancies of Graduate Standard Class-III posts fell vacant in between January, 1990 to December, 1996 out of 3rd Graduate Level Competitive Examination (for short 3rd Examination).

2. The admitted fact of the case shows that there are different Graduate Level Class-III posts existing in different Departments of the State of Bihar which are being filled up through Combined Competitive Examination. Earlier, two such Combined Competitive Examinations, commonly known as 1st Graduate Level and 2nd Graduate Level, were conducted and a number of Class-III Graduate level posts were filled up in pursuance of those two competitive examinations.

For 2nd Graduate Level Competitive Examination (for short 2nd Examination), Advertisement No.6/85 was published in the year 1985 and more than 2000 posts of Class-III Graduate level, have already been filled up. It appears that still the dispute relating to filling up certain more Class-III Graduate

level posts out of 1985 advertisement (2nd Examination), is going on, which I will discuss at appropriate stage.

3. So far as 3rd Examination is concerned, Advertisement No.1/90 was published in the year 1990 by the then Bihar State Subordinate Service Selection Board (for short 'Board'), wherein no specific number of posts were notified. It was mentioned that the possible vacancies likely to occur, the same were to be filled up in pursuance of the said 3rd Examination. The Board could not conduct the examination till 1992 and it was dissolved. All the duties and responsibilities of the Board were vested with the Bihar Public Service Commission (for short B.P.S.C.)

4. Initially, the B.P.S.C. asked the Respondents-State whether they should proceed with the selection in pursuance of 1990 Advertisement and/or should go for fresh advertisement and the State of Bihar intimated to proceed with the selection to fill up all the Graduate level vacancies occurred in between 1st January, 1990 and ~~30th~~ 31st December, 1993. The B.P.S.C. then conducted the 3rd Examination in December, 1995 and the first recommendation of successful candidates was made in December, 1996/January, 1997 out of the said list about 600 persons have already been appointed.

5. The case was heard on different dates and as the matter relates to appointment in pursuance of an old advertisement, parties have agreed for immediate disposal at the stage of admission itself.

6. The counsel for the petitioners made two fold submissions. It was alleged that the cut-off date of 31st December, 1993 was fixed arbitrarily, without any basis. Earlier about more than 2,500 vacancies were filled up out of 2nd Examination. All the posts which fell vacant between 1985 and 31st December, 1989 were filled up from the said examination and further about 200-300 posts, which were meant for 3rd Examination were also filled up out of the old 2nd Examination.

Further, it was submitted that the posts which fell vacant upto the date of 1st recommendation (December, 1996) should be filled up from amongst successful candidates in pursuance of

7. On behalf of the B.F.S.C., stand was taken that in absence of further requisition by the State, they were not in a position to recommend further names.

8. On the other hand, according to the State, they have requested the B.P.S.C. to send the list of vacancies because of non-joining of candidates and the report was called for by Personnel & Administrative Reforms Department vide letter no.9985 dated 1st December,1997, but no such report/recommendation has been received from B.P.S.C. This Court by order dated 11th August,1997 asked the Commissioner and Secretary, Personnel Department to file consolidated counter affidavit giving therein their stand relating to cut-off date of vacancies to be filled up in pursuance of * 3rd Examination and the details relating to existing vacancies of Graduate level ~~xxx~~ posts, which fall vacant by 31st December,1993.

Apart from the counter affidavits filed by one or other Departments, a consolidated affidavit/supplementary affidavit has been filed on behalf of the Respondents from its Personnel and Administrative Reforms Department, which is a nodal department. Therein, they have taken the following stand :

(a) the Government has taken decision in June,1995 fixing 31st December,1993 as cut-off date of vacancies to be filled up from 3rd Examination. It will not extend the said cut-off date; and (b) the Government has also taken a decision that no vacancies will be released in lieu of vacancies, which were to be filled up from 3rd Examination, but were filled up from other sources, including 2nd Examination.

With the supplementary affidavit, the Respondent-State have also enclosed a chart as Annexure-A showing therein the details of vacancies as were existing upto 31st December,1993 and are still existing in one or other Departments of the State of Bihar with the nomenclature of such posts. The Commissioner and Secretary, Personnel Department also appeared before this Court on certain dates and made statement on behalf of the State that they have taken steps to fill up all the Graduate level vacancies

upto 31st December, 1993, which are still vacant, out of 3rd Examination and for which process is going on.

The counsel for the State further stated that the detail of vacancies shown in the chart as Annexure-A has been prepared on actual verification made by the authorities of one or other Departments, who sent such details to the Personnel and Administrative Reforms Department, for giving details of such vacancies in the present case.

9. From the pleadings made by the parties, I find that there is no dispute relating to filling up Graduate level posts which fell vacant between 1st January, 1990 and 31st December, 1993 and are still lying vacant. There is a confusion with regard to 300-400 posts of Health Educator, which were vacant as on 31st December, 1993 and are still lying vacant. There is also certain confusion with regard to about 198 posts of Junior Statistical Assistant/Block Statistical Supervisor, which I will discuss at appropriate stage.

10. So far as the prayer of the petitioners to direct the authorities to fill up all Graduate level Class-III posts fell vacant upto December, 1996 out of 3rd Examination is concerned, no plausible ground could be shown on behalf of the petitioners to pass such direction.

It is a settled law that the persons, even if selected, have no right to claim appointment, till such right flows in pursuance of any law and/or person lowest in the merit list is appointed. This Court has also no jurisdiction under Article 226 of the Constitution of India to fix up any cut-off date to make appointment against one or other posts in pursuance of a particular competitive examination. It is the competent authority, which can fix up such cut-off date. In this case, the State of Bihar has already taken decision to fill up Graduate level Class-III posts fell vacant upto 31st December, 1993 out of 3rd Examination. The State of Bihar is still making efforts to make requisition to fill up such vacancies.

11. I find no arbitrariness and/or illegality in the matter of fixation of cut-off date and thereby reject the aforesaid prayer of the petitioners.

12. In the counter affidavit, as State has shown clear vacancy ~~xxxxxx~~ (see Annexure-A) of one or other Graduate level posts, which fell vacant upto December 31, 1993 and are still lying vacant and they have stated that they will fill up those vacancies out of 3rd Examination, according to me, they should take immediate steps to fill up all those vacancies and thereby to complete the total process of selection and appointment immediately.

13. Though the Respondents-State have shown the details of vacancies to be filled up out of 3rd Examination, but as there are some ambiguity relating to certain posts like Health Educator, Junior Statistical Assistant and Block Statistical Supervisor, I would like to discuss the same.

14. So far as the post of Health Educator is concerned, in the counter affidavit, the total number of vacancies have been shown to be more than 400. It is stated that there were about 455 vacancies of Health Educator, all of which fell vacant prior to 1st January, 1990 and those vacancies were meant for 2nd Examination.

Initially, 122 candidates were appointed. Subsequently, the total vacancies were found to be 443 for which roster clearance was taken from Personnel & Administrative Reforms Department in the year 1995. For 137 vacancies, the B.F.S.C has sent recommendation. As there is a doubt of actual number of vacancies, so fresh report of existing vacancies has been called for from Health & Family Welfare Department.

It is further stated that the posts of Health Educator were made known to the B.F.S.C. to fill up such posts out of 2nd Examination.

15. Subsequently, certain direction was issued by this Court in one C.W.J.C.No.1412 of 1992 and then in M.J.C.No.142 of 1993 and for the said reason, no step has been taken as the contempt

petition is still pending. As such, there is a legal difficulty in making these posts available for the 3rd Examination.

16. According to the petitioners, out of 443 vacancies, 137 persons have already been appointed from amongst the Scheduled Castes and Scheduled Tribes categories in pursuance of a special examination. Still 306 posts of Health Educator are vacant, which vacancies though occurred prior to 1st January, 1990 but remained vacant even as on 31st December, 1993. According to them, those vacancies cannot be filled up from 2nd Examination, after about 12 (twelve) years of advertisement, that too, when Supreme Court in S.L.P.No.17671 of 1995, have directed not to make appointment out of the aforesaid examination.

17. It has been brought to my notice that the 2nd Examination was conducted in pursuance of advertisement published in the year 1985 being Advertisement No.6/85. Certain writ petitions, including C.W.J.C.No.1412 of 1992 and then C.W.J.C.No.379 of 1993 were filed to fill up the posts out of 2nd Examination. Certain decisions and directions were given by this Court in those cases. On allegation that the order passed in C.W.J.C.No.1412 of 1992 has not yet been complied, one M.J.C.No.242 of 1993 has been filed by one Bihar State Subordinate Service Selection Board Examinees Federation, which has been made analogous with C.W.J.C.No.5009 of 1993. In the meantime, against one of the judgment aforesaid, B.P.S.C. and another moved before the Supreme Court in S.L.P.No.17671 of 1995, which was later converted into as Civil Appeal No.14753 of 1996. The Supreme Court in the said case, reported in 1997 (2) F.L.J.R. 10 (SC), took into note a report of one S.N.Biswas, the then Commissioner and Secretary of Personnel and Administrative Reforms Department relating to irregularity in the matter of selection and recommendation. The Supreme Court set aside the direction of this Court to make appointment^{out} of the old examination and held that the panel prepared by the Selection Board, which was abolished, does not confer any enforceable rights. The direction of this Court was held to be not valid in view of Committee's report.

18. As the Supreme Court has reversed the direction of this

Court to make appointment out of the old examination in view of the report of Shri S.N. Biswas and held that no appointment should be made from such panel and as the Advertisement No.6/85 (with respect to 2nd Examination) was one of the subject matter for which report was submitted by Shri S.N. Biswas, in pursuance of direction in C.W.J.C.No.1412 of 1992, the Supreme Court decision ^{being} ~~is~~ binding, ~~xxx~~ the Respondents cannot fill up the post of Health Educator out of such 2nd Examination.

Further, I find that there is no such specific direction which was given by this Court to fill up all the posts of Health Educator in pursuance of said 2nd Examination.

There being no order of stay passed by this Court in contempt petition aforesaid, the Respondents can fill up the posts of Health Educator which remained vacant upto 31st December, 1993 and are still lying vacant out of the 3rd Examination. They are, accordingly, directed to fill up those posts ^{out} of the 3rd Examination.

19. With respect to 198 posts of Junior Statistical Assistant/Block Statistical Supervisor, stand was taken by the State that there was a decision to fill up those posts from surplus employees of Planning & Development Department, though they were to be filled up out of 3rd Examination. The petitioners have enclosed a letter dated 9th January, 1997 issued from Planning & Development Department, wherein it has been stated that there is no surplus ~~xx~~ employees in the Department. Therefore, the Respondents should not hesitate to fill up aforesaid 198 posts of Junior Statistical Assistant/Block Statistical Supervisor from 3rd Examination. They are directed accordingly.

20. Now I am giving hereunder the details of total vacancies as were existing on 31st December, 1993 and are still lying ~~xxx~~ vacant, as shown by the State in their chart enclosed as Annexure-A.

21. Admittedly, the posts which are to be filled up out of the 3rd Examination, in different Departments, are given below:

Name of the Department	Name of the Posts	no. of xxxxxxx existing vacancies which fell vacant upto 31st December, 1993.
1.	2.	3.

<u>1.</u>	<u>2.</u>	<u>3.</u>
1. ✓ Road Construction Department	- Research Assistant	- 15 ✓
2. ✓ Rural Development Department	- Sankhiki Anwesak	- 11 • 06 †
3. ✓ Transport Department	- Statistician	- 02 • 4† †
4. ✓ Health Department	- Malaria Inspector	- 36 †
5. ✓ Planning & Development Department.	(a) Sr. Statistical Assistant	- 27 ✓
	(b) Block Statistical Supervisor	- 198 ✓

6. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~
Agriculture Department:

(a) Weights & Measurement Inspector	- 09 †
(b) Asstt. Research Officer	- 16 - P.T. Pallew.
(c) Statistical Asstt.	- 20 †
(d) Statistical Estimator	- 06 †
<u>Block Welfare Officer</u>	- <u>11</u> †

7. Welfare Department
8. Fisheries Department

(a) Fish Extension Supervisor	- 20 ^{Dist. form}
(b) Fish Extension Officer	- 15 (✓)
(c) Fish Inspector	- 01 †

9. ~~XXXXXXXXXXXX XXXXXXXXXXXX~~
Revenue & Land Reforms Department

(a) Circle Inspector	- 42 †
----------------------	--------

10. Science & Technology Deptt.:

(a) Laboratory Asstt.	- 13 †
(b) Laboratory Asstt. attached with Engineering Collège/ Polytechnic.	- 01 †

11. ✓ Finance (Commercial Taxes) Department:

Statistical Clerk	- 02 ✓
-------------------	--------

12. Home (Special) Department :

Receptionist	- 03 †
--------------	--------

13. Forest Department :

(a) Statistics (Sankhata)	- 02 †
(b) Statistical Asstt.	- 04 †
(c) Statistical Supervisor.	- 01 †

Total : 455 posts.

Apart from the aforesaid posts, there are about 306 posts of Health Educator in the Health Department. However, exact number of such post is to be verified by the State, which may increase or

decrease. In any case, requisition is to be made thereafter.

Other posts ~~xxx~~ to be ascertained and if vacancies remained in existence upto 31st December, 1993, are to be filled up out of 3rd Examination, relating to which details have been shown by the petitioners, as hereunder :-

- 1. Welfare Department : (a) Statistical Assistant (Divisional level) 14
- (b) Statistical Assistant (Directorate of Social Welfare) 77

~~The petitioners have stated that requisition for the~~

- 2. Directorate of Panchayati Raj : Village Panchayat Supervisor 07

The petitioners have stated that requisition for the post of Village Panchayat Supervisor has already been made.

22. Accordingly, the Respondents are directed to make requisition immediately within one month from the date of receipt/production of a copy of this judgment with respect to 455 posts, as shown in Paragraph No.21 above. Such requisition is to be made to the B.P.S.C. by the concerned competent Officer/Secretary/Head of the Department, if no such requisition has been made as yet.

23. So far as the posts of Health Educator, Statistical Assistant of Divisional level and Directorate of Social Welfare of Welfare Department are concerned, the competent authority/Secretary/Head of the Department will first ascertain the vacancies upto 31st December, 1993 which are still lying vacant and make such requisition, if not yet made, to the B.P.S.C. within three months from the date of receipt/production of a copy of this judgment.

24. The B.P.S.C. and its authorities will make recommendations within one month from the date of each requisition from amongst successful candidates, who have obtained minimum qualifying marks and are eligible for one or other posts.

(2)

25. The process and appointment to fill up all the Graduate standard Class-III posts, which are still vacant, are to be completed within a total period of six months from the date of receipt/production of a copy of this judgment. It is for the petitioners to produce a copy of this judgment before the competent authority/Secretary/Head of the Department of the concerned Departments of the State of Bihar as well as before the Secretary of the B.P.S.C.

26. The writ petition stands disposed of with the aforesaid observations and directions.

sd/- Sudhansu Jyoti Mukhopadhyaya. J

Patna High Court,
The 3rd. February '98,
S.R.C./N.A.F.R.

CERTIFIED TO BE TRUE PHOTO COPY
For Joint Registrar (J)
Patna High Court
Authorized U/S 76 Act 1 of 1973

[Signature]
11/2/98

[Signature]
11.2.98
22.90.989v