

24th Judicial

(23)

( P. H. C. Sch. III—8 )

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IN THE HIGH COURT OF JUDICATURE AT PATNA  
C.W.J.C.No.2351 of 2002  
Ashok Kumar Shukla and ors.v. State of Bihar & ors.

For the Petitioners : Mr. Siya Ram Shahi, Adv.  
Mr. Sanjiv Kumar, Adv.  
For the B.P.S.C. : Mr. Devendra Kr. Sinha  
Sr. Adv.  
For the State : Mr. Anil Kr. Singh no. 1, Adv.  
Mr. Swaraj Kumar Ghosh  
A.A.G. II  
Mr. Rajesh Kr. Singh,  
J.C. to A.A.G. II  
For the High Court : Mr. R.K. Dutta,  
S.C. IV  
Mr. Jaiendra Kr. Sinha, Adv.

6. 10.2.2003

Heard the parties.

The present writ application has been filed by the petitioners for a direction to the respondent Bihar Public Service Commission (hereinafter referred to as the 'Commission') to recommend the names of 13 candidates from the general category from serial no. 88 onwards in view of the communication of the State Government pursuant to letter no. 5510 dated 20.9.2001 and letter no. 7419 dated 28.12.2001, as contained in Annexures 5 and 7 respectively. The above mentioned letters have been sent by the Department of personnel and Administrative Reforms, Government of Bihar for recommendation of names in view of the remaining vacancies pursuant to 24th Judicial Service Competitive Examination.

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The short facts of the present case are that the petitioners, who are practising Advocates along with others, had applied for appointment pursuant to advertisement for 24th Judicial Service Competitive Examination. The result was published and the names of the candidates in the general category had been recommended.

It has been contended on behalf of the petitioners that out of 195 qualifying candidates, 123 candidates were of general category, 38 of backward and 34 were of scheduled castes. However in the said list of 195 candidates there was none in the scheduled tribes category. The matter was contested up to the supreme court and in view of interim order dated 13.5.94 passed by the Supreme Court, no appointment was made till the order dated 16.11.1995 in S.L.P.(C) No.16476/93 modifying the interim order dated 13.4.94 was passed. The aforesaid order is quoted below:

"Having heard the counsel representing different interest we, modify the order dated 13.5.94 whereby it was stated that while the process of selection may go on but actual appointment orders should not be issued. If the selection process is over the selectees may be appointed subject to the result of this petition and further subject to the seniority that may be required to be adjusted if reservation is held and the candidates to fill in the reserved selectees are selected any time herein after and become entitled to appointment. However,

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question of filling up the reserved posts will not arise and they shall remain in abeyance but if after this court decides on issue of reservation in the instant case and selections are made ever thereafter and appointments are made, they will be entitled to respective seniority at the selectees available as on the date of appointment of general category."

In view of the aforesaid order of the Supreme Court of India 123 candidates in the general category were appointed in three phases by different notifications. ~~Initially~~ The S.L.P. filed by the State of Bihar was dismissed by the Supreme Court of India and after the aforesaid judgment in the State of Bihar.v. Balmukund Sah (A.I.R.2000 SC-1296) a letter was sent by the Personnel and Administrative Reforms Department to the B.P.S.C. stating therein that against 34 vacancies of scheduled caste, the candidates recommended vide letter no. 158 dated 16.5.94 be appointed. As far as 24 vacancies in the scheduled tribes were concerned, a single candidate recommended vide letter dated 15.5.1994 may be appointed and rest 23 vacancies be reserved for next 3 recruitment years in terms of section 4, sub section 6(a) of the Bihar Reservation of vacancies in post and services (for scheduled castes, scheduled tribes and other backward classes Act III of 1920. As far as 64 vacancies reserved for other backward category were concerned, the aforesaid letter stated that those posts recommended be made for <sup>available</sup>

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		<p>the general category. The aforesaid letter dated 18.8.2000 is appended and marked as Annexure-2 to the writ application.</p> <p>A writ application being C.W.J.C.No.8655/2000 was filed in this Hon'ble Court challenging the decision of the State Government so far as it relates to carry forward for three years the vacancies reserved for scheduled castes, as the same was stated to be contrary to Rule 20 of the Bihar Civil Services (Judicial Branch) (Recruitment) Rules, 1955. The said writ application was heard and allowed by a Bench of this court on 24.1.2001 and the decision of the State Government to that extent was quashed and the Commission was directed to proceed in accordance with the provisions of Rule 20 of the Recruitment Rules and prepare a supplementary list of successful suitable candidates from the merit list prepared under Rule 19 and recommend them to the State Government for appointment and filling up those vacancies.</p> <p>It has further been contended by the learned counsel for the petitioners that even before the judgment of this court was delivered, the B.P.S.C. published the names of 64 candidates in the general category in daily news paper 'Hindustan' on 1.1.2001 in view of the</p>	

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		<p>direction of the Supreme Court in S.L.P. No.16476 of 1993 and directed the candidates to appear before the Commission on 15.1.2001 with certificate and with second copy of application. Out of those 64 candidates, only 56 appeared with their requisite papers before the Commission. Consequently, the Commission vide letter no.10 dated 28.4.2001, letter no. 24 dated 7.5.2001 and letter no.25 dated 1.6.2001 sent the list of 56 candidates for appointment.</p> <p>It has further been contended that vide letter dated 17.5.2001, the Commission published the result of 73 candidates in terms of Rule 20 in light of order passed by this court in C.W.J.C.No.8655/2000 dated 24.1.2001 and directed the candidates to appear before the Commission on or before 28.5.2001. It appears that the Commission vide letter no.44 dated 11.6.2001 recommended the names of 22 candidates for appointment. Till date out of 87 vacancies, 74 candidates were recommended; who have been appointed and are discharging their duties. As there were 87 vacancies, in view of appointment of 74 persons, still 13 vacancies remained to be filled up. In spite of letter of the State Government in view of the direction of this court and the Supreme Court of India, the</p>	

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Commission is not recommending the names against these 13 vacancies, hence the present writ application.

As already stated above, the stand of the petitioners is that these 13 vacancies are to be filled up from the general category in view of Rule 20 and it has been interpreted by this court and the Supreme Court of India that the said vacancies are required to be filled up from the 24th Judicial Service Competitive Examination <sup>itself</sup>. A stand which now is being agreed to and agitated by the State of Bihar also, the B.P.S.C. is of the view that the panel in question ~~has~~ already stood exhausted, as the life of a panel is of one year only.

It has further been contended that earlier pursuant to the advertisement the names against all the vacant posts have been recommended. If the posts remained vacant due to non-joining or otherwise the same has to be carried over for subsequent advertisement and in any view of the matter as 25th Judicial Service Competitive Examination has already been held, there cannot be any question of recommending any further name in view of requisition sent by the State.

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		<p style="text-align: center;">7</p> <p>In support of his contention, learned counsel for the petitioners has relied upon a decision of the Supreme Court in the case of Surendra Narain Singh and ors. v. State of Bihar and ors (A.I.R. 1998, SC-1841) wherein while interpreting Bihar Judicial Service (Recruitment) Rules, 1955, specially Rule 20, it has been held that candidates nominated by Public Service Commission - not containing sufficient SC/ST candidates - supplementary list was to be submitted by the Commission. The said list need not be confined to SC/ST candidates only "such candidates" do not mean SC/ST candidates only. The Supreme Court has held that in the facts and circumstances of the case the expression 'such candidates', in Rule 20 would be referable to the candidates who figure in the merit list prepared by the BPS and out of this merit list a supplementary list of candidates under Rule 20 was required to be prepared, who in the opinion of the BPS have attained the required standard of qualifications and are in all respects suitable for the appointment of service. This may even include SC/ST candidates.</p>	
		<p>Relying on the aforesaid decision it has been argued by the learned counsel for the petitioner that in case SC/ST candidates were not available, the candidates from the general category were required to be recommended. The</p>	

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only criteria, which was required to be seen by the BPSC was that the candidates had attained the required standard of qualification, which was the minimum qualification laid down by the B.P.S.C. for recommendation. In the aforesaid judgment of Surendra Narayan Singh and others (supra), it has further been held that the supplementary list has to contain the names of the candidates from the merit list and once the merit list is prepared, the same cannot be modified and the same has to remain in force until the supplementary list is prepared to fill up in the advertised posts but without any compromise as regards merit. While submitting the supplementary list the BPSC shall nominate sufficient number of such candidate, i.e., candidates from the merit list, who in its opinion have attained the required standard of qualifications and are in all respects suitable for appointment to the service.

In view of the aforesaid judgment, it has further been contended that all the vacancies pursuant to 24th Judicial Service Competitive Examination have to be filled up from the merit list of the said examination alone. Further reliance has been made upon a judgment of this court in the case of Ranjit Kumar Singh v. State of Bihar and others



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		<p style="text-align: center;">9</p> <p>reported in 1997(2) PLJR-960 whereas a Bench of this court relying upon the judgment of the Supreme Court has come to the conclusion that a direction can be issued to the respondent-State and the B.P.S.C. to send recommendation and make appointment against 9 vacant posts of Munsif, pursuant to 24th Judicial Service Competitive Examination subject to the condition laid down by the Supreme Court in its order dated 16th November, 1995 in S.L.P. (Civil) No.16476/93.</p> <p>In support of the contention made on behalf of the BPSC, reliance has been made upon the judgment in the case of Madan Lal and ors. v. State of Jammu and Kashmir and ors reported in A.R.I. 1995, S.C. 1088 wherein it has been held that merit list gets exhausted the moment all the vacancies advertised gets filled up or after expiry of the period of one year from the date of publication even if all the vacancies are not filled up. This judgment has been relied upon by the learned counsel for the BPSC to show that even if those vacancies have not been filled up and still remained for more than one year the life of the said list has elapsed and no recommendation should be sent from the said list. The aforesaid case has been distinguished in the case of Ranjit Kumar Singh (supra) in paragraph 7 thereof. This court has found that</p>	

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the aforesaid judgment was in view of specific provision as contained in Rule 41 of Jammu and Kashmir Civil Services (judicial) Recruitment Rules, 1967 where the validity of the panel was only for one year. No such provision is in Bihar Civil Services (Judicial Branch) Recruitment Rules, 1955. In view of the same, no benefit can be derived from the aforesaid judgment, as the facts of the present case are distinguishable and Rules governing the two Judicial Services are also entirely different.

In the facts of the present case and in view of the judgments of the supreme court as well as this court, as discussed above, this court has no option but to direct the Bihar Public Service Commission to recommend the names of successful candidates from the general category on the remaining posts as has been asked for by the State of Bihar pursuant to its letter dated 20.9.2001 (Annexure-5) and letter dated 28.12.2001 (Annexure-7). It goes without saying that the supplementary lists are required to be sent by the Commission till the vacancies are finally exhausted. The B.P.S.C. is directed to comply with the procedure in this regard in accordance with law and send the recommendation at the earliest, preferably within a period of two months from today. The State Government is also directed that after

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CERTIFIED TO BE TRUE PHOTO

For  
Patna High Court  
Authorised 1/4/78

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25.2.2003  
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