(P. H. C. Sch. III-5)

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		IN THE HIGH COURT OF JUDICATURE AT PATNA CIVIL WRIT JURISDICTION CASENO 7374 of 2000 Vijay Kumar Singh v. The State of Bihar & ors. For the Petitioner : M/S Mihir Kr. Jha Vijay Kr. Verma For the State : Mr. Sailendra Kumar Singh J.C. to S.C. IX For B.P.S.C. : Mr. Nadim Seraj ----	
12.	28.10.2005	In this writ petition, petitioner has challenged the validity of letter of Bihar Public Service Commission, contained in memo no. 125 dated 24.6.2000 (Annexure-12), whereby and whereunder his candidature for appointment on the post of Lecturer in Mathematics in Government Polytechnic has been cancelled on the ground that he had not passed the preliminary examination. This letter is purported to have been issued in the light of the direction of this Court passed in C.W.J.C. No. 9555 of 1998 and analogous cases by order dated 14.12.1999, contained in Annexure-A to the counter affidavit filed on behalf of Secretary, Science and Technology Department, Government of Bihar, Patna (Respondent no. 2). 2. In short, the relevant facts are that the Commission vide advertisement no. 10 of 1995 dated 28.7.1995 advertised for filling up of posts of Lecturer in different Government Polytechnic of State of Bihar. Thereafter, the petitioner and several others, who were already working as part time lecturer in different Government Polytechnics for quite some time approached this Court through their	

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seeking appropriate direction to the Respondents to consider their case for regularisation. Writ petition was dismissed and the matter went to the Supreme Court and the Supreme Court disposed of the Special Leave Petition by following orders :

"We have heard the learned senior counsel appearing for the petitioners as well as Shri B.B. Singh, the learned counsel appearing for the State. We do not find any ground to interfere with the impugned judgments of the High Court in so far it holds that the petitioners cannot seek regularisation on the post of lecturers held by them but the petitioners can appear at the stage of regular selection for appointment on the said posts. While upholding the said direction of the High Court, We however, direct that if any of such persons is found to have crossed the maximum age prescribed for such regular selection, the State Govt. and the Bihar Public Service Commission shall make one time relaxation in favour of such person so as to enable him to be considered for such selection. It is also directed that while making such selection, the concerned authority may take into account the experience as part time Lecturers of the persons who applies for such consideration. The SLPs. are disposed of accordingly."

According to the petitioner, thereafter

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the written (screening) test for general candidates was conducted on 17.10.1997 and result was announced on 8.1.1998. The petitioner was not asked to appear in the written (screening) test. However, the Commission vide corrigendum dated 22.2.1998 (Annexure-3) decided to call those part time lecturer for interview. Thereafter, the petitioner was also called for interview vide Annexure-4 and final result was published vide Annexure-6 on 11.10.1998 in which his name figured at serial no. 3. It is claimed that the Commission recommended his case for appointment as Lecturer in Mathematics on 19.11.1998 vide Annexure-7 and thereafter medical test was also conducted in which he qualified vide Annexure-8. According to learned counsel for the petitioner, even Police verification was done in which there was nothing found against the petitioner. However, by the impugned order he has been communicated Commission's decision cancelling the recommendation made in his favour by the Commission earlier.

3. Mr. Jha, learned Senior counsel appearing for the petitioner has contended that the impugned cancellation (Annexure-12) on the face of it is bad and fit to be set aside on the simple ground that the petitioner was not given any notice before cancelling the same despite

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direction given by this Court in C.W.J.C. No. 9555 of 1998 and analogous cases pursuant to which it is purported to have been issued. He submitted that this Court while directing that such of the part-time lecturers who appeared in the written (Screening) test held on 9.11.1997 but failed, cannot be treated as eligible for being called for interview and be finally selected for appointment, further clarified that if as a result of the aforesaid finding, the selection/recommendation of any part-time lecturer is to be withdrawn, the commission would be well advised to give notice to them before taking such action. It is submitted that admittedly the petitioner was not a candidate, who failed in the written (screening) test, obviously as he was never called for the same and his case is covered by the corrigendum issued by the Commission, according to which, he and all such other candidates were only required to appear at the interview. With regard to notice he referred to the specific averment made in paragraph 28 of the writ petition, wherein it is stated that before issuing the impugned advertisement/final result contained in Annexure-11 and the letter dated 24.6.2000 (Annexure-12), the Respondent-Commission has not issued any notice to the petitioner in the light of the directions of this Court. As such, according to him, the impugned cancellation of

which fact has not been denied

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the recommendation made in favour of the petitioner is wholly arbitrary and contrary to the direction of this Court and is fit to be set aside.

4. A counter affidavit has been filed on behalf of State (Respondent no. 2) and separate counter affidavit has been filed on behalf of Commission (Respondent nos. 3 & 4).

5. Learned counsel appearing for the Commission has not been able to show from the said counter affidavit that there is any denial to the aforementioned averment made in paragraph 28 of the writ application. He, however, ventured to submit that the Commission in the light of the order passed by this Court (Annexure-A) decided to withdraw the name of such part-time lecturer, who were directly called for interview and had been recommended by the Commission. He submitted that the petitioner is also one of them. However, he has failed to show from the judgment/order of this Court, contained in Annexure-A that there was any such direction to withdraw the candidature of all such candidates. From the said judgment/order (Annexure-A) it appears that this Court simply denied any relief to such candidates, who appeared in the written (screening) test, but, failed, which is evident from the clarification made in the latter part. However, it is not in dispute that the

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petitioner had not failed in the written (screening) test and as per the clarification given in the said judgment/order, the Commission was obliged to give notice before taking any action regarding withdrawal of the selection/recommendation, which was not given to the petitioner.

6. Under such circumstances, in my opinion, the impugned cancellation cannot be sustained and it is, accordingly, set aside.

7. It appears that pursuant to the direction of this Court, the State filed its counter affidavit to which availability of vacancy for the post of Lecturer of Mathematics has been furnished in Annexure-C. From Annexure-C it appears that there are 14 posts of Lecturer still vacant.

8. Under such circumstances, this Court directs the Respondent-Commission to reconsider the case of the petitioner after giving due notice to him in the light of the direction of this Court and the Commission and the State are directed to proceed with the matter afresh keeping in view the earlier recommendation.

9. This writ petition is, thus, disposed of.

Sd/- Radha Mohan Prasad, J

01-12-2005