

\*\*\*  
Against the judgment and order dated 3.10.1996  
passed in C.W.J.C.No.7603/94.

\*\*\*  
Harendra Prasad Sahu- Appellant.

Versus  
Bihar Public Service Commission & ors- Respondents.

\*\*\*  
For the Appellant :- M/s Dr.S.N.Jha,Asim Jha.  
For B.P.S.C :- M/s D.K.Sinha,Yugal Kishore,  
B.N.Sharma,Anukul Raj.  
For the State :- Mr.Shashi Bhushaqn Kumar,  
J.C.to S.C.6  
For respondentno.9:- Mr.Naresh Chandra Verma.

\*\*\*  
P R E S E N T

The Hon'ble Chief Justice  
The Hon'ble Mr. Justice R.N.Prasad.

The appellant who filed the appeal, was appointed to the post of Junior Statistical Assistant in the Bihar Public Service Commission in 1989. The appellant was appointed to the post of Junior Statistical Assistant in the Bihar Public Service Commission in 1989. The appellant was appointed to the post of Junior Statistical Assistant in the Bihar Public Service Commission in 1989.

R.N.Prasad, J. The Letters Patent Appeal has been filed against the judgment and order dated 3.10.1996 passed in C.W.J.C.No.7603/94 whereby the appointment of the appellant made in 1989 was held to be illegal and the Bihar Public Service Commission was directed to recommend the name of respondent no.9 and of one Md.Salauddin and to appoint one of them in the Irrigation department, Government of Bihar.

The Bihar State Subordinate Service Selection Board, here-in-after to be referred to as "the Board", published an advertisement no.5/85 in the 'Arya Varta' on 26.6.1985 for graduate level limited competitive examination inviting applications from candidates belonging to scheduled castes, scheduled tribes and most back-ward class for appointment on different posts including the post of Junior Statistical Assistant in the pay scale of Rs.785-1210/-. Respondent no.9 pursuant to the advertisement filed an application for appointment.

On 12.7.1985 the Board published an advertisement no.6/85 for second graduate level non-Gazetted competitive examination inviting applications from candidates of all categories i.e. general and reserved for appointment on different posts including the post of Statistical Assistant. The appellant filed application for his appointment. In the advertisement back-ward class but the reservation code number of reservation was also mentioned. 04 was for most back-ward class and 05 was for back-ward class. The appellant claimed that he belonged to most back-ward class i.e. 04 category. The appellant and others appeared in the examination and a merit list, Annexure-7 to the appeal, was prepared for appointment to the post of Statistical Assistant. The merit list was sent to the Water Resources Department for appointment to the post of Statistical Assistants. The Water Resources Department vide letter no.7.9.1989 asked the appellant to appear alongwith certificates and other documents on 15.9.1989. The appellant appeared on the date fixed and produced the relevant documents including caste certificate granted by the Sub-divisional Officer and after verification he was appointed on the post of Statistical Assistant in Water Resources Department vide letter dated 20.10.1989, Annexure-8 to the appeal. He jointed the post of Statistical Assistant, whereas Respondent no.9, a candidate under advertisement no.5/85, after about five years of appointment of the appellant filed writ petition bearing C.W.J.C.No.7603/94 for issuance of direction to the respondents to appoint him on the post of Junior Statistical Assistant on the ground that persons lower to him in merit list have been appointed. In the said writ

petition the appellant was impleaded as respondent no.9. His further case was that he was selected for appointment and his name was recommended for appointment to the post of Junior Statistical Assistant in the Irrigation Department, Government of Bihar vide letter dated 15.4.1989. His further case was that he belongs to most back-ward class but the Water Resources Department returned the recommendation to the Board on the ground that the post for most back-ward class is not vacant because the appellant has been appointed on the post though he belonged to back-ward class vide letter dated 18.11.1989. His name was recommended for appointment on the post of Junior Statistical Assistant on 15.4.1989 but the department did not take any step for his appointment and appointed the appellant on the basis of recommendation letter dated 30.8.1989. The petitioner thereafter, filed representation to the authorities concerned but nothing was done. Thus he filed the writ petition.

names of respondent no.9 and one Md. Sa. Suddin were recommended and in such a situation, wanted to know from the Board as to who is to be appointed and he filed counter-affidavit. His stand was that he filed application pursuant to the advertisement no.6/85, whereas respondent no.9 filed application pursuant to the advertisement no.5/85. He was selected for appointment on the post of Junior Statistical Assistant, whereas appellant was selected for appointment on the post of Statistical Assistant. He belongs to most back-ward class i.e. 04. His name was recommended to the Water Resources Department for appointment on the post of Statistical Assistant and he was appointed on the said post after verifying relevant records including caste certificate granted by the Sub-divisional Officer vide letter dated 20.10.1989 and since then he has been working on the post.

He was not appointed on the post of Junior Statistical Assistant for which advertisement no.5/85 was issued. Nothing on the record was placed to show that the appellant was appointed pursuant to advertisement no.5/85.

The Board was abolished in the year 1992 and the records were sent to the Bihar Public Service Commission. A counter-affidavit was filed on behalf of Bihar Public Service Commission stating therein that

respondent no.9 was selected for appointment on the post of Junior Statistical Assistant pursuant to advertisement no.5/85. The appellant was selected for appointment on the post of Statistical Assistant pursuant to advertisement no.6/85. However, it was stated that the appellant belonged to back-ward class i.e. 05, whereas respondent no.9 belonged to most back-ward class i.e. 04.

On recommendation the Water Resources Department made query that for one post of Junior Statistical Assistant names of respondent no.9 and one Md.Salauddin were recommended and, in such a situation, wanted to know from the Board as to who is to be appointed but no reply was sent by the Board. The appellant, however, has been appointed on the said post.

After hearing the parties the writ petition was allowed vide judgment and order dated 3.10.1996 mainly on the ground that appellant belongs to back-ward class in the category of 04. The most back-ward class has been categorised as 05. The appointment of appellant was made on the post of Junior Statistical Assistant which was meant for advertisement no.5/85 and as such his appointment was illegal.

The Water Resources Department, Bihar, India, on the  
 To resolve the issue involved, on the  
 that two persons have been recommended in the  
 direction of the Court, the Bihar Public Service  
 no.9 and Md. Salaudin for advertisement no.5/85  
 Commission produced the records of advertisement no.5/85  
 Assistant and as such it was through the record the learned  
 and 6/85 and after going through the record the learned  
 was sent. Learned counsel submitted that name of the  
 counsel for the Commission submitted that name of the  
 Secretary, Irrigation Department, Bihar, India, in  
 appellant was recommended for appointment on the post of  
 counter-affidavit filed in this case that the name of the  
 Statistical Assistant and he was appointed on the said  
 requisition was made for appointment no.9 and one  
 post, whereas, the name of respondent no.9 and one  
 Statistical Assistant in back-ward class was recommended for  
 Md.Salaudin was recommended for appointment on the post  
 back-ward class of Junior Statistical Assistant. However, their names  
 of Junior Statistical Assistant. However, their names  
 on the said post were returned with query as to who was to be appointed but  
 no reply was sent by the Board.

It is evident from the admitted  
 position that appellant's position is that the  
 advertisement no.5/85 on the post of Statistical  
 The admitted position is that the  
 appellant filed an application pursuant to advertisement  
 Assistant rather than for second graduate level  
 no.6/85 dated 12.7.1985 for second graduate level  
 Statistical Assistant for non-gazetted competitive examination for appointments on  
 different posts including Statistical Assistant.  
 It appears that in the application of Respondent no.9  
 that 04 is for back-ward application pursuant to  
 Respondent no.9 filed application pursuant to  
 back-ward category advertisement no.5/85 for graduate level limited  
 competitive examination meant for reserved category  
 candidates only. The appellant's claim was that she  
 i.e. 04 although the appellant's claim was that she  
 which is evident from the certificate of appointment  
 belonged to most back-ward class i.e. 04 and certificate  
 to the aforesaid effect granted by the Sub-divisional  
 Officer was also produced. Respondent no.9 also claimed  
 for allowing the writ petition. Respondent no.9 also claimed  
 back-ward class 04 is for back-ward class i.e. 04. The appellant was  
 to be most back-ward class i.e. 04. The appellant was  
 been stated that she has filed application for  
 selected for appointment on the post of Statistical  
 Assistant vide letter dated 7.9.1989. He was appointed  
 category but it has been stated that he was appointed  
 back-ward class. Respondent no.9 was appointed  
 vide letter dated 20.10.1989 on the said post. Respondent  
 order produced in this case that Respondent no.9  
 no.9 was selected for appointment on the post of Junior  
 Statistical Assistant. His name was recommended for the  
 said post. One Md.salaudin was also recommended for the  
 said post who obtained more marks than respondent no.9.

The Water Resources Department made query from the Board that two persons have been recommended i.e. respondent no.9 and Md.Salauddin for one post of Junior Statistical Assistant and as such who was to be appointed but no reply was sent. Learned counsel for respondent no.6, the Secretary, Irrigation Department on the basis of Board for the counter-affidavit filed in this appeal submitted that requisition was made for appointment on 10 posts of Statistical Assistant in which one post was for most back-ward class i.e. 04 and the appellant was appointed on the said post.

Therefore, it is evident from the admitted position that appellant was not appointed pursuant to advertisement no.5/85 on the post of Junior Statistical Assistant rather he was appointed on the post of Statistical Assistant pursuant to advertisement no.6/85. It appears that in the order impugned it has been stated that 04 is for back-ward category and 05 is for most back-ward category and it has been said that application was filed by the appellant as Backward class candidate i.e. 04 although 04 is meant for Most Backward class which is evident from advertisement no.6/85. The aforesaid mis-conception has led to erroneous conclusion for allowing the writ petition. In fact, 04 is for most back-ward class and 05 is for back-ward class. It has been stated that appellant has filed application under 04 category but it has wrongly been mentioned that it was for back-ward class. In such a situation, the finding in the order impugned cannot be held to be legal.

It was pointed out by learned counsel for the respondents that no requisition was made but it appears from the counter-affidavit filed on behalf of the Secretary, Water Resources Department, respondent no.6, that requisition was made pursuant to the letter of the Board for the post of 10 Statistical Assistants out of which one post was for most back-ward class i.e. 04 on which the appellant was appointed. The admitted position is that respondent no.9 was applicant under advertisement no.5/85 which was for Junior Statistical Assistant and as such it cannot be said that appellant was appointed pursuant to the advertisement no.5/85 on the post of Junior Statistical Assistant rather there are documents on the record to show that appellant was appointed on the post of Statistical Assistant pursuant to advertisement no.6/85.

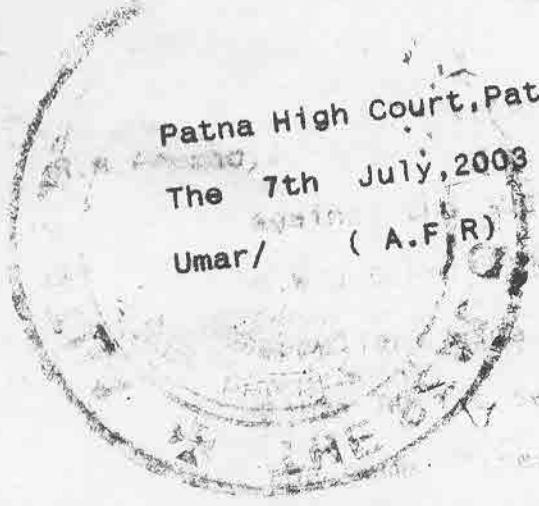
It is evident from the writ petition that no prayer was made for quashing of appointment of appellant. However, it has been stated in the writ petition that appellant was appointed in his place. The averment and submission of learned counsel for respondent no.9, in such a situation, does not appear to be correct as appellant was not appointed on the post of Junior Statistical Assistant pursuant to the advertisement no.5/85 rather he was appointed on the post of Statistical Assistant pursuant to advertisement no.6/85. The scale of Junior Statistical Assistant and the Statistical Assistant is quite different.

Thus on consideration, as discussed above, the order impugned cannot be upheld. Accordingly, appeal is allowed. The order under appeal is hereby set aside but without cost.

Sd /  
( R.N.Prasad, J )

Ravi S. Dhavan, C.J. *Agree.*

Sd /  
( Ravi S. Dhavan, C.J )



*True Copy  
sd. Umar Ali  
8.7.2003  
secy.*