

Miscellaneous Jurisdiction Case No. 242 of 1993  
with  
Civil Writ Jurisdiction Case No. 5009 of 1993.

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In the matter of applications under Article 215 of  
the Constitution of India, read with Section 12 of  
the Contempt of Court Act and also under Articles  
226 and 227 of the Constitution of India.  
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Bihar State Subordinate Service  
Selection Board Examinees Confederation ... Petitioner  
( in MJC No.  
242/93)

Union of Junior Field  
Investigator Examinee batch ... Petitioners (in  
of Bihar Public Service ... CWJC No. 5009/93)  
Commission & others

Versus

The State of Bihar & others ..... Respondents  
( in both the cases).

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For the petitioner :- M/S Ram Balak Mahto, Ganesh  
Prasad Singh, Sanjay Prasad &  
Tun Tun Kumar.  
( in MJC No. 242/93)  
Mr. K.K. Tewary (in CWJC 5009/93)  
For the State :- Mr. Ashok Kr. Singh, SC 3 &  
Mr. Pravin Kumar Verma, JC to  
S.C. 3.  
For the BPS :- M/S K.D. Chatterji,  
Mukteshwar Singh & Rajni Kant  
Jha.  
For the Intervenors :- M/S Rajendra Prasad Singh,  
Ravi Shankar Prasad, Sanjay  
Kumar Singh and Anjani Kr. Sharan

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P R E S E N T

THE HON'BLE MR. JUSTICE SACHCHIDANAND JHA

S.N. Jha, J.

MJC No. 242/93 has been filed for initiating  
contempt proceedings for non-compliance of the order  
of this Court dated 30.9.92 passed in CWJC No. 1412/92.  
I shall refer to the said order soon hereinafter. I  
may at this stage mention that the writ petition had  
been filed by the Bihar State Subordinate Service  
Selection Board Examinees Confederation and others  
challenging the resolution of the State Government  
dated 22.10.91 by which the Bihar State Subordinate

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Services Selection Board ('Service Selection Board', in short) was abolished and its functions were entrusted to the Bihar Public Service Commission ('Commission', in short). It may be stated here that the Service Selection Board was constituted by the Government of Bihar on 20.4.1981 for making selection of candidates for appointment to various class-III posts in different departments of the Government. Adverting to CWCJ No. 1412/92, although the scope of the writ petition and relief sought therein was limited to the abolition of the Service Selection Board, the petitioners referred to certain advertisements issued by the Board in respect of vacancies in various departments, between 1985 and 1987. This Court while disposing of the writ petition directed the State Government to notify the vacancies concerned " which are the subject-matter of this writ petition". The Commission was directed to make recommendation with respect to <sup>those</sup> vacancies so notified, on the basis of the results of the Examination published prior to 22.10.91. This Court clarified that it was not going into such cases in which the result had not been published prior to 22.10.1991 which matter was left to the parties to be agitated in any other proceeding.

2. After the contempt petition was filed on 27.4.93, complaining of non-compliance of the aforesaid order, this Court passed several orders from time to time. A Bench of this Court presided over by Hon'ble G.B.Pattanaik, C.J. (as his lordship then was) in fact observed in the order passed on 13.7.1995, " from the order sheet we find that a very queer procedure has been adopted in the contempt proceeding as the court has taken upon itself an inquiry to find out as to how many vacancies exist in a particular department to be notified by the Public Service Commission for taking further action in the matter, but since orders

have already been passed conferring some right on more than 900 applicants, we are not annulling those orders". In view of those orders, it is obvious that the question as to whether the opposite party have committed any contempt has gone in oblivion. The question now is whether the petitioners are entitled to any substantive relief in this proceeding.

3. It may be mentioned here that during the relevant period between 1985 and 1987, the Service Selection Board had issued a number of advertisements for different posts. The advertisements mentioned in the supplementary affidavit filed in GJC No. 1412 of 1992 and treated as subject-matter of that case are Advt. no. 4/85 relating to the post of Sub-Inspector of Police, Advt. no. 6/85 relating to the Second Graduate Standard Exam., Advt. no. 8/87 relating to the First Intermediate Standard Exam., Advt. no. 18/87 relating to the post of Pashudhan Sahayak (Live Stock Assistants), Advt. no. 19/87, relating to the post of Kaniya Kshetriya Amweshak (Junior Field Investigators), and Advt. no. 21/87 relating to the post of Routine Clerks. During the intervening period from 1992, several writ petitions were filed in this Court either challenging the selections made by the Service Selection Board and/or seeking direction for appointment of the concerned petitioners. While some of the writ petitions were dismissed on the ground that direction of that kind could not be issued for making appointment from stale panel, some other writ petitions were allowed and it appears that pursuant to orders passed in those cases, the persons concerned were also appointed in course of time.

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It is difficult to refer to the various orders passed in different writ petitions. The records of this case, which has become quite bulky running into about 800 pages, is replete <sup>with</sup> references to those cases. It would have been convenient if the parties had catalogued them at one place. However, it may not really be necessary to refer to those orders. One such order passed in CWJC No. 379/93 directing the respondents to appoint the concerned petitioner went up to the Supreme Court in SLP No. 17671 of 1995/Civil Appeal No. 14753 of 1996. The Supreme Court took into consideration the report of Shri S.N. Biswas, the then Commissioner and Secretary of the Personnel and Administrative Reforms Department relating to irregularities committed by the Service Selection Board in the matter of selection and recommendation. The Supreme Court held that the panel prepared by the Selection Board, which had already stood abolished but had continued to make recommendations even after its abolition, does not confer any enforceable right. In fact, it issued a general direction not to make any further appointment from the panels prepared by the Board. The appointments already made, however, were not cancelled since in several cases appointments had been made pursuant to the order of the Court and in some cases those orders had not been interfered with by the Supreme Court. It would be useful to quote the relevant part of the order of the Supreme Court, which is reported in (1997) 3 SCC 198= 1997(2) PLJR 10(SC), as follows:-

" Having given our anxious consideration to the rival contentions of the parties and on carefully examining the materials on record we find sufficient force in the contentions raised by the learned counsel for the appellant and we are unable to agree with the submissions of Mr. Sharan, the

learned counsel for the respondents. True it is, this court did not entertain a special leave petition on 5.9.1994 when the State of Bihar had challenged an order of the Patna High Court. But it is crystal clear that when the court did not entertain the special leave petition, the report of Shri Biswas had not been brought to the notice of the Court nor the Court was aware of the gross irregularities and illegalities committed by the Subordinate Services Selection Board in the matter of making selections and recommending names for different posts in Class III. We have no doubt in our mind that if the irregularities and illegalities found by Shri Biswan would have been placed before the Court, the Court would not have hesitated in entertaining the matter and cancelling the lists altogether. Be that as it may, we are of the considered opinion that the High Court committed gross error of law in passing the mandamus requiring the Public Service Commission and the State to give appointment to the respondent even after going through the Biswas Committee Report which in no uncertain terms indicates the gross irregularities and illegalities committed by the Service Selection Board in the matter of holding the examination and drawing the list of successful candidates .....

In the aforesaid premises, We set aside the order of the Patna High Court and the writ petition filed by the respondents stands dismissed. We also further direct that the Bihar Public Service Commission need not take any further action upon the lists

prepared by the State Service Selection Board nor recommend any names for different posts in class-III from these lists."

5. While the stand of the counsel for the respondents and the Intervenors was that in view of the aforesaid clear-cut direction of the Supreme Court, it is not open to this Court to issue any further direction for making further appointment pursuant to the advertisements in question, on behalf of the petitioners it was submitted that the report of Shri S.N. Biswas was confined to the examination held pursuant to only one advertisement, namely, Advt. No. 8/87, <sup>and the-~~best~~</sup> the order of the Supreme Court has to be construed as confined to the vacancies covered by the said advertisement and the examination. The order of this Court in the connected case i.e. CWJC No. 1412 of 1992 being general in nature with respect to vacancies and posts in various departments covered by different advertisements and examinations, the order of the Supreme Court does not prevent the respondents from making further appointments nor this Court is prevented from issuing direction in that regard.

6. I have considered the submissions of the counsel for the parties. I may mention here that in Civil Appeal No. 14753 of 1996 (Supra) the Supreme Court noticed the report of Shri S.N. Biswas in connection with the very same case i.e. CWJC No. 1412 of 1992 giving rise to the present MJC. This is evident from para 4 of the judgement. The Supreme Court having pointedly noticed CWJC No. 1412/92 and the report of Shri S.N. Biswas in that connection, and issued the above-mentioned direction, it is difficult to agree that the order and direction of the Supreme Court should be construed



asked confined to only one advertisement and examination. I may also mention here that the report of Shri S.N. Biswas, copy whereof was furnished to me in course of hearing of the case, is not confined to only Advt. no. 8/87 relating to appointment of intermediate level posts but, also to Advt. No. 6/85, Advt. no. 18/87, Advt. no. 19/87, Advt. no. 21/87 and so on.

7. That apart, I have no manner of doubt that the examinations in question having been held and panels prepared on the basis of such examination more than a decade ago, it would be illegal and inequitable to direct the respondents to make further appointment from such panels. In State of U.P. Vrs. Ram Gopal Shukla, AIR 1981 Supreme Court 1041, the Supreme Court deprecated the practice of making appointments from stale panels. In that case the Government of Uttar Pradesh had framed statutory rule under Article 309 of the Constitution providing for appointment of persons from a particular panel till the same is exhausted. The Supreme Court observed that although the State has got executive power to frame rules regulating the conditions of service, but the same must be reasonable, fair and not grossly unjust, if they are to survive the test of Articles 14 and 16 of the Constitution of India. The Court held, " A rule which contemplates that unless the list of 300 persons is exhausted no other person can be selected, obviously is unjust as it deprives other persons in the same situation of the opportunity of being considered for promotion."

8. As indicated above this Court has refused to grant reliefs to the concerned petitioners seeking direction for their appointment on the basis of the same very examinations on the ground of delay. Reference may be made

to CWJC No. 3280/91, CWJC No. 7141/91, CWJC No. 60/94 and analogous, and so on.

9. On behalf of the respondents/Intervenors it has been stated that while the number of vacancies covered by different advertisements issued in 1985 and 1987 was only 876 but about 3265 appointments have already been made against those vacancies. Although there may be some dispute regarding the actual number of vacancies covered by the advertisements in question and the actual number of appointments made pursuant thereto, there is no dispute that candidates far in excess of the notified vacancies have already been appointed, many of them pursuant to orders of this Court. It would not be out of place to mention here that the grievance of the concerned petitioners in those cases in substance was that while candidates acquiring lesser marks and placed lower in the panel had been appointed, their cases have been ignored.

10. A Bench of this Court in *Indu Bhushan and others Vs. State of Bihar & ors.* 1984 PLJR 302 noticed the above-noted decision and other decisions of the Supreme Court and held, 'If there is time limit like a period of one year or so for the validity of the panel, number of vacancies may not matter. But if no time limit is fixed for the life of the panel to end, in my opinion, the only reasonable course is to limit the appointments from the panel to the vacancies available upto the date of the preparation of the panel. Vacancies becoming available subsequently should be left open for all eligible candidates.'

11. In *Shankarsan Dash Vs. Union of India*, AIR 1991 Supreme Court 1612, a Constitution Bench of the Apex Court



held that empanelment does not create any indefeasible right in the candidate of being appointed. It is at best a condition of eligibility for the purpose of appointment and by itself does not create any vested right in the selection. It was stated that if a number of vacancies are notified for appointment and adequate number of candidates are found fit the successful candidates, <sup>de hors</sup> acquire an indefeasible right to be appointed which cannot be legitimately denied. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. Having said so, the court further clarified, "The process of final selection has to be closed at some stage."

12. In State of Bihar Vrs. Madan Mohan Singh and others, AIR 1994 Supreme Court 765, the High Court had prepared a panel of 129 Advocates for appointment as Additional District & Sessions Judge direct from the Bar 32 candidates out of 129 called for interview were initially selected for appointment against the existing vacancies, later, the Court on administrative side decided that any <sup>future</sup> further vacancy in the quota of direct recruits from the Bar during the next one year would be filled up from the said panel. The Supreme Court held that the advertisement and the consequential selection process were made only to fill up 32 vacancies. After appointments against the said vacancies were made, the panel got exhausted and its life cannot be extended. It observed, "If the same list is to be kept subsisting for the purpose of filling up other vacancies also, that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process."

13. In State of Bihar Vrs. The Secretariat Assistant Successful Examinees Union 1986 and others, AIR 1994 Supreme Court 736, again the Supreme Court had the occasion to consider the claim of the successful examinees for appointment of graduate level Assistants pursuant to advertisement no. 11/85 issued by the same ~~very~~ Bihar State Subordinate Services Selection Board, while declining to grant any relief to the candidates for their appointment against vacancies as available on the date of publication of the result, the Court observed, "the vacancies having been advertised in the year 1985, holding of the examinations two years after and further, declaration of result almost three years after holding the examination, does not confer any right on the empanelled candidates to be appointed on the date of publication of their results, after 4 to 5 years from the date of holding of examination." The court noticed the decision in the case of Shankarsan Dash Vs. Union of India(Supra).

14. In the above backdrop of the legal position, I have no manner of doubt that at this stage after passage of more than a decade, no direction can be issued for appointment pursuant to the impugned advertisements. The various orders passed in MJC No. 242/93 must be deemed to have become infructuous in view of the injunction issued by the Supreme Court in Civil Appeal No. 14753/96 (Supra).

15. Counsel for the parties agreed that in view of the various orders ~~xx~~ ~~xx~~ passed in course of hearing of the MJC the question as to whether the order passed in the connected case i.e. GJC No. 1412/92 has been complied with or not so as to warrant initiation of any proceeding for contempt, has become insignificant, and the only question to be considered is whether and if so what

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relief can be granted to the petitioners.

16. The above discussion would cover CWJC No. 5009 of 1993, which has been filed on behalf of the so-called 'Union of Junior Field Investigator Examinees Batch seeking direction to fill up vacancies on the post on the basis of examination held pursuant to Advt. No. 19/87 and in the light of direction of this Court in CWJC No. 1412/92.

17. In the above premises, both MJC No. 242/93 and CWJC No. 5009/93 are dismissed. There will be no order as to costs.

Sd/- S. N. Jha

HIGH COURT PATNA

DATED THE 30<sup>th</sup> March, 1999

N. A. F. R. / S. Pandey.

CERTIFIED TO BE TRUE PHOTO COPY

For District Registrar (S)

Patna High Court

Acted on 1/1/1999

18/1/1999  
1-1-1999