

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2125 of 2014

Sudhir Kumar, Son Of Satrudhan Prasad Gupta, Resident Of Darbar House,
Mohalla - Chhoti Badalpura, P.O. Khagaul, District - Patna

.... Petitioner/s

Versus

1. The High Court Of Judicature At Patna Through Its Registrar General Patna
High Court Patna
2. The Registrar General Patna High Court Of Judicature At Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Sr, Advocate
Mr. Sanjeev Kumar Mishra
For the Respondent/s : Mr. Bindhyachal Singh
Mr. Sumit Singh

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 17-09-2015

17.09.2015

Petitioner has filed this writ application for a direction upon the respondent-Patna High Court for consideration of his case for appointment on the post of an Assistant, as his claim has been rejected summarily and without considering not only the true facts but also the rules governing such selection and appointment.

The High Court issued an Employment Notice No. 1 of 2010, where 49 posts of Assistants were shown to be available to be filled up after due selection. The advertisement also indicated that even the anticipated vacancies occurring in the near future may also be

considered. Advertisement is annexure-5 to the writ application.

As per the pleading of the petitioner he has the requisite qualification. He went through the process of selection and succeeded in making it to the list of successful candidates. Two set of lists were drawn up. One of 114 candidates and another of 40 successful candidates shown in the wait list. Petitioner was at Sr. No. 1 in the wait list and belongs to the Backward Class Category. His category is significant for the reason that the last man appointed belonged to the general category, therefore, next vacancy, if appointment was made and filled up, would have gone to the BC category, as is the stand of the learned senior counsel and not seriously disputed.

As reflected in the advertisement, it seems that some more vacancies did occur while the process of selection and appointment was going on. The original figure of 49 culminated into a total figure of 114. Since the entire exercise could not be completed, therefore, Hon'ble the Chief Justice decided to extend the life of the panel on 02.08.2012 by one full year. By 3rd of August, 2011 only 94 candidates came to be appointed and 20 more candidates were accommodated within the period

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of extended life of the panel.

Since the life of the panel would have come to an end on 02.08.2013 and in the meantime two vacancies arose, i.e., on 28.02.2013 and 30.06.2013, the petitioner had a legitimate expectation for consideration or recommendation for appointment on the post of Clerk. The file was placed before Hon'ble the Chief Justice, who vide order, dated 14.07.2013, decided to scrap the wait-list panel and the endorsement made in the file, which has been quoted in the supplementary counter affidavit, is reproduced hereinbelow:

“Existing and anticipated vacancies are filled in. The wait list will not be operated further. All vacancies now will be in by a fresh recruitment process. The process will be commenced soon.”

Learned senior counsel, representing the petitioner, has two-fold arguments. One that when Hon'ble the Chief Justice decided to bring to an end the life of the panel as well as scrap the wait-list, Her Lordship was probably not properly informed about the vacancy position and the period when the life of the panel was going to end, i.e., on 02.08.2013. If it is so, then the decision not to operate the wait-list would not have been taken on 14.07.2013. The other matter of



significance is that there is a set of rules, which is in place and which has reflection on the decision making process. The relevant rule in question is the ***Patna High Court Officers and Staffs (Conditions of Service and Conduct) Rules, 1997.***

The attention of this Court had been drawn to rule 8 (c) (ii), which is reproduced hereinbelow:

“(c) (ii) Posts falling vacant during the currency of the panel, may be filled up from the same panel.”

The legal submission of the learned senior counsel is that since the panel's life was coming to an end only on 02.08.2013 and two vacancies were in existence, the same should have filled up as per the rule above. When Hon'ble the Chief Justice decided to close the wait-list on the basis that 114 candidate have already been appointed, there was an obligation to take into consideration the provisions of rule 8 (c) (ii).

The submission of the senior counsel, therefore, is that atleast on the date when decision was taken, detrimental to the interest of the petitioner, there was a right for consideration and the rules support such submission.

Counsel representing the High Court submits that there is a significant word used under the said rules,

which says *“which may be filled up from the same panel”*.

The word *“may”* can not be read to be discretionary for the reason that if it is so then there would be no occasion to consider filling up any post which become vacant during the currency of the panel. If the panel was in existence and its life was very much alive and a conscious decision was taken at the highest level to extend the life of the panel with the object of filling up all the vacancies subsisting and arising in between and which has been done in the present case during the period of extended life of the panel, the least which should have been done was to consider the claim of the petitioner for recommendation since he had already been selected and he was wait-list no. 1 and belonged to reserved category candidate, which the petitioner is.

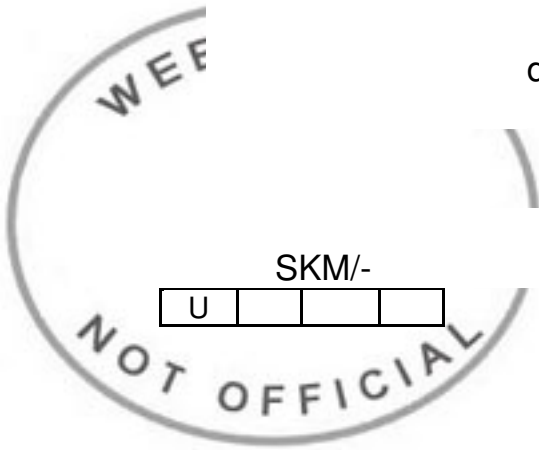
In view of the above, the writ application is allowed with a direction upon the Registrar General of the Patna High Court to place the matter before Hon'ble the Chief Justice for reconsideration in view of the position emerging in facts and law indicated above.

As a natural corollary, Annexure-6, dated 22.11.2013, which is a cryptic order, passed by the Registrar General, Patna High Court, Patna, rejecting



the representation of the petitioner, is quashed.

Writ application is allowed with observation /
direction as above.



(Ajay Kumar Tripathi, J.)