

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.2609 of 2014

1. Ramesh Kumar Son of Ram Bilash Ram Resident Of Village Jamuni Diyara P.S. Dhansoi Distt. Buxar At Present Resident At Street No. 1 Mohalla Dhobighat Model P.S. And Distt. Buxar

.... .... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. Principal Secretary Department Of H.R.D., Patna
3. Bihar Public Service Commission through Its Chairman, 15 Jawaharlal Nehru Marg (Bailey Road) Patna
4. The Examination Controller Cum Additional Secretary Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg (Bailey Road) Patna
5. The Special Executive Officer, B.P.S.C. 15 Jawahar Lal Nehru Marg, (Bailey Road) Patna

.... .... Respondent/s

with

### Civil Writ Jurisdiction Case No. 15447 of 2014

1. Arun Kumar son of Sudama Bhagat, resident of village Sato Awanti, Police Station Noan, District- Kaimur

.... .... Petitioner/s

Versus

1. The State of Bihar through the Secretary-cum-Commissioner, Department of Finance, Government of Bihar, Patna
2. The Secretary-cum-Commissioner (Commercial Taxes), Department of Finance, Government of Bihar, Patna
3. The Secretary, Department of Personal and Administrative Reforms, Government of Bihar, Patna
4. The Bihar Public Service Commission through Chairman, Bailey Road, Patna

.... .... Respondent/s

with

### Civil Writ Jurisdiction Case No. 2330 of 2014

1. Rajesh Kumar Pandey Son Of Late Ramesh Chandra Pandey Resident Of Mohalla New Chandramari, P.S.- Town, P.O.- Motihari, District- East Champaran
2. Rajeev Ranjan Gupta Son Of Sri Raghubir Singh Resident Of Raghubir Sadan, Mohalla- Chandmari, P.S.- Town, P.S.- Motihari, District- East Champaran
3. Bal Krishna Sharma Son Of Late Devendra Sharma Resident Of Mohalla Balua Tal, P.S.- Town, P.O.- Motihari, District- East Champaran
4. Vidya Sagar Ram Son Of Sri Mahendra Ram Resident Of Village Mathiya Mohan, P.O.- Panchpakari, P.S.- Dhaka, District- East Champaran

5. Manoj Kumar Singh Son Of Sri Birendra Narayan Singh Resident Of North Nehru Nagar, P.S. Pataliputra Colony, Town And District Patna

.... .... Petitioner/s

Versus

1. The State Of Bihar through the Secretary cum Commissioner, Department Of Finance, Government of Bihar, Patna
2. The Secretary cum Commissioner (Commercial Taxes), Department Of Finance, Government of Bihar, Patna
3. The Secretary, Department Of Personal and Administrative Reforms Government of Bihar, Patna
4. The Bihar Public Service Commission, Bailey Road, Patna

.... .... Respondent/s

with

**Civil Writ Jurisdiction Case No. 22248 of 2014**

1. Rakesh Kumar Toofan Son of Ramlal Prasad Resident of Mohalla - Amber Sristal, Town Bihar Sharif, P.S. Bihar, District - Nalanda

.... .... Petitioner/s

Versus

1. The Secretary cum Commissioner (Commercial Tax), Department of Finance, Government of Bihar, Patna
2. The State of Bihar through the Secretary cum Commissioner, Department of Finance, Government of Bihar, Patna
3. The Secretary, Department of Personal and Administrative Reforms Government of Bihar, Patna
4. The Secretary, the Bihar Public Service Commission, Baily Road, Patna

.... .... Respondent/s

with

**Civil Writ Jurisdiction Case No. 1580 of 2015**

1. Manoj Kumar Sinha S/o Sri Basudeo Prasad, Assistant Teacher, Primary School, Kahartoli, Mohalla- Jakkanpur, Patna, District- Patna
2. Bibhuti Kumar, S/o Late Madan Sahu, Assistant Teacher, Primary School, New Bahadurpur Jhugi Jhopri, Rajendra Nagar, Patna, District- Patna
3. Rajesh Kumar S/o Yogendra Kumar, Assistant Teacher, Middle School, Pathraura Rajgir, Nalanda
4. Binod Kumar S/o Krishna Murari Prasad, Assistant Teacher, Primary School, Kahartoli, Mohalla- Jakkanpur, Patna, District- Patna

.... .... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Finance Department, Govt. of Bihar, Patna
3. The Principal Secretary, Commercial Taxes, Finance Department, Government

- of Bihar, Patna  
4. The Principal Secretary, General Administration Department, Government of Bihar, Patna  
5. Bihar Public Service Commission, Bailey Road, Patna through its Secretary

.... .... Respondent/s

=====

**Appearance :**  
**(In CWJC No. 2609 of 2014)**

- For the Petitioner/s : Mr Ashok Kumar Sinha  
Mr. Shyam Sundar Pandey  
Mr Ashok Kumar  
For the BPSC : Mr P.N.Shahi, Sr. Advcoate  
Mr Ratnesh Kumar Singh  
For the State : Mr. Rajiv Kumar Singh, GP 2

**(In CWJC No. 15447 of 2014)**

- For the Petitioner/s : Mr Dinu Kumar  
Mr. Manoj Kumar Singh  
For the BPSC : Mr. Lalit Kishore, Sr Advocate  
Mr Satyabir Bharti  
For the State : Mr Kundan Kumar, AC to SC 2

**(In CWJC No. 2330 of 2014)**

- For the Petitioner/s : Mr Chittranjan Sinha, Sr. Advocate  
Mr. Rajesh Ranjan  
For the BPSC : Mr P.N.Shahi, Sr. Advocate  
Mr Ratnesh Kumar Singh  
For the State : Mr. GP-1 U.S.S.Singh  
Mr Swapnil Kumar Singh, AC to GP 1

**(In CWJC No. 22248 of 2014)**

- For the Petitioner/s : Mr. Madan Kumar  
For the BPSC : Mr Sanjay Pandey  
For the State : Mr. AC to GA 1

**(In CWJC No. 1580 of 2015)**

- For the Petitioner/s : Mr Rajendra Pd. Singh, Sr. Advocate  
Mr. Rajeev Kumar Singh  
For the BPSC : Mr Sanjay Pandey  
For the State : Mr. AC to PAAG

=====

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**  
**ORAL JUDGMENT**  
**Date: 08-12-2015**

The writ applications noted above have been filed and  
clubbed together to be heard together because they all have a common  
grievance, if not relief. There are some minor variations in the

pleadings or the question of law sought to be raised to achieve the same object. All the writ applications, therefore, have been heard together and assistance has been rendered by various counsels representing their interest in the writ applications.

2. Behind the present dispute is the Advertisement No.14 of 2010 issued by the Bihar Public Service Commission (BPSC) on 4.8.2010/ 5.8.2010 inviting applications for 27 posts of Finance Officer to be appointed in the basic grade of Bihar Finance Service, through what is known as Limited Competitive Examination.

3. The Commercial Taxes Department sent two requisitions, one on 23.3.2009, which is letter no.1077, indicating availability of 11 posts, another letter no.2594 dated 10.7.2009 followed indicating additional 16 posts for Finance Officer. Based on these two requisitions, the advertisement indicated the number of vacancies to be 27 and process was initiated.

4. When the exercise was going on by BPSC, letter no.571 dated 13.2.2013 was received by BPSC indicating that 11 more posts have become vacant and they should be included in the vacancies previously advertised.

5. BPSC vide its communication no.583 dated 14.6.2013 deliberated on the issue and sent a letter of refusal and the reasons for such refusal is evident from the said communication itself.



The communication is Annexure- 17 to CWJC No.2609 of 2014, which is the case of Ramesh Kumar. Two reasons have been indicated in the said communication that at least 10 years of confirmed continuous service in class III post as on 1<sup>st</sup> April of the date of application must be fulfilled and that maximum age of 45 years have to be maintained. The latest requisition indicated the vacancies from 1.4.2009 to 21.3.2012. Therefore, including more vacancies after the Advertisement No.14 of 2010 would not be justifiable in accordance with law.

6. BPSC went ahead, held the examination, completed the process of selection and the final result was published on 23.10.2013 limiting the exercise to 27 vacancies, which were advertised in the very first place. Recommendation was also sent on 26.12.2013. The Court has been informed that the recommended candidates have also been appointed and they have joined their respective posts.

7. The legal battles start thereafter. All those unsuccessful candidates started rushing to the Court by filing various writ applications raising one question of law or the other. What is of importance is that all these candidates are candidates, who failed to make it to the select list after duly participating in the process. The Court, therefore, is not unmindful of the law already settled that much



leeway is not required to be given to such candidates when they come to assail the recommendations after failing to make it. The Court, however, without taking such a strict technical view and throwing the writ applications out at the very threshold, decided to look into matters dispassionately whether the grievance so raised are supported by law and how far the respondent authorities have failed to follow the law while deciding the right of these petitioners for consideration for appointment.

8. The attacks are varied. In the very first writ application of Ramesh Kumar, the effort was made to demonstrate that the results itself should be set aside because of many infirmities in the conduct of the examination including the wrong questions and answers, which were used for the examination. Half way down the line when resistance was perceived by the petitioner strategy changed. He now attacks refusal of BPSC to include more vacancies as requested by the Commercial Taxes Department on 13.2.2013 numbering 11.

9. Not satisfied with such change of strategy when the Court put a question to the counsels as to how the right of the petitioners for further direction upon the BPSC could be entertained so long as the letter refusing to include 11 more vacancies subsisted First, the counsels decide to file I.A.s and challenge letter no.583



dated 14.6.2013 (Annexure- 17 to CWJC No.2609 of 2014) and even further expanding the ambit of the argument by submitting as to how the State Government has miscalculated the actual number of vacancies under various category of reservation in terms of the rules. Therefore, a much larger number of vacancies were available to be filled up than what the original requisitions indicated before the advertisement.

10. With due respect to all the counsels assisting the Court this Court is not willing to get carried away by their persuasive argument contrary to the main issue, which is required to be considered as a question of law in the present set of writ applications.

11. The Court has already taken note of the stand reiterated even in the counter affidavit of the BPSC, that these are all failed candidates in the exercise for selection and most of them are miles away from the cut-off marks available in the various categories of people. The second aspect of the matter is whether the BPSC was wrong in refusing to entertain request after request after the advertisement was already issued and the reasons given by them for refusal are tenable in law or not?

12. The stand of the petitioners is that BPSC has in the past included such requests and included vacancies, which have arisen subsequently and made recommendations. There is no reason why



there should be a deviation or why they should not be compelled to take back their decision not to entertain the request of the Commercial Taxes Department. The other aspect is that the reasons assigned by the BPSC also is fallacious and in this regard two decisions have been pressed into service to show that vacancies at least on the date of preparation of select list should have been considered. Learned senior counsel appearing for the petitioners in CWJC No.1580 of 2015, which is the case of Manoj Kumar Sinha, relied on two decisions of the Hon'ble Apex Court, which is the case of *Union of India and others v. Ishwar Singh Khatri and others, reported in 1992 Supp (3)SCC 84*. Reliance is placed on paragraph 4 and 5 of the said decision. Another decision in this regard is the case of *Sandeep Singh v. State of Haryana and another, reported in (2002) 10 SCC 549*. In this case emphasis is on paragraphs 2 and 3 of the said decision.

13. From perusal of the two decisions, it is evident that the Hon'ble Apex Court opined as they did in above two cases on the facts of the two cases.

14. The principles of law enunciated by the Hon'ble Supreme Court on which the counsels representing the BPSC relied whether there can be inclusion of more vacancies, which may have arisen after the date of the advertisement is otherwise. In this regard





attention of this Court has been drawn to some Division Bench as well as Full Bench decisions of this Court as well as a decision rendered by the Hon'ble Apex Court in the case of *Arup Das and others v. State of Assam and others, reported in (2012) 5 SCC 559*, especially paragraph 17.. The decision of the Patna High Court, which is of significance, is the case of *Indrajit Bhaskar and others v. State of Bihar and others, reported in 2011 (4) PLJR 750*. The Court while dealing with same kind of matter in relation to filling up of certain judicial posts of Civil Judge (Junior Division) relied on the principle laid down by the Hon'ble Apex Court in the case of *Rakhi Ray and others v. High Court of Delhi and others, reported in AIR (2010)2 SCC 637*. Paragraphs 11, 12 and 13 of Indrajit Bhaskar case (supra) states as under:

“11. The above referred directions have been considered by a three-Judge Bench of the Hon'ble Supreme Court in the matter of *Rakhi Ray and others v. High Court of Delhi and others*, [(2010) 2 SCC 637]. The learned Judges reiterated the well settled law, **“It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as “the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution”, of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable,**



for the reason, that it amounts to “improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated from and such a deviation is permissible only after adopting policy decision based on some rationale”, otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, is not permissible in law.” The Hon’ble Court reiterated with approval, “currency of select list had expired as soon as the number of posts advertised are filled up, therefore, appointments beyond the number of posts advertised would amount to filling up future vacancies” and said course is impermissible in law”. Referring to the judgment in the matter of *Malik Mazhar Sultan*(3) (supra), the Hon’ble Court observed, “**This Court made it clear that appointments in Judicial Service have to be made as per the existing statutory rules.**”

12. Once again, the same view is reiterated by the Hon’ble Supreme Court in the matter of *Public Service Commission, Uttaranchal v. Mamta Bisht & Ors.*, [2010 (3) PLJR (SC) 100].

13. On a conjoint reading of all these judgments, we have no hesitation in holding that in absence of an emergent situation or unavoidable circumstance, the State Government could not have made more than 318 appointments pursuant to the 26th Bihar Judicial Service Competitive Examination, 2005. Admittedly, the writ petitioners did not find place in the select list of 318 successful applicants. The writ petitioners have, therefore, no right to appointment pursuant to the 26th Bihar Judicial Service Competitive Examination, 2005.”

15. Yet another decision is a Full Bench decision of this

Court which has been rendered in the case of *State of Bihar v. Shardendu Bhushan*, reported in 2014 (2) PLJR 553. The essence of

such principles have been rightly crystallized in paragraphs 41 and 42 of the said decision, which reads as under:

*“41. In Service Jurisprudence the “anticipated vacancies” and “future vacancies” have two different and distinct meaning. The prospect of there being anticipated vacancies in fact has to be indicated in the advertisement itself by disclosing the number of vacancies and those likely to take place within the fixed period.*

*42. If, however, in the advertisement the number of posts is totally circumscribed and fixed with no indication of any anticipated vacancies, any vacancy occurring after the date of advertisement will be a future vacancy and that cannot be filled up by taking recourse to the earlier advertisement. Doing so would be in negation to the rights guaranteed under Articles 14 and 16 of the Constitution of India.”*

(emphasis mine)

16. If this be the legal position and in the given facts, the Court has no hesitation in coming to a conclusion that the BPSC cannot be faulted for refusal to entertain any further request for filling up additional vacancies as was requested by the Commercial Taxes Department on 13.2.2013 when the advertisement was issued as far back as 4.8.2010/ 5.8.2010. Vacancies will arise after advertisements but they are not required to relate back to the advertisement which have already been issued and process of selection initiated. There are many a conditions which are required to be fulfilled in terms of the advertisement and the same cannot be diluted or ignored for the

purposes of accommodating candidates subsequently. The Court, therefore, holds that the BPSC was absolutely correct in turning down the request of the State in this regard.

17. Dealing with other contention of the counsels for the petitioners that they have done so in the past, since those decisions are not under judicial scrutiny before the Court, the Court refrains to comment. If the BPSC gets wiser and better counsel prevails now with regard to correct proposition of law, the precedent cannot be made a ground for giving a direction to breach the settled principles of law some of which has been noticed above.

18. The attack with regard to vacancies cannot be directed against the BPSC. BPSC will be guided by the requisition and vacancy position based on which the advertisement was made. If the State Government had miscalculated the vacancies, which were available and if the requisition, which was sent, was erroneous, the option for the petitioner was at the threshold when the advertisement was issued in the very first place on 4.8.2010. They cannot get wiser after having participated and failed in the examination by raising objections that much wider number of posts should have been advertised to be filled up by BPSC.

19. In totality therefore, these are desperate measure adopted by the petitioners through all kinds of arguments thrown at

the bar only with a hope that if the ambit of vacancies get expanded they may get a chance and opening. But the facts and figure with regard to performance of most of these candidates indicate that they are miles away from the last recommended candidates. The effort of the petitioners are not supported by law.

All the writ applications are, therefore, required to be dismissed and are dismissed.

**(Ajay Kumar Tripathi, J)**

sk

|   |  |  |  |
|---|--|--|--|
| U |  |  |  |
|---|--|--|--|