

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1487 of 2011
IN
Civil Writ Jurisdiction Case No. 7351 of 1996**

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1. Mithilesh Kumar Prasad, S/O Late Rajendra Prasad, Resident Of Mohalla-Gewal Bigha, Police Line Road, Durga Asthan, Near Post Office, Gaya, District-Gaya.
 2. Renu Kumari, D/O Late Mayakant Verma, Resident Of Mohalla-Pachmahalla (Sarlahi Gali), District-Gaya.
 3. Nagendra Prasad, S/O Late Boban Prasad, C/O Dr. Arun Kumar Prasad, Resident Of Heera Kunj, 307, Augrah Puri Colony, District-Gaya.
 4. Md. Mazahir Masoom, S/O Md. Yunus, Resident Of Mohalla-Sahmir Takiya (Near Masjid Gali), P.O.-Chand Choura, P.S.-Civil Line, District-Gaya.
 5. Om Prakash, S/O Late Ram Pratap Sharma, Prakash Commercial Institute, Chand Choura, District-Gaya.

.... Petitioners-Appellant/s

Versus

1. The State of Bihar.
2. The Secretary & Commissioner, Human Resources Department, Govt. of Bihar, Patna.
3. The Director, Youth Art & Culture Department, Govt. of Bihar, Patna.
4. The Deputy Director, General NCC Directorate, C.D.A. Building, Rajendra Path, Patna-1.
5. The Joint Director, NCC, Directorate, C.D.A. Building, Rajendra Path, Patna.
6. Bihar Public Service Commission through its Secretary, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.

.... Respondents-Respondent/s

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Appearance :

For the Appellant/s : Mr. Chitranjan Sinha, Senior Advocate
Mr. Arun Kumar Sinha, Advocate

For the Respondent Nos. 1 to 5 : Mr. Anshuman, S.C.-14

For the Respondent No.6 : Mr. Nadim Seraj, Advcoate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-04-2015

The petitioners herein, challenge the order dated 19.07.2011 passed by the learned Single Judge in CWJC No.7351 of 1996.

The facts, in brief, are as under:-

The Department of Personnel and Administrative Reforms through its Secretary issued advertisement dated 23.06.1995 proposing to fill 45 posts of Class III in the office of Directorate of N.C.C. in the State of Bihar. The selection process had been carried out by the Directorate of NCC and, in fact, a select list was prepared on 14.03.1996. However, that was cancelled through order dated 14.03.1996 on the ground that the entire selection process is contrary to the policy decision taken by the Government through Resolution dated 02.01.1993. The appellants challenged the action of the respondents in cancelling the select list. During the pendency of the writ petition, another advertisement was issued in the year 1997 and as many as 116 posts were filled. By filing an interlocutory application, the appellants challenged the subsequent proceedings also.

The respondents pleaded that on 02.01.1993, the

Government passed a resolution to the effect that all the posts of Class III in various offices of the State of Bihar shall be filled through the Bihar Public Service Commission and all other methods of appointment shall stand cancelled; and despite that, the selection of candidates in the instant case was made by the Directorate of NCC.

The learned Single Judge dismissed the writ petition. Aggrieved by that, the appellants filed the present LPA. A Division Bench of this Court dismissed the same through order dated 21.10.2013. The appellants carried out the matter to the Hon'ble Supreme Court by filing Civil Appeal No.1886 of 2015. The Civil Appeal was allowed on 13.02.2015 on the ground that the Division Bench did not address the actual controversy in the case, and accordingly, remanded the matter. That is how the matter is before us.

Sri Chitranjan Sinha, learned senior counsel for the appellants, advanced detailed arguments. His principal contention is that though the Government passed Resolution on 02.01.1993, bringing all the appointments to Class III posts, within the purview of the Bihar Public Service Commission, the implementation thereof took place only with effect from 06.12.1995, when detailed Rules were framed. He submits that the Directorate of NCC was delegated the power to appoint clerks in category III vide an order passed in 1972, and that remained in force till it was impliedly superseded on 06.12.1995.

Learned counsel for the State, on the other hand, submits that the Resolution dated 02.01.1993 came into force immediately and obviously not being aware of it, the Directorate of NCC proceeded to select the candidates, and the same was set at naught, through the order of cancellation of select list.

The posts, which are in question, are in the office of the Directorate of NCC. However, the appointment to them has always been within the purview of the State of Bihar. In the year 1972, the Government delegated the power to the Directorate of NCC to fill those posts, subject, however to the condition that Directorate of NCC shall follow the instructions and orders that are issued by the Government, from time to time.

On 02.01.1993, the State of Bihar passed Resolution directing that the appointment to the Class III and all the posts in the State shall be within the purview of the Bihar Public Service Commission. There is nothing in that order to indicate that the implementation thereof was deferred to any particular date. It has come into force with immediate effect.

To the extent, the Department of Personnel and Administrative Reforms, Government of Bihar, issued advertisement dated 23.06.1995, there cannot be any controversy. However, the agency, which must select the candidates, needs to be identified with



reference to law that was in force on that date. Obviously not being aware of the Resolution dated 02.01.1993, the Directorate of NCC proceeded to select the candidates. However, much before any finality could be added to the select list, the concerned authority withdrew the same on noticing that the only agency that is conferred with the power to select the candidates in Class III posts with effect from 02.01.1993 is the Public Service Commission. Therefore, the decision to cancel the select list cannot be said to be arbitrary or otherwise illegal.

Added to that, it is fairly well settled principle of law that mere selection does not confer any right on the candidates and it is always open to the competent authority to take its own decision, depending upon the facts and circumstances of the case.

The contention of the learned Senior counsel that the Resolution dated 02.01.1993 came into force only with effect from 06.12.1995 cannot be accepted. The reason is that what happened on 06.12.1995 is that a detailed set of Rules was prepared for the purpose of selection of candidates. That does not mean that the Resolution dated 02.01.1993 did not come into force till the Rules were framed. Though discussion was not undertaken on this aspect by the learned Single Judge in a detailed manner the conclusion arrived at by him, accords with what we find herein.

Therefore, the appeal is dismissed.

Interlocutory application, if any, shall stand disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Sudhir Singh, J)

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