

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18799 of 2012

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1. Satyendra Sharma Son Of Late Yadu Sharma Resident Of Village - Sona, P.O. Admapur, Piplawar, P.S. Naubatpur, District - Patna

.... Petitioner

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Human Resources Development Department Now Education Department, Govt. Of Bihar, New Secretariat, Bailey Road, Patna
3. The Secretary, Law Department, Govt. Of Bihar, Old Secretariat, Patna
4. The Joint Secretary, Law Department, Govt. Of Bihar, Old Secretariat, Patna
5. The Director, Primary Education, Human Resources Development Deptt. Now Education Department, Govt. Of Bihar, New Secretariat, Patna
6. The Director (Administration) Cum Additional Secretary, Human Resources Development Department, Now Education Department, New Secretariat, Patna
7. The Bihar Public Service Commission, Through Its Chairman, Bailey Road, Patna
8. State Of Jharkhand through Principal Secretary, Human Resources Development Department, Ranchi (Jharkhand)

.... Respondents

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Appearance :

For the Petitioner : Mr. Chittranjan Sinha, Sr. Advocate
Mr. Wasi Ahmad Khan, Advocate

For the State : MR. Rajiv Roy GP5
Mr. Arun Kumar, AC to GP 5

For the Resp. No.7: Mr. Vikash Kumar, Advocate

For the Resp. No.8: Mr. Satyavrat Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 22-05-2015

1. This writ application has been filed by the petitioner,

Satyendra Sharma, seeking following relief:-

“I. For issuance of a writ in the nature of mandamus or any other appropriate writ/writs commanding the respondents to fill- up 128 vacancies from general category candidates as per order and direction of Division Bench of this Hon’ble Court dated 16.10.2009 passed in CWJC No. 454 of 1992 and CWJC No. 6539 of 1991.

II. For issuance of a writ in the nature of mandamus or any other

appropriate writ/writs directing the respondents to appoint the petitioner in Bihar Sub-ordinate Education Service.

III. For issuance of a writ in the nature of certiorari for quashing of the memo no. 1179 dated 11.20.2000 of respondent No.2 whereby and wherein he has requested the State of Jharkhand to appoint 42 candidates.”

2. By the judgement and order dated 16. 10.2009 passed in CWJC Nos. 454 of 1992 (Ashok Kumar Vs. the State of Bihar & Ors) and 6539 of 1991 (Krishna Prasad & Ors. Vs. the State of Bihar & Ors) reported in 2010 (1) PLJR 734, which is the basis for seeking relief in the present writ application, a Division Bench of this court, dealing with the issue of policy of reservation as applicable to advertisement No. 5/1988 issued by the erstwhile Bihar Sub-ordinate Service Selection Board, for appointment to the Bihar Sub-ordinate Education Service (Primary), while allowing the writ applications issued following directive:-

“24. In the results, we allow the two writ petitions and hold that the appointments shall be made in the proportion indicated in the said Resolution dated 10.11.1978. It, therefore, follows that the State Government is obliged to fill up from the present selection process, like number of vacancies by candidates of the general category as have been filled up by candidates of the reserved categories. Let the Commission send a supplementary list of the candidates in accordance with the directions indicated hereinabove within a period of two months from the date of receipt and/or production of a copy of this judgement. The fresh appointees shall be entitled to their seniority in

accordance with the merit list and consequential benefits.”

3. The petitioner was not a party to the said writ application, though it is not in dispute that he had participated in the process of selection as a general candidate.

4. Alleging disobedience of the said order of the division Bench dated 16.10.2009 in case of Ashok Kumar (supra), some candidates, who had participated in the said process of selection, had filed contempt petitions bearing MJC Nos. 292 and 393 of 2010. The contempt petitions were disposed of by an order 06.09.2011, noticing substantial compliance of the said order of the division Bench. From the said order disposing of the contempt petitions, it appears that the contemnors before the court took stand that the Commission had recommended to the State Government name of 86 candidates for their appointment on the basis of merit list so prepared in compliance of Division Bench decision of this court in case of Ashok Kumar Vs. State of Bihar & Ors. (supra). It also appears from the said order that the State Government, accepting recommendations made by the Commission, had published general notice in the local newspapers for circulation and information to those 86 candidates for the purpose of their appointment. Finally, however, 49 candidates turned up, while other did not. Those 49 persons came to be appointed. In the year



2011, though the petitioner was not a party to the writ proceeding, he filed a contempt petition being MJC No.512 of 2011 before this court alleging disobedience of the order of division Bench dated 16.10.2009 passed in case of Ashok Kumar Vs. State of Bihar & Ors (supra). The said contempt petition was disposed of by this court by an order dated 01.03.2012. The court did not find any case of contempt of court to have been made out. However, liberty was given to the petitioner to pursue his remedies against the State of Jharkhand or against the State of Bihar.

5. I must take note of the fact, as has transpired from various orders passed by this court and the pleadings brought on record on behalf of the parties, that in the light of the division Bench order of this court in case of Ashok Kumar Vs. State of Bihar & Ors. (supra) 128 posts were required to be filled up by general candidates on the basis of merit list prepared pursuant to selection process held, based on Advertisement No. 5/1988. Consequent upon re-organization of the State of Bihar and creation of State of Jharkhand, out of such 128 posts 42 went to the share of State of Jharkhand and 86 posts, thus, remained to be filled up by the State of Bihar. This was the circumstance in which names of 86 persons from merit list were notified for their appointment on the basis of advertisement No. 5/1988, in order to comply with the division Bench order of this court



dated 16.10.2009. The petitioner, however, claimed that he could have been appointed, had the names of 128 persons been notified for appointment in the State of Bihar in the light of the direction of this court dated 16.10.2009. However, in course of argument, learned senior counsel appearing on behalf of the petitioner has confined his submission that the petitioner's case should be considered against those vacant posts which remained unfilled because of non joining of candidates in the State of Bihar as admittedly out of 86 persons, who were notified to be appointed, only 49 had turned up and 37 posts remained vacant.

6. Mr. Chittranjan Sinha, learned senior counsel appearing on behalf of the petitioner, has submitted that the petitioner's right to be appointed on the basis of his merit position prepared through selection process carried out in the light of advertisement No. 5/1988 flows from the direction issued by the division Bench order of this court dated 16.10.2009. He has submitted that it was obligatory upon the respondents to have notified the names, after non joining of 37 candidates out of 86, whose names were notified for appointment, in the light of the order of this court, from merit list on the basis of merit.

7. A counter affidavit has been filed on behalf of respondent No.7, the Bihar Public Service Commission, which is the body to which the functions and duties of erstwhile Bihar Sub-



ordinate Service Selection Board has subsequently been assigned. The Commission has brought on record an order of this court dated 01.05.2013 passed in MJC No. 3755 of 2012. The said contempt petition was filed alleging disobedience of the same order of this court dated 16.10.2009 in the case of Ashok Kumar Vs. State of Bihar & Ors. (supra), which is the basis for the petitioner to seek relief in the present writ application. The division Bench while dismissing the contempt petition made following observation:-

“We are of the opinion that in above circumstances the merit list prepared pursuant to advertisement No. 5/1988 cannot now be operated. It may be noted that the advertisement No. 5/1988 was issued for 424 vacancies. As against the advertised 424 vacancies, the State Government has filled-in more than 600 vacancies. Around 240 vacancies, created after the date of advertisement, have also been filled-in by operating the merit list prepared in 1990 against all canons of service jurisprudence. Further, the petitioners have now reached the age of 50 years, they cannot be included in public service as fresh recruits.”

8. Mr. Sinha, learned senior counsel for the petitioner, faced with the observation made by division Bench of this court in MJC No. 3755 of 2012, as quoted above, has submitted that the said observation cannot be held to be binding upon this petitioner, he not being a party to the said proceeding. He has further submitted that the division Bench order of this court dated 16.10.2009 was required to be



implemented in its true spirit and neither any addition nor deletion was permissible in the said order by any subsequent bench and this court, despite the said observation made by Division Bench of this court in the said contempt proceeding, may proceed to enforce the rights which accrued to persons, arising out of earlier Division Bench order of this court exercising writ jurisdiction in case of Ashok Kumar Vs. the State of Bihar (supra). He has placed reliance upon various judgements of the Supreme Court reported in *(1999) 3 SCC 696 (Virender S. Hooda v. State of Haryana)*, *(2002) 10 SCC (Sandip Singh v. State of Haryana)* as well as *(2013) 12 SCC 171 (Manoj Manu v. Union of India)* to submit that admittedly 39 vacancies remained unfilled because of non joining of candidates and, therefore, the said vacancies ought to have been filled up on the basis of merit list prepared pursuant to the advertisement No. 5/1988, taking into account the division Bench decision of this court rendered on 16.10.2009 in case of Ashok Kumar vs. State of Bihar (supra). Paragraph 15 of the Supreme Court decision in the case of *Manoj Manu v. Union of India* (supra) is relevant and is quoted hereinbelow:-

“15. This court in the Sandeep Singh v. State of Haryana commended that the vacancies available should be filled up unless there is any statutory embargo for the same. In Virender S. Hooda v. State of Haryana, 12 posts for direct recruitment were available when the

advertisement for recruitment was made which was held in the year 1991. Some of the selected candidates did not join in this batch almost similar to the present case, the Court held that the appellant's case ought to have been considered when some of the candidates (sic vacancies arose) for reasons of the non-appointment of some of the candidates and they ought to have been appointed if they come within the range of selection."

9. Mr. Rajiv Roy, learned GP 5, appearing on behalf of the respondents- the State of Bihar, has submitted that it is not the case of the petitioner that any person below in the merit list has been appointed ignoring his claim. He has contended that the petitioner does not have any indefeasible right to be appointed even if his name figured somewhere in the merit list. He has placed reliance upon a decision of this court reported in **2012 (2) PLJR 647 (Subodh Kumar v. the State of Bihar & Ors)** with special reference to paragraphs 14, 20 and 21 and a Supreme Court decision reported in **(2004)2 SCC 681 (Bihar State Electricity Board v. Suresh Prasad & anr.)** with special reference to paragraph 6. He has also relied upon a full Bench decision of this court reported in **2014 (2) PLJR 553 (The State of Bihar & Ors. v. Shardendu Bhushan)** in support of his submission that the petitioner has no indefeasible right to be appointed on the basis of merit list.

10. I need not go into detail of various rival submissions



made on behalf of the parties, in the facts and circumstances of the case, particularly, in view of the observation made by division Bench of this court in MJC No. 3755 of 2012. In its order dated 01.05.2013, part of which has been extracted hereinabove, the division Bench opined, in most unequivocal terms that the merit list prepared pursuant to advertisement No. 5/1988 could not be operated any more. The court further took the view that altogether 424 vacancies were advertised through advertisement No. 5/1988 and the State Government had already filled-in more than 600 vacancies. In view of these observations of the division Bench of this court, no relief, as sought for by the petitioner in the present writ application, can be granted.

11. Mr. Sinha, learned senior counsel, has attempted to pursue me that the said observation could not have been made by the division Bench in a contempt proceeding.

12. In my opinion, the observations of the division Bench are binding on this court which were made in the context of the same selection process and dealing with the same order of the Division Bench of this court in case of Ashok Kumar Vs. State of Bihar & Ors. (supra), which is the foundation for the relief sought for by the petitioner in the present case.

13. I do not find any merit in this writ application. This

writ application is, accordingly, dismissed.

14. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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