

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19013 of 2014

Dr. Ashfaque Ahmad S/o Kefaitullah R/o Village Chaurawn, P.O. Thawe, P.S. Thawe, District - Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Education Department, Govt. of Bihar, Patna.
4. The Director, Department of Secondary Education, Govt. of Bihar, Patna.
5. The Bihar Public Service Commission, Jawahar Lal Nehru Marg (Bailey Road), Patna, through its Secretary.
6. The Examination Controller, Bihar Public Service Commission, Jawahar Lal Nehru Marg (Bailey Road), Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha
For the Respondent State: Mr. Manish Kumar, AC to GP 28
For the B P S C : Mr. Lalit Kishore, Sr. Advocate
Mr. Zaki Haider

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 29-10-2015

By virtue of the present writ application moved by the petitioner, he wants a direction or a mandamus upon the respondents for appointing him on the post of Headmaster in any of the Nationalized Secondary/High Schools, operating in the State of Bihar, since he has the requisite qualifying marks in the written test and interview held by the Bihar Public Service Commission (in short, BPSC).

2. Petitioner pleads that many a persons with 119 qualifying marks have been appointed but for no apparent reason

petitioner has not been appointed.

3. As per Advertisement No. 1 of 2007, published on 7.5.2007 by the BPSC (Annexure-1), petitioner sat for the written examination, also qualified in the interview and obtained 119 marks. The number of posts under various categories was indicated in the said advertisement and petitioner had every legitimate expectation to be appointed on the marks he had obtained, which is 119.

4. It is of significance to note that BPSC had issued three advertisements, one after the other, for filling up posts of such teachers, which Advertisement No.31/05, 32/05 and 01/07. Exercise under different advertisements was carried out. But for some reason , the final notification appointing the selected candidates against the three advertisements came to be issued together. Petitioner wants to take advantage of the recommendations clubbed together by trying to demonstrate that all kinds of mischief and chaos had happened. Some persons or applicants in the three advertisements have been recommended at three different places thereby effectively reducing the number of vacancies, which were required to be filled up. The fact remains that the actual posts required to be filled up was never filled up.

5. A lot of hard work has been done by the petitioner to create a comparative chart to show the confusion in the notification

which became the basis for non-appointment of the petitioner.

6. The State and the BPSC were directed to explain the position. The BPSC in the counter affidavit have clarified and crystallized their stand in para 6. In nut-shell their stand is that the petitioner being an applicant of Advertisement No. 01/07 was considered along with the applicants of the said advertisement. He is a general category candidate. His merit position is 351 and the last person in the general category candidates recommended for such appointment was at merit position 337. There is no other reason for non-recommendation of the petitioner. It is the stand of the counsel for the BPSC that the confusion which the petitioner is creating is only to derive advantage. No doubt, the State authorities issued a notification posting the recommended candidates across the State by clubbing the various recommendees of all the advertisements. But that is in no way a reflection of any kind of arbitrariness or mischief in posting the recommended candidates.

7. Merely because the petitioner at random has picked up similar names figuring in the list and since the list does not provide full details like parentage etc. he can surely try to create an impression that the same person has been appointed or recommended in more than one school.

8. Such an impression was dispelled by the learned senior



counsel representing BPSC. Their stand is that separate recommendations against the three advertisements were made by the BPSC of all the qualified candidates. There is no overlapping between the one advertisement and the other. The notification of posting has been done by the State government as per the merit list recommended by the BPSC.

9. Supplementary counter affidavits have also been filed on behalf of the State and the BPSC. They take an additional plea that even if for the sake of argument the stand of the petitioner is considered that there are certain vacancies subsisting because some persons have not joined or resigned etc. etc. those vacancies cannot be filled up from the candidates who may have been short-listed but not recommended. The law on this issue is well settled, not only by this Court but even the Apex Court. Once the process and selection of appointment is over, the select list loses its effect and no appointment can be made on any subsequent vacancies which may have arisen due to non-joining and resignation etc.

10. From the totality of the submissions and the pleadings, the Court is satisfied that the petitioner has created a ghost to show that less meritorious people have been appointed or that some persons have been recommended for more than one place of positing. The fact stands that the petitioner did not have the requisite merit position

in the general category candidate and he was way below in the merit position. So, he was not recommended by the BPSC for such appointment. There is neither any foul play nor any mischief, which counsel for the petitioner tried to paint a picture.

11. Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

U			
---	--	--	--