

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14982 of 2007

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Binit Prasad, son of Dr. M. Prasad, resident of Mohalla- Bahadurpur,
P.S. Patrakar Nagar, District- Patna

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Personnel and Administrative Reforms Department,
Govt. of Bihar, Patna
3. The Bihar Public Service Commission, through its Secretary
4. The Chairman, Bihar Public Service Commission, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajendra Pd. Singh, Sr. Adv.
Mr. Rajeev Kumar Singh, Adv.

For the Respondent/s : Mr. AC to AAG-4
For the B.P.S.C. : Mr. Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 20-03-2015

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The petitioner, invoking writ jurisdiction of this Court under Article-226 of the Constitution of India, has prayed for directing the respondents for issuance of appointment letter to the petitioner in view of vacancies published for 46th Combined Competitive Examination held by Bihar Public Service Commission (hereinafter referred to as the “B.P.S.C.”).

2. The petitioner has pleaded that 103 posts were advertised and result was published in the year, 2006. After completing the process of selection, names of selected candidates



were recommended by the B.P.S.C. However, some posts remained vacant due to non-joining and some vacancies occurred due to resignation of some of the selected persons. It has been claimed that in view of vacancies occurred subsequent to recommendation, names of candidates from below the recommended names were required to be sent by the B.P.S.C and consequently the State was required to issue appointment letter in favour of petitioner.

3. I have heard Sri Rajendra Prasad Singh, learned Senior Counsel, who was assisted by Sri Rajeev Kumar Singh, learned counsel for the petitioner. A plea was taken by Sri Singh that after the vacancies occurred, it was necessary on the part of the B.P.S.C. to recommend the name of next candidate. In support of his argument, he has placed heavy reliance on a Judgment of the Hon'ble Apex Court reported in AIR 1996 SC 703; Jai Naraian Ram Vs. State of Uttar Pradesh). He has placed reliance on paragraph nos. 7 and 8 of the said Judgment. On the aforesaid ground, it has been pleaded that the writ petition is fit to be allowed.

4. Sri Sanjay Pandey, learned counsel for the Respondent nos.3 and 4/Bihar Public Service Commission and learned AC to AAG-4 have vehemently opposed the prayer of the petitioner relying on stand taken in their counter affidavit. Sri Pandey, learned counsel for the B.P.S.C. submits that B.P.S.C. was only required to



recommend the names against the vacancies notified by the State Government. After recommendation, if any vacancy occurs as per the Government instruction the vacancies were required to be carried forward for the next year examination. It has been argued that after publication of the result of 46th Combined Competitive Examination held by the B.P.S.C, the B.P.S.C. has conducted examination on several years as 47th, 48th to 52nd Combined Competitive Examination and from the date of filing of counter affidavit, which was filed in the year 2011, steps for selection pertaining to 53rd to 55th Combined Competitive Examination was under process. Sri Pandey, learned counsel for B.P.S.C. has placed reliance on Annexure-A to its counter affidavit i.e. a copy of the Judgment of the Apex Court passed in Appeal (Civil) 6084 of 1998. The Judgment of the Apex Court was delivered on 25.02.2004. He submits that almost in similar situation, the matter was examined by the Apex Court and it was held that the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. He has also produced a Government Notification issued by the Government of Bihar dated 17th June, 1977 and placing the provision contained in Clause 4 (xiv) he submits that vacancies remaining unfilled due to candidates not joining the post or for any other reason shall be carried forward to the next year. In any event, it was argued that none of the candidates

below the petitioner was recommended by the B.P.S.C. for being appointed against the said advertisement. Accordingly, it has been prayed to reject the present writ petition.

5. Besides hearing the parties, I have also perused the materials available on record. Fact remains that the petitioner in the said examination was not qualified to be included in the select list against the vacancies advertised by the B.P.S.C. It's hardly matter whether after recommendation any vacancy occurred, since it is not a case of the petitioner that any candidate having lesser marks than the petitioner was recommended by the B.P.S.C. So far Judgment of the Apex Court in Jai Narain Ram's case (supra) is concerned, it appears that in view of particular facts and circumstances of the case, the Apex Court had passed order in favour of the appellant of the case. Moreover, once subsequent to the Judgment of the Hon'ble Supreme Court passed in Jai Narain Ram's case (supra), the Hon'ble Apex Court has clarified the position in a subsequent Judgment i.e. Annexure-A to the counter affidavit of B.P.S.C. passed in Appeal (Civil) 6084 of 1998, the Court is of the opinion that same Judgment is required to be followed in stead of earlier Judgment of the Apex Court. In view of Government instruction and stand taken by the Respondents, all remaining posts occurred subsequent to recommendation was carried forward, no case is made out in favour of

the petitioner.

6. I do not find any ground to interfere in the matter. The writ petition stands dismissed.

(Rakesh Kumar, J)

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