

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1124 of 2016

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1. Raj Kumar Son of Surendra Sharma R/o village - Belhari, P.S. Belaganj, District Gaya and at Present residing Krishna Bhawan North T.N. Path Chiraiyatand, P.S. Kankarbagh, P.O. G.P.O., District - Patna

.... Appellant

Versus

1. Patna High Court through its Registrar General
2. Coordination Committee through its Convener - Cum - District & Sessions Judge, Patna
3. The Convener - Cum - District & Sessions Judge, Patna
4. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
5. The Secretary, Law Department, Government of Bihar, Patna

.... Respondents

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Appearance :

For the Appellant/s	:	Mr. Dinu Kumar, Advocate Mr. Rajesh Kumar Singh, Advocate
For the Respondent High Court:	:	Mr. Mrigank Mauli, Advocate
For the Respondent State	:	Mr. Nawal Kishore Singh, AC to GP 26

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 28-11-2016

Heard learned counsel for the parties.

The challenge in the present Letters Patent Appeal is to an order dated 18th April, 2016 passed by learned Single Bench in C.W.J.C.No. 19734 of 2013 whereby the challenge to notice dated 5th December, 2012 giving appointment to 811 candidates as against the advertised total tentative vacancies of 1296 in terms of advertisement dated 6th February, 2011.

The advertisement was published on behalf of Convenor,



Co-ordination Committee, Patna High Court constituted under Rule 7(3) of the Bihar Civil Court Staff Rules, 2009 to fill up 1296 post of Clerk. Such advertisement also contemplated that the panel prepared for each of the post shall be valid for two years from the date of preparation thereof. Rule 7 (13) of the Bihar Civil Court Staff (Class III & IV Employees) Rule 2009 also contemplates that the panel will remain valid for a period of two years.

The grievance of the appellant is that though advertisement was published for 1296 vacancies but only 811 candidates were appointed out of which many candidates have not joined, therefore, the appellant who is a candidate in the merit list, is entitled to be appointed against one of the vacancies so advertised.

Learned Single Bench of this Court has found that the posts advertised have already been filled up and that a fresh advertisement has been issued on 8th February, 2016 inviting applications from the eligible candidates for appointment to Class III posts and that life of advertisement published in 2011 has exhausted and the panel prepared cannot be used as repository for the future vacancies.

The argument of learned counsel for the appellant is that the advertisement was published for 1296 posts whereas only 811 candidates were appointed and thus for remaining vacancies, the candidates in the merit list was required to be appointed. Learned



counsel for the appellant relies upon the judgment of the Supreme Court, reported as Manoj Manu & another Vs Union of India & Ors 2013(XII)SCC 171).

We have heard learned counsel for the appellant and find no merit in the present appeal. The advertisement was published in the year 2011 for filling up 1296 posts though only 811 posts were filled up. The second advertisement has been published in the year 2016 after a gap of five years. As per the condition in the advertisement and in the Rules, the panel prepared is valid for a period of two years. The result was declared on 5th December, 2012, therefore, in terms of the advertisement and the Rules, the life of panel stood exhausted in December, 2014. The next advertisement has been published in February, 2016 that is after expiry of another two years.

Still further we find that the name of the candidate in the merit list does not confer any right of appointment that is what has been held in the judgment of the Supreme Court reported as Kulwinder Pal Singh & another V. State of Punjab & others, AIR 2016 Supreme Court 2281 wherein the judgment referred to by the appellant such as Manoj Manu's case (Supra) has been considered. It has been held as under:-

“11. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as



well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide Food Corporation of India and Ors. v. Bhanu Lodh and Ors., (2005)3 SCC 618: (AIR 2005 SC 2775); All India SC & ST Employees' Association & Anr. v. A. Arthur Jeen & Ors. (2001)6 SCC 380: (AIR 2001 SC 1851) and Union of Public Service Commission v. Gaurav Dwivedi and Ors. (1999) 5 SCC 180: (AIR 1999 SC 2137).

12. This Court again in the case of State of Orissa & Anr. v. Rajkishore Nanda and Ors. (2010) 6 SCC 777: (AIR 2010 SC 2100, held as under:

14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitution mandate.....”

The Hon'ble Supreme Court has reiterated a well known principle that the mere fact that the name of the candidate appears in the merit list, does not confer any right of appointment. Therefore, mere fact that the name of the appellant is in the list of successful candidate is not a ground on the basis of which any direction can be issued. The fact is whether the name of the appellant is amongst the meritorious candidates is also disputed by the learned counsel for the respondents. It is stated that there are many more meritorious



candidates who were declared successful, therefore, there cannot be any direction to fill up the vacant post that too after the fresh advertisement has been issued in the year 2016.

Still further, We find that the terms in the Advertisement and the Rules is only enabling the provision so as to permit the employer to fill up the vacancies but there cannot be any direction to fill up the vacant post. The gap of five years between the two Advertisements is sufficient to indicate that many more candidates must be eligible candidate and thus a fresh selection process would be more appropriate than to use old selection list.

In view thereof, there is no merit in the Letters Patent Appeal. The same is thus dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

A.I./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.12.2016
Transmission Date	

