

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1553 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 16539 of 2013
Along with
Interlocutory Application No.6996 of 2015

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1. Chandan Kumar Jha, S/o Sri Bhogendra Jha, Resident of village- Kamalpur, P.S.- Pipra Bazar, District- Supaul.
 2. Krishna Pal Singh, S/o Sri Triweni Prasad Singh, Resident of village- Anandipatti, P.S.- Pipra Bazar, District- Supaul.

.... Petitioners -Appellants

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Agriculture, Govt. of Bihar, Patna.
3. The District Officer-cum-Chairman, Kishan Salahkar Chayan Samiti, Supaul.
4. The District Magistrate, Supaul.
5. The District Agriculture officer, Supaul-cum-Secretary, Kisan Salahkar Chayan Samiti, Supaul.
6. Pappu Kumar, S/o Umesh Prasad Singh, Resident of Village- Machcha, P.O.- Kusha, P.S.-, District- Supaul.

.... Respondents-Respondents

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Appearance :

For the Appellants : Mr. Rajendra Pd. Singh, Senior Advocate
Mr. Mukesh Kumar Singh, Advocate

For the Respondents : Mr. Mayank Rukhaiyar, A.C. to G.A.1

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 24-06-2016

Re.: Interlocutory Application No.6996 of 2015

The application is for condonation of delay of 214 days in filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.1553 of 2015

The order dated 14th November, 2014 is subject matter of challenge in the present Letters Patent Appeal passed by the learned Single Judge of this Court. The challenge in the writ petition was to an order dated 04.07.2013 passed by the District Magistrate, wherein the claim of the appellants for appointment to the post of *Kisan Salahkar* was not accepted.

181 posts of *Kisan Salahkar* were advertised, including 91 posts meant for general category. 91 candidates as per the merit list were offered appointment, but candidates at serial no.17, 50 and 52 did not submit their joining. Consequently, three posts fell vacant. Such three posts were offered to the candidates higher in the merit, but the appellants whose names appear at merit nos.139 and 151 respectively were not offered the appointment which made them to invoke the jurisdiction of this Court for appointment. In terms of a direction issued by this Court, the learned District Magistrate found that there are 12 candidates above appellant no.1 and 23 candidates above appellant no.2 who have not been appointed. Therefore, the appellants could not be offered appointment. It is the said decision which was challenged by the appellants by way of a writ application which stands dismissed.

The learned Single Judge found that all 91 posts meant for general category stands filled up. There are candidates higher in merit



empanelled in the merit list, therefore, the appellants being lower in the merit list were not considered for appointment. It was noticed that there are 9 candidates above appellant no.1 and 23 candidates above appellant no.2. It was also found that six posts which have remained vacant either due to resignation and non-joining are required to be filled up by fresh advertisement which has been issued as per I.A. No.5384 of 2014 filed by the appellants.

We have heard learned counsel for the appellants and find no merit in the present Letters Patent Appeal. As against 181 posts advertised, 91 posts fell to the quota of general category. The appellants are at serial no.139 and appellant no.2 at serial no.151. Therefore, the names of the appellants do not fall as per the merit list for appointment. The appellants have claimed appointment against the vacancies which have occurred due to resignation of candidates, who had joined and then resigned, or other vacancies. All such vacancies can be filled up only by way of fresh advertisement which admittedly has been issued.

Similar question has been examined by the Hon'ble Supreme Court recently in the judgment dated 12th of May, 2016 passed in Kulwinder Pal Singh and Anr. Versus State of Punjab and others (Civil Appeal Nos.5035-5036 of 2016), wherein the Court has held to the following effect:

18. Learned counsel for the appellants submitted that the appellants have been pursuing the matter for about eight years and even today there are vacancies in Punjab Judicial Service and thus prayed that

direction be issued to the respondents to consider the case of the appellants as against the existing vacancies. This contention does not merit acceptance. Appointment to an additional post or to existing vacancies would deprive candidates who were not eligible for appointment to the post on the date of submission of the applications mentioned in the advertisement but became eligible for appointment thereafter. After referring to Rakhi Ray, Rajkishore Nanda and other decisions, High Court rightly held that the candidates much more than the vacancies advertised have already been permitted to join and thus the appellants cannot claim any legal right in respect of the posts of reserved category remaining unfilled. The impugned judgment does not suffer from any infirmity warranting interference in exercise of our jurisdiction under Article 136 of the Constitution of India.”

Since the advertised vacancies have been filled up, therefore, the appellants cannot be permitted to lay any claim on the other available vacancies.

In view thereof, we do not find any merit in the present Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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