

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.289 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 8625 of 2012

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1. Bihar State Electricity Board Patna Through its Chairman, Presently Bihar State Power (Holding) Company Ltd. Through its Chairman Cum Managing Director having Office at Vidyut Bhawan, Bailey Road, Patna
 2. The Chairman Bihar State Electricity Board, Vidyut Bhawan, Patna Presently its Chairman Cum Managing Director Having Office At Vidyut Bhawan, Bailey Road, Patna
 3. The Joint Secretary, Department Of General Administration, Bihar State Electricity , Vidyut Bhawan, Patna Presently Joint Secretary, Bihar State Power (Holding) Company Ltd. having Office at Vidyut Bhawan, Bailey Road, Patna

.... Appellants/ Respondents

Versus

1. Abhishek Ranjan S/O Late Radheshyam Mandal R/O Vill - Guria, P.O. + P.S. - Bounsi, Distt – Banka Respondent-Petitioner 1st set
2. The State of Bihar Through Principal Secretary, Department Of Energy, Govt. Of Bihar, Patna

.... Respondent 2nd set- Respondents

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Appearance :

For the Appellant/s : Mr. Anand Kumar Ojha, Addl. Standing Counsel
For the Respondent : Mr. Radha Mohan Pathak
Mr. Prabhakar Dwivedi
For the State : Mr. Vijay Bharti, AC to SC 26

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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: 28-06-2016

The order dated 10th/12th April, 2013 passed by the learned Single Bench of this Court in CWJC No. 8625 of 2012, whereby the writ application filed by the applicant-respondent no.1 herein was allowed, is under challenge in the present Letters Patent Appeal.

The appellant-Bihar State Electricity Board, Patna (hereinafter referred to as “Board”) decided to make appointment to



the vacant posts of Assistant Electrical Engineer through campus selection process from different Engineering Institutes in the State of Bihar. The campus selection process was based by the marks obtained by the candidates in pre-final year and after marks obtained in the final year of the course were taken into consideration for preparation of final select list. The writ applicant was selected for such campus selection as BC candidate and was ranked 11 in the merit list of such candidates. A letter of appointment was issued on the basis of such selection on 28th September, 2011 but before the writ applicant could join the offer of appointment was withdrawn on 14th October, 2011. The communication withdrawing the offer of appointment reads as follows:-

“BIHAR STATE ELECTRICITY BOARD, PATNA
(Department of General Administration)
Letter No. 1817, Patna, dt. 14.10.11

From

P K Govil
Joint Secretary

To

Sri Abhishek Ranjan
C/o Late Radheshyam Mandal
Vill. Guria, PO +PS Baunsi
Distt. Banka

Sub: Regarding withdrawal of offer of appointment issued under letter no.1704 dt. 28.9.2011 for appointment to the post of Assistant Electrical Engineer (General).

Sir,

I am directed to inform that on verification it was found that as per decision of the Board only 10 candidates were selected under BC category on the post of AEE (Gen.).

As per the merit list of AEE (Gen.) proposed for campus selection, your selection comes under BC category. Since as per rule only 10 posts comes under BC category, the offer of appointment

issued under Letter No.1704 dt. 28.09.2011 on the post of Assistant Electrical Engineer (Gen.) is hereby withdrawn as you rank junior to the last candidate selected in the BC category.”

Aggrieved against the action of the appellant in withdrawing the offer of appointment, the applicant filed the aforesaid writ application which has since been allowed by the learned Single Bench by the order impugned, inter alia, on the ground that there were vacancies against the posts for which the campus selection was made. Therefore, the action of the Board in not offering the appointment to the applicant is not tenable.

Learned counsel for the appellants points out that the process of campus selection for the post of Junior Engineer became the subject matter of challenge before a Division Bench of this Court in the case of *Pravin Kumar vs. State of Bihar [2011(4) PLJR 214]*, decided on 26th July, 2011. Such process was adversely commented upon.

A perusal of the communication dated 14.10.2011 withdrawing the offer of appointment shows that the offer for appointment was withdrawn for the reason that there were 10 posts in BC category and the writ applicant was placed below to the last 10th candidate selected in BC category. In the counter affidavit it was explained that there was error in calculating the seats for BC category, therefore, it was decided to be corrected. It was also pointed out that



discrepancies were found in the marks calculated on the basis of performance up to pre-final year. The same was re-calculated and revised; as a result one Miss Manisha was selected under BC category. It is also pointed out that only 8 candidates joined under BC category. Thus, two posts remained vacant. In view of the more requirements of Engineers, the Board decided to issue advertisement for appointment through open market including the two posts of BC category.

Learned counsel for the appellants refers to the judgment of the Hon'ble Supreme Court in the case of *Shankarshan Dash vs. Union of India [(1991) 3 SCC 47]*, and *Bihar State Electricity Board vs. Suresh Prasad [2004 (2) SCC 681]*. Learned counsel also refers to a Division Bench judgment of this Court in the case of *Subodh Kumar vs. State of Bihar [2012(2) PLJR 647]*, wherein in fact the learned Single Judge was a member of the Bench. In *Shankarshan Dash's* case (supra), the Court held to the following effect :-

“ 7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken



bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha*, (1974) 1 SCR : (AIR 1973 SC 2216), *Miss Neelima Shangla v. State of Haryana*, (1986) 4 SCC 268 : (AIR 1987 SC 169), or *Jitendra Kuamr v State of Punjab*, (1985) 1 SCR 899 : (AIR 1984 SC 1850).

8. In this background it was observed that it is, of course, open to the Government not to fill up all the vacancies for a valid reason, but the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and there must be a conscious application of mind by the Government and the High Court before the number of persons selected for appointment is restricted. The fact that it was not for the Public Service Commission to take a decision in this regard was emphasized in this judgment. None of these decisions, therefore, supports the appellant”.

In *Suresh Prasad's* case (supra), the Court found that there is no rule mandating the Board to prepare a waiting list in addition to the panel for the purpose of appointment. Therefore, there cannot be any direction only for the reason that the candidate was duly selected.

A Division Bench of this Court in the case of *Subodh Kumar vs. State of Bihar* [2012 (2) PLJR 647] referring the judgment of this Court in *Bihar State Electricity Board vs. Suresh Prasad*.(supra), observed in paragraph -8 as follows:-

“8. In the matter of Bihar State Electricity Board (supra), in similar



circumstances the Hon'ble Court held that in the absence of statutory rule to the contrary, the employer was not bound to offer the unfilled vacancies to the candidates next below the candidates in the merit list. The Hon'ble Court also considered the above-referred judgment in the matter of Jai Narain Ram (supra) and has distinguished the same on the ground that the respondents therein had conceded before the Court that the reserved post could be filled up by the candidates of reserved categories alone."

On the other hand, learned counsel for the respondent-writ applicant refers to the judgments of the Supreme Court in the cases of *R S Mittal vs. Union of India [1995 Supp(2) SCC 230]* and *Manoj Manu vs. Union of India [2013(12) SCC 171]* as well as Division Bench Judgment of this Court reported as *Ashutosh Kumar Vinayak vs. State of Bihar [2000 (3) PLJR 495]*, to contend that the State is bound to offer appointment to the candidates who are in the select list.

We have heard learned counsel for the parties and found that the order of the learned Single Bench is not sustainable.

In *Shankarshan Dash's* case, following the case of *State of Haryana vs. Subhash Chaner Marwaha (AIR 1973 SC 2216)*, the Supreme Court observed that merely because the name of a candidate in the select list does not give him right of appointment but the State Government must record reason as to why the appointment is not to be offered. In the present case, the reasons have been recorded in the letter withdrawing the offer of appointment that the name of the writ



applicant is junior to the candidates relating to the available vacancies. Still further, in the counter affidavit it has been averred that there are large number of vacancies of Assistant Engineer; therefore, the existing vacancies in the campus selection process have been included to be filled up by direct recruitment. Even the process of campus selection has been adversely commented upon in another judgment of this Court in the case of **Pravin Kumar** (supra). Therefore, the action of the appellant in withdrawing the letter of appointment issued to the writ applicant cannot be said to be unjustified or illegal as it is for the employer not to offer appointment to a candidate but for a good and valid reason. The valid reason is that the vacant posts should be filled up through open advertisement rather than from the select list prepared on the basis of campus interview.

The judgment of the Hon'ble Supreme Court in the case of **R S Mittal** (supra), is to the effect that although a person on the select panel has no vested right to be appointed to the post for which he has been selected, but denial of appointment to a selected candidate without a proper reason is unjustified. Since the reasons are forthcoming in the present case, therefore, the said judgment does not help the writ applicant in any manner. Similarly in the case of **Manoj Manu** (supra), it has been held that it is always open to the Government not to fill up all the vacancies but there should be valid

reasons for adopting such action.

The attention of the Division Bench in the case of *Ashutosh Kumar Vinayak* (supra) was not drawn to the Supreme Court judgments in the cases of *Subhash Chander Marwaha* (supra) and *Shankarshan Das* (supra), which have laid down the principles contrary which have been laid down by the Division Bench in *Vinayak's* case.

In view thereof, we find that the order of the learned Single Bench directing the appellant-Board to offer appointment to the writ applicant cannot be sustained. Consequently, the present appeal is allowed. The order dated 10th/12th April, 2013 passed by the learned Single Bench in CWJC No. 8625 of 2012, is set aside and the writ application is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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