

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.760 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 10994 of 2010**

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Akhilesh Kumar Singh, S/o Sri Ambika Singh, R/o Village - Manjhiaon, P.O. Manjhiaon, District - Garhwa (Jharkhand) Presently resident of Sardar Patel Colony Near - Patliputra Telephone Exchange, Kurji Patna

.... Appellant/s

Versus

1. The State of Bihar
2. The Secretary, Information and Public Relation Department, Govt. of Bihar, Patna
3. The Director, Information and Public Relation Department, Govt. of Bihar, Patna
4. The Joint Director, Information and Public Relation Department, Govt. of Bihar, Patna
5. The Under Secretary Home (Special) Department, Govt. of Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Kumar Jain, Advocate.

For the State : Mrs. Namrata Mishra, GA-6

Mr. Alok Ranjan, AC to GA-6.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 06-10-2016

Heard learned counsel for the parties.

2. The challenge in the present intra court appeal is to the order dated 29.11.2011 passed by the learned Single Bench by which CWJC No. 10994 of 2010, filed by the appellant, has been dismissed.

3. The appellant had applied for his appointment to the post of Van Driver pursuant to an advertisement issued by the Bihar Public Service Commission, Patna (hereinafter referred to as the 'BPSC') on 26.11.1997 for 39 posts. After interview, the BPSC



published the result in the newspaper on 28.01.2000 of 15 candidates, out of which 13 belonged to the General Category and 02 to the Scheduled Tribe. It was also stated that no candidate was available for appointment in the category of Scheduled Caste, Backward Class, Extremely Backward Class and Women category. The appellant figured in the list of successful candidates. The selected candidates, including the appellant, were directed to submit original documents relating to educational qualification as well as technical experience and driving licence, which was complied with. When no appointment letter was received by the successful candidates, including the appellant, they submitted representation before the authority concerned to appoint them.

4. 12 candidates, including the appellant, moved this Court in CWJC No. 2318 of 2001, which was disposed off by order dated 13.07.2004 observing that during the pendency of the writ application, 10 out of 12 writ petitioners, excluding the appellant, had been appointed, but pursuant to lesser number of vacancies and roster clearance, the matter was sent to the BPSC for fresh recommendation. The left out persons, including the appellant, were directed to represent before the appropriate authority and in case certain vacancies are available, their cases may be considered in accordance with law.



5. In pursuance of the direction of the Court, the Director, Information and Public Relation Department, Bihar, Patna issued Letter No. 53 dated 08.04.2005 directing the BPSC to recommend the name of the appellant. The appellant not being appointed represented afresh on 17.06.2006.

6. The appellant filed M.J.C. No. 1356 of 2007, in which the Department brought on record order dated 22.10.2007 rejecting the claim of the appellant. M.J.C. No. 1356 of 2007 was disposed off on 01.04.2010 giving liberty to the appellant to challenge the order dated 22.10.2007. The appellant, thus, filed CWJC No. 10994 of 2010 assailing the order dated 22.10.2007 and the order dismissing the writ application dated 29.11.2011 is the subject matter of the present Letters Patent Appeal.

7. Learned counsel for the appellant submitted that once his name had been recommended initially and there being vacant posts available, he had to be appointed. He submitted that the materials brought on record, which are copies of official letters/documents, show that still posts are available as the number of vehicles is more than the drivers available and the appellant once having been found suitable, the authorities are required to appoint him. It was further submitted that even as per the earlier order of the Court dated 13.07.2004 in CWJC No. 2318 of 2001, the authorities



were directed to decide the claim of the appellant in case certain vacancies were available. Thus, when admittedly, vacancies are available, non-appointment of the appellant is in the teeth of the order of the Court. It was further submitted that the appellant has now become overage for any other employment and thus, a compassionate view may be taken. Learned counsel submitted that the Director asking the BPSC to recommend the name of the appellant also indicates that the appellant has been wrongly denied appointment.

8. Learned counsel for the State submitted that upon bifurcation of the State, the number of posts got reduced and thus, the BPSC was asked to send recommendations for only 18 vacancies and the previous recommendation was returned. It was submitted that the BPSC, thereafter, on 26.06.2001, recommended only the names of 12 candidates, which did not contain the name of the appellant and thus, there has been no discrimination or illegality in the appellant not being appointed. It was submitted that the order of the Court in CWJC No. 2318 of 2001 was rightly complied with and thus, M.J.C No. 1356 of 2007, filed by the appellant alleging non-compliance, was disposed off. It was submitted that since there are sufficient number of drivers, any further appointment is not required to be made.

9. Having considered the rival contentions, we do not find any merit in the present appeal. The appellant may have been



recommended earlier for appointment, but under the changed circumstances, if the position of vacancies gets modified, as has happened in the present case, and the authorities having sent the list of recommended persons back to the BPSC for sending fresh recommendation, in terms of the revised vacancy position, such exercise cannot be said to be arbitrary or illegal. The appellant having assailed the second recommendation by the BPSC, in which his name was not included, and the Court not interfering with such recommendation, clearly indicates that there was no illegality in the same.

10. Further, the appellant has also not raised the plea that any person below him in the merit list has been either recommended or appointed; therefore, no case of discrimination is made out. Moreover, it is for the employer to decide as to whether, despite availability of vacancies, the same are to be filled up or not and the successful candidates in the selection process do not acquire any indefeasible right to be appointed.

11. The Hon'ble Supreme Court, in the case of ***The State of Haryana v. Subash Chander Marwaha and Ors.*** reported as ***AIR 1973 SC 2216***, has held as under:

“8. It is rather difficult to follow the reasoning of the High Court in this case. It agrees that the advertisement mentioning 15 vacancies did not give a right to any



candidate to be appointed to the post of a Subordinate Judge. Even so it somehow persuaded itself to spell out a right in the candidates because in fact there were 15 vacancies. At one place it was stated “so long as there are the number of vacancies to be filled in and there are qualified candidates in the list forwarded by the Public Service Commission along with their Rolls, they have got a legal right to be selected under Rule 10(ii) in Part ‘C’.” One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate’s name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect. The true effect of Rule 10 in Part C is that if and when the State Government propose to make appointments of Subordinate Judges the State Government (i) shall not make such appointments by traveling outside the list and (ii) shall make the selection for appointments strictly in the order the candidates have been placed in the list published in the Government Gazette. In the present case, neither of these two requirements is infringed by the government. They have appointed the first seven persons in the list as Subordinate Judges. Apart from these constraints on the power to make the appointments, rule 10 does not impose any other constraint. There is no constraint that



the Government shall make an appointment of a Subordinate Judge either because there are vacancies or because a list of candidates has been prepared and is in existence”.

12. Similar view has also been taken by the Hon’ble Supreme Court in the case of *Shankarsan Das v. Union of India* reported as **(1991) 3 SCC 47**, which reads as under:

“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) 3 SCC 220: (1974) 1 SCR 165: 1973 SCC (L & S) 488; *Neelima Shangla vs. State of Haryana*, (1986) 4 SCC 268: 1986 SCC (L & S) 759; or *Jatendra Kumar v. State of Punjab*, (1985) 1 SCC 122: (1985) 1 SCR 899: 1985 SCC (L & S) 174”.



13. For the reasons aforesaid, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal, which, accordingly, stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

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