

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11749 of 2013

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Motiur Rahman Ansari, son of late Mohammad Siddique Ansari, resident of Village
- Akhtiyarpur, Post- Garkha, P.S. Garkha, District - Saran, Chapra

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, the Science and Technology Department, Government of Bihar, Patna
3. The Deputy Secretary, The Science and Technology Department, Government of Bihar, Patna
4. The Bihar Public Service Commission, through its Chairman, Bailey Road, Patna
5. The Chairman, Bihar Public Service Commission, Bailey Road, Patna
6. The Secretary, Bihar Public Service Commission Bailey Road, Patna
7. The Deputy Secretary, Bihar Public Service Commission, Bailey Road, Patna
8. Sri Ravindra Lal Son of Sri Lakhan Lal, resident of Village - Nijamuddinpur, Post,P.S. and District - Jehanabad

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Senior adv.
Mr. Subh Narayan singh, adv.
For the State : Mr. Nawal Kishor singh, A.C. to G.P.- 26
For the BPSC : Mr. Sanjay Pandey, adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-09-2016

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Bihar Public
Service Commission.

2. In this case, the petitioner is challenging the order

containing memo No.2312 dated 28.09.2012, whereby the Principal Secretary, Science and Technology Department, Government of Bihar, has rejected the representation of the petitioner.

3. The short facts of this case are that the Science and Technology Department, Government of Bihar, issued an advertisement for five posts of Assistant Professor, Physics, out of which one post was reserved for extremely backward class candidate. After bifurcation of the State of Bihar, one vacancy for the extremely backward class post remained with the State of Bihar. The Commission has recommended the name of altogether six persons. In the said recommendation / list, Mr. Janardhan Prasad Mahto was at Serial No.1, Mr. Ravindra Lall was at Serial No.2 and the petitioner was at Serial No.3.

4. The name of Mr. Janardhan Prasad Mahto was recommended for appointment, but his native State was Jharkhand and as such after bifurcation, the benefit of reservation was not granted to him. Next person was the Ravindra Lall, his case was recommended for the appointment, but he was also not appointed on account of non-availability of post as the Government has filled up the post by transfer.

5. Learned counsel for the petitioner submits that the petitioner is the third person in the recommendation / list and when Mr. Ravindra did not join, recommendation should have been made in his favour as he was the third person in the said recommendation/list.

6. Being aggrieved by the action of the respondent-authorities, the petitioner approached this Court vide C.W.J.C. No.8411 of 2007. This Court vide order dated 13.03.2012 disposed of the said writ application in the following terms:-

“4. Aforesaid submission has been made in the reply to the counter affidavit filed by the petitioner, copy whereof has been served on the counsel for the State and Commission today in Court itself. In the circumstance, this writ petition is disposed of directing the petitioner to represent before the Principal secretary, Science and Technology Department of the State Government highlighting the aforesaid fact that the candidate recommended for appointment against the post of Assistant Professor (Physics) in the M.B.C. category has not been appointed as recommended candidates have not chosen to join, whereafter the Principal Secretary shall consider the representation of the petitioner and pass appropriate order as also take suitable steps with the Commission so that appointment on the post of Assistant Professor (Physics) pursuant to Advertisement No.26/99 is made from the M.B.C. category at the earliest not

exceeding three months from the date of receipt/production of a copy of this order before the Principal Secretary.”

7. In pursuance of the aforesaid order, the Deputy Secretary, Science and Technology Department considered the case of the petitioner and rejected his claim, holding that the vacancy is not available as the same has been filled up by transfer and as such, appointment could be conferred upon the petitioner.

8. It is an admitted fact that Ravindra Lall is the second person whose name was recommended for appointment, but was not appointed on account of non-availability of the vacancy, but said Ravindra Lall has not challenged the action of the respondents. In the present case also the petitioner is not making allegation that any person below him has been appointed and his case has been rejected, but the case of the present petitioner is that though Ravindra Lall has not challenged the action of the respondents, but he has a cause and he can claim the post as he is the next person in the merit list.

9. The reliance has been placed by the learned counsel for the petitioner on the decision of the Hon'ble Supreme Court in the case of *Manoj Manu and Another vs. Union of India and Others*,



reported in **(2013) 12 , S.C.C. 171** will not be applicable to the facts of the present case as the same was decided in different facts and situation, but the Hon'ble Supreme court has held that "*we are conscious of the legal position that merely because the name of a candidate finds place in the select list, it would not give him/her indefeasible right to get appointment as well. It is always open to the Government not to fill up all vacancies. However, there has to be a valid reason for adopting such a course of action*".

10. Learned counsel for the petitioner has also drawn my attention to paragraph No.12 of the said judgment, where it has been held that the Government may decide not to fill up all the vacancies, but reason should be there for not appointment, but so long the reason which has been given by the respondent authority in annexure-1 for rejecting the claim of the petitioner appears to be valid reason and this Court does not find any error in the said order.

11. Learned counsel for the State has placed reliance on the decision of the Apex Court in the case of ***State of Haryana vs. Subash Chander Marwaha***, reported in **(1974) 3, S.C.C. 220**, there the Hon'ble Supreme Court held that merely standing the name in the merit list does not create any indefeasible right for his / her appointment.

12. Having considered the aforesaid facts, this Court is of the view that when Ravindra Lall has been deprived of his appointment, it can be best for Ravindra Lall to challenge his non-selection, the petitioner is the third one in the recommendation, he does not have any right to challenge the action of the respondents for and on behalf of Ravindra Lall. Further, advertisement in question is of the year 1999 already 17 years have passed, so much so that Ravindra Lall has not shown any interest in challenging the action of the respondents- authority, in such a situation, it will not be proper to give direction for appointment of the petitioner after such a long delay.

13. In such view of the matter, this Court does not find any merit in the present application. Accordingly, this writ application is dismissed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
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