

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.75 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 6140 of 2011

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1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
 2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
 3. The Joint Secretary, General Administration Department, Govt. of Bihar, Old Secretariat, Patna
 4. The Deputy Secretary, General Administration Department, Govt. of Bihar, Old Secretariat, Patna
 5. The Principal Secretary, Department of Labour Resources, Govt. of Bihar, Patna
 6. The Secretary, Bihar Staff Selection Commission, P.O. Veterinary College, Patna- 14

.... Appellants

Versus

1. Dimpee Rani, D/o Shri Satyendra Kumar, Resident of Village- Ganpat Bigha, P.O.- Hilsa, P.S.- Hilsa, District- Nalanda, Presently Posted as Stenographer in the Department of Nibandhan, Utpad aur Madya Nishedh, Govt. of Bihar, New Secretariat, Patna
2. Jyoti, D/o Sri Sita Ram Singh, Resident of Village/Mohalla- Beur, P.S.- Anisabad, District- Patna at presently posted as Stenographer in the Department of Health, Vikash Bhawan, Government of Bihar, New Secretariat, Patna
3. Dharmendra Kumar, S/o Shri Krishnaj Pandit, Resident of Village- Oieyaw, P.S.- Oieyaw, District- Nalanda, Presently posted as Stenographer in the Commercial Taxes Tribunal, Commercial Tax Department, Old Secretariat, Barack No. 9A, Bihar, Patna
4. Sujeet Kumar, S/o Shri Subhash Prasad, Resident of Village/Mohalla- Garhpur, P.O. Bihar Sharif, District- Nalanda, Presently posted as Stenographer at Bihar State Law Commission, Law Department Main Secretariat, Govt. of Bihar, Patna
5. Vishwajit Kumar, S/o Shri Virendra Tanti, Resident of Village/Mohalla- Asha Nagar, P.O.- Sohsarai, P.S.- Sohsarai, District- Nalanda, Presently posted as Stenographer in State Election Commission, Bihar Panchayat Raj Department, Sone Bhawan, Third Floor, Birchand Patel Path, Patna
6. Shafika Jabeen, D/o Shri Muzaffar Hasan, Resident of Village/Mohalla- Sohdi, P.S. Sohsarai, District Nalanda, presently posted as Stenographer in Department of Finance, Govt. of Bihar, Old Secretariat, Patna
7. Pankaj Kumar, S/o Shri Nageshwar Singh, Resident of Village- Audi, P.O.- Audi, P.S. Asthawan, District- Nalanda, at presently posted as Stenographer in Chief Minister's Secretariat, 4 Desh Ratana Marg, Bihar, Patna
8. Narendra Kumar, S/o Shri Ram Sagar Thakur, Resident of Village- Mcriyawan, P.O. Sain, P.S. Dhanarua, District- Patna, presently posted as Stenographer in Mhadalit Commission, Bailey Road, Patna
9. Dhananjay Kumar, S/o Shri Shiv Nandan Prasad, Resident of Village- Dihra, P.O. Jagatpur, P.S.- Chandi, District- Nalanda, presently posted as Stenographer in Chief Minister's Secretariat, 4 Desh Ratna Marg, Bihar, Patna
10. Bharat Kumar, S/o Shri Munna Lal, Resident of Village- Noorsarai, P.O.-

Noorsarai, P.S.- Noorsarai, District- Nalanda, at present posted as Stenographer in Chief Minister's Secretariat, 4 Desh Ratan Marg, Bihar, Patna

11. Sanjeev Ranjan, S/o Shri Rajeshwar Prasad, R/o Village/Mohalla- Damaria, P.O. Anisabad, P.S.- Anisabad, District- Patna at presently posted as Stenographer in State Election Commission, Bihar (Panchayati Raj Department), Sone Bhawan, Third Floor, Birchand Patel Path, Patna

12. Jay Prakash, S/o Shri Ram Sagar Singh, Resident of Village- Telmar, P.O.- Telmar, P.S.- Noorsarai, District- Nalanda at presently posted as Stenographer in Directorate of Provident Fund, Finance Department, Govt. of Bihar, Old Secretariat, Bihar, Patna

13. Pravaw Ranjan, S/o Shri Brahmdeo Prasad, Resident of Village- Bahadi Bigha, P.O. Onda, P.S. Saare, District- Nalanda, at presently Posted as Stenographer in Chief Minister's Secretariat, 4 Desh Ratan Marg, Bihar, Patna

.... Respondents

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Appearance :

For the Appellants : Mr. Anjani Kumar, A.A.G. 6
Mr. Sanjay Prasad, A.C. to A.A.G. 6

For the Staff Selection
Commission : Mr. Prabhat Kumar Singh, Advocate.

For the respondents : Mr. Sanjay Singh, Advocate.
Mr. Arun Kumar, Advocate.
Mr. Bipin Kumar, Advocate.

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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: 06-05-2016

Heard learned counsel for the appellants, respondents and the Bihar Staff Selection Commission (hereinafter referred to as “the Commission”).

2. The order dated 17th of July, 2012 passed by the learned Single Bench of this Court in C.W.J.C. No. 6140 of 2011 is subject matter of challenge in the present Letters Patent Appeal, whereby an order dated 23rd of March, 2011 passed by the State Government was set aside.



3. The Commission published an advertisement bearing No. 1505 of 2005 on 08.10.2005 for appointment of 135 Stenographers. The advertisement contemplated that such posts are in various districts including National Saving Organization, Labour Employment and Training Department in the pay scale of Rs. 4000-100-6000/-. The writ petitioners, respondents herein (for short “the applicants”) were the candidates for such appointment. Out of the short-listed 77 candidates against the said advertisement, 62 candidates were given appointment. The applicants were the candidates who waited for their appointment. Later, the Commission sent the names of the applicants for appointment in the Labour Employment and Training Department on 25.05.2006. However, such recommendation was not accepted by the said Department on 20.10.2006 (Annexure-F to the counter affidavit filed by the Commission) on the ground that the information sent to the Labour Commissioner, Bihar on 19th of July, 2004 and to the Commission was the information relating to the vacant posts and was not a requisition for appointment. Consequently, the names of the applicants were sent back to the Commission. It is thereafter the Commission recommended the name of the applicants to the Personnel and Administrative Reforms Department on 21st of December, 2006 as per Annexure-H attached to the counter affidavit filed by the Commission. The said communication is in response to

the communication of the Personnel and Administrative Reforms Department dated 13th of March, 2006 while giving reference to the posts advertised vide Advertisement No. 1505 of 2005.

4. It is in pursuance of such recommendation, 15 candidates were recommended (one candidate has since resigned) and appointed by the Personnel and Administrative Reforms Department on 05.04.2007. These 14 candidates are the writ applicants.

5. A separate advertisement being Advertisement No. 906 of 2006 was published on 18th of May, 2006 (Annexure-6 to the writ application) inviting applications for total 304 vacant posts for Stenographers in the pay scale of Rs. 4000-100-6000/- in the Personnel and Administrative Reforms Department, National Saving Organization, Labour Employment and Training Department etc. The said advertisement was issued consequent to the recommendations of the General Administration Department dated 13th of March, 2006 to fill up 238 vacant posts of Stenographers. The other posts are said to be the post of Labour Employment and Training Department over and above the posts advertised earlier in terms of the alleged requisition of Labour Employment and Training Department of 54 left over vacancies of Stenographers which were not advertised while publishing Advertisement on 8th of October, 2005.

6. After the return of the names of the applicants by the



Labour Employment and Training Department, the names of the applicants were recommended to Personnel and General Administration Department on 21st of December, 2006, as mentioned above. The said recommendation was accepted and the applicants were appointed on 5th of April, 2007. At this stage, it may be mentioned that the applicants were not the candidates who submitted applications pursuant to Advertisement No. 906 of 2006.

7. After the appointment of the applicants, the candidates, who were appointed in pursuance of the first advertisement, filed C.W.J.C. No. 11718 of 2009 claiming parity with the candidates who have been appointed in the Personnel and General Administration Department. Such writ application was disposed of on 8th of September, 2009 with a direction to consider the claim of the petitioners therein. In terms of such direction, the 15 candidates who were appointed in the Personnel and General Administration Department were sent to the Labour Employment and Training Department vide order dated 10th of November, 2009.

8. The applicants filed C.W.J.C. No. 15754 of 2009 aggrieved against the said decision; whereas the other appointed candidates pursuant to Advertisement No. 1505 of 2005 filed C.W.J.C. Nos. 4219 of 2010 (Nishant Gaurav & Ors. Vs. The State of Bihar & Ors.) and 9460 of 2010 (Ram Katesh Singh Vs. The State of



Bihar & Ors.). Such writ applications were decided on 26th of November, 2010 with a direction to the respondents to pass fresh orders. This Court set aside the earlier order dated 06.11.2009. It is thereafter, the impugned order dated 23rd of March, 2011 was passed sending the applicants to the Labour Employment and Training Department against the post advertised vide Advertisement No. 1505 of 2005. It may be stated that in the meantime, there were separate set of rules which came into being; one in respect of the Stenographers of the Secretariat called Bihar Sachivalaya Ashulipik Seva Niyamavali, 2006 published on 14th of June, 2006. The candidates appointed in pursuance of Advertisement No. 906 of 2006 are the candidates governed by the said set of rules; whereas the candidates appointed pursuant to Advertisement No. 1505 of 2005 are governed by another set of rules called Bihar Kshetriya (Samaharnalaya) Ashulipik Samvarg Niyamavali, 2006 published on 9th of October, 2006. The service conditions and channel of promotion were more liberal in the Secretariat service than the conditions of service of the candidates appointed in respect of the Regional offices.

9. The learned Single Bench allowed the writ application for two reasons; firstly, the advertisement dated 18.05.2005 was wrongly issued by the Commission as the post of Labour Employment and Training Department were included without requisition; secondly,



the Commission recommended the name of the applicants for the post of Stenographers of Civil Secretariat in Labour Employment and Training Department. Since such names were accepted by the Government and they were given appointment, therefore, the appointment of the applicants against the said post cannot be said to be illegal. It is in these circumstances, the State is in appeal before this Court.

10. Learned counsel for the appellants vehemently argued that the applicants were the candidates for appointment against 135 posts only. If there were number of posts not available, as communicated by Labour Employment and Training Department, the name of the applicants could not be sent for appointment in respect of another advertisement published on the basis of requisition of the other departments. It is contended that mere fact that the applicants were short-listed for appointment does not confer any right to seek appointment as mere selection does not confer any right to seek appointment. Reference may be made to State of Haryana Vs. Subhash Chander Marwaha (1974) 3 SCC 220.

11. It is further argued that the recommendation of the Commission on 21st of December, 2006 was against the requisition for 238 posts sent by the Personnel and Administrative Reforms Department on 13th of March, 2006. It is in pursuance of the said



requisition; an advertisement was published on 18th of May, 2006. Whereas the applicants have applied for the posts in pursuance of the advertisement published on 8th of October, 2005. The letter of the Commission though is in response to the communication on 13th of March, 2006 but it makes reference to the Advertisement No. 1505 of 2005 on account of which, the State Government accepted the recommendation and appointed the applicants without realizing that the requisition referred to by the Commission was different requisition and the advertisement published. Therefore, the applicants cannot be appointed in the General and Administrative Reforms Department as they were never the candidates for such appointment.

12. On the other hand, learned counsel for the respondents argued that the applicants were the selected candidates and were recommended for appointment. Since in the subsequent Advertisement No. 906 of 2006, there were posts of Labour Employment and Training Department, therefore, the applicants could very well be appointed against the said posts. Still further, the applicants were appointed in the Personnel and General Administration Department without any fault of them. Therefore, at this stage, to allocate them to the Labour Employment and Training Department would be unfair.

13. The applicants are not allocated to Labour Employment



and Training Department while recommending them for appointment. They have been allocated to Personnel and Administrative Reforms Department. The requisition of the Personnel and Administrative Reforms Department led to Advertisement No. 906 of 2006. The applicants were not candidates for appointment to any of the posts advertised subsequently i.e. Advertisement No. 906 of 2006. Since the applicants were not the candidates for such advertisement which included the vacant posts of Personnel and Administrative Reforms Department, the applicants could not be appointed in the said Department. Thus, the act of appointing the applicants in the Personnel and Administrative Reforms Department is an illegal act as no candidate can be appointed to a post against which he was not a candidate. But keeping in view the fact that the applicants were appointed by the State Government, therefore, they have to meet out the difficult situation, as they have been allocated to the Labour Employment and Training Department. By such process the interest of the applicants has been safeguarded as they have not been removed from service as in the absence of any vacant post in the Labour Employment and Training Department there may not be any other option but to ease them out but instead of turning out from service they have been ordered to be adjusted by the impugned order in the Labour Employment and Training Department. Such action is just,

fair and reasonable.

14. We find that the reasoning given by the learned Single Bench is not tenable. Even if, some posts are advertised by the Commission without requisition, that will not confer any right on the applicants for appointment. There has to be a requisition, selection and then appointment. Still further, mere fact that the applicants have been permitted to join as Stenographers in the Civil Secretariat in the Personnel and General Administration Department, will not confer any equitable and legal right in their favour as they were not the applicants for any of such posts.

15. Therefore, we find that the order passed by the learned Single Bench is not sustainable in law. Consequently, the present Letters Patent Appeal is allowed, order passed by the learned Single Bench is set aside and the order dated 23rd of March, 2011 passed by the State Government and the consequential orders are upheld.

14. The Writ application stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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