

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1196 of 2016
IN
Civil Writ Jurisdiction Case No. 6503 of 2012**

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Viresh Prasad, Son of Sri Siya Saran Prasad, Resident of Village- Milkipar, P.O- Jagdishpur Tiary, P.S. Noorsarai, District Nalanda.

.... Appellant

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Secretary, Department of Animal Husbandry and Fishery Department, Government of Bihar, Patna.
3. The Deputy Secretary, Fishery Department, Government of Bihar, Patna.
4. The Director, Fishery Department, Government of Bihar, Patna.
5. The Bihar Public Service Commission, through its Secretary Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Bindhyachal Singh,
Mr. Ranjeet Kumar, Advocates
For the Respondents : Ms. Nutun Sahay, AC to AAG 12
For the Commission : Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 08-12-2016

Heard learned counsel for the appellant and learned counsel for the respondents.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 4th of May, 2012 in CWJC No. 6503 of 2012 whereby the writ of mandamus sought by the appellant for appointment to the post of Junior Engineer (Civil) in the Department of Fisheries under the State Government remained unsuccessful.

3. The appellant was a candidate for appointment to the



post of Junior Engineer (Civil) in the Department of Fisheries, Government of Bihar which was advertised through Advertisement No.99/1998 on 17th of December, 1998. The appellant was recommended for appointment but not appointed due to the fact that one Mithilesh Kumar was claiming appointment as other backward class and one post was kept reserved for him. The issue of appointment of Mithilesh Kumar got settled when his writ application bearing W.P. (s) No. 2450 of 2006 was decided on 19th of June, 2006 by the Jharkhand High Court. It is admitted that in terms of the order passed by the Jharkhand High Court, Mithilesh Kumar stands allocated to the State of Jharkhand.

4. The argument of the learned counsel for the appellant is that the post reserved for Mithilesh Kumar is now vacant and, therefore, the appellant is entitled to be appointed against such available post.

5. In earlier round of litigation, the appellant was given liberty to file a representation against four available vacancies in the category to which the appellant belongs. An order was passed on 16th of April, 2009 rejecting the representation on the ground that there is no vacancy in his category and the last two available vacancies have been filled up by the appointments from his category and such order was communicated on 5th of October, 2009. It is thereafter, the



appellant invoked the writ jurisdiction of this Court almost three years later in the year 2012.

6. The argument of the learned counsel for the appellant is based upon the additional supplementary affidavit filed by the appellant to contend that the post which was kept reserved for Mithilesh Kumar was sought to be filled up from the same process of advertisement, therefore, the appellant has right for appointment against the post which has now fallen vacant. We do not find that the appellant is entitled to any mandamus for appointment to the post of Junior Engineer (Civil) which was advertised in the year 1998 and the appointments made in the year 2002.

7. It is well settled that mere inclusion of the name of a candidate in the select list does not confer any right of appointment. The law has been restated in the recent judgment in Kulwinder Pal Singh & Anr. Vs. State of Punjab & others [AIR 2016 Supreme Court 2281] wherein it has been held as follows:-

“11. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide Food Corporation of India and Ors. v. Bhanu Lodh and Ors., (2005) 3 SCC 618 : (AIR 2005 SC 2775); All India SC & ST Employees’ Association & Anr. v. A. Arthur Jeen & Ors. (2001) 6 SCC 380; (AIR 2001 SC 1851) and Union of Public Service Commission v. Gaurav Dwivedi and



Ors. (1999) 5 SCC 180; (*AIR 1999 SC 2137*).

12. This Court again in the case of State of Orissa & Anr. V. Rajkishore Nanda and Ors. (2010) 6 SCC 777: (*AIR 2010 SC 2100, paras 13, 15*), held as under:

“ 14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.....

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required...”

13. In Manoj Manu and Anr. V. Union of India & Ors. 2013 (10) SCALE 204; (2013) 12 SCC 171: (*AIR 2014 SC (supp) 927*), it was held that merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the Government not to fill up the vacancies, however, such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the Court would not issue any mandamus to Government to fill up the vacancies. As noticed earlier, because twenty two other candidates were declared successful by the Supreme Court pertaining to the selection of the years 1998, 1999, 2000 and 2001 as Civil Judges (Junior Division), they were to be accommodated, as rightly resolved by the Administrative Committee in the meeting dated 06.07.2011. The three resultant vacancies of the year 2007-2008 stood consumed with the



joining of the said seventeen candidates and the same could not be filled up from the select list of that year. The decision of the Administrative Committee observing that the three resultant vacancies stood consumed is based on factual situation arising there and cannot be said to be arbitrary.

14. As noticed earlier, as against twenty seven posts of general category advertised for the year 2007-2008, thirty one general category candidates have joined and are working. In *Rakhi Ray and Ors. v. High Court of Delhi And Ors.* (2010) 2 SCC 637: (AIR 2010 SC 932, paras 14, 15), observing that the vacancies cannot be filled up over and above the number of vacancies advertised, recruitment of the candidates in excess of the notified vacancies would amount to denial of equal opportunity to eligible candidates, this Court held as under-

“12. In view of above, the law can be summarized to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up the process of selection comes to an end. Waiting list, etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service any more.

13. In the instant case, as 13 vacancies of the general category had been advertised and filled up, the selection process so far as the general category candidates is concerned, stood exhausted and the unexhausted select list is meant only to be consigned



to record room”.

8. That apart, the post was advertised in the year 1998.

The writ applicant has no right to claim appointment to the post of Junior Engineer (Civil). The writ of mandamus can be issued only if the appellant has right to which the respondents are not recognizing. Since the appellant has no right to seek appointment, he cannot claim the benefit of any writ of mandamus. The learned Single Bench has recorded that an order was passed on 16th of April, 2009 declining appointment to the appellant for the reason that the candidates having higher in merit than the appellant stand appointed. Even though the said order was communicated but the appellant has not challenged the same in the present writ application.

9. Thus, for the reasons stated hereinabove, we do not find any merit in the Letters Patent Appeal. The same is dismissed.

(Hemant Gupta, ACJ)

B.T/Ibrar

(Vikash Jain, J)

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