

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17798 of 2014

- =====
1. Anurag, Son of Sri Pramod Kumar Verma, Resident of Mohalla Takkichak, Colony, Salehpur Road, P.S. Habibpur, District Bhagalpur.
 2. Amitabh Mishra, Son of Sri Nityanand Mishra, Resident of Mohalla Charuchandra Mukharjee Road, Sudama Bhawan, P.S. Adampur, District Bhagalpur. At present address C/o Sri Amresh Kumar, House No.66 Montessori School Lane opposite Karlo Automobiles, Boring Road, Patna, P.S. S.K. Puri, District Patna.

.... Petitioners

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
5. The Director, Social Welfare Directorate, Old Secretariat, Bihar, Patna.
6. Bihar Staff Selection Commission through its Secretary, Veterinary College, Patna-800014.
7. The Chairman, Bihar Staff Selection Commission, Veterinary College, Patna-800014.
8. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna-800014.

.... Respondents

=====

Appearance :

For the Petitioners	:	Mr. Dinu Kumar, Advocate Mr. Rajesh Kumar Singh, Advocate Mr. Arvind Kumar Sharma, Advocate Mr. Manoj Kumar, Advocate Mr. Santosh Kumar, Advocate Mr. Ritu Raj, Advocate
For the State	:	Mr. Dhurjati Kr. Prasad, G.P.7
For B.S.S.C.	:	Mr. Satyabir Bharti, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
CAV JUDGMENT
Date: 30-03-2016

The two petitioners before this Court originally filed the writ application for a direction upon the General Administration Department to issue appointment letters in favour of the petitioners on the post of Secretariat Assistant on the basis of their performance and the marks obtained by them and as per the

preference exercised by them at the time of counselling.

2. Advertisement No.110 of 2010 was issued by the Staff Selection Commission against vacancies available in various departments numbering 1569. The petitioners gave their option for preference to the posts which they would like to be considered for while filling up their application form. The petitioners performed reasonably well and they had the requisite marks to be recommended for the post of Secretariat Assistant but were not recommended on such a post but were given post of Accountant-cum-Cashier in the Social Welfare Directorate, Government of Bihar as is their case.

3. Many a reasons have been alleged as to why the petitioners have been treated in this manner.

4. However, a counter affidavit on behalf of the Staff Selection Commission has been filed and they have explained the issue vexing the two petitioners in their counter affidavit. It is stated in the counter affidavit that after the result of the main examination was published, large number of writ applications came to be filed, the leading case being the case of Dhananjay Kumar Mishra & Ors. vs. the State (CWJC No.3640 of 2013). All the writ applications were heard and disposed of on 20th of August, 2013 directing publication of the mains results after deleting four questions which was said to be wrong. A revised result was

published after deleting the questions.

5. It is further stated that out of the 21 posts, which were required to be filled up, 11 posts required additional qualifications. Only such candidates who possessed additional qualifications could be selected against the vacancy arising on the 11 posts. The details have been provided for in a tabular form in Annexure-A to the counter affidavit.

6. Petitioners belong to general category. No doubt they opted for the post of Secretariat Assistant as their first preference and post of Accountant-cum-Cashier as their second preference. The petitioners as per revised result had obtained 432 and 424 marks respectively their rank being 567 and 961.

7. In the general category, the last person with 432 marks having 560 rank was recommended for Secretariat Assistant post. The merit position, therefore, of the petitioners came in the way of such a recommendation. The petitioners were offered the post of Accountant-cum-Cashier, their second preference post. However, some problem did arise due to absence of such a post available in the Social Welfare Directorate. However, the State took a decision which has been brought as Annexure-D to the counter affidavit of the Staff Selection Commission trying their level best to accommodate the petitioners. However, the petitioners are not willing to accept and in fact they prevailed upon the

Directorate to return their services to the State and thereafter they have approached the High Court seeking a direction.

8. The Court has gone through the materials and the stand of the State. They take a plea that it was a case of honest mistake in matter of posting of these petitioners in the Social Welfare Department since a rule had come into place which governs the service conditions. Petitioner no.1 has been given suitable accommodation so has petitioner no.2. The decision of the State is well protected in terms of what the Hon'ble Supreme Court had to say in the case of *Union of India v. Bikash Kumar*, reported in (2006) 8 SCC 192. This is what the Apex Court had to say in paragraph-12:

"12. The matter relating to appointment or recruitment of EDDA is not governed by any statute but by departmental instructions. It is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation require compliance with the principles of natural justice. It is only in a case where the mistake is apparent on the face of the record, a rectification thereof is permissible without giving any hearing to the aggrieved party."

9. The Court is satisfied that the respondent-State authorities have done their level best to accommodate the petitioners dependent on their rank and position. The problem was created due to the directive issued earlier by the High Court in a batch of writ applications. The petitioners were not entitled to be recommended for the post of Secretariat Assistants and their

second best preference was taken into consideration but since a service rule came into play and the non-availability of the post was an issue, the petitioners have been offered appointment on the same rank and pay scale but for reasons best known to the petitioners, they are not willing to accept the same.

10. In this era of unemployment liberty is given to the petitioners to either accept the opening given by the State under the circumstances explained by them or they can try their luck afresh, if the occasion so arises. The Court, therefore, will not pass any order in favour of the petitioners by giving any directive to appoint them on the post of Secretariat Assistants. They have been given the opening according to their second best preference. The act of the State is justified and protected as per the principle laid down by the Apex Court in the case of *Union of India* (supra).

11. Writ application stands dismissed.

(Ajay Kumar Tripathi, J.)

Sanjay/N.A.F.R.

U			
---	--	--	--