

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1397 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 18601 of 2012**

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1. Bipin Kumar Singh, Son of Bindeshwari Pd. Singh, R/o Village- Tetri Gadhiya, P.O.- Yogdiha, District- Banka
 2. Dilip Kumar, Son of Sri Keshav Rai, R/o Village- Chakmusa, Via- Mohamadpur, P.S.- Janipur, District- Patna
 3. Pranay Pankaj Kumar Singh, son of Lakshmishwar Pd. Singh, R/o Village- Jarwagdi, P.O.- Jarnagdevgha, P.S.- Gayghat Sarfiddinpur, District- Muzaffarpur
 4. Sanjay Jha, Son of Late Mahendra Pd. Jha, R/o Village- Phulwariya, P.O.+P.S.- Akbarnagar, District- Bhagalpur
 5. Sujit Kumar Verma, son of Baikunth Prasad, R/o Village- Khervanbiga, Distt.- Nalanda

.... Appellants

Versus

1. The State of Bihar through Principal Secretary, Health and Family Welfare Department, Government of Bihar, Patna
2. The Director-in-Chief, Health Service, Government of Bihar, Patna
3. The Chairman, Bihar Staff Selection Commission, Bihar, Patna
4. The Secretary, Bihar Staff Selection Commission, Patna
5. Avinash Kumar, Son of Krishna Prasad, R/o Village- Sadarpur, P.O.+P.S.- Tehara, District- Nalanda
6. Purnendu Narain Mishra, Son of Indra Nr. Mishra, R/o Zaud, District- Muzaffarpur
7. Akhileshwar Mani Tiwari, Son of Shyam Mani Tiwari, R/o Bettiah, P.S.- Bettiah, District- East Champaran
8. Tuphani Prasad Yadav, son of Late Tikam Mahto R/o Village + P.O.- Nawadih, P.S.- Rutou, District- Nawada
9. Abhinandan Prasad Yadav, Son of Girija Nandan Prasad Yadav, R/o Laxaman Nagar, Via- Kewat Sabruari, District- Darbhanga
10. Manoj Kumar, S/o- Sri Bindeshwari Sharma, R/o Village Haibasapur, P.O. Ghamahi (Singari), P.S. Hauspura, District- Aurangabad
11. Nawal Kishore Sharma, Son of Sri Veer Bahadur Sharma, residing at Mainpura (Kahar Toli), P.S. Patliputra, Patna

.... Respondents

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Appearance :

For the Appellants : Mr. Banwari Sharma, Advoate.
Mr. Mithilesh Kumar Upadhyay, Advocate.
For the State : Mr. Rajesh Kumar, A.C. to G.P. 10
For Respondent No. 7 : Mr. Arup Kumar Chongdar, 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: 14-07-2016

Heard learned counsel for the parties

2. The challenge in the present Letters Patent Appeal is to an order dated 14th of March, 2014 passed by the learned Single Bench of this Court in C.W.J.C. No. 18601 of 2012 which was dismissed along with analogous cases.

3. The appellants were the applicants for 1059 posts of Pharmacist advertised on 25th of January, 2000. But subsequently the State of Jharkhand was carved out from Bihar and the number of vacancies which were to be filled up stands reduced to 771 in State of Bihar. Out of 771, 325 vacancies fall to the General Category. The appellants are General Category Candidates. It is admitted that all General Category vacancies stand filled up.

4. Learned counsel for the appellants has not challenged the order passed by the learned Single Bench on merits but argues that even after appointment of 325 candidates, there are still large number of vacancies which should be directed to be filled up from amongst the candidates who responded to the advertisement published on 25th of January, 2000.

5. We do not find any merit in the said claim. Mere fact that at one point of time the appellants were candidates for the post of Pharmacist and were not selected will not confer any right to



seek consideration for appointment after the posts advertised stand filled up. The appellants are not even in the select list. Somewhat similar question in respect of the candidates in the select list was examined by the Hon'ble Supreme Court in a judgment reported as Kulwinder Pal Singh and another V. State of Punjab and others, A.I.R. 2016 Supreme Court 2281. It has been held that such candidates have no right to seek appointment. The relevant extract of the judgment reads as under:-

“18. Learned counsel for the appellants submitted that the appellants have been pursuing the matter for about eight years and even today there are vacancies in Punjab Judicial Service and thus prayed that direction be issued to the respondents to consider the case of the appellants as against the existing vacancies. This contention does not merit acceptance. Appointment to an additional post or to existing vacancies would deprive candidates who were not eligible for appointment to the post on the date of submission of the applications mentioned in the advertisement but became eligible for appointment thereafter. After referring to Rakhi Ray, Rajkishore Nanda and other decisions, High Court rightly held that the candidates much more than the vacancies advertised have already been permitted to join and thus the appellants cannot claim any legal right in respect of the posts of reserved category remaining unfilled. The impugned judgment

does not suffer from any infirmity warranting interference in exercise of our jurisdiction under Article 136 of the Constitution of India.”

6. In view of the aforesaid judgment, we do not find any merit in the argument raised that the existing vacancies should be directed to be filled up from amongst the candidates who applied more than 16 years back.

7. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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