

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.260 of 2016

IN

Civil Writ Jurisdiction Case No. 15447 of 2014

1. Arun Kumar, son of Sudama Bhagat, resident of village- Sato Awanti, Police Station Noan, District- Kaimur

.... Appellant/s

Versus

1. The State of Bihar through the Secretary-cum-Commissioner, Department of Finance, Government of Bihar, Patna
2. The Secretary-cum-Commissioner (Commercial Taxes), Department of Finance, Government of Bihar, Patna
3. The Secretary, Department of Personal and Administrative Reforms, Government of Bihar, Patna
4. The Bihar Public Service Commission through Chairman, Bailey Road, Patna

.... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Y. V. Giri, Sr. Advocate with Mr. Dinu Kumar, Advocate Mr. Rajesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Mandal, SC-3 Ms. Alka Singh, Advocate
For the BPSC	:	Mr. Satyabir Bharti, Advocate Ms. Aparna Arun, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

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HONOURABLE DR. JUSTICE RAVI RANJAN

JUDGMENT AND ORDER

CAV

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-10-2016

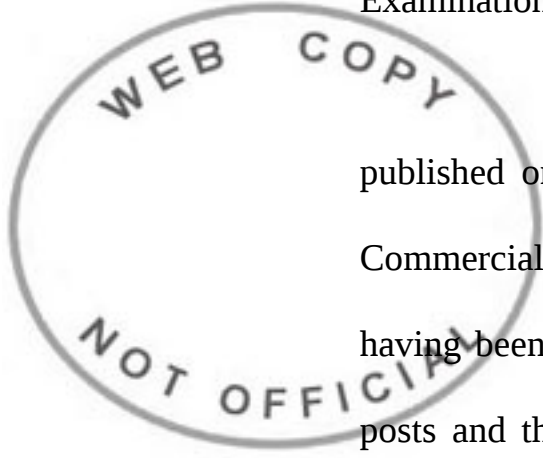
At the core of this Letters Patent Appeal lies the Advertisement No.14 of 2010 published, on 04.08.2010/05.08.2010, by the Bihar Public Service Commission (in short "BPSC") inviting applications to fill up 27 posts of Finance Officer to be appointed in the

basic grade of Bihar Finance Service through Limited Competitive Examination.

2. The advertisement aforementioned had come to be published on the basis of two requisitions sent to the BPSC by the Commercial Taxes Department, Govt. of Bihar, the first requisition having been sent, on 23.02.2009, indicating therein availability of 11 posts and the second requisition was sent, on 10.07.2009, indicating therein additional 16 vacancies in the post of Finance Officer by Letter No. 1077, dated 23.03.2009, and Letter No.2594, dated 10.07.2009, respectively of the Department concerned.

3. When the process of selection was in progress in respect of the said 27 posts of Finance Officer, Letter No.571, dated 13.02.2013, was received by the BPSC from the Commercial Tax Department indicating therein that 11 more posts of Finance Officer had fallen vacant and shall, therefore, be included in the vacancies already advertised.

4. By its communication, dated 14.06.2013, the BPSC, having deliberated on the issue, sent a letter declining to accede to the request of the Department concerned. Two reasons were assigned by the BPSC for their refusal to include the latter 11 posts of Finance Officer in the selection process, which was already in progress. One reason was that at least, 10 years of confirmed continuous service, in



Class III post, as on 1st April of the date of application, was required to be fulfilled and the other condition was that maximum age of 45 years has to be maintained. As the latest requisition, sent by the Department, indicated vacancies from 01.04.2009 to 21.03.2012, the BPSC was of the view that inclusion of more vacancies after the Advertisement No.14 of 2010 would not be justifiable in law.

5. The BPSC, then, went ahead without any objection from any corner and completed the process of selection, which culminated in the publication of final result, on 23.10.2013, limiting the exercise of selection to 27 vacancies, which had been advertised by the Advertisement No.14 of 2010, dated 04.08.2010/ 05.08.2010 aforesaid. Recommendations were sent by the BPSC accordingly, on 26.12.2013, to the Commercial Taxes Department.

6. It was thereafter that the unsuccessful candidates came to this Court with writ petitions, made under Article 226 of the Constitution of India, questioning the stand of the BPSC in keeping the selection process confined to the 27 posts. These writ petitions gave rise to CWJC No.2609 of 2014, CWJC No.15447 of 2014, CWJC No.2330 of 2014, CWJC No.22248 of 2014 and CWJC No.1580 of 2015.

7. We have heard Mr. Y. V. Giri, learned Senior Counsel for the appellant, and Mr. Sunil Kumar Mandal, SC 3, appearing on

behalf of the State-respondents. We have also heard Mr. Satyabir Bharti, learned counsel, appearing on behalf of the Bihar Public Service Commission.

8. While considering the present appeal, it needs to be borne in mind, as has already been indicated by the learned single Judge, in the order, under appeal, that all the writ petitioners were those candidates, who had failed to make it the select list after duly participating in the selection process. In fact, the learned single Judge also indicted that not only that the writ petitioners had failed to find their place in the final select list, but many of them, as pointed out by the BPSC, were miles away from the cut off marks available in the various categories of the participants.

9. Having so indicated in the order, under appeal, that all the writ petitioners were unsuccessful candidates, the learned single Judge, nevertheless, undertook the exercise of examining the rational of BPSC in not including the 11 posts of Finance Officer, which were requested by the Commercial Taxes Department to be included in the advertisement aforementioned. The learned single Judge took the view that BPSC cannot be faulted at for refusal to entertain any further requisition to fill up the additional vacancies, when the advertisement was issued as far as back on 04.08.2010/05.08.2010; whereas the Commercial Taxes Department had sent the last requisition on

13.02.2013 and that the vacancies, which had arisen after the advertisement, could not have been included in the advertisement, which had already been published and when pursuant to the order, the process of selection was already in progress.

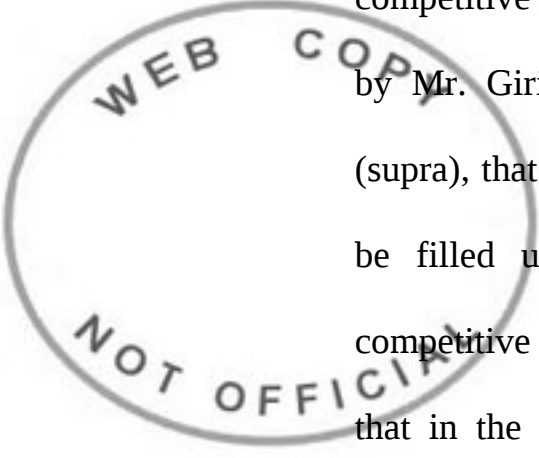
10. Admittedly, as on the date of advertisement, the requisition, which had been sent by the Commercial Taxes Department, was to fill altogether 27 posts of Finance Officer. It was only on 13.02.2013 that the Commercial Taxes Department sent the third requisition for including 11 more posts. As these posts had arisen subsequent to the advertisement, these posts could not have been included in the said advertisement inasmuch, as least, 10 years of confirmed continuous service, in class III post, as on 1st April of the date of application, are, as pointed out by the BPSC, required to be fulfilled with maximum age of 45 years.

11. In *Rakhi Ray and others Vs. High Court of Delhi and others* reported in AIR (2010) 2 SCC 637, it has been held that the vacancies cannot be filled up over and above the number of vacancies advertised as the recruitment of the candidates, in excess of the advertised vacancies, is a denial and deprivation of the constitutional rights guaranteed, under Article 14 read with Article 16(1) of the Constitution, to those persons, who acquired eligibility for the post, in question, subsequent to the date of notification of the

vacancies in accordance with the statutory rules. Filling up the posts over and above the advertised vacancies is neither permissible nor desirable, because it amounts to improper exercise of power and only in exceptional, rare and in emergent situations, such a rule can be deviated from and such a deviation is permissible only after adopting policy decision based on some rationale or else, the exercise would be arbitrary. Thus, filling up of vacancies, over and above the notified vacancies, amounts to filling up of future vacancies, which is not permissible in law.

12. In the backdrop of above position of law, there is no escape from the conclusion that the BPSC was wholly justified in not including the additional vacancies of 11 posts of Finance Officer in the Advertisement No. 14 of 2010 published on 04.08.2010/ 05.08.2010. This apart, as the decision of the BPSC could not be shown to be arbitrary and/or unreasonable and/or irrational, we do not find that the order, under appeal, suffers from any infirmity, legal or factual, and/or warrants interference of this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

13. Mr. Y. V. Giri, learned Senior Counsel, appearing on behalf of the appellants, by referring to the decision in ***Sandeep Singh Vs. State of Haryana and others reported in (2002) 10 SCC 549***, has contended that the vacancies, available up to the date of interview,



should be filled up from amongst the candidates selected in the said competitive test. Indeed, the Supreme Court, as correctly pointed out by Mr. Giri, learned Senior Counsel, has held, in **Sandeep Singh** (supra), that the vacancies available up to the date of interview should be filled up from amongst the candidates selected in the said competitive test. What is, however, of immense importance to note is that in the case at hand, the qualifications prescribed are, amongst others, as has been rightly pointed out by the BPSC, at least 10 years of confirmed continuous service, in Class III post, as on 1st April of the date of application, with the maximum age being 45 years on the date of advertisement. This apart, in *Sandeep Singh* (supra), the advertisement had not specified the number of vacancies and the advertisement also made it clear that the number of vacancies could increase, and, therefore, the vacancies, up to the date of interview, were directed to be filled up.

14. Considering the fact that the vacancies arose subsequent to the publication of the advertisement, these vacancies, which had so arisen subsequent to the date of publication of advertisement, could not have been filled up in the selection process, which gave rise to the order, under appeal.

15. There is yet another aspect of this appeal, which cannot be ignored. There is nothing on record to show that had the

BPSC agreed to make recommendation for 11 posts, in question, the writ petitioner-appellant would have received appointment letter. Considered, thus, we find no merit in this appeal.

16. Because of what have been discussed and pointed out above, we do not find that the order, under appeal, dated 08.12.2015, calls for any interference in appeal. The appeal, being wholly without merit, is hereby dismissed.

17. No order as to costs.

(I. A. Ansari, CJ)

Dr. Ravi Ranjan, J: I agree.

(Dr. Ravi Ranjan, J)

J.Alam/-

AFR/NAFR	NAFR
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