

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7189 of 2015

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1. Avinash Kumar Son of Harinandan Prasad Yadav, R/at + P.O. - Babhangama
P.S. - Bihpur, District - Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Transport Department Government of Bihar, Patna.
2. The Principal Secretary - cum - Commissioner Transport Department, Govt. of Bihar, Patna.
3. The Additional Transport Commissioner Transport Department, Govt. of Bihar, Patna.
4. The Deputy Transport Commissioner Transport Department, Govt. of Bihar, Patna.
5. The Under Secretary Transport Department, Govt. of Bihar, Patna.
6. The Bihar Staff Selection Commission Veterinary College, Patna through its Secretary.
7. The Chairman, Bihar Staff Selection Commission, Veterinary College, Patna.
8. The Secretary, Bihar Staff Selection Commission Veterinary College, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Ashok Kumar Choudhary Mr. Pawan Kumar
For the State	:	Mr. K. P. Yadav, GP 11 Mr Sunil Kumar, AC to GP 11
For BSSC	:	Mr Prabhat Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 09-09-2016

So long as there are litigants and lawyers, they will never allow some issues to die down. The Court has reason to observe as above by looking at the facts of the present case.

Way back on 17.12.2004, an Advertisement No.1004 was published inviting applications for filling up the post of Enforcement Sub Inspector under the Transport Department. The



process carried on from 2004 till 2012. The post, it seems, is rather lucrative and very sought after because one to many rounds of litigations were brought before the High Court and the final selection and appointment dragged on from year to year. It is only after a decisive declaration and direction issued after many rounds of litigations at the level of the Division Bench that the process of appointment could be completed.

The Staff Selection Commission was saddled with the responsibility of carrying out the obligation of selection and they did so and made recommendations on 13.2.2013. It seems that thereafter due to non-joining or other reasons certain vacancies have emerged. Petitioner is one of the candidate, who claims that he was in the list of selected candidates and had identical marks with those who had been appointed and therefore, he had a legitimate expectation that the vacancies subsisting should be filled up by making a fresh recommendation in his favour. He even goes to the extent of saying that for extraneous reasons the Staff Selection Commission is not making recommendation despite a requisition having been sent by the State Government to the Secretary of the Commission.

Keeping the above controversy in mind, the Court directed both the Staff Selection Commission and the State to file counter affidavit. From the stand taken in the counter affidavit of the



Staff Selection Commission and the State a totally different picture emerges as to the facts as well. The reason, which the petitioner is talking about, is Annexure-C and dated 18.2.2014, which has been annexed with the counter affidavit of respondent no.1 to 5. Not only the Court has gone through that communication but even the counsel for the Staff Selection Commission has meticulously placed the contents of that communication and submits that the extra emphasis being placed by the petitioner showing vacancy and requisition is nothing but a figment of imagination of the petitioner and a desperate bid to clamour on to the vacancies which does not relate to him. The subject and object of the communication contained in Annexure- C has been issued almost a year after the recommendation had been made by the Staff Selection Commission and it talks about future vacancies as well and how they are required to be filled up keeping in mind the proposed amendment which are in the pipeline for the said post.

This, therefore, cannot become the basis for the Staff Selection Commission to take cognizance and recommend the case of the petitioner for appointment.

The stand of the State is not at variance with the Staff Selection Commission.

Counsel for the Staff Selection Commission submits that



the Commission becomes functus officio once recommendations are made against the requisitioned post and exercise stands completed and in this regard there is a circular of the General Administration Department, which is in place and vogue since 2007. The said circular of the General Administration Department dated 16.7.2007 has been annexed as Annexure- A to the counter affidavit of the Staff Selection Commission. Attention of the Court has been drawn to clause (14) and (16) of the said circular.

The said circular is unambiguous and has been occupying the field without any let and hindrance. In addition to that, counsel for the Staff Selection Commission relies on a Division Bench decision of the High Court in identical situation rendered in the case of *Subodh Kumar v. State of Bihar, reported in 2012(2) PLJR 647*. The relevant paragraph is paragraph 15, which is reproduced herein below.

“ 15. Paragraph 4 of the said Memorandum sets out a time-schedule in respect of each stage of the recruitment process. Clause (xiv) thereof provides: “Vacancies remaining unfilled due to candidates not joining the post or for any other reason shall be carried forward to the next year.” It appears that the State Government has compiled the instructions issued from time to time in respect of the recruitment process in Government Resolution dated 16th July, 2007. The aforesaid instruction has been reiterated in the said Resolution dated 16th July, 2007. Clause (16) of

Paragraph 3 of the said Resolution reiterates that the vacancies remaining unfilled due to non-joining of the selected candidates shall be carried forward.”

In addition to that, a very recent decision of the Hon’ble Supreme Court has also been relied upon by the Staff Selection Commission, which is the case of ***Kulwinder Pal Singh vs. State of Punjab, reported in 2016 (3) PLJR (SC) 229.***

If the Division Bench decision and the Hon’ble Supreme Court decision are read together, the law is unambiguous that after a recommendation is made and appointments carried out, no vacancy remaining can form the basis for any appointment from the list of panel prepared earlier whatever be the reason for such vacancy.

In contrast, counsel for the petitioner draws the attention of this Court to another decision of the Hon’ble Supreme Court, which has been rendered in the case of ***Manoj Manu v. Union of India, reported in (2013) 12 SCC 171*** where a contra view has been taken in the given facts of the case.

The facts being what they are and keeping in mind the provisions, which are in vogue in the State of Bihar issued by the General Administration Department as well as the instructions and resolutions in place, which have binding effect, the decision relied upon by the petitioner does not help him. In fact, the Division Bench decision and the recent decision of the Hon’ble Supreme Court which

repels the argument of the petitioner, occupy the field. No recommendation, therefore, in favour of the petitioner can be ordered to be made by the Staff Selection Commission in the given facts.

Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

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