

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2300 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 9212 of 2016

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Rahul Kumar, aged about 26 years, S/o Rajendra Prasad Yadav, Resident of Village+P.O.- Kariho, P.S. & District- Supaul.

.... Appellant/s

Versus

1. The State of Bihar.
2. Mishan Director, Bihar Administrative Reforms Mishan Society, General Administration Department, Government of Bihar, Patna.
3. The District Magistrate-cum-Chairman, Chayan Samittee, Supaul.
4. The Nodal Officer of Mishad Director, Supaul.
5. Ashok Kumar Suman S/o Devendra Prasad Mehta, Resident of Village + P.O. - Kariho, P.S. & District Supaul.
6. Navneet Nayan S/o Shahdev Mehta Resident of Village + P.O. Nirmali, P.S. Pipara, District - Supaul.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Prasad Singh, Senior Advocate
Mr. Nirala Kumar Singh, Advocate
Mr. Kumar Nikhil, Advocate

For the Respondent/s : Mr. Prabhat Kumar Verma- A.A.G.-3

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 23-12-2016

The challenge in the present Letters Patent Appeal is to



an order passed by the learned Single Bench of this Court on 17.11.2016 whereby, the writ application filed by the appellant claiming appointment on contract basis as Executive Assistant remained unsuccessful.

The General Administration Department, Government of Bihar issued a Circular (Annexure-3) inviting applications for the post of Executive Assistant, the last date to fill up online form was 31st March, 2015. The appellant asserts that he was one of the successful candidates as per the merit list published on 13th of May, 2016 (Annexure-6), but the appointments have not been made in pursuance of such list. Therefore, he invoked the writ jurisdiction of this Court claiming appointment for the reason that he was one of the selected candidates.

In the counter affidavit, it has been pointed out that 6284 candidates applied whereas, 3268 appeared for counselling and out of them only 2867 appeared for the written test. 1230 candidates were declared successful on the basis of cut off marks which was fixed by the Committee. Out of such 1230 candidates, 1159 appeared in the computer test. It is at that stage, the allegations were made regarding procedure for evaluation. It was found that certain unsuccessful candidates were actually successful. It is averred to the following effect in the counter affidavit:-



“14. That it is important to mention here at this juncture that the unsuccessful candidates of written test placed their grievances and dis-satisfaction as against the procedure of evaluation and for the redressal of their grievances re-evaluation was done of the computer exam, answer sheet between the dates 01.04.2016 to 04.04.2016 and very outcome was there that out of these candidates found unsuccessful earlier were included in the list of successful candidates which were 32 in numbers. As well as they were sent up for computer knowledge test, on the other hand the list of successful compilation of written test stood frustrated for the reason of minimum cut off marks consequent to the omission of 27 candidates where declared unsuccessful and such re-test of those 32 candidates were sent up for computer test examination on the schedule date 19.04.2016 and thereafter, their answer sheets were evaluated.

19. That it is also stated that this was not the end of episode, in preparation of final merit list on after its publication 150 candidates which were unsuccessful claimed the merit list of different grounds which was examined and verified and 30 no. of objection were found bonafide and in view of that ambiguity the said provisional merit list and final merit list stood cancelled as the procedure adopted by the concerned was caught to be malafide and fishy by the District Magistrate, Supaul, who ultimately order for cancellation of said merit list and to hold computer typing test again which is memo no.678-2/Estb dated 17.05.2016.”

In the meantime, writ petitions were filed before this Court challenging the appointment process such as CWJC No.6419 of 2016 (Nishant Ketu and others Vs. The State of Bihar & Ors.) and



CWJC No.9212 of 2016 (Rahul Kumar and others Vs. The State of Bihar & Others) wherein this Court stayed the appointments. In view of the stay order, computer test was put on hold. An enquiry report was submitted by the Additional Collector, Supaul. Action has been initiated to find out as to where the illegalities have been committed. The inquiry report has been attached with the counter affidavit. In view of the illegalities committed in the evaluation of the answer sheets, the appointments are not being made.

We find that there exist sufficient and good reasons as to why selection in pursuance of Annexure-3 has not been concluded. Mere fact that the appellant, at one stage, was in the merit list does not confer right of appointment. Reference may be to a judgment of the Hon'ble Supreme Court in Kulwinder Pal Singh and another v. State of Punjab and others, A.I.R. 2016 Supreme Court 2281, wherein the Court held to the following effect:-

“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.”

Consequently, we do not find any error in the order of the learned Single Bench which may warrant interference in the present intra-court appeal. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

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AFR/NAFR	N. A. F. R.
CAV DATE	N. A.
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