

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6793 of 2014

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1. Mukesh Kumar Choudhary Son Of Sri Yogendra Prasad Choudhary Resident Of Village Kalyanpur Basti, P.S. Mohiuddin Nagar, Distt. Samastipur.
 2. Suman Kumar Suman S/O Maheshwar Prasad Resident Of Village Bishanpur, P.S. Sonbarsha Kachehri, Distt. Saharsa.
 3. Shekhar Kumar S/O Jay Prakash Das Resident Of Village Rahika, P.S. Pranpur, Distt. Katihar.
 4. Prabhakar Sudhanshu S/O Satya Narayan Prasad Sudhanshu Resident Of Village Bishanpur, P.S. Medni Chowki, Distt. Lakhisarai
 5. Abhimanu Kumar S/O Hira Lal Gupta Resident Of Village Seemapur, P.S. Barari, Distt. Katihar.
 6. Amit Kumar S/O Awadesh Thakur Resident Of Village -- Resident Of Mohalla Damochak, P.S. Kasi Mohamadpur, District - Muzaffarpur.
 7. Deepak Kumar Tiwari Son Of Kamlesh Tiwari Resident Of Village Arap, P.S. Bikram, Distt. Patna.

.... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government Of Bihar, Patna
2. The Principle Secretary, Department Of Home Government Of Bihar, Patna
3. The Principle Secretary, Department Of Health, Government Of Bihar, Patna.
4. The Principle Secretary, General Administration Department, Government Of Bihar, Patna.
5. The Principle Secretary Department Of Social Welfare, Government of Bihar, Patna
6. The Secretary, Department Of Health, Government of Bihar, Patna.
7. The Director General Of Police Government Of Bihar, Patna.
8. The Inspector General Of Prison, Government Of Bihar, Patna.
9. The Bihar State Staff Selection Commission, Patna
10. The Chairman, Bihar State Staff Selection Commission, Patna.
11. The Secretary, Bihar State Staff Selection Commission, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Roy
For the Respondent/s : Mr. SC23 Kumar Priya Ranjan
Mr S.S.Sundaram

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 17-03-2016

An advertisement was issued to fill up the post of Jail

Pharmacist by the Bihar Staff Selection Commission. The number of posts advertised was 43. While the process was on, some more



requisition was received from the Department by the Staff Selection Commission showing some more vacancies. They wanted all the vacancies to be included in the process of appointment. The total vacancies stood at 90. The Staff Selection Commission returned such a request and requisition on the ground that after the advertisement and the notification of the vacancies indicated therein, additional vacancies cannot be included. Any inclusion will be doing violence to the settled principles of law. Settled even by the Hon'ble Supreme Court time and again. Since these petitioners did not have the merit position and could not enter the select list within the vacancies of 43, they decided to file the writ application for a mandamus that those vacancies should be filled up even now.

The State as well as the Staff Selection Commission has filed counter affidavit. They vehemently oppose the writ application by placing reliance on a similar matter, which had travelled to the High Court earlier where the exercise was done and additional vacancies for the post of Block Statistical Supervisor/ Junior Statistical Supervisor/ Investigator were sought to be included after the vacancies were advertised.

Keeping in mind the vacancy position, a learned Single Judge passed an order to include those vacancies while carrying out the exercise for appointment. An appeal was moved by the Bihar Staff Selection Commission against the order of the learned Single

Judge dated 19th September, 2011. The appeal was allowed by the Division Bench which is reported in 2012 (4) PLJR 305. The Court is tempted to reproduce the ratio of the decision rendered in the case of Bihar Staff Selection Commission v. Manish Kumar (supra) as under :

“11. We do agree that the High Courts and the Hon’ble Supreme Court have at times upheld the action of the concerned authority in filling up the vacancies in excess of the advertised vacancies. However, the cardinal principle still remains that only the vacancies advertised can be filled in pursuant to a recruitment process. Filling up of the vacancies in excess of the advertised vacancies is without jurisdiction. (emphasis mine). Even though, the advertisement leaves a leeway for the authority to alter the number of vacancies, unless the extreme administrative exigency calls for such alteration, no alteration should be made. In any view of the matter, it is the authority concerned which has discretion to avail of such leeway, if required. The stipulation made in the advertisement does not confer an enforceable right upon the candidates applying in answer to the advertisement. In our opinion, therefore, no Court, unless the relevant rules so require, should direct the authority to fill up the posts in excess of the advertised vacancies.

12. Another cardinal principle governing the recruitment is that once the recruitment process is set in motion; alteration in the relevant rules will not affect such recruitment process. In other words, the recruitment process once set in motion shall be brought to its logical end in accordance with the rules governing the recruitment at the time of



commencement of the process. In the present case, as it has come on record, since the advertisement published on 24th August 2006 the eligibility has been modified. For appointment to the aforesaid cadres, under the modified criterion, not only a candidate must possess a Bachelor's Degree in the concerned subject but shall also have a Diploma in Computer Applications. The recruitment process for 224 vacancies which had been commenced on 24th August 2006 would not be affected by the later modification in the eligibility criterion; whereas the 181 vacancies not advertised on 24th August 2006 or until the modification in the recruitment rules would be required to be filled in in accordance with the modified eligibility criteria. The said 181 vacancies which arose after 30th May 2006 (the date of requisition made by the State Government) were not advertised until 16th May 2010, the date of examination.

13. In our opinion, if the direction issued by the learned single Judge is sustained it would lead to an illegality and an incongruity. First; the 181 vacancies which are required to be filled in in accordance with the modified recruitment rules will actually be filled according to the rules prevalent in 2006. Second; if an attempt is made to fill in the said 181 vacancies by selecting the candidates who do possess the Diploma in Computer Applications, it would lead to incongruity to the extent that in one single recruitment process two different standards will have to be applied. Third; such an action would be arbitrary and discriminatory inasmuch as in absence of the public advertisement the candidates possessing the requisite qualification as on 16th May 2010 would be deprived of the opportunity to

compete for public employment.

16. In the matter of Rakhi Ray & Ors. (Supra), the Hon'ble Supreme Court has summed up the settled law and has held in no uncertain terms, "as the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution, of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated from and such a deviation is permissible only after adopting policy decision based on some rationale, otherwise the exercise would be arbitrary."

The present case, therefore, is covered by the ratio of the Division Bench. Any adventurism embarked upon by this Court on the egging of the counsel for the petitioners will have the same fate as the decision of the learned Single Judge in the case of Manish Kumar (supra).

Writ is dismissed.

(Ajay Kumar Tripathi, J)

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