

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.261 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 19174 of 2014
with
Interlocutory Application No.1004 of 2016**

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Zubair Shadab Khan, son of Mohammad Shakir Khan, resident of 151, Ground Floor, Jayalaxmipuram, Mysore-570012(Karnataka)

.... Appellant

Versus

1. The Union of India through the Secretary, Human Resources Department, Government of India, New Delhi.
2. The Vice Chancellor, Central University of Bihar, B.I.T. Campus, Post Office- B.V. College, Patna.
3. The Central University of Bihar through its Registrar.
4. The Registrar, Central University of Bihar, B.I.T. Campus, Post Office- B.V. College, Patna.
5. The Deputy Registrar, Central University of Bihar, B.I.T. Campus, Post Office- B.V. College, Patna.

.... Respondent/s

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Appearance :

For the Appellant : Mr. Syed Masleh-Uddin Ashraf, Adv.
Mr. Zeyaul Hoda, Adv.
For the Union of India : Dr. Punam Kumari Singh, C.G.C.

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

ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 19-12-2016

Re. Interlocutory Application No.1004 of 2016.

The application is for condonation of delay of 14 days
in filing of the present Letters Patent Appeal.



For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re: Letters Patent Appeal No.261 of 2016.

The order dated 3rd December, 2015 passed by the learned Single Bench is subject matter of challenge in the present Letters Patent Appeal.

The appellant has sought declaration of result of the vacant post of Assistant Professor of Urdu and to appoint him on such vacant post advertised vide Employment Notice No.19 of 2013 dated 1st June, 2013.

The advertisement Notice No. 19 of 2013 was published for the post of Assistant Professor of Urdu indicating two existing or anticipated vacancies in the subject of Urdu. The appellant along with two other persons, were short-listed but, the candidate at serial no.1 of the merit list has been appointed. The appellant asserts that he was not informed regarding his status. Therefore, he invoked the writ jurisdiction of this Court claiming declaration of result and appointment on the second post of Assistant Professor of Urdu advertised vide the advertisement in question.



The learned Single Bench has reproduced the reasons as to why the offer of appointment was not made to the appellant i.e., in view of student-teacher ratio, only two students were enrolled in the faculty of B.A., B. Ed. and one teacher has been appointed as the first nominee on the merit list. Since there are only two students, the requirement was found of one teacher, who has been appointed.

The appellant has invoked the writ jurisdiction of this Court claiming declaration of result for the reason that two posts were advertised, therefore, the appellant is entitled to be appointed. We do not find any merit in such an argument. If the requirement is of one teacher and the said teacher has been appointed, there is no compulsion for the University to publish result of the second post of which the University does not intent to fill the same. Reference may be made to the judgment reported as AIR 2016 SC 2281 Kulwinder Pal Singh vs. State of Punjab. The Supreme Court has held that mere fact that name of the candidate appears in the select list, it does not confer any right of appointment. The relevant extract from the said judgment read as follows:-

“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.

14. As noticed earlier, as against twenty seven posts of general category advertised for the year 2007-2008, thirty one general category candidates have joined and are working. In *Rakhi Ray And Ors. vs. High Court of Delhi And Ors.* (2010) 2 SCC 637 : (AIR 2010 SC 932, paras 14, 15), observing that the vacancies cannot be filled up over and above the number of vacancies advertized, recruitment of the candidates in excess of the notified vacancies would amount to denial of equal opportunity to eligible candidates, this Court held as under:-

“12. In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, the process of selection comes to an end. Waiting list, etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service any more.

13. In the instant case, as 13 vacancies of the general category had been advertised and filled up, the selection process so far as the general category candidates is concerned, stood exhausted and the unexhausted select list is meant only to be consigned to record room.”



In view of the aforesaid judgment and in view of the fact that there are only two students, the appellant cannot claim any right of appointment against the second post which was advertised.

We do not find any merit in this Letters Patent Appeal, accordingly, it is dismissed.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Amrendra/Ashwini

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23/12/2016
Transmission Date	

