

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.340 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 4089 of 2012

=====

Manish Kumar Son of Sri Bindeshwari Yadav Resident Of Village Mangrar, P.S.
Lakshmipur, Dist. Jamui

.... Appellant/s

Versus

1. The State of Bihar
2. Principal Secretary, Human Resource Development Department, Government Of Bihar, Patna
3. District Magistrate, Jamui
4. District Education Officer, Jamui
5. Block Development Officer Cum Secretary Block Teacher Appointment Unit, Lakshmipur Block, Dist. Jamui
6. Block Education Officer, Lakshmipur Block, Dist. Jamui
7. The District Teacher Appointment Appellate Authority, Jamui, through its Member

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Prabhat Ranjan Singh, Advocate.

For the Respondent/s : Mr. Deepak Kumar, AC to SC-5

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 25-07-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 21.06.2013 in C.W.J.C. No. 4089 of 2012, whereby the writ petition filed by the appellant for appointment to the post of Block Teacher remained unsuccessful.

As per the appellant, 68 vacancies were advertised for the post of teachers in Laxmipur Block but only 11 teachers were appointed. Therefore, the appellant claims that he has a right for

appointment against the unfilled vacancies.

Before the learned Single Bench, the stand of the State was that the appellant belongs to backward category and the teachers appointed in the backward category were trained teachers whereas the appellant was untrained. The learned Single Bench found that none in the backward category with lesser qualification and marks have been appointed, therefore no error can be said to have been committed by the District Teachers Employment Appellate Tribunal.

It is not in dispute that the appellant was untrained and only trained teachers have been appointed whereby, the appointing authority has decided not to fill up the vacant post from untrained teachers. Mere selection in the select list does not confer any right to seek appointment. The action of the appointing authority also not appointing the untrained teacher cannot be said to be unwarranted in any manner. In respect of candidates in the select list, the matter has been examined recently by the Hon'ble Supreme Court in the case of **Kulwinder Pal Singh v. State of Punjab** reported as **AIR 2016 SC 2281**. The Court held that mere selection does not confer any right of appointment. The Court said 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 v. Bhanu Lodh and Ors.* [*Food Corporation of India v. Bhanu Lodh*, (2005) 3 SCC 618: (AIR 2005 SC 2775); *All India SC & ST Employees' Assn. v. A. Arthur Jeen* [*All India SC & ST Employees' Assn. v. A. Arthur Jeen*, (2001) 6 SCC 380: (AIR 2001 SC 1851) and *UPSC v. Gaurav Dwivedi* [*UPSC v. Gaurav Dwivedi*, (1999) 5 SCC 180: (AIR 1999 SC 2137)

12. This Court again in *State of Orissa v. Rajkishore Nanda* [*State of Orissa v. Rajkishore Nanda*, (2010) 6 SCC 777: (AIR 2010 SC 2100, paras 13 and 15), held as under:

“14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at 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 v. Union of India* [*Manoj Manu v. Union of India*, (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 the 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 6-7-2011. 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.”

In view of the well settled principles of law, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the Letters Patent Appeal.

Accordingly, the appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar/Anjani

FR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A