

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8730 of 2014

Prabhakar Kumar son of Sri Triloki Pandey, resident of village- Madapur,
P.S.- Bhagwanpur, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Department of Planning and Development, Govt. of Bihar, Patna
3. The Principal Secretary, Department of Planning and Development, Govt. of Bihar, Patna
4. The Bihar Public Service Commission through its Secretary, Jawaharlal Nehru Marg, Patna
5. The Secretary, Bihar Public Service Commission, Jawaharlal Nehru Marge, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Onkar Nath, Advocate

For the Respondent/s : Mr. Vivek Prasad,
GP-7

Mr. Sanjay Kumar Ojha
AC to GP-7

For the B.P.S.C. : Mr. P. N. Shahi, Sr. Advocate
Mr. Sanjay Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 21-09-2016

Heard learned counsel for the parties.

Petitioner is one of the candidates, who was aspirant for appointment on the post of District Statistical Officer / District Assistant Director. An examination was held by the B.P.S.C. Petitioner appeared in the said examination and had obtained 637 marks in the written examination. Appointments came to be made on the basis of recommendation made by the B.P.S.C. But since the petitioner did not have the merit position,

which could beget him the benefit of recommendation, he has not been appointed.

He now files a writ application on the ground that there are vacancies subsisting after the recommendation for one reason or the other. He has also obtained information under Right to Information Act and this position is reflected therein and, therefore, a mandamus should be issued for his appointment.

From the RTI response, annexed as Annexure-4, it seems that the merit position of the petitioner was 15 with a total marks of 717 and that the vacancy, which may have subsisted after the recommendation is not required to be filled up by making fresh recommendation, since the stand of the counsel for B.P.S.C. is that B.P.S.C. becomes functus officio after the recommendation.

In addition to that reliance has been placed on a recent decision of the Hon'ble Apex Court, which is the case of *Kulwinder Pal Singh and Anr. Versus State of Punjab and Ors., reported in (2016) 6 SCC 532*. The Hon'ble Supreme Court has this to say in paragraph nos. 10 to 13:

“10. 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, All India SC & ST Employees' Assn. v. A. Arthur Jeen and UPSC v. Gaurav Dwivedi).

11. *This Court again in State of Orissa v. Rajkishore Nanda, held as under: (SCC p. 783, paras 14 & 16)*

"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."

12. *In Manoj Manu v. Union of India, it was held that (SCC p. 176, para 10) 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.

13. 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 v. High Court of Delhi, observing that the vacancies cannot be filled up over and above the number of vacancies advertised, 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: (SCC pp. 642-43, paras 12-13)

“12. In view of above, the law can be summarized 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, unexecutable 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 settled law in this regard from the highest Court of the land, the expectation of the petitioner for issuance of a mandamus in his favour for appointment in the background and circumstances is a misplaced one.

Writ application has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

SKM/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	22.09.2016
Transmission Date	