

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.367 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 11747 of 2013**

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Dharmendra Kumar, Son of Sri Arun Kumar, Resident of Village - Rahui, P.S. -
Rahui, District - Nalanda.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Central Recruitment Board (Constable Recruitment) Bihar, Patna Through
Its Chairman, Computer Bhawan, Jawaharlal Nehru Marg, Patna. Null Null
4. The Chairman, Central Recruitment Board (Constable Recruitment) Computer
Bhawan, Jawajal Lal Nehru Marg, Patna.
5. The Secretary, Central Recruitment Board (Constable Recruitment) Computer
Bhawan, Jawaharlal Nehru Marg, Patna.
6. The Public Information Officer, Teh Central Recruitment Board (Constable
Recruitment), Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Yugal Kishore, Sr. Advocate Mr. Ajey Kumar, Advocate Mr. Pramod Kumar, Advocate
For the State	:	Mr. Raj Ballabh Pd. Yadav, AAG 11 Mr. Ramashray Ray, Advocate
For Respondent Nos. 3 to 6	:	Mr. Sanjay Pandey, Mrs. Shikha Roy Mr. Binod Kumar Mishra, Advocates

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 27-07-2016

The challenge in the present Letters Patent Appeal is to an
order dated 3rd February, 2014 passed by the learned Single Bench of
this Court in CWJC No. 11747 of 2013, whereby the writ application
filed by the appellant was dismissed.

The appellant was a candidate for appointment on the post

of Constable. He belongs to the Backward Class Male Non-Home Guard category. He scored 177 marks. The cut-off mark was also 177, but the candidate older in age was appointed. Such was the condition in the policy for appointment issued earlier. There is no surviving claim on this account.

The other argument raised before the learned Single Bench was that there are more than 150 posts vacant and other 300 vacancies, therefore, the appellant should be considered against the available vacancies.

The learned Single Bench found that for the available vacancies an advertisement has already been issued and it is open to the appellant to avail that opportunity but no direction can be issued for appointment against the available vacancies.

The issue as to whether a candidate has a right to seek a direction for appointment even if some vacancies are available has been examined by the Hon'ble Court in the case of Kulwinder Pal Singh vs. State of Punjab (AIR2016 SC 2281). The Supreme Court has held that mere fact that name of a candidate appears in the select list does not confer a right for appointment. The Court has observed 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 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.”

The available vacancies have been taken into consideration while issuing the subsequent advertisement and that the fact that the name of the candidate in select list does not confer any right. Therefore, we do not find any merit in the present Letters Patent Appeal.

The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

mrl.

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