

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19926 of 2013

Priyanka

.... Petitioner/s

Versus

The Bihar Staff Selection Commission & Ors

.... Respondent/s

Appearance :

For the Petitioner/s: Mr. Dinu Kumar

: Mr. Rajesh Kumar Singh

: Mr. Arvind Kumar Sharma

: Mr. Santosh Kumar

: Mr. Manoj Kumar

For the B.S.S.C. : Mr. Satyabir Bharti

: Mr. Alok Chandra

For the State : Pramod Kumar Singh, A.C. to S.C.12

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-04-2016

1. Heard learned counsel for the petitioner, learned counsel for the Commission and learned counsel for the State.

2. In this case, the petitioner is seeking relief in the nature of certiorari for quashing the part of notice dated 29.12.2012 issued under the signature of Bihar Public Service Commission, by which 1650 vacancies of 13 services, break up has been given, but not required to be mentioned, were not advertised in the advertisement No.110 of 2010 has been included in appointment and options were asked from the candidates for appointment. It has further been sought relief to declare the counseling of 1650 posts of 13 services, details has been given, is without jurisdiction and violation of

Article 16 of the Constitution of India.



3. The short facts of this case are that the petitioner is claiming to have graduated from a recognized university, but the fact is that she never applied against the Advertisement No.110 of 2010. In the writ application, the primary question that been raised by the petitioner is that the selection has been made over and above the number of vacancies which were notified in the advertisement No.110 of 2010 and claiming that any appointment *de hors* to the advertisement is not sustainable.

4. Another point has been taken that the Government has amended the Rule vide Notification dated 28.02.2012 and selection and appointment have been made in connection with 11 departments newly added by newly amended Rule. It has been submitted that the department which has been mentioned in the said Notification were not there in the original Rule, but it has been brought by way of amendment. In the said Notification, it has been provided that the amended Rule was brought into force only after the publication in the extraordinary Gazette. It has further submitted that the petitioner has tried his best to find out the date when it was published in the extra ordinary gazette, but failed. In another way has urged that this notification was never brought into existence by issuing extra

ordinary Gazette, but selection has been made with regard to the post which had fallen vacant in 11 departments of the State of Bihar and requested to declare the selection of those candidates with respect to this 11 departments to be *null and void*.

5. Learned counsel for the Commission has pointed out that the issue with regard to the selection of excess candidates was raised in the earlier litigation in the case of ***Dhananjay Kumar Mishra and ors. Vs. Bihar Staff Selection Commission***, reported in **2013(4) PLJR, 169**, where this point was specifically raised by the petitioner and this Court has taken note of the submission made by the petitioner there. It will be relevant to quote paragraph No.29 of the said judgment, which reads as under:-

“29. Mr. Dinu Kumar, learned counsel for the petitioners in CWJC No.3640 of 2013 and Mr. Abhinav Srivastava, learned counsel for the petitioners in CWJC No.3740 of 2013 had however concentrated in their submissions on yet another aspect that the Commission having expanded the zone of consideration beyond five times as stipulated in the advertisement has committed such an error that now the whole Main Examination including the impugned result has become vitiated. In this regard, it has been explained by them that even in the number of vacancy which was increased from 1569 to 3285 from the stage of holding of preliminary test to Main Examination, the total number of candidates of the



specific terms set out in the advertisement limiting it to five times of total posts could not have exceeded beyond 16425 but the Commission, having declared 27289 candidates to be successful in the preliminary test who were allowed to appear in the Main Examination has acted contrary to the terms of advertisement which in turn has vitiated the entire result of the Main Examination wherein 25792 candidates have been declared successful for 3285 posts.”

6. In the aforesaid case, plea of excess selection was raised and submitted that there is an increase of vacancies from 1569 to 3285 and that has been answered in paragraph Nos. 33 of the said judgment in the following manner:-

“33. This Court, therefore, would find nothing wrong in increase of number of posts and the selection made in respect of them. Law in this regard is also well settled that while future vacancies may not be included in a selection process but anticipated vacancies can very well be included. In the present case in the advertisement itself it was mentioned that the number of vacancies could be increased before holding of the Main Examination and in fact before forms in the Main Examination were filed up by the candidates including the petitioners declared successful in Preliminary Test, the number of vacancies were increased and notified by the Commission. This procedure of including the anticipated vacancies has been invariably approved by the Apex Court. Reference in this

*connection may usefully be made to the judgment of the Apex Court in the case of **K.Laxshmi vs. State of Kerala & Ors.**, reported in (2012) 4 SCC 115 [:(2012(2) PLJR (SC)416] and in the case of **Arup Das & Ors. v. State of Assam & Ors.**, reported in (2012) 5 SCC 559.”*

7. So the argument of excess selection of persons is no longer *res integra* so much so the aforesaid judgment has been affirmed by the Division Bench of this Court in the case of **Kumod Kumar and ors. v. The Bihar Staff Selection Commission**, reported in 2015(3) **PLJR, 693** with some modification. In such view of the matter, the point that has been raised by the petitioner regarding selection of excess candidates is no longer required to be gone into.

8. Another point has been raised by the petitioner with regard to the amendment in the Rule. It will be relevant to examine the provisions of Bihar State Staff Selection Commission Act, 2002. This Rule has been made in exercise of power under Section 12 of the aforesaid Act. The Section 5 of the Commission Act, 2002 is as follows:-

5. Services/Cadres/Posts for which the Commission may recommend for appointment- *The Commission may recommend for appointments for all general/technical/non-technical services/cadres/posts under the State Government and field officers having*

pay scales less than Rs.6500-10,500 (or corresponding scale as revised from time to time) and as provided in the Rules.”

9. On analysis of the above Section, it is clear that the Commission has jurisdiction to make selection and recommendation to the class of posts of different departments relating to the General, technical, non technical service, cadres, post. The limit has been provided from pay scale of Rs.6500-10,5000/- there the Commission has jurisdiction to conduct the examination and recommend the persons who are declared to be successful. So, it is clear from Section 5 itself stipulates that the Commission has jurisdiction to hold examination with regard to the class of posts which carrying the pay scale of Rs.6500 – 10,5000/- .

10. It is submitted that in the amended Notification of 2012, eleven posts were included, which were not in the original Notification and the advertisement was notified in consonance with the Rule not the amended Rule. The Rule has been created in exercise of power under Section 12 of the Bihar Staff Selection Commission Act, 2002 and when Section 5 itself mentions that the Commission has jurisdiction to select the persons for the post carrying pay scale of Rs.6,500–10,5000/-, even though original Rule is silent, the appointment made with respect to other departments

cannot be declared to be illegal as the act stipulates selection with respect to departments mentioned within ceiling provided. The Rule has been framed in view of Section 12 of the Act. If the Rule is *de hors* to the Act that will be declared to be ultra virus not *vice-versa* and so much so that Section 5 makes it very clear that selection can be made for the post carrying the pay scale of Rs.6500 -10,5000/-. Here it is pertinent to note that the petitioner has not applied against the advertisement, but merely he has taken a chance to file the present litigation only for the academic discussion not for any relief as the present application neither in the shape of PIL nor in the shape of *co-warranto*. One fact is very important to note that the persons who were selected and appointed by the authority are working for last five years, so it will be inequitable to entertain this application and this application was filed when the recommendation was made.

11. In such view of the matter, this Court does not find any merit in the present petition. Hence, this petition is dismissed.

(Shivaji Pandey, J)

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