

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.236 of 2016

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Manjeet Kumar, son of Late Arjun Singh, resident of Village – Muraura, P S –
Biharsharif, District - Nalanda

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Bihar State Legal Service Authority through its Chairman, Bihar, Patna.
3. The Secretary, Bihar State Legal Service Authority, Bihar, Patna.
4. The Chairman, Permanent Lok Adalat, Patna High Court, Patna.
5. The Chairman, District & Sessions Judge, District Legal Service Authority,
Nalanda at Biharsharif.
6. The Secretary, District Legal Service Authority, Nalanda at Biharsharif.
7. District Magistrate cum Deputy Chairman, District Legal Service, Nalanda at
Biharsharif.
8. The District Legal Service Authority Appointment Committee, Nalanda at
Biharsharif.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Prasad Singh
For the Respondent State : Mr. Tripurari Nath Ambastha, AC to GP 14
For Respondents No.2 to 6 : Mr. Pushkar Narain Shahi, Senior Advocate
Mr. Patanjali Rishi

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 28-06-2016

The District Legal Service Authority, Nalanda at Biharsharif, issued an advertisement inviting applications for filling up certain posts under them. The advertisement is Annexure-1 to the writ application. Petitioner responded and participated in the process of selection and he was placed at Serial No.1 amongst the category of wait listed candidates. It is his case that the person over and above in the merit position of the selected candidate did not join. The name of the said selected candidate for the post of clerk has been indicated as Vandana Priyadarshi.

2. Due to non-joining of Vandana Priyadarshi the post of clerk remained vacant. Petitioner, therefore, had a legitimate expectation to be

appointed since he was at serial No.1 of the wait list. Since nothing came to be done for a long time despite the respondents having been approached, the present writ application came to be filed seeking a direction upon the respondents not only to appoint the petitioner but permit his joining.

3. The Court is informed that the vacancy still subsists and it has not been filled up till date.

4. A direction was issued upon the respondents to file their show-cause/counter affidavit as to why the petitioner is not being appointed or has been appointed so far. In the counter affidavit a plea is taken that because of filing of certain writ applications the matter dragged on for a while and only when the issue got settled that the authorities decided to issue appointment letters. They do accept the position that Vandana Priyadarshi did not join despite her selection and being placed over and above the petitioner but their stand is that since more than a year has elapsed since such an event having had taken place, the wait list has elapsed. No appointment can be made on the vacancy caused due to non-joining of Vandana Priyadarshi.

5. Learned counsel representing the petitioner submits that if it was a case of Vandana Priyadarshi joining and then quitting, may be they could have an arguable case on behalf of the respondents that such vacancy cannot be filled up from a wait listed candidate or shortlisted candidate. This is a case where the candidate in question did not respond at all to the letter of appointment and since she did not join, the natural corollary would be that the wait-listed candidate at Serial No. 1 ought to be given an opportunity, which has not been done in the present case. The factum of Vandana Priyadarshi not joining was known to the respondents all along and it is they and they alone who are to blame for delaying the matter and trying to kill the right of the petitioner.

6. Counsel also places before this Court a recent decision rendered by the Hon`ble Supreme Court, which is **Manoj Manu and another vs. Union of India and others**, reported in **2013 (4) PLJR 88 (SC)**. The relevant paragraph which has significance in the present dispute is para 11 and 12 which are reproduced herein below:

“11. It can be clearly inferred from the reading of the aforesaid that it is not the case where any of these persons initially joined as Section Officer and thereafter resigned/left/promoted etc. thereby creating the vacancies again. Had that been the situation viz. after the vacancy had been filled up, and caused again because of some subsequent event, position would have been different. In that eventuality the UPSC would be right in not forwarding the names from the list as there is culmination of the process with the exhaustion of the notified vacancies and vacancies arising thereafter have to be filled up by fresh examination. However, in the instant case, out of 184 persons recommended, six persons did not join at all. In these circumstances when the candidates in reserved list on the basis of examination already held, were available and DoP&T had approached UPSC “within a reasonable time” to send the names, we do not see any reason or justification on the part of the UPSC not to send the names.

12. We are conscious of the legal position that merely because the name of a candidate finds place in the select list, it would not give him/her indefeasible right to get appointment as well. It is always open to the Government not to fill up all vacancies. However, there has to be a valid reason for adopting such a course of action. This legal position has been narrated by this Court in **Ms. Neelima Shangla vs. State of Haryana**,

(1986) 3 SCR 785. In that case:-

The appellant was the candidate for appointment to the post of Subordinate Judge in Haryana. Under the scheme of the Rules, the Public Service Commission was required to hold first a written test in subjects chosen by the High Court and next a viva voce test. Unless a candidate secures 45% of the marks in the written papers and 33% in the language paper, he will not be called for the viva voce test. All candidates securing 55% of the marks in the aggregate in the written and viva voce tests are considered as qualified for appointment. The appellant though secured 55% of the marks was not appointed as her name was not sent by the Public Service Commission to the Govt. The Supreme Court in such fact situation found that the Public Service Commission is not required to make any further selection from the qualified candidates and is, therefore, not expected to withhold the name of any qualified candidate. The duty of the Public Service Commission is to make available to the Govt., a complete list of qualified candidates arranged in order of merit. How should Govt. act, is stated by the Supreme Court in the following words:-

“Thereafter the government is to make the selection strictly in the order in which they have been placed by the Commission as a result of the examination. The names of the selected candidates are then to be entered in the Register maintained by the High Court strictly in that order and appointments made from the names entered in that Register also strictly in the same order. It is, of course, open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for example, decide that, though 55 per cent is the minimum qualifying mark, in the



interests of higher standards, they would not appoint anyone who has obtained less than 60 per cent of the marks.” (Emphasis supplied)”

7. The proposition or the ratio which has been laid down by the Hon`ble Supreme Court quoted above supports the case of the petitioner for a direction upon the respondents to appoint him on the post of a clerk because it is a case of non-joining of the selected candidate and the non-joining creates a right in favour of a waitlisted candidate to be appointed against the subsisting vacancy.

8. Writ application is allowed. Direction is issued upon the Chairman and Secretary of the District Legal Service Authority, Nalanda at Biharsharif that the petitioner would be offered a letter of appointment within a period of six weeks from the date of production of a copy of this order.

9. Writ application is allowed in terms of the above.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	29/06/2016
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