

**Letters Patent Appeal No.841 of 2015
Along with
Interlocutory Application No. 3568 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 6586 of 2009**

.... Appellant/s

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Human Resource Development Department, Government of Bihar, Patna.
3. The Director, Higher Education, Government of Bihar, Patna.
4. The Vice-Chancellor, Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur.
5. The Registrar, Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur.

.... Respondent/s

For the Appellant/s : Mr. Naresh Chandra Verma with
Mr. Ram Kumar Singh, Advocates
For the Respondent/s : Mr.

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 09-08-2016

The application is for condonation of delay of 81 days in filing of the appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 81 days in filing of the appeal is condoned.

Interlocutory Application stands disposed off.

Re.: Letters Patent Appeal No. 841 of 2015

In the present Letters Patent Appeal, the challenge is to an order dated 05.04.2012 whereby the writ application filed by the appellant for directing the respondents to regularize the service of the appellant on the post of Lecturer in the Department of Electronic Science remained unsuccessful.

An advertisement was published in the year 1997 by the Bihar State University (Constituent Colleges) Service Commission. The appellant applied for appointment to the post of Lecturer in the Electronic Science. It is thereafter, the appellant was appointed temporarily on the post of Lecturer on account of death of a Lecturer in the said college. He was being paid honorarium of Rs. 3000/- which was subsequently increased from time to time. The appellant asserts that he was called to appear before the Interview Board on 19.07.2001 but the result of the selection in the Department of Electronic Science was not published. After waiting for publication of the result, he approached the Commission in the year 2005. The appellant asserts that in the meantime, the vigilance sleuths of the State of Bihar took the entire records of the Commission. The State Government thereafter decided to dissolve the Commission on 19th April, 2007, therefore, the result of the Department of Electronic Science was never formally published. The appellant relies upon the

tabulation chart of the Commission to assert that he is one of the selected candidates.

In the counter affidavit, it has been averred that the tabulation chart was never published by the Commission. The appellant is continuing without any recommendation by the Commission, therefore, he is not entitled to regularization of his service or for regular pay scale.

Admittedly, the learned Single Bench dismissed the writ petition, *inter alia*, on the ground that the Commission could not complete the selection process and send the recommendation to the University before it was disbanded. In such circumstances, the appellant cannot claim right of appointment and it will be open to the University to start a fresh exercise for appointment on the sanctioned post of Lecturer in the Department of Electronic Science.

The appellant appeared as per the stand in the writ application in the year 2001 for interview but the result was never published. In the meantime, the Commission stands dissolved. Therefore, there could not be any recommendation for appointment in the Department of Electronic Science by a defunct Commission. The appellant appeared for interview in the year 2001 and invoked the writ jurisdiction in the year 2009. The relief claimed is of regularization in service and/or publication of result. Since the appellant was

appointed as a stop gap arrangement, pending filling up of the regular vacancy, services of the appellant cannot be regularized. Still further, the result cannot be declared to be published as the Commission who has conducted the interview is no longer in existence.

Even it is assumed that the appellant appeared in the select list, he does not have any right to seek appointment in view of the recent judgment of the Hon'ble Supreme Court in the case of **Kulwinder Pal Singh v. State of Punjab 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 [*Food Corporation of India v. Bhanu Lodh*, (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 *UPSC v. Gaurav Dwivedi & Ors.* (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.”

The other prayer of the appellant is that the appellant is entitled to regular pay scale at par with the regular employees of the University. We do not find any merit in the said argument as well.

The appellant was appointed on a fixed honorarium. It was a stop gap arrangement so that the cause of the students does not suffer. Merely because at one stage the appellant has been appointed on honorarium basis, it cannot be said that he is discharging the same duties and responsibilities as that of a regularly appointed Lecturer moreso he has not faced any process of regular selection. He, thus, cannot be given a regular pay scale when he has not been appointed by any known method of public employment.

In view thereof, we do not find any merit in the argument of learned counsel for the appellant that the appellant is entitled to regular pay scale.

Accordingly, we do not find any reason to interfere with the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal and the same is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar/Anjani

AFR/NAFR	NAFR
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