IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.269 of 2016
Arising out of
Letters Patent Appeal No. 1487 of 2011
Along with
Interlocutory Application No.4409 of 2016

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1. Md. Mazahir Masoom S/o Md. Yunus, resident of Mohalla- Shahmir Takiya, (Near Masjid Gali) P.O.- Chand Choura, P.S.- Civil Lines, Gaya, District- Gaya
2. Om Prakash S/o Late Ram Pratap Sharma, resident of Prakash Commercial Institute, Chand Choura, District- Gaya
3. Nagendra Prasad S/o Late Baban Prasad, C/o Dr. Arun Kumar Prasad, R/o Heera Kunj, 307, Anugrahpuri Colony, District- Gaya

.... Appellants-Petitioners

Versus

1. The State of Bihar
2. The Secretary and Commissioner, Human Resources Department (now re-designated as Principal Secretary, Education Department), Government of Bihar, Patna
3. The Director, Youth, Art and Culture Department, Government of Bihar, Patna
4. The Deputy Director General, NCC Directorate, C.D.A. Building, Rajendra Path, Patna-1.
5. The Joint Director, NCC Directorate, C.D.A. Building Rajendra Path, Patna
6. The Bihar Public Service Commission through its Secretary, 15, Jawaharlal Nehru Marg, Bailey Road, Patna
7. Mithilesh Kumar Prasad, S/o Late Rajendra Prasad, R/M- Gewal Bigha, Police Line Road, Durgasthan, Near Post Office- Gaya, District- Gaya
8. Renu Kumari D/o Late – Mayakant Verma, R/Mohalla- Pachmahalla (Sarlahi Gali) District- Gaya

.... Respondent/s-Opp.Parties

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Appearance :
For the Petitioner/s : Mr. Rajendra Narayan Sinha, Sr. Advocate
Mr. Rakesh Kumar Samrendra, Advocate
Mr. Manager Sah, Advocate
For the State : Mr. Rakesh Prabhat, AC to SC-21

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 04-02-2017

Re.: Interlocutory Application No.4409 of 2016

The application is for condonation of delay in filing of the present Civil Review Application.

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For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Civil Review Application.

Interlocutory Application stands allowed accordingly.

Re.: Civil Review No.269 of 2016

The petitioners seek review of the order passed by a Division Bench of this Court on 27th April, 2015 in Letters Patent Appeal No. 1487 of 2011 whereby the selection process initiated by the Advertisement dated 23rd June, 1995 to fill up 45 posts of Class III in the office of Directorate of N.C.C. in the State of Bihar remained unsuccessful.

The petitioners claim that a select list was prepared on 14.03.1996 in which the petitioners are successful candidates but such selection process was cancelled on the ground that the entire selection process is contrary to the policy decision taken by the Government through Resolution dated 02.01.1993. It is on record that during the pendency of the writ application, another advertisement was issued in the year 1997 after the cancellation of the previous selection process and as many as 116 posts were filled up.

The sole argument raised by the petitioners is that the

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Resolution dated 02.01.1993 was withdrawn on 18th June, 1993, therefore, the cancellation of selection process on the basis of Resolution dated 2nd January, 1993 is not tenable.

Though such Resolution was not produced before the writ Court or in appeal, we have examined the effect of the said Resolution as well. As per the revised circular dated 18th June, 1993, the candidates are to be selected by a Selection Committee under the Chairmanship of the District Magistrate. Such Committee consists of six members including the representative of different Administrative Departments on the basis of year-wise rotation, representative of Scheduled caste/Scheduled Tribe, a candidate from the minority community on the basis of year-wise rotation and representative of backward Classes I & II apart from the Deputy Collector of the District. It is pointed out that the same process shall be followed in respect of appointments in respect of appointments in the Boards, Corporation, Companies and Universities except Class IV post which are State Government undertakings in the same manner as is mentioned above.

Admittedly, the selection process has not been carried out as per the norms fixed by the Resolution date 18th June, 1993. Still further, after the cancellation of the selection process another selection process was initiated and the posts advertised stand filled

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up. None of the candidates who have been selected have been impleaded as party-respondents.

Still further, it is well settled that mere selection does not confer any right to seek appointment. For good and sufficient reasons, the selection process could be nullified. Reference may be made to a recent judgment of the Supreme Court in the case of Kulwinder Pal Singh and another v. State of Punjab and others, A.I.R. 2016 Supreme Court 2281, wherein the Court held 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 (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).
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> 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:
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> > "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

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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 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 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."

Therefore, the petitioners cannot claim any right of appointment on the basis of selection process initiated in the year 1995 more so when the post advertised in the earlier selection process was included in the subsequent selection process and candidates appointed.

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In view thereof, we do not find any merit in the present review petition. The same is dismissed.

(Hemant Gupta, ACJ.)

(Sudhir Singh, J.)

S.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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