

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14211 of 2008

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Vijay Vikram, son of Late Vishwa Nath Prasad, resident of Mohalla – Shipuri Beur
Road, P.S. Gardanibagh, Town District - Patna

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna
2. The Secretary, Raj Bhasha Department, Govt. of Bihar, Old Secretariat, Patna
3. The Deputy Secretary, Raj Bhasha Department, Govt. of Bihar, Patna
4. The Secretary, Personnel & Administrative Reforms Department, Old Secretariat, Patna
5. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhay Kumar Singh I, Mr. Bharat Bhushan, Advocates
For the State	:	Mr. Anujit Sinha, AC to PAAG 2
For the BPSC	:	Mr. Ashok Kr. Choudhary, Mr. Akshansh Ankit Mr. Amit Kr. Tiwary, Advocates

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 09-02-2017

Heard learned counsel for the petitioner and learned
counsels for the Respondent State and Respondent BPSC.

The present writ application has been filed by the
petitioner for directing the respondent authorities to appoint the
petitioner on the post of Rajbhasha Assistant, Grade-III, in view of
the recommendation made by the Bihar Public Service
Commission, pursuant to Advertisement No. 32/97.

The factual matrix of the case would unveil that the
Bihar Public Service Commission (hereinafter referred to as the



Commission) issued a common advertisement in the year 1997 (as contained in Annexure-1), inviting applications from candidates for appointment on different posts, which also included Advertisement No. 32/97 for appointment on 12 posts of Rajbhasha Assistant Grade-III, in the Rajbhasha Department in the scale of Rs. 1500/- to 2750/-. Out of 12 posts, 9 posts were for candidates of general category, while one post was reserved for candidate of scheduled Caste category, one for Scheduled Tribe category and one for extremely backward caste category. The educational qualification was prescribed as B.A. (Hons.) in Hindi or M.A. in Hindi and working knowledge of English. The mode of selection was a written test. In pursuance to such advertisement, the petitioner applied for his candidature and accordingly, the petitioner was issued an Admit Card bearing Roll No. 100174 to appear in the written examination, which was conducted on 21.03.1999. The result was published on 29.01.2000 in which the petitioner's name also figured at Serial No. 9 in the merit list of 12 successful candidates(as contained in Annexure-3) and accordingly, the Commission forwarded the names of the 12 successful candidates to the Rajbhasha Department vide letter dated 27.03.2000 (as contained in Annexure-4). Petitioner's name figured at the bottom, i.e. at Serial No. 9, amongst the candidates



of general category. In pursuance thereto, the Rajbhasha Department, Bihar issued a letter to the petitioner vide Memo No. 433 dated 16.05.2002 to get his documents verified on 28.05.2002 in the office of Director, Rajbhasha Department. As gets reflected from the pleadings, the appointment process got delayed due to bifurcation of the State of Bihar, pursuant to the Bihar Reorganization Act, 2000 coming into force, which resulted into carving out, of the State of Jharkhand out of the State of Bihar. As such the Home (Special) Department had stayed all the appointments until the reorganization, vide letter No. 1427 dated 24.09.2000.

Such bifurcation of the State of Bihar, led to a natural division of all resources, assets and liabilities amongst the two States, as also the allocation/ sharing of the posts between the two States and it was agreed that $\frac{2}{3}^{\text{rd}}$ of the posts would remain with the State of Bihar, while $\frac{1}{3}^{\text{rd}}$ would go to the State of Jharkhand. As such, 8 out of the 12 advertised posts of Rajbhasha Assistants remained with the State of Bihar, while 4 posts were allocated to the State of Jharkhand.

It was probably under such circumstances that the State Government decided not to act upon the recommendation made by the Commission for appointment of selected candidates



on the post of Rajbhasha Assistant, until the posts are allocated. The Personnel and Administrative Reforms Department, Bihar, gave its opinion on the point of procedure of appointment and the roster point, as a result of which 8 posts of Rajbhasha Assistants, recommended for appointment, remained with the State of Bihar and as per the roster points, out of the 8 posts, the category-wise break up was decided as 4 candidates of general category, 4 candidates under the reserved category. In view of the same, revised recommendations were made, pursuant to which four candidates were appointed under the General Category, as per Rajbhasha Department's office order No. 19 dated 15.03.2007 and four candidates from the reserved category were appointed, as per office order No. 06 dated 26.06.2008. The revised list of recommended candidates of general category did not include the name of the petitioner and as such, his candidature for appointment got rejected, in view of the changed circumstances, arising out of the Bihar Reorganization Act, 2000.

During the interregnum, the petitioners and others had preferred a writ application bearing CWJC No. 14435 of 2003, for directing the respondent authorities to act upon the recommendation of the Commission and to appoint them. Acknowledging the fact that the process of appointment was kept



in abeyance as per the advice of the Finance Department vide circular No. 7173/VI(2) dated 03.10.2000, as also the fact that the State Government had decided not to act upon the recommendation made by the commission for appointment of the petitioners, the writ application was disposed of on 27.04.2004, in the following terms :-

“It is not in dispute that the petitioners have already been recommended by the Commission for their appointment but recommendation itself has no binding effect in the State Government and it would depend upon the State Government either to accept recommendation or not to accept the same. The petitioners as such do not have the right to ask for appointment by the State Government.

However, in view of the statements made in the counter affidavit filed on behalf of the State Government, the petitioner’ case has not finally been rejected and merely process of appointment has been kept in abeyance and in that view of the matter, the State Government may consider to act upon the recommendation made by the Commission on exigency of vacancies.

With the aforesaid direction and observation, this application is disposed of.”



Another leg of argument by the petitioner is that prior to the reorganization of the State of Bihar there were altogether 35 posts of Rajbhasha Assistant, but after the reorganization 23 posts remained in the State of Bihar, out of which only 9 persons are working, hence 14 posts are vacant and available, against which the petitioner can be appointed. But as against such contention, it has been contended by the learned counsel for the Respondent Nos. 2 and 3 that the claim of the petitioners for being appointed as Rajbhasha Assistant has been rejected vide Memo No. 878 dated 11.12.2009.

Learned counsel for BPSC submits that the petitioner could not be appointed, despite being initially recommended for appointment in the undivided State of Bihar, only due to the intervening circumstance of reorganization of the State of Bihar, resulting into sharing of posts, pursuant to which only 8 posts out of 12 posts remained with the State of Bihar and accordingly the recommendation was revised, wherein the name of the petitioner could not be recommended in the list of 4 General Category candidates, since the name of the petitioner stood at Serial No. 9 of the merit list, or in other words, the petitioner was at the bottom of the list amongst the General Category candidates.

The counter affidavit filed on behalf of Respondent



No. 5, B.P.S.C., has placed on record a letter issued vide Memo No. 1019 dated 02.12.2006, by the Deputy Secretary, Rajbhasha Department (as contained in Annexure-B series), whereby it has been specified that as per the Reservation Roster, appointment of 8 candidates was to be made on Roster Point 25 to 32 (total 8 posts).

Considering the rival submission of the parties, the question which remains to be decided is whether the petitioner could have been appointed, in the changed circumstances, which was the outcome of the reorganization of the State of Bihar. In view of this Court, it is not in dispute that the petitioner was not recommended in the select list for being appointed. Such list of recommended candidates was forwarded to the Rajbhasha Department on 27.03.2000 by the B.P.S.C., when the State of Bihar was not bifurcated. But the Respondent authorities could not act upon the recommended list of candidates, by appointing them, in view of the process of appointment being kept in abeyance, in anticipation of reorganization of the State of Bihar. The petitioner's name figured at the bottom of the list amongst the General Category candidates i.e. at Sl. No. 9.

But, subsequent to reorganization, only 8 seats out of the total 12 seats remained with the State of Bihar and as per



the reservation roster 4 seats remained available for general category candidates, 1 seat for backward category, 1 seat for backward category female and two for extremely backward category. It was under such circumstances that despite being recommended for appointment in the undivided State of Bihar, the petitioner could not be appointed as against such recommendation, since only 4 seats were left for general category candidates, while the petitioner's name figured at Serial No. 9.

So far as the contention made by the petitioner, regarding appointment of four reserved category candidates, as against the reserved post, whose names did not figure in the list of recommended candidates is concerned, such contention in view of this Court, is of no help to the petitioner, since the petitioner could not have been appointed against the reserved seats, and even if it is considered for the sake of argument, any increase of one or two seats of general category, would never have made a case for appointment of a general category candidate, whose name figured at Serial No. 9.

Moreover, merely being recommended for being appointed, does not create an indefeasible right for being appointed. Such view has been taken by the Apex Court in a catena of decisions i.e., Kulwinder Pal Singh Vs. The State of



Punjab, reported in AIR 2016 SC 2281; UPSC Vs. Gaurav Dwivedi and Others, reported in (1999) 5 SCC 180; State of Orissa & Anr Vs. Raj Kishore Nanda & Others, reported in (2010)6 SCC 777. In Raj Kishore Nanda (supra), the Apex Court has further held that empanelment, is at best, a condition of eligibility for the purpose of appointment and it does not create a vested right to be appointed.

The petitioner, despite being recommended, could not be appointed, which could be attributed to the bifurcation of the State of Bihar, in view of the Bihar Reorganization Act, 2000. Though, the B.P.S.C. had recommended the select list of candidates prior to the bifurcation of State of Bihar, but the appointment process was put under abeyance by the State. Subsequently after reorganization of the State of Bihar, i.e., after bifurcation, a revised recommended list became inevitable in view of reservation roster, which was now available, in view of the roster points. Non-appointment of the petitioner is attributable to a valid reason, which cannot be called to be arbitrary or unreasonable and the non-appointment of the petitioner was based on sound, rational and conscious application of mind. Under such circumstances, finding the decision, by which the petitioner is aggrieved, to be based on a valid reason, this Court is not inclined to issue any



mandamus to the Government to appoint the petitioner.

The bifurcation of the State in the year 2000, was done as per the Bihar Reorganization Act, 2000, which led to sharing of assets and liabilities and the Administrative set up between Bihar and Jharkhand. Such bifurcation resulted into reduction of seats for the general category and as such the petitioner could not be appointed.

Hence, in considered opinion of this Court and in view of the aforesaid discussions, this Court finds no merit in this writ application. It is, accordingly, dismissed.

(Dinesh Kumar Singh, J)

Anil/DKS

AFR/NAFR	NAFR
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