

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.372 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 19013 of 2014**

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Dr. Ashfaque Ahmad, S/o Kefaitullah, R/o Village- Chaurawn, P.O- Thawe, P.S.-
Thawe, District- Gopalganj.

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Education Department, Govt. of Bihar, Patna.
4. The Director, Department of Secondary Education, Govt. of Bihar, Patna.
5. The Bihar Public Service Commission, Jawahar Lal Nehru Marg (Bailey Road), Patna, through its Secretary.
6. The Examination Controller, Bihar Public Service Commission, Jawahar Lal Nehru Marg (Bailey Road), Patna.

.... Respondent/s

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Appearance :

For the Appellant	:	Mr. Purushottam Kumar Jha, Advocate Mrs. Sandhya Mishra, Advocate Ms. Sweta Kumari, Advocate
For the State	:	Mr. Sushil Kr. Singh, AC to AAG-10
For the BPSC	:	Mr. Zaki Haider, Advocate

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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: 02-02-2017

The challenge in the present Letters Patent Appeals is to
an order passed by the learned Single Bench on 29th of October, 2015
in C.W.J.C. No.19013 of 2014 whereby, writ of mandamus claimed
by the appellant for appointment on the post of Headmaster remained
unsuccessful.



2. Three advertisements were issued inviting applications for appointment to the post of Headmasters. The first advertisement is Advertisement No. 31 of 2005 in respect of 99 vacancies to be filled up from the general category candidates, Advertisement No. 32 of 2005 inviting applications for 48 vacancies and Advertisement No.01 of 2007 inviting applications for 347 candidates from the general category candidates. The appellant has filed an application for appointment in respect of advertisement No.1 of 2007 as a general category candidate. The result in pursuance of such advertisement was declared on 5th of April, 2014 (Annexure 6). The names of 347 candidates were recommended against the general category candidates, out of which up to 336 are of the general category candidates on merit, whereas candidates at merit position No.337, 347 are the candidates against the category of physically handicapped in terms of principle of horizontal reservation. The name of one candidate was not recommended by the Commission in view of an interim order passed by this Court. In terms of the recommendation of the Bihar Public Service Commission (for short, “Commission”), the appointment letter was issued on 21st of October, 2014 (Annexure-10).

3. The argument of learned counsel for the appellant is that against 348 vacancies advertised, only 344 general category candidates have been appointed. The names of 11 candidates appear



as selected candidate in the earlier two advertisements. Therefore, 4+11=15 vacancies are still available, against which the candidates are required to be appointed on merit and, consequently, the appellant, who had secured 119 marks, would be a meritorious candidate entitled to be appointed against the result declared by the Commission.

4. On the other hand, the stand of the respondent Commission is that they have recommended names of selected candidates, who have applied in respect of advertisements published from time to time. The Commission is required to send names for the posts advertised to the State Government and that Commission had made recommendations in respect of the requisitions received.

5. The learned Single Bench dismissed the writ application finding that the appellant has done hard work to create a comparative chart to show the confusion in the notification, which is said to have become the basis of non-appointment of the appellant. It was the stand of the Commission that the merit position of the appellant was 351 and the last person in the general category candidate recommended for appointment was at Serial No.337. Thus, the appellant stands lower in merit and could not have been appointed.

6. The argument of the learned counsel for the appellant is based upon the appointment letter (Annexure-10) whereby the



candidates appointed in pursuance of Advertisement No.1 of 2007 find mention from page 24 of the letter of appointment (62 of the paper book). The argument is that since the last candidate appointed in the said list is at Serial No.344, therefore, 344 candidates have been appointed.

7. We do not find any merit in the said argument. A random comparison of the merit as per the result declared by the Commission (Annexure-6) and the name of the candidates appearing from page No.24 show that it does not appear to be in the same seriatim as per the result declared by the Commission. Therefore, it is not possible to accept the argument raised by the learned counsel for the appellant that 344 candidates were appointed in pursuance of the result declared by the Commission. The fact is that the Commission had declared the result of 347 general category candidates including 11 candidates belonging to physically handicapped category. Once the Commission has recommended the names and the name of the appellant has not been recommended, the appellant cannot claim appointment merely because there are resultant vacancies on account of the name of same candidate appearing in the two other selection processes.

8. The contention that eleven vacancies are available is a purely fortuitous fact, which does not confer any right on the appellant to seek appointment. The right of appointment is only in



respect of the candidates whose names were recommended. Since the name of the appellant was never recommended, he does not get any right of appointment. No person lower in merit from the general category, whose name has not been recommended by the Commission on merit, has been appointed. Therefore, we do not find that the appellant has any right to seek appointment even if there are vacancies available. Reference may be made to Kulwinder Pal Singh v. State of Punjab (AIR 2016 Supreme Court 2281).

9. Consequently, we do not find any merit in the present Letters Patent Appeal. The same is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

Narendra/-

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