

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16360 of 2016

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Bal Mukund Kumar son of Lal Kishor Prasad resident of Mohalla- Sakunat Kala,
(Near Hoemeopathy College), Station Road, Bihar, Police Station- Bihar, District-
Nalanda.

.... Petitioner

Versus

1. The State of Bihar through the Law Secretary, Law Department, Patna.
2. Bihar State Legal Services Authority through its Chairman, Bihar, Patna.
3. The Secretary, Bihar State Legal Services Authority, Bihar, Patna.
4. The Chairman, Permanent Lok Adalat, Patna High Court, Patna.
5. The Chairman, District and Sessions Judge, District Legal Services Authority, Nalanda at Bihar Sharif.
6. The Secretary, District Legal Services Authority, Nalanda at Bihar Sharif.
7. The District Magistrate-cum-Deputy Chairman, District Legal Services Authority, Nalanda at Bihar Sharif.
8. The District Legal Services Authority, Appointment Committee, Nalanda at Bihar Sharif.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rabi Bhushan Prasad No.1, Adv.

For the Respondent/s : Mr. Binay Kumar, AC to SC10

For the Legal Services Authority: Mr. Dhirendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-04-2017

Heard Mr. Rabi Bhushan Prasad, learned counsel appearing
for the petitioner, Mr. Binay Kumar, AC to SC-10, and Mr. Dhirendra
Kumar, learned counsel for the Legal Services Authority.

A rather limited grievance was raised by the petitioner to
move this writ petition. Learned counsel for the petitioner submits that
even though there was a vacancy in the panel of Stenographers
prepared for the Permanent Lok Adalat, Nalanda and the District
Legal Services Authority, Nalanda at Bihar Sharif and one of the
persons selected did not join and even though the petitioner was at



serial no.1 of the wait list fulfilling all criteria, yet the District Legal Services Authority, Nalanda has not chosen to extend the offer to the petitioner. Mr. Rabi Bhushan Prasad accepting that the petitioner has come before this Court with some delay submits that it is only when the information was gathered by the petitioner by invoking the Right to Information Act that he came to know of the position where despite the petitioner's name coming at serial no.1 of the Waiting List Candidates and despite vacancy existing by non-joining of one of the candidates to the post of Stenographer, yet the petitioner was not extended the offer that he has moved this Court and in between a similarly situated wait listed candidate Manjeet Kumar came before his Court for the same reason in C.W.J.C.No. 236/2016 and in view of the directions so passed by this Court that he has been given the appointment.

A counter affidavit is being filed. Let it be taken on record.

The argument is contested by Mr. Dhirendra Kumar, learned counsel for the respondents, on two grounds, namely, that the petitioner has approached belatedly and after expiry of the panel and secondly, that the appointment was given to the said Manjeet Kumar under the orders of this Court.

I have heard learned counsel for the parties and have perused the records.



Although it is entirely the discretion of the appointing authority whether or not to fill up the post however, once a selection process has been initiated, a panel prepared together with a wait list, then there has to be sound reason assigned by the employer for not filling up the post. If what the petitioner submits is correct and the person so selected did not join the post, the offer should have been extended to the person at serial no.1 of the wait list of Stenographers. It is unfortunate that the petitioner has to invoke the Right to Information Act to gather information before he can exercise his right which was always there available for him. The stand taken by the District Legal Services Authority, Nalanda to distinguish the case of the petitioner with Manjeet Kumar is again unsustainable because once the respondents have travelled to the list of waitlisted candidates of Clerks, under the orders of this Court, the direction is equally applicable to similarly placed candidates in other waiting lists and cannot be distinguished merely because one of them has chosen to knock the door of the Court.

There is no dispute that in the same selection process while the name of the said Manjeet Kumar appeared at serial no.1 of the wait list candidates amongst Clerks, the name of the petitioner appeared at serial no.1 of the wait list candidates of Stenographer and although by virtue of the order passed by this Court, Manjeet Kumar



has been granted the benefit, the petitioner is yet waiting. The legal position stands discussed in the order of Manjeet Kumar, a copy of which is placed at Annexure 6/1 to the writ petitioner, and for the sake of convenience the relevant extract thereof is being reproduced hereinbelow:

"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 in 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 candidate 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 Shangia vs. State of Haryana*, (1998) 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 in 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 mark. 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 appointment 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 interest of higher standard, 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."

The direction so passed by a Bench of this Court in the case of Manjeet Kumar (supra) was equally applicable in the case of the petitioner and it is unfortunate that he has to approach this Court to seek similar direction.

The Chairman, District Legal Services Authority, Nalanda is directed to consider the case of the petitioner in the light of the order passed by this Court in the case of Manjeet Kumar (supra) and in case, the case of the petitioner stands on the same footing and is covered by the directions contained herein, then to extend similar benefit to him within a period of eight weeks from the date of receipt/production of a copy of his order.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2017
Transmission Date	NA

