

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.703 of 2016
IN
Civil Writ Jurisdiction Case No. 22248 of 2014**

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Rakesh Kumar Toofan S/o Ramlal Prasad, Resident of Mohalla - Amber Sristal,
Town Biharsharif, P.S. - Bihar, District - Nalanda.

.... Appellant/s

Versus

1. The State of Bihar through the Secretary-Cum-Commissioner, Department of Finance, Government of Bihar, Patna.
2. The Secretary-Cum-Commissioner (Commercial Tax) Department of Finance, Government of Bihar, Patna.
3. The Secretary, Department of Personal and Administrative Reforms, Government of Bihar, Patna.
4. The Secretary, the Bihar Public Service Commission, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rama Kant Singh
For the State : Govt. Advocate No. 10
For BPSC : Mr. Sanjay Pandey

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 30-08-2017

Seeking exception to an order dated 8.12.2015 passed
by the learned Writ Court in CWJC No. 22248 of 2014, this appeal
has been filed under Clause 10 of the Letters Patent.

Advertisement No. 14/2010 was issued by the Bihar
Public Service Commission (in short, BPSC) on 4th August, 2010
inviting applications for 27 posts of Finance Officer to be appointed
in the basic grade of Bihar Finance Service. When this was pending,
the Commercial Tax Department on 23.03.2009, sent a requisition



for filling up 11 posts and thereafter on 10.07.2009 for additional 16 posts of Finance Officer. It seems that when the exercise was going on, the BPSC amended the advertisement and conducted the process of selection for various posts communication for which was received, the posts were included in the advertisements and specified process of recruitment was conducted. The entire process of selection was completed. The result was published on 23.10.2013 for filling up 27 posts which were advertised in the very first place and it is an admitted position that all the 27 persons who have been selected have been appointed. However, after such process was completed the unsuccessful candidates filed the writ petition in question in the year 2014 and it was their case that by conducting a combined examination/ recruitment process for different vacancies which fallen vacant during the course of various years, the examination conducted is not proper.

The learned Writ Court examined the matter and rejected the claim. Even though the learned counsel for the petitioner vehemently argued that a combined examination /recruitment process without segregating the vacancies for different years is not permissible.

We are of the considered view that this legal question need not be gone into the present facts of this case for the simple



reason that the appellants knowing full well that the selection is being held participated in the process of selection without any objection and when they were unsuccessful in the selection, they have now challenged the same by contending that the selection process is vitiated on account of the fact as are detailed hereinabove.

The Hon’ble Supreme Court in the case of **Ramesh Chandra Shah vs. Anil Joshi & others [(2013) 11 SCC 309]** and recently in the case of **Madras Institute of Development Studies vs. K. Sivasubramaniyan [(2016) 1 SCC 454]** has laid down the principle that a candidate having participated in the process of selection and having become unsuccessful cannot challenge the advertisement or process of selection on the ground which has not been canvassed in the writ petition.

Keeping in view the aforesaid, we see no reason to make any indulgence in this matter. The appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl.

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