

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1214 of 2013
IN
Civil Writ Jurisdiction Case No. 20690 of 2010**

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Dr. Lalit Sagar, Son Of Dr. Vidya Sagar Yadav, Principal, Jag Jivan College, Ara,
P.S.- Town, District- Bhojpur At Ara (Bihar)

.... Appellant/s

Versus

1. Dr. Narendra Kumar Son Of Sri Sahdeo Narayan Singh, Resident Of Flat No. 203, Sevakunj Apartment, Mahesh Nagar, P.S.- Patliputra, Town & District- Patna
2. Veer Kuer Singh University, Ara Through Its Registrar
3. Vice Chancellor, Veer Kuer Singh University, Ara
4. Registrar, Veer Kuer Singh University, Ara
5. Chancellor Of Universities Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Y. V. Giri Sr. Advocate Mr. Raju Giri Advocate
For the University	:	Mr. Arbind Nath Pandey Advocate
For the Respondents	:	Mr. Amaresh Kumar Singh Advocate Mr. Sushil Kumar Ray Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)
Date: 08-05-2017**

The Letters Patent Appeal has been filed by the appellant, who was Respondent No. 5 in the writ application. The writ application was filed by the Private-respondent No. 1 in the present appeal, seeking quashing of Memo No. 162/Estb/09, dated 15.06.2009, by virtue of which the present appellant was appointed as a Principal under Veer Kunwar



Singh University, Bhojpur at Ara and posted at Jag Jjivan College, Ara. Besides, quashing of such appointment, the private-respondent also sought a direction for his appointment on the post of Principal.

2. In the writ application, the primary grievance, which the petitioner of the case had, was that the appellant had less marks than him and he was placed below him in the selection list, but still juggling was done by the university authorities by finding opportunity on a vacancy arising due to non-joining of one Dr. Satish Singh Chandra, who was initially appointed on the 7th vacant post under the General Category.

3. The Veer Kunwar Singh University, Bhojpur at Ara invited applications through an advertisement for appointment on 13 posts of Principals, to be posted in different constituent colleges of the university. The advertisement was dated 11.09.2008. There were seven posts for general category; two posts for most backward caste; two posts were reserved for other backward caste; and two posts for the scheduled caste. The private-respondent cum petitioner was an applicant under general category. He was called for the interview. A select list was prepared on the basis of marks obtained by the candidates. The private-respondent received 79.7 total marks in comparison to the appellant, who had obtained 77.6 marks. The panel, which was appended as Annexure – 4 to the writ



application, showed the private-respondent at Sr. No. 9 in the general category. The appellant was placed at Sr. No. 3 in the reserved category for backward caste. One Dr. Satish Singh Chandra was shown at Sr. No. 7 in the general category and Dr. Anil Kumar Singh was at Sr. No. 8 in the general category as well as at Sr. No. 1 in the backward caste category.

4. Based on the position in the select list, persons came to be appointed on the post of Principal. 13 persons were appointed against the 13 vacancies, in which neither the private-respondent nor the appellant were appointed for the obvious reason that the private-respondent was at Sr. No. 9 in the general category, where only 7 posts were vacant and the appellant was at Sr. No. 3 where only 2 vacancies for backward caste was on offer.

5. The appointed candidates were directed to give their joining by 18th of June, 2009. Dr. Anil Kumar Singh, who was at Sr. No. 8 of the general list and at Sr. No. 1 in the backward caste category joined on 13.06.2009. However, one Dr. Satish Singh Chandra, who was at Sr. No. 7 in the general category, declined to join, because he had also been selected for the post of Principal in Magadh University, Bodh Gaya, Gaya. The Vice-Chancellor of Veer Kunwar Singh University, Bhojpur at Ara, therefore, appointed the present appellant against the vacancy caused by non-joining of Dr. Satish Singh



Chandra.

6. Submissions were made that the Vice-Chancellor had no business to appoint the appellant Dr. Lalit Sagar in the general category due to non-joining of one of the candidates, namely, Dr. Satish Singh Chandra. In the alternative, it was also urged that the direction of the Vice-Chancellor was deliberately twisted and misinterpreted, because his endorsement on the file was ***“please notify the next person in the panel in place of Dr. Satish Singh Chandra immediately”***.

7. The Learned Single Judge formulated the following issues for determination in the writ application:

(i) Whether Dr. Anil Kumar Singh was appointed on the unreserved category or appointed under the category reserved for Backward Caste?

(ii) Whether there could have been any shifting of Dr. Anil Kumar Singh from Backward Caste Category to General Category after refusal of Dr. Satish Singh Chandra to join the last post at sl. No. 7 of the General Category?

(iii) Whether the vacancy which has cropped up after refusal of Dr. Satish Singh Chandra to join as Principal, should have been filled up from unreserved (General Category) or from the Backward Caste Category?

(iv) Whether the petitioner should have been appointed or appointment of respondent no. 5 is legal and valid?”

8. The Learned Single Judge, therefore, answered



the above issues on due deliberation of fact and law as under:

***“Learned counsel appearing for the respondent no. 5 has submitted that Dr. Anil Kumar Singh who was senior to the petitioner in the merit list has been appointed on the post of General Category due to refusal of one of the General Category who has been appointed. However, his appointment has not been challenged by the petitioner, therefore, no relief should be granted to the petitioner in the absence of that. It has next been contended on behalf of the respondent no. 5 that even assuming that Dr. Anil Kumar Singh was appointed on Backward Caste Category, the moment the post again became vacant in General Category after non joining of Dr. Satish Singh Chandra, that ought to have been filled up by appointing Dr. Anil Kumar Singh in the General Category itself as he was above the petitioner in the merit list which had eventually been done. Thus, due to his shifting in unreserved category, a post became available under Backward Caste Category which was filled up by appointing the respondent no. 5. Learned counsel for the respondent no. 5 has placed reliance upon a decision of the Apex Court rendered in Union of India Versus Ramesh Ram and others [(2010) 7 Supreme Court Cases 234] to impress upon this Court that when a candidate from the merit list gets adjusted from the reserved category to general pool, the same creates corresponding vacancies in the reserved category if such candidate is there in both the lists.*”**



Learned counsel appearing for the petitioner also places reliance upon the same judgment of the Apex Court. It has urged on behalf of the petitioner that since Dr. Anil Kumar Singh was in both lists, i.e., general as well as Backward Caste Category but was adjusted in the reserved category as he could not be appointed in unreserved category, that would create a vacancy in the General Category only if any person from that list does not join.

This Court had also called for the original records of the entire proceeding of the selection. Though the University has taken a stand that Dr. Anil Kumar Singh, was initially appointed on the post reserved for Backward Caste Category, however, was shifted later on in unreserved or general category due creation of vacancy on refusal of Dr. Satish Singh Chandra to join, thus, a post under Backward Caste Category became vacant due to such shifting and upon that the respondent no. 5 has been appointed, however, it is absolutely unanswered by the private respondent or by the University that as to how Dr. Anil Kumar Singh still remained in the panel even after his joining against the vacancy available for OBC so that such shifting could have been done subsequently. The stand of the respondent no. 5 that Dr. Anil Kumar Singh, who was above the petitioner in the merit list, was appointed against the General Category itself has no legs to stand in view of the fact that only seven vacancies were there in the General Category, which would be apparent from Annexure 1, and seven candidates starting from Dr.



Janeshwar Singh and ending at sl. No. 7 Dr. Satish Singh Chandra were already given offer of appointment vide Annexure 4 as well as notification as contained in Annexure 5. It is further apparent that Dr. Anil Kumar Singh who was at sl. No. 8 in the merit list as well as Dr. Navin Kumar were appointed against the vacancy reserved for Backward Caste Category otherwise, if Dr. Anil Kumar Singh was appointed as General Category then the notification as contained in Annexure 5 ought to have contained the name of the respondent no. 5 after Dr. Navin Kumar having been appointed against the Backward Caste Category which is admittedly not the case. That apart it is apparent that Dr. Anil Kumar Singh had already joined on 13.6.2009 itself, i.e., before any application having been filed by Dr. Satish Singh Chandra indicating his unwillingness to join the post as the same was admittedly filed on 15.6.2009. Thus, it is evident that on 13.6.2009 Dr. Anil Kumar Singh had joined against the first post reserved for Backward Caste Category. Now the question would arise as to whether, after refusal shown by Dr. Satish Singh Chandra to join the post on 15.6.2009, there could have been any shifting of Dr. Anil Kumar Singh as General Category candidate as he was just below to Dr. Satish Singh Chandra at sl. No. 8? On such issue the Apex Court has clearly laid down in Union of India Versus Ramesh Ram and others (supra) as follows:

“36. We must also take note of the fact that when MRC candidates get adjusted



against the reserved category, the same creates corresponding vacancies in the general merit list (since MRC candidates are on both lists). These vacancies are of course filled up by general candidates. Likewise, when MRC candidates are subsequently adjusted against the general category [i.e. without availing the benefit of Rule 16(2)], the same will result in vacancies in the reserved category which must in turn be filled up by wait-listed reserved candidates. Moreover, the operation of Rule 16 does not result in the ouster of any of the candidates recommended in the first list. Many of the wait-listed candidates are accommodated in the second stage, and the relatively lower ranked wait-listed candidates are excluded. It is pertinent to note that these excluded candidates never had any absolute right to recruitment or even any expectation that they would be recruited. Their chances depend on how MRC candidates are adjusted.

39. A significant aspect which needs to be discussed is that the aggregate reservation should not exceed 50% of all the available vacancies, in accordance with the decision of this Court in Indra Sawhney v. Union of India⁵. If MRC candidates are adjusted against the reserved category vacancies with respect to their higher preferences and the seats vacated by them in the general category are further allotted to other reserved category candidates, the aggregate reservation could possibly exceed 50% of all of the available posts.

42. Therefore, we are of the firm



opinion that MRC candidates who avail the benefit of Rule 16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will therefore be offered to general category candidates. This is the only viable solution since allotting these general category seats (vacated by MRC candidates) to relatively lower-ranked reserved category candidates would result in aggregate reservations exceeding 50% of the total number of available seats. Hence, we see no hurdle to the migration of MRC candidates to the reserved category.”

It would be apparent from the aforesaid decision that if a candidate belonging of unreserved category is adjusted in reserved category, the vacancy arising out after such adjustment has to be filled up from unreserved category. However, if a candidate is shifted from reserved pool to general list then that will create a vacancy in reserved pool. In the case in hand the situation is that Dr. Anil Kumar Singh, who was at sl.no.8 in the general list could not be offered appointment in that category as there were only 7 vacancies available. Therefore, he was obviously given offer of appointment under reserved category but at the same time such shifting did not create any vacancy in general category due to his joining on 13.06.2009 against aforesaid offer. The vacancy was created after refusal of joining by Dr. Satish Singh Chandra in



the general category. In my considered opinion, once Dr. Anil Kumar Singh joined the post of Principal under reserved category at the place of posting shown in Annexure-5, he was not available, thereafter, in the selection panel for reconsideration of appointment in the general category (emphasis supplied).

Had Dr. Satish Singh Chandra shown his unwillingness to join the post prior to joining of Dr. Anil Kumar Singh then, no doubt, Dr. Anil Kumar Singh could have automatically been shifted under the General Category as he was placed next in the unreserved category. However, once he has been placed on the top of the list of Backward Caste Category and has already joined on the first post reserved for Backward Caste Category, in my considered opinion, that option was not open for the University to shift him for the General Category as he has already joined the post and was no more available in the selection list as stated above. That apart, it did not appear from perusal of the entire original record of the selection and appointment procedure that either there was any application having been filed by Dr. Anil Kumar Singh or there was any order of the competent Authority indicating such shifting of Dr. Anil Kumar Singh in the General Category. The respondents are banking upon an endorsement made by the Vice Chancellor on Annexure 10 or the complete Annexure R5/1 annexed in the rejoinder filed on their behalf or respondent no. 5 which only indicates that a direction was given to notify the next person in the



panel in place of Dr. Satish Singh Chandra. The next person of the list, i.e., Dr. Anil Kumar Singh already having joined on the first post on 13.6.2009 reserved for Backward Caste Category, as would be evident from notification as contained in Annexure 5, for all practical purposes the next person in the panel was the petitioner, Dr. Narendra Kumar who was placed at Sl. No. 9.

9. In this background, the Learned Single Judge came to a considered opinion that the petitioner now private-respondent had succeeded in making out a case in his favour and, therefore, appointment of the appellant was quashed and set aside. A direction was issued to appoint the private-respondent No. 1, who was next in the panel of general category.

10. Submissions have come to be made on behalf of the appellant that once a reserved category candidate was selected on merit, he has to be adjusted against unreserved category. Based on such a submission the argument is further extended that since Dr. Anil Kumar Singh, who was a backward category candidate, but was shown on the 8th position in the general category, his adjustment against the vacancy of Dr. Satish Singh Chandra was by dint of his merit position and, therefore, the direction for appointment of the appellant was



wrong. Even the appointment of the appellant does not breach the 50 percent quota and, therefore, the right of the private-respondent for such appointment at the cost of the present appellant was a serious error of law.

11. So far as the university is concerned, though they did try to support the decision taken by the Vice-Chancellor, but to some extent they have been fair enough to just place the facts before the Court to decide on the correctness or otherwise of such a decision.

12. Having heard the counsel for the parties extensively, the Court does not find anything seriously amiss with the conclusion and the finding reached by the Learned Single Judge, holding the appointment of the appellant to be bad in law and such a decision is duly supported by the decision, which was relied upon and quoted extensively, which was the case of ***Union of India versus Ramesh Ram and others, reported in [(2010) 7 SCC 234]***. In fact, even the Patna High Court has expressed similar view in some of the recent decisions, which is the case of ***G. V. Nutan versus The Bihar Combined Entrance Competitive Examination Board & ors., reported in 2014 (2) PLJR 725*** and in the case of ***Sudhanshu Moses vs. The State of Bihar & ors, reported in 2015 (4) PLJR 529.***

13. In totality, therefore, this Court does not find anything amiss with the order impugned, dated 13.08.2013,



passed by the Learned Single Judge in the writ application.
Appeal has no merit and so is dismissed.

(Ajay Kumar Tripathi, J)

Nilu Agrawal, J. I agree.

(Nilu Agrawal, J)

SKM/-

AFR/NAFR	AFR
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