

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.169 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 11266 of 1997

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Subodh Prakash Singh, Son of Rameshwar Prasad Singh, resident of Mohalla-
Bibiganj Bhattha, P.S- Danapur Cantt, District- Patna.

.... Petitioner /Appellant.

Versus

1. The State of Bihar.
2. The Bihar Public Services Commission, through its Secretary.
3. The Director Soil Conservation Agriculture Department, Govt. of Bihar, Patna.
4. The Director, Statistical land Evaluation Directorate under Planning Department, Govt. of Bihar, Patna.
5. The Secretary, Agriculture Department, Govt. of Bihar, Patna.
6. The Commissioner, Personnel and Administrative Reforms, Govt. of Bihar, Patna.
7. The Secretary, Planning Department, Govt. of Bihar, Patna.
8. Sri Mahfooj Alam, resident of Mohalla- Khitari Jail Talab, P.O.- Arrah, District- Bhojpur.

.... Respondents/Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ramchandra Singh, Adv
	:	Mr. Surj Bansh Roy, Adv
	:	Mr. Shankar Kumar, Adv
For the Respondent/s	:	

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 16-01-2017

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 04.02.2015, whereby the writ application seeking quashing of the



Memo No. 603 dated 27th April, 1993 terminating the services of the appellant from the post of Field Supervisor in the Department of Soil Conservation remained unsuccessful.

An advertisement was issued by the Bihar State Sub-ordinate Service Selection Board on 01.01.1988 inviting applications from the eligible candidates for the post of Field Supervisor. The writ petitioner was one of the successful candidates in the result initially published. However, a writ petition being C.W.J.C No. 7932 of 1991 (Satish Kumar & Ors versus The State of Bihar & Ors) was filed challenging the preparation of the merit list prepared after granting benefit of marks obtained in the subject of Hindi. The said writ application was allowed by a Division Bench of this Court on 24th February, 1992. It was held that the Board has erred in law in taking into account the marks obtained in General Hindi, beyond 30 marks for the purpose of preparing merit list. The Board was directed to prepare a fresh merit list in terms of the directions issued. In the revised merit list, the name of the appellant did not appear in the meritorious candidates eligible to be appointed as he has obtained 182 marks. As a consequence thereof, the service of the appellant was terminated.

Similar action was challenged by some other candidates in a judgment reported as 1995 BBCJ 650(Law Lal and Ors versus State of Bihar and Ors). The writ application was dismissed but with observation that if there is any vacancy in



other Departments, the State of Bihar shall take a decision in this regard as early as possible for filling up the existing vacancies strictly in accordance with the second select list.

After considering the judgments referred, the learned Single Bench dismissed the writ application after returning the following findings:-

“14. Learned Senior Counsel referring to paragraph No. 32 of the said decision of the Division Bench of this Court in the case of Law Lal has submitted that the petitioner can be considered for appointment as even today, as the vacancies exist in the Department of Directorate of Statistics and Evaluation of the Government of Bihar. He has referred to paragraph No. 15 of the petitioner’s reply to the counter affidavit filed on behalf of the Commission. In my opinion, no such direction can be issued to the present proceeding under Article 226 of the Constitution of India as the petitioner has not been able to make out any legal right to be appointed on the basis of merit list prepared pursuant to the selection process in the light of Advertisement No. 19/87 dated 01.01.1988. The panel, in my opinion can no more be utilized as it has outlived its utility.

15. Learned Senior Counsel has also attempted to convince that the termination of service of the petitioner from government service is in violation of Article 311 of the Constitution of India because once the petitioner joined against a post under the State Government, he acquired a right to hold the post and such right cannot be taken away in the



manner the State Respondents and the Commission have done. This submission is not convincing to me because the Division Bench of this Court had found preparation of first merit list itself, on the basis of the said Advertisement No. 19/87, to be defective and illegal and, accordingly, directed the Board/Commission to prepare a revised merit list, which was accordingly prepared. Petitioner's name did not figure in the revised merit-list.

In such circumstances, it cannot be said that the petitioner had any right to hold the post merely because he was appointed as such."

Still aggrieved, the appellant is before this Court challenging the order passed by the learned Single Bench.

The arguments of the learned counsel for the appellant are two folds. Firstly, that no show cause notice was issued before terminating the services of the appellant, therefore, action of termination of services is violative of principles of nature justice. The second argument is that, in terms of earlier judgment in *Law Lal case(supra)*, the existing vacancies are required to be filled up from the second select list published in pursuance of the earlier order passed by this Court, therefore, the appellant is entitled for the same direction as was granted in *Law Lal case(supra)*.

We do not find any merit in any of the arguments raised by the learned counsel for the appellant. The facts remain is



that an action was taken against the appellant in pursuance of an order passed by the Division Bench of this Court. Though the appellant was not a party to such writ application but the Board was bound to act in accordance with the directions issued by the Court. Similar challenge has remained unsuccessful in the matter of Law Lal's case (Supra) as well. In the present appeal, the appellant could not raise any argument on merits such as the marks of the Hindi subject were required to be taken into consideration. The facts are not in dispute that the marks obtained by the appellant in the subject of Hindi cannot be taken into consideration except the qualifying marks. Therefore, the principles of nature justice were not required to be complied with as nothing was required to be controverted by the appellant. The principles of nature justice that such as an opportunity of hearing is not a straight jacket formula. Such doctrine has to be applied keeping in view of the facts and circumstances of the case. Since the facts were not in dispute, therefore, the order of termination could very well be passed without giving any opportunity of hearing. In view of the aforesaid, we do not find any merit in the first argument raised by learned counsel for the appellant.

In respect of the second argument, we do not find that there could be any direction to fill up the remaining vacancies in the other Departments on the basis of the revised merit list prepared. The vacancies in other Departments are required to be filled up only after due advertisement giving



opportunity to compete to all eligible candidates. The merit list prepared in one selection cannot be taken as a reservoir for appointment in all other Departments. The Supreme Court in the case of Kulwinder Pal Singh versus State of Punjab reported in AIR 2016 SC 2281 held that more vacancies than advertised cannot be filled up.

In view of the above, we do not find any merit in the appeal. Accordingly the Letters Patent Appeal is dismissed.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	NA
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