

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11557 of 2018

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1. Shiv Prakash Rai, Son of Late Nageshwar Rai, Resident of Gali No. 2, Dhobi Ghat, Charitrvan, Buxar, Police Station Buxar, District Buxar (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary to Hon'ble Governor of Bihar, Raj Bhawan, Patna.
4. The Additional Secretary, General Administration Department, Government of Bihar, Patna.
5. Shishir Kumar Sinha, Son of name not known to the petitioner, Chairman, Bihar Public Service Condition, Bailey Road, Patna.
6. Rajendra Prasad Gupta, Son of name not known to the petitioner, Member, Bihar Public Service Commission, Bailey Road, Patna.
7. Md. Nushad Yusuf, Member, Bihar Public Service Commission, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Sharma

For the Respondent/s : Mr. P.K. VERMA-AAG3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 27-06-2018

The present writ application has been preferred by way of Public Interest Litigation challenging the decision making process of appointment of respondent nos.5 to 7 and appointment of Sri. Shishir Kumar Sinha (respondent no.5) as the Chairman of the Bihar Public Service Commission (hereinafter referred to as 'the B.P.S.C'). Relying upon a judgment of the Hon'ble Supreme Court in the case of **State of Punjab vs. Salil Sabhlok reported in 2013 (5) SSC 1** and **Techi Tagi Tara vs. Rajendra Singh Bhandari reported in 2018 (1)**



P.L.J.R SC 130 and two other Judgments of the Hon'ble Supreme Court which we will refer hereinafter the petitioner has prayed for setting aside of Annexures 3 to 5.

2. Learned counsel for the petitioner submits that in the matter of appointment of respondent nos.5 to 7 there is no consideration of the relevant facts and prior to the appointment of respondent nos.5 to 7 the Government of Bihar has not issued any advertisement and there is no consideration as to whether any complaint against respondent nos.5 to 7 or there is any judicial proceeding pending against them, as such no transparent procedure has been adopted.

3. It is submitted that the Hon'ble Supreme Court in the case of **State of Punjab vs. Salil Sabhlok** (Supra) has observed that while the personal integrity of the candidate cannot be discounted, institutional integrity is primary consideration to be kept in mind while recommending a candidate for appointment to the post of Chairman and Member of the Public Service Commission but the same has not been followed in the appointment of respondent nos.5 to 7. It is further submitted that at no point of time any notice, advertisement and nomination was asked from the eligible candidates by the Government of Bihar for filling up the aforesaid post.

4. Having heard learned counsel for the petitioner and on going through the judgments of the Hon'ble Supreme Court cited at



the Bar, we find that in the present writ application there is no averment as to there being any requisite qualification and experience required for appointment as Chairman and Member of the Bihar Public Service Commission. It is not the case of the petitioner that respondent nos.5 to 7 do not possess the required qualification and experience.

5. Shishir Kumar Sinha (respondent no.5) happens to be a senior Member of the Indian Administrative Service (I.A.S) and has taken voluntary retirement from the post of Development Commissioner, Government of Bihar. Sri. Rajendra Prasad Gupta (respondent no.6) is said to be a Member of Bihar Administrative Service and his appointment has been challenged only because he happens to be a Private Secretary to the Deputy Chief Minister, Government of Bihar. Md. Naushad Yusuf (respondent no.7) is also a promote I.A.S of 1996 batch and has served as District Magistrate, Begusarai.

6. In the case of **Salil Sabhlok** (Supra) the Hon'ble Supreme Court has categorically held in Paragraph No.52 as under:-

“52. Therefore, I hold that the High Court should not normally, in exercise of its power under Article 226 of the Constitution, interfere with the discretion of the State Government in selecting and appointing the Chairman of the State Public Service Commission, but in an exceptional case if it is shown that relevant factors implied from the very nature of the duties entrusted to Public Service Commissions under



Article 320 of the Constitution have not been considered by the State Government in selecting and appointing the Chairman of the State Public Service Commission, the High Court can invoke its wide and extraordinary powers under Article 226 of the Constitution and quash the selection and appointment to ensure that the discretion of the State Government is exercised within the bounds of the Constitution.”

7. In the facts of the said case the Hon’ble Supreme Court has found that there was a finding by the Division Bench of the High Court in the impugned order that the irregularities and illegalities alleged against Mr. Harish Dhanda have not been substantiated, however, on the question of competence of Mr. Harish Dhanda who acted as the Chairman of the State Public Service Commission, the Hon’ble Supreme Court found from the materials placed before it that Mr. Harish Dhanda had no knowledge or experience whatsoever either in administration or in recruitment matters and, therefore, the Hon’ble Supreme Court took a view that there was no information or material to show that Mr Harish Dhanda has the positive qualities to perform the duties of the office of the Chairman of the State Public Service Commission under Article 320 of the Constitution. It is in these circumstances that the Hon’ble Supreme Court held that the decision of the State Government to appoint Mr. Harish Dhanda as the Chairman of the Punjab Public Service Commission was invalid for non-consideration of the relevant factors i.e., the very nature of the



duties entrusted to the Public Service Commissions under Article 320 of the Constitution.

8. In the case of **Techi Tagi Tara** (Supra) the Hon'ble Apex Court has issued directions to the Executive in all the States to frame appropriate guidelines or recruitments rules within six months, considering the institutional requirements of the State Pollution Control Boards (SPCBs) and to ensure that suitable professionals and experts are appointed to the SPCBs. The Hon'ble Supreme Court also made it clear that the public spirited individuals may move the appropriate High Court for the issuance of writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such. This judgment is specific with regard to the appointments in the 'SPCB'.

9. Even though learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh and others** reported in (2011) 5 SCC 29 and on the another judgment of the Hon'ble Supreme Court in the case of **State of Punjab and another vs. Brijeshwar Singh and another** reported in (2016) 6 SCC 1, we find that these two judgments have been rendered in the context of all together different issues. In the case of **Akhil Bhartiya Upbhokta Congress** (Supra) the Hon'ble Supreme Court was dealing



with the policy of allotment of land by State or instrumentalities without inviting any invitation or advertisement. In the case of **Brijeshwar Singh and another** (supra) the Hon'ble Supreme Court has laid down guidelines with regard to engagement of Law Officers by the State Government while leaving it open for the Government to formulate its own procedure.

10. The judgment referred in the case of **Salil Sabhlok** (Supra) is directly on the subject involved in the present case wherein the Hon'ble Supreme Court has clearly held that it is for the government who is the appointing authority under Article 316 of the Constitution to lay down procedure for the appointment of Chairman or Member of the Public Service Commission but in absence of any procedure laid down by the Governor for such appointments, the State Government would not have absolute discretion in selecting and appointing any person and even where a procedure has not been laid down by the Governor, the State Government has to select only persons with integrity and competence for appointment as Chairman of the Public Service Commission because the discretion vested in the State Government under Article 316 of the Constitution is impliedly limited by the purposes for which the discretion is vested and the purpose are discernible from the functions of the Public Service Commissions enumerated in Article 320 of the Constitution of India.

11. We have already discussed hereinabove the fact



situation of the **Salil Sabhlok** case. In the present case the writ application does not contain any averment questioning the integrity of the respondent nos.5 to 7. No instance has been brought before us to impress that at any point of time respondent nos.5 to 7 have faced any charge with regard to their integrity. So far as question of competence is concerned, it has to be seen and tested keeping in mind the purposes for which the B.P.S.C has been constituted. We find that all the three respondents have worked in Senior Administrative Services position where they have/had definitely an occasion to deal with the matters relating to recruitment etc. The competence of these respondents have also not been questioned with any substantial averments to raise a doubt even for a while as to their competence.

12. In result, we find no merit in the Public Interest Litigation hence, the same is dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	AFR
CAV DATE	
Uploading Date	10.07.2018
Transmission Date	

