

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.312 of 2005

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Rajiv Ranjan, son of Shri Rameshwar Prasad Sinha, resident of village-
Dighikalawan, Near- Block Office, P.S. Sadar Hajipur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, the Government of Bihar.
2. The Commissioner-cum-Secretary, Road Construction Department,
Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Miss Sugandha Prasad, Adv.
For the Respondent/s	:	Mr. Rishi Raj Sinha, SC-19
	:	Mr. Saurabh Kumar, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 01.04.2019

Heard parties.

2. This writ petition under Article 226 of Constitution of India has been filed by the petitioner for issuance of writ of mandamus or any appropriate writ, order and direction to appoint petitioner on the post of Assistant Engineer in Rural Engineering Organization (REO) on the recommendation made by Bihar Public Service Commission (BPSC).

3. Briefly stated, the facts of the case is on the direction of Supreme Court in Civil appeal No. 7516-17 of 1996 the Apex Court directed government of Bihar to issue advertisement for appointment on the post of Assistant Engineer on the vacant post in REO and pursuant thereto 200 posts of Assistant Engineer were advertised on which appointments were to be



made on the recommendation of BPSC requisition was sent to BPSC by letter dated 12.07.1996 against which BPSC published advertisement No. 128/96 for filling up 200 posts of Assistant Engineer (civil). The examinations were conducted by BPSC and the results were published on 07.05.2002 in which name of petitioner also figured at serial No. 114 in BC category.

4. 200 posts were created in the Rural Development Department in compliance of order of Hon'ble Supreme Court, the above posts were for undivided State of Bihar. In the meantime, the State was bifurcated and Jharkhand State came into existence. BPSC had conducted written examination and interview for the total vacancies for undivided Bihar and send its recommendation vide letter dated 06.05.2002 for total 199 posts, although the State was divided on the date of said recommendation and a new Jharkhand State was created.

5. On account of division of State government of India was requested by the Home Department of Government of Bihar to issue guidelines as to recommendation received from BPSC will be enforceable against one third post admissible for Jharkhand State or not. In reply Government of India clearly stated that BPSC can recommend only for two third of the total posts within Bihar and not for the post transferred to State of



Jharkhand after division of State, as such Government of Bihar issued notification for appointment for 130 posts vide notification dated 31.07.2004.

6. Appointments against advertisement No. 128/96 has been made upto serial No. 101 in BC category whereas petitioner's name stand at serial No. 114 in BC category.

7. Petitioner had filed I.A. No. 2784 of 2007 to bring on record certain developments which came during pendency of writ petition stating therein that due to non joining of 18 candidates recommendation was made by BPSC for candidates upto serial 151 of the merit list and 48 candidates of the select list were in the waiting list. It has been further submitted that 11 reserved category candidates of backward class who were recommended by the BPSC for open category and who have been appointed as a general category candidates and as such against vacancies arising for their non joining candidates belonging to backward class ought to have been recommended, however, the BPSC erroneously recommended candidates of general category against vacancies arising against non joining of backward class candidates who were appointed on merit in open category.

8. Petitioner has also filed I.A. No.1208 of 2012 in



which he has challenged the advertisement issued by the department by which services of ad hoc employee Engineers of PWD department are being sought to be regularized absorbed in the department as regular employee. Petitioner has challenged their regularization on the ground that as petitioner has been selected and recommended by BPSC as such he has a better right of appointment on the post which has been occupied by ad hoc employees which are sought to be regularized by the department by issuance of notification as contained in Annexure-18. It has been submitted that these ad hoc employees were working on the post of Assistant Engineer since 27.06.1987 and were given liberty to participate in the examination to be conducted by BPSC against 200 posts against advertisement No. 128/96 and they were permitted to appear in the examination by relaxing their age pursuant to order dated 08.04.1996 passed by the Apex Court and some of them participated in the examination and got selected and department thereafter are regularizing their services although such relief was denied to them by the Apex Court and as such their ad hoc appointment ought to have been terminated and resultant vacancies should have been filled by petitioner and other wait listed candidates.



9. After division of the State out of 200 vacancies two third i.e. 133 came into the share of State of Bihar and accordingly same was divided category wise. General 67 out of 100, BC 12 out of 20, MBC 19 out of 28, SC 19 out of 28, ST 10 out of 13.

10. In the supplementary counter affidavit filed on behalf of respondent No. 2 it has been stated that against advertisement No. 128/96 appointment was made for 130 posts vide notification dated 31.07.2004. Out of 130 appointed Assistant Engineers, 14 of general category and 4 of backward category did not join and 18 vacancies arising out of non joining was decided to be filled by the wait listed candidates. Accordingly vide notification dated 15.04.2005, 18 Assistant Engineers were appointed. The last candidate appointed in backward category was Ashok Kumar who was at serial No. 106 whereas serial No. of petitioner who is also from BC category is at serial No. 114 and thereafter no appointment has been made from said list.

11. After appointment against advertisement No. 128/96 further appointment has been made pursuant to advertisement No. 25/99, advertisement No. 1/2006, advertisement No. 2/2011 and thereafter requisition has been



sent to BPSC for further appointment with respect to advertised vacancies.

12. After hearing the parties and considering the material available on records, it is apparent that pursuant to direction of the Apex Court 200 vacancies were notified for appointment on the post of Assistant Engineer in Rural Engineering Organization for which BPSC made recommendation of 199 candidates against 200 vacancies, however, during selection process the State of Bihar was bifurcated into two states and a new state of Jharkhand came into existence and as per guidelines issued by the Central Government, the posts were divided between State of Bihar and State of Jharkhand in the ratio of two third and one third and after division of 200 posts 133 came into the share of State of Bihar and BPSC recommended 130 candidates under different categories for appointment on the post of Assistant Engineer in the Rural Engineering Organization. Out of which 18 candidates did not join and against resultant non joining vacancies BPSC made recommendation of 18 candidates and the last candidate who was recommended under BC category was at serial No. 106 of the merit list whereas petitioner is at serial No. 114 under same category as such he could not have been appointed. It has



categorically been stated by the respondents that thereafter no further appointment has been made from said list and subsequent thereto requisitions against vacancies were made to BPSC and selection and appointment on the basis of recommendation made by BPSC has been made through advertisement No. 25/99, advertisement No. 1/2006, advertisement No. 2/2011 and further appointments have also been made by subsequent advertisements as such there is no scope for appointing petitioner against BC category post against advertisement No. 128/96. As far as grievance of the petitioner that 91 ad hoc appointees have been regularized by the State Government is a totally different issue and cannot be clubbed with the present writ petition. The scope and ambit of main writ petition cannot be expanded or enlarged by incorporating any amendment which is not related to the main writ petition and relief prayed in said writ petition.

13. This Court examined the candidates appointed against the non-joining of 14 open category candidates and 4 backward category candidates and compared the same from original merit list prepared and found the submission of petitioner misconceived. The 14 candidates appointed against non-joining of open category candidates belong to general



category except one who belongs to backward class category. All 14 candidates appointed against non-joining in open category have been appointed as per merit list. The 4 non-joining vacancies under backward class category has also been made as per merit list prepared of backward class category who are above in merit list than petitioner. No candidate thereafter has been appointed from said list.

14. For the reasons as stated above, this court does not find any merit in this writ petition and it is accordingly dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	N.A.

