

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2670 of 2018

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1. Tarique Shamim, Son of Shamim Akhtar, resident of Village- Purandaha, Post- Doriasonpur, P.S.- Simraha, District- Araria.
 2. Md. Shahnawaz Ansari, Son of Md. Quddus Ansari, Resident of Old G.T. Road, Post- Aurangabad, P.S.- Aurangabad, District- Aurangabad.
 3. Ahsan Rashid, S/o Md. Rashiduzzaman, resident of Chhota Telpa (Korar), Imamganj, Post- Chhapra, P.S.- Town Thana, District- Saran.
 4. Payal Kumari, daughter of Late Ramesh Prasad, resident of Bihari Kunj, Makhania Kuan, P.O.- Bankipur, P.S.- Pirbahore, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Old Secretariat, Patna.
3. The Bihar Public Service Commission through its Chairman, Jawaharlal Nehru Marg, Bailey Road, Patna.
4. The Secretary, Bihar Public Service Commission, Jawaharlal Nehru Marg, Bailey Road, Patna.
5. The Controller of Examination, Bihar Public Service Commission, Jawaharlal Nehru Marg, Bailey Road, Patna.
6. The Hon'ble High Court of Judicature at Patna through its Id. Registrar General, Patna.
7. The Ld. Registrar General, the Hon'ble High Court of Judicature at Patna, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashhar Mustafa, Adv.
For the Respondent-State	:	Mr. Ravi Verma, AC to GP-4
For the Respondent- BPC	:	Mr. Sanjay Pandey, Adv.
For the Respondent- PHCt:	:	Mr. Piyush Lall, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)
Date : 16-01-2019

The four petitioners herein who were applicants in the
29th Bihar Subordinate Judicial Services Examination are before
us praying for the following reliefs:

- (i) For issuance of a writ in the nature of certiorari to quash the notice dated 15.10.2017 issued by the Special Secretary cum Examination Controller, Bihar Public Service Commission, Patna by which vacancies for the BC-I Category of 29th Bihar



Subordinate Judicial Services Examination was arbitrarily reduced from 41 seats to 34 seats at the fag end of the selection process while the final interview was already going on which was completely under the teeth of the direction of the Hon'ble Supreme Court in this regard.

- (ii) For issuance of a writ in the nature of certiorari to quash the final result of 29th Bihar Subordinate Judicial Services Examination published on 31.10.2017 to the extent it published the result of only 34 candidates in the BC-I category and reduced 7 seats, which were mechanically transferred in the General Category and Scheduled Caste category.
- (iii) For grant of any other relief(s) for which the petitioners may be found entitled to in the facts and circumstances of the present case.

Mr. Ashhar Mustafa, learned counsel has appeared for the petitioners, the State is represented by Mr. Ravi Verma, learned Assisting Counsel to Government Pleader No.4, the Bihar Public Service Commission (hereinafter referred to as the 'BPSC') is represented by Mr. Sanjay Pandey and the Patna High Court is represented by Mr. Piyush Lall.

The four petitioners herein were applicants to the 29th Bihar Subordinate Judicial Services Examination under BC-I category coming from the Extremely Backward Class and are aggrieved because 41 seats earmarked for them in the advertisement have been reduced to 34 which reduction has taken away their right to appointment against one of such seats.

The entire argument canvassed to question this



reduction by Mr. Mustafa and the explanation given by the counsel represented the State, the 'BPSC' and the High Court revolves around the directions present at paragraph 19 of the judgment of the Hon'ble Supreme Court rendered in the case of **State of Bihar and others vs. Daya Nand Singh** since reported in **(2016) 16 SCC 101** which runs under:

“19. We are left with a delicate problem. Some of the candidates⁵ belonging to certain backward classes would have been entitled to get appointed pursuant to the 2012 notification, if the Rule 3A (referred to supra) were to be valid. In view of the fact that the rule itself is declared to be illegal, they are not entitled as of right to be appointed against any reserved quota. Having regard to the facts that (i) a large number of vacancies exist in the JUDICIAL SERVICE, (ii) the question of reservation is lingering for a quarter century, (iii) the remoteness of the possibility of the State completely failing to establish the need to provide for reservations in JUDICIAL SERVICES, we deem it appropriate to direct that these candidates be appointed to the service against the vacancies which arose subsequent to the 2012 notification (seeking to fill up 118 vacancies). Their appointment shall be appropriately adjusted against the vacancies which are the subject matter of recruitment under the notification dated 13.01.2016 (referred to supra) and the vacancies which arose thereafter. The candidates appointed pursuant to the above directions would take their place after the 118 candidates (some of whom are already appointed and other to be appointed without reference to Rule 3A) for all purposes. The appeals are accordingly disposed of.

5. Their extract number is not very certain- It is something between 20 or 23.



Some bare essential facts which are necessary for consideration of the grievance raised needs to be placed on record.

A notification bearing No.6067 dated 25.06.2009 was issued by the State whereby rule 3A was inserted in the Bihar Subordinate Judicial Services (Judicial Branch) (Recruitment) Rules, 1955 providing for applicability of the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 in recruitment to the post of Civil Judge (Junior Division). By a similar notification bearing No.6069 dated 25.06.2009 a similar provision was incorporated in the Rules governing the District Judge (Entry Level) posts.

These notifications came to be challenged in CWJC No.14677 of 2009 (**Dayanand Singh and others vs. The State of Bihar and others**). The Patna High Court vide judgment and order dated 10.11.2014 struck down the notification(s) and declared them ultra vires to the Constitution of India. The State feeling aggrieved moved the Supreme Court in Civil Appeal No.9921 of 2016 (**State of Bihar vs. Dayanand Singh**) and the Supreme Court while upholding the judgment and order of the Patna High Court was pleased to issue certain directions present



at paragraph 19, reproduced hereinabove and the interpretation of which is the foundation of the present contest.

In between this period, a requisition for filling up of 206 posts of Civil Judge (Junior Division) was placed by the State Government in its General Administration Department before the 'BPSC' on 25.02.2014 through the 29th, 30th, and 31st examination. A copy of this requisition is enclosed at Annexure 'A' to the counter affidavit of the State. It is following such requisition received that 'the BPSC' published an advertisement. Needful to mention that the posts earmarked for BC-I (Extremely Backward Class) category is 37.

The 'BPSC' proceeding on the request published an Advertisement No.01 of 2016 inviting applications from the willing candidates against 206 posts of Civil Judge (Junior Division), however, the breakup of the posts under different category were to be notified later, understandably, in view of the pendency of the matter before the Supreme Court.

It is on disposal of the matter by the Supreme Court on 29.09.2016 that the process for filling up of the posts advertised through Advertisement No.01 of 2016 through the 29th Bihar Subordinate Judicial Services Examination commenced and in which direction the State Government in its General



Administration Department notified the vacancies to the 'BPSC' through letter dated 02.02.2017, a copy of which is enclosed at Annexure 'C' to the counter affidavit of the 'BPSC' and whereunder 41 posts were earmarked for the candidates coming under the BC-I (Extremely Backward Class) category.

This letter was followed by another letter dated 10.10.2017, whereby certain variations were made to the vacancies notified in the earlier letter dated 02.02.2017 and in so far as the BC-I (Extremely Backward Class) category is concerned, the vacancies were reduced from 41 to 34. This letter is placed at Annexure 'D' to the counter affidavit of the 'BPSC'. It is in view of the letter dated 10.10.2017 that the 'BPSC' published the impugned notice dated 15.10.2017 clarifying the vacancies against each of the category as it was originally advertised and as it stood on its variation in the light of the order passed by the Hon'ble Supreme Court in the case of **Dayanand Singh** (supra) which is impugned at Annexure 11 to the writ petition and has aggrieved the petitioners because they have missed out on the appointment by few marks.

While the cut-off marks for the BC-I (Extremely Backward Class) category is 437, it is a matter of record that while petitioners nos.1 and 2 have secured 432 marks, the



petitioner no.3 has secured 429 marks and petitioner no.4 has secured 433 marks which was less than the cut-off marks of 437 in BC-I (Extremely Backward Class) category.

Mr. Mustaffa, learned counsel appearing for the petitioners while taking this Court through the directions present in paragraph 19 of the judgment of the Supreme Court in the case of **Dayanand Singh** (supra), the relevant extract of which I have produced hereinabove has submitted that it is on a complete mis-appreciation of the direction present that the vacancies have been reduced by the respondents because as per the direction of the Supreme Court, the adjustment of the candidates had to be made against the total vacancies and not the respective vacancies as done by the respondents.

According to Mr. Mustafa, 206 vacancies were notified for the 29th Bihar Subordinate Judicial Services Examination and which earmarked 41 vacancies for BC-I (Extremely Backward Class) category and in case the respondent-State would have adjusted these appointees under the order of the Supreme Court against the total number of 206 vacancies and then worked out the vacancies under the respective category may be, the petitioners would have succeeded in appointment because the reduction would not have



been so large.

It is the argument of Mr. Mustafa that the letter of the State in its General Administration Department issued on 02.02.2017 and placed at Annexure 'C' to the counter of the 'BPSC' is on a correct appreciation of the legal position and there was no occasion to interfere with this calculation of vacancies either by the State themselves or by the High Court on a misinterpretation of the direction of the Supreme Court which has led to the issuance of the impugned notice dated 15.10.2017 at Annexure 11 to the writ petition whereby the seats earmarked for the BC-I (Extremely Backward Class) category has been reduced from 41 to 34.

While learned counsel appearing for the 'BPSC' has shifted the burden for such variation on the State Government in its General Administration Department, the State Government in its counter affidavit has in turn has explained the reasons for the exercise on the High Court.

Mr. Piyush Lall, learned counsel appearing on behalf of the Patna High Court has taken us through the counter affidavit filed on their behalf and in particular reference to the position explained in paragraphs 15 onward has submitted that the directions of the Supreme Court present in paragraph 19 of



the judgment rendered in the case of **Dayanand Singh** (supra) clearly mentioned that the candidates appointed in the reserve quota pursuant to 2012 notification in the light of the reservation notification which has been struck down by the High Court and upheld by the Supreme Court, were to be appropriately adjusted against the vacancies which are subject matter of the notification dated 13.01.2016 and the vacancies which arose thereafter. It is consequent upon the direction so present in the judgment of the Supreme Court that the State Government vide notification dated 28.12.2016 (Annexure 8) notified the Bihar Civil Services (Judicial Branch) (Recruitment) (Amendment) Rules, 2016 and made it effective from 25.02.2014 applying reservation to the vacancies as existing on the date in the manner set out thereunder.

Mr. Mustafa, learned counsel appearing for the petitioners, in reply to the arguments advanced, has submitted that the judgment of the Supreme Court is eloquent and the benefit given to those who had been appointed under the reservation notification which has been struck down by the High Court and upheld by the Supreme Court, was not to be at the cost of the vacancies earmarked for such category but as against the total vacancies.



I have heard learned counsel for the parties and I have perused the records. In the nature of the contest set up, I do not find the necessity to engage myself in any long drawn discussion because as per the affidavits filed by the respondent-State, and the 'BPSC' the mantle has been thrown on the Patna High Court to justify the variations. For the purpose I deem it proper to deal with some of the paragraphs in the affidavit which has been relied upon by Mr. Lall to justify the opinion given by the High Court to the General Administration Department which led to the variations in question and has aggrieved the petitioners:

“15. That reverting back to the above judgment dated 29.9.2016 of the Hon'ble Supreme Court passed in the batch of appeals of the case of Dayanand Singh it is stated that in paragraph No.19 it considered the appointment of backward class category candidates made pursuant to Advertisement No.01/2012 i.e. for 28th Batch and noting that as Rule 3A of the 1955 Rules had been declared ultra vires they had no right to be appointed against any reserved quota but on the grounds as enumerated by it therein the Hon'ble Supreme Court was pleased to direct these candidates be appointed against vacancies which arose subsequent to Advertisement No.01/2012 i.e. 118 vacancies which had been advertised under Advertisement No.01/2016 and their appointments be appropriately adjusted against the vacancies under Advertisement No.01/2016 and vacancies which arose thereafter.

16. That thereafter the Commission by Notice dated 18.5.2017, in context of the above said judgment dated 29.9.2016 of the Hon'ble



Supreme Court in S.L.P. (Civil) Nos.10163-10165 of 2015, notified that as per letter No.1247 dated 2.2.2017 of the General Administration Department, Bihar, Patna for the 194 vacancies under the 29th Bihar Judicial Service Competitive Examination (i.e. vacancies pertaining to Advertisement No.01/2016) the category wise reserved vacancies would be 97 for unreserved category (35 for women), 31 for schedule caste (12 for women), 2 of schedule tribe (1 for women), 41 of extremely backward (14 for women), 23 of backward class (8 for women) categories and 2 were physically disabled candidates.

17. That the Hon'ble Court on its Administrative Side vide Agenda Item No.3 of the meeting of the Selection and Appointment Committee held on 23.8.2017 considered the letter No.1247 dated 2.2.2017 from the General Administration Department in the matter of roster clearance for 29th Bihar Judicial Service Examination and resolved as follows:

“Perused the notes of the Registry and also the order of Hon'ble Supreme Court of India dated 29.09.2016 passed in Civil Appeal No(s). 9921-9932 of 2016 and other connected cases (Govt. of Bihar & Ors. Etc. Etc. Versus Dayanand Singh Etc. Etc.) and also the minutes of Selection and Appointment Committee dated 20.10.2016 along with the minutes of Full Court dated 10.11.2016.

It is resolved that vacancies in respect of 12 additional candidates appointed over and above 118 vacancies notified under 28th BJS Examination, be adjusted against vacancies of the respective reserved categories notified under 29th BJS Examination.”

18. That the Hon'ble Standing Committee of the Court in its meeting held on 12.9.2017 vide Agenda Item No.24 considered the minutes dated 23.8.2017 of the Hon'ble Selection and Appointment Committee against Agenda Item No.3 in view of letter dated 2.2.2017 received from the General Administration Department,



Government of Bihar in the matter of roaster clearance for 29th Bihar Judicial Service Examination and resolved as follows:

“It is resolved to accept the minutes of the Hon’ble Selection and Appointment Committee in the matter”

19. That the above decision of the Court taken on 12.9.2017 was communicated by the Court to the General Administration Department, Govt. of Bihar, Patna vide letter No.65041 dated 15.9.2017 of the Court. Thereafter on 20.9.2017 the Commission declared result of 514 successful candidates of the mains written examination of the said 29th Batch which had been held by it from 24.3.2017 to 28.3.2017 and vide paragraph No.2 of this notice the Commission notified the number of candidates who had been declared under their respective reserved categories out of the said total of 514 successful candidates.

20. That the Commission held the interview of the above successful candidates of the mains written examination from 9.10.2017 to 18.10.2017. And on 15.10.2017 it issued another Notice (Annexure 11 to the writ petition) notifying that the General Administration Department, Bihar by letter No.12984 dated 10.10.2017 has modified its above letter No.1247 dated 2.2.2017 and informed it about the number of each of the reserved category vacancies as per roaster for the said 194 vacancies being 103 for unreserved category (37 for women), 33 for schedule caste (12 for women), 2 of schedule tribe (1 for women), 34 of extremely backward (12 for women), 22 of backward class (7 for women) categories and 2 were physically disabled candidates.

21. That on 31.10.2017 the Commission declared the final result (Annexure 12 to the writ petition) of the said Examination and a total of 323 candidates were declared successful in this final result. The cut off marks for extremely backward category was 437.”

A plain reading of the stand taken by the High Court



would indicate that the words ‘**appropriately adjusted against the vacancies**’ present in the direction of the Supreme Court at paragraphs 19 of the judgment in the case of **Dayanand Singh** (supra) has been acted upon by the High Court as an adjustment against the future vacancies in different categories and not against the total vacancies advertised. This appreciation of the High Court can neither be held perverse or contrary to the directions so present in the judgment of the Supreme Court especially where the State came up with fresh amendments on identical lines on 28.12.2016 and applied it retrospectively to existing vacancies. May be, if these words were not present in the direction, there could be a possible explanation to the grievance raised by the petitioners herein but if the High Court has understood the term ‘**appropriately adjusted against the vacancies**’ to mean an adjustment against the vacancies occurring in the respective category, it is a possible reasonable explanation in tune with the direction and in such situation a mere second opinion by this Court would not be sufficient to interfere with such decision taken.

The powers of judicial review though extremely wide, is not to be exercised on a mere second opinion unless the decision-making process reflects a perversity or runs counter to



the parent statute or any direction under which such exercise has been undertaken.

I am in no confusion to record that there is absolutely no infirmity in the stand taken by the High Court on the manner of adjustment and even though it has proved extremely harsh for the petitioners who have missed on the appointment by a few marks in the category of BC-1 (Extremely Backward Class) coupled with the fact that the selection process is long over, no indulgence can be granted to the prayer made.

The writ petition is dismissed. No order as to costs.

(Jyoti Saran, J)

I agree
(Nilu Agrawal, J.)

(Nilu Agrawal, J)

Skpathak/-

AFR/NAFR	AFR
CAV DATE	26.10.2018
Uploading Date	21.01.2019
Transmission Date	NA

