

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.351 of 2018

In
Letters Patent Appeal No.488 of 2015

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Brajesh Kumar Singh S/o Ganesh Prasad Singh, Resident of Mohalla-
Banama, P.S.- Shahkund, P.O.- Punchrukhi, District- Bhagalpur, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
3. The Bihar Public Service Commission through its Chairman, Bailey Road, Patna.
4. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
5. The Principal Secretary, General Administrative Department, Secretariat, Government of Bihar, Patna
6. The Principal Secretary, Finance Commercial Tax Main Secretariat, Patna.
7. The Principal Secretary, Rural Development Department, Main Old Secretariat, Patna.
8. The Chief Secretary, Government of Bihar, Old Main Secretariat, Patna, Bihar.
9. Bipin Kumar, S/o Binay Kumar Biswas, Resident of Village- Kharhat, P.O.- Narayanpur, P.S.- Raniganj, District- Araria.
10. Suraj Kumar Singh, S/o Late Badrinath Singh, Resident of Mohalla P.S.- Baliya, District- Baliya Uttar Pradesh.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Navjot Yesu, Advocate
For the Opposite Party/s :		Mr. Suman Kumar Jha, AC to AAG-3
For B.P.S.C.		Mr. Pushkar Narayan Shahi, Sr. Advocate
		Mr. Sanjay Pandey, Advocate

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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 : 23-01-2019

Heard learned counsel for the petitioner, and the
learned senior counsel representing the Bihar Public Service
Commission, assisted by learned advocate.



I.A. No. 8322 of 2018 has been preferred seeking condonation of delay of one year and eight days in filing of the present review application. In the interest of justice and for the reasons stated in the interlocutory application, wherein we find that the petitioner had earlier gone to the Hon'ble Supreme Court challenging the order of the Hon'ble Division Bench and that liberty was granted by the Hon'ble Apex Court to the petitioner to withdraw the Special Leave Petition and move a review application before this Court, we are inclined to condone the delay. I.A. No. 8322 of 2018 is, thus, allowed.

With the consent of the parties, the matter has been heard at length on merit.

The review application has been preferred for review of the order dated 14.07.2017 passed in Letters Patent Appeal No. 488 of 2015 by which the Hon'ble Division Bench of this Court had earlier refused to interfere with the judgment of the learned Single Judge in C.W.J.C. No. 7499 of 2014.

At this stage, learned counsel for the petitioner has drawn our attention towards Annexure '3' to the review application which is a memorandum bearing No.3/RI-302/77/Ka110018, dated 07.06.1977 issued under the signature of the Additional Secretary to the Government, Department of Personnel, Government of Bihar addressed to all departments of



the Government. Learned counsel submits that paragraph 4 of the said memorandum contains some guidelines to the department concerned of the Government in order to ensure timely appointment of the successful and suitable candidates on various posts and services, according to the available vacancies. Clause X under paragraph '4' of the memorandum reads as under:

“The merit list drawn up by the commission after adding the marks of written examination and viva-voce shall not comprise names more than 10% of the total reported vacancies.”

It is the aforesaid Clause X of the memorandum which is the bone of contention in the review application, while it is the case of the petitioner that as per the aforesaid guidelines merit list is to be drawn up by the commission to the extent of 10% more than the total reported vacancies and in case of any vacancy remaining unfilled due to non-reporting of the successful candidate, the candidate whose name finds place in the reserved list of 10% is essentially required to be called upon to join the vacancy, the stand of Bihar Public Service Commission is that merely because the name of a candidate finds place in the reserved list, it would not confer any indefeasible right upon him to be called for filling up the vacancies which will remain unfilled due to non-reporting of a successful candidate.



Learned counsel for the petitioner has relied upon a judgement of the Hon'ble Apex Court in the case of Manoj Manu & Anr. Vs. Union of India & Ors., reported in (2013) 12 SCC 171, to submit that in the said case the Hon'ble Supreme Court has held that the authority would not be justified in sending names of some of the candidates and not sending the names of some other candidates. It is a submission of learned counsel for the petitioner that in view of the distinction made by the Hon'ble Apex Court in the case of Manoj Manu (supra), the vacancies which have remained unfilled due to non-joining of a successful candidate are to be essentially filled up from amongst the candidates whose names have been placed in the reserved list.

On the other hand, Mr. Pushkar Narayan Shahi, learned senior counsel representing the commission, submits that the judgment of the Hon'ble Apex Court rendered in the case of Manoj Manu (supra) has to be read in the context in which it has been rendered. It is submitted that the ratio of the judgement is the law decided in that judgement and if that is to be seen it may be easily found that there is no departure from the settled proposition of law that a candidate whose name finds place in the reserved list has no indefeasible right to get appointment.

It is submitted that what had moved the Hon'ble Supreme Court in the said case was the fact that there was a case



of discrimination among the candidates whose names had been there in the reserved list. It is submitted that in the present case there is no allegation of discrimination.

This Court wanted to know from the learned counsel for the petitioner as to whether he has alleged any discrimination on the part of the recruiting authority in the matter of sending the name of the candidates from amongst the reserved list. The answer is 'No' as it is not the case of the petitioner that there has been any discrimination.

In the given facts and circumstances of the case, in view of the discussions made hereinabove, we do not find any error in the judgement under review.

There is no merit in the review application. The review application is dismissed.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/Uma/-

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