

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15496 of 2019

Dr. Sudhakar Thakur, aged about 44 years, male, Son of Dinanath Thakur,
Resident of Village-Lahsanganj, P.S.-Simraha (Farbisganj), District-Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The Principal Secretary, Animal and Fishery Resources Department, Govt. of Bihar, Patna.
5. The Secretary, Animal and Fisheries Resources, Department, Government of Bihar, Patna.
6. The Deputy Secretary of Govt., Animal and Fishery Resources Department, Govt. of Bihar, Patna.
7. The Director, Animal and Fishery Resources Department.
8. The Bihar Public Service Commission through its Chairman, Bailey Road, Patna.
9. The Chairman of the Bihar Public Service Commission, Bailey Road, Patna.
10. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
11. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Niranjan Kumar, Adv. Mr. Chandan Kr. Tiwary, Adv.
For the State	:	Mr. Subash Chandra Yadav, GP-15
For the Commission	:	Mr. Sanjay Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT



Date : 06-08-2019

The petitioner seeks a direction to the respondent authorities to consider his case for appointment on the post of Mobile Veterinary Officer as many posts have remained vacant and he is just below in the merit list to the person who is the last man who has been appointed on such post in the general category.

2. It has been submitted on behalf of the petitioner that pursuant to an advertisement bearing Advertisement No. 1 of 2017, which was floated for appointment of 903 Mobile Veterinary Officers in the Animal and Fisheries Resources Department, Govt. of Bihar, Patna, 945 applicants applied, but only 896 candidates appeared before the Bihar Public Service Commission, Patna (*in short the Commission*). Finally, only 581 candidates were selected and were offered appointment letters.

3. Learned counsel for the petitioner has submitted that some of the appointees have chosen not to join such post and many posts otherwise also have remained vacant. Under these circumstances, it has been requested



by the learned counsel for the petitioner that necessary direction be issued to the authorities concerned to consider the case of the petitioner for his being adjusted/appointed on the vacant posts, more so, when in the merit list, the petitioner is just beneath the last person who has been appointed.

4. As opposed to the aforesaid contentions raised on behalf of the petitioner, learned counsel for the State as also for the Commission have in unison stated that in view of the Government Circular dated 17.06.1977, providing that all such posts which remain vacant after the selection process is over would be carried over to the next recruitment process and there cannot be any consideration on the case of the petitioner once the process has ended and curtain has finally been drawn, no order in favour of the petitioner can be passed.

5. In response to the aforesaid argument on behalf of the State as also of the Commission, Mr. Niranjana Kumar, learned Advocate for the petitioner has drawn the attention of this Court to a judgment delivered in **Niraj**



Kumar Singh & Anr. Vs. The State of Bihar & Ors.;
2007 (3) PLJR 702, wherein a learned Single Judge of this Court has held that the Circular of Government, dated 17.06.1977 is an inoperative resolution and cannot be a ground for carrying forward non-joining posts for the next year or next advertisement, specially when yearly examinations are not being held for such posts.

6. The aforesaid judgment was referred to in a Division Bench judgment in ***Subodh Kumar Vs. The State of Bihar & Ors.; 2012 (2) PLJR 647***, wherein the Division Bench was beset with an issue whether in case of non-joining of candidates who were offered appointment letters, such persons in the waiting list down below will be entitled to be considered for appointment. The Division Bench, after taking note of various judgments including ***Niraj Kumar Singh*** (supra), came to the conclusion that there is no vested right in such candidates who are placed in the waiting list and that the judgment in ***Niraj Kumar Singh*** (supra), which held the aforesaid Circular of the State Government dated 17.06.1977 to be inoperative was further



held to be *per incuriam*. However, in one of the cases, the Supreme Court has directed the respondents to consider the case of the petitioner therein, not on any legal grounds, but on sympathetic consideration with a caveat that any favourable consideration would not be taken as a precedent.

7. In ***Subodh Kumar*** (supra), the Division Bench took note of the arguments of the parties that it was not safe to rely upon only such executive instructions which are being issued at intermittent stages for blind reliance upon such Executive Circulars can lead to discrimination and nepotism. But in any view of the matter, it was decided that the Circular has to be given effect too in the absence of any rules framed in that regard.

8. It is also pertinent to mention here, as submitted, that the aforesaid Circular of the State Government dated 17.06.1977 has again been reiterated *vide* Circular dated 16.07.2007.

9. In the present case, the petitioner has fared well as he is just below the last candidate who has been offered appointment and some of the persons who were



offered appointments have not joined such posts of Mobile Veterinary Officers. Otherwise also, many posts have remained vacant.

10. The advertisement is of the year 2017 and till date, no fresh process of recruitment on such post has been initiated. In this background, this Court deems it appropriate to direct the concerned respondent, *viz.*, the Principal Secretary, Animal and Fishery Resources Department, Govt. of Bihar, Patna (respondent No. 4) to at least consider the representation of the petitioner and take into account the fact that the petitioner is now 44 years of age and would miss out on age requirement by the next recruitment process and, thereafter, shall pass a reasoned order in accordance with law.

11. For the convenience of the parties as also the concerned respondent, the petitioner is directed to furnish a reminder letter, enclosing a copy of the representation which has earlier been filed by him, within a period of two weeks from today.

12. It is expected that an order shall be passed



by the concerned respondent, viz., the Principal Secretary, Animal and Fishery Resources Department, Govt. of Bihar, Patna (respondent No. 4) within a period of 10 weeks of the receipt of such reminder letter/representation.

13. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
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