

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 15901 of 2014

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Sandeep Kumar, Son of Sri Krishna Kumar Sinha, R/o Flat No. 86/800, Lal Bahadur Sastri Nagar, P.S. Sastri Nagar, District - Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
3. The Principal Secretary, Cooperative Department, Government of Bihar, Patna
4. The Bihar Staff Selection Commission through its Secretary, Veterinary College, Patna - 800014
5. The Chairman, Bihar Staff Selection Commission, Veterinary College, Patna - 800014
6. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna - 800014
7. Principal Secretary, General Administration Department, Government of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Singh
For the Respondent/s : Mr.Abbas Haider, SC XVI

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 20-09-2019

Heard learned counsel for the petitioner and the respondent-State.

2 The issue, which arises for consideration in the instant writ petition, is whether the petitioner, who had participated in the process of selection pursuant to Advertisement No 110 of 2010 for appointment as Circle Inspector/Cooperative Extension



Officer, can claim appointment against the vacancies available from the said selection process of 2010.

3 The brief factual background is that Advertisement in question was published on 18.06.2010 by the Bihar Staff Selection Commission (for brevity, “BSSC”). 1569 vacancies had been advertised. It was also stipulated that the vacancies could increase or decrease; and if vacancies were sent from other Departments, the same may also be included. Prior to publication of the result for the preliminary examination, certain other vacancies were received from other Government Departments. Accordingly, total number of 3285 vacancies were to be filled pursuant to the selection process. After being declared successful in the Preliminary Test, applications were to be invited afresh from the successful candidates. Petitioner was declared successful in the Preliminary Test. As such, on 29.12.2012, he was given notice for submitting his On Line application and preference for the Department/Posts between 31.12.2012 to 17.12.2013 on the Website of the respondent-Commission. Application was submitted by the petitioner pursuant to the notice dated 29.12.2012 issued by the respondent-Commission. The petitioner was issued an Admit Card for appearing in the Graduate Level Combined (for brevity, “GLC”) Main Examination on 27.01.2013.



4 On 06.02.2013, result of the GLC Main Examination was published. 25,792 candidates were declared successful having secured 30% marks in Hindi and minimum qualifying marks fixed by Government in General Science. The result/merit list was published in the Website of the Commission and counselling and Medical Test were to be conducted against the existing vacancies according to the position in the merit list, category wise. Petitioner had secured 416 marks. Petitioner also submitted his choice for posting on 10.01.2014 in order of preference.

5 The result was subject to challenge by other aggrieved persons in CWJC No 3640 of 2013. On 20.08.2013, this Court directed to delete certain questions from the examination. Result was, accordingly, revised. In the revised list, petitioner got 414 marks and his general ranking was at serial 1485.

6 Along with other candidates, the petitioner also was called for counselling on 03.10.2013. Candidates were to be selected only after counselling. Petitioner had given his preference for the post of Circle Inspector and Cooperative Extension Officer. Candidates were, thereafter, recommended as per their position in the merit list/result. The various Departments including the Cooperative Department and the Revenue Department had sent



requisition for candidates after declaration of results as per availability in the Department. After the counselling, requisitions were being sent from the Departments as per available vacancies and candidates were called to join against the vacancies occurring as per their position in the merit list. The last such opportunity for joining was upto 31.03.2014.

7 150 vacancies on the post of Cooperative Extension Officer remained to be filled up. Some of these vacancies had remained in spite of recommendations made by the BSSC for filling up the same. Such a situation had occurred due to non-joining by candidates who had been recommended by the BSSC. Petitioner's case is that he had secured 414 marks. Candidates securing upto 420 marks in the General Category had been offered appointment on the post of Circle Inspector. Land Reforms Department had sent requisition for appointment in favour of 87 candidates. In the circumstances, if the BSSC had recommended 87 candidates, the petitioner would have got appointment as a Circle Inspector or Cooperative Extension Officer as in respect of Cooperative Extension Officer also, posts were lying vacant on account of non-joining instead of requisition being made by the concerned Department.



8 In this background, the petitioner has approached this Court in the instant proceedings that the Commission should be directed to recommend candidates against the vacancies lying vacant on account of non-joining. As a result, the petitioner would get appointment as Circle Inspector having regard to his position in the merit list, vis-a-vis, the number of posts lying vacant on account of non-joining, for which the Departments concerned had sent requisition.

9 Learned counsel for the petitioner has relied upon one order passed by Division Bench of this Court in LPA No 1021 of 2016. The said judgment is in respect of other candidates who had participated in the same process of selection. It is submitted by the petitioner's counsel that the Division Bench on 04.10.2016, i.e., much after filing of the instant writ proceedings, directed the Principal Secretary, General Administration Department in the Government of Bihar to send the vacancy position of various posts advertised by the Commission which had remained unfilled on account of non-joining of the candidates. The direction was to send the vacancy position within 15 days and on the basis of their merit position. The Division Bench further directed that once recommendations were made, the Departments concerned were required to proceed accordingly and issue appointment letter in



favour of the appellants. The Division Bench has taken judicial notice of the fact that on account of non-joining of candidates, many posts would remain unfilled. This lack of human resource in the Departments adversely affects the public interest. It was, thus, observed that the State Government, in its discretion, should take a decision for filling up the vacancies remaining unfilled due to non-joining by taking a policy decision if the Rules do not forbid. The Division Bench in the said case made specific direction for recommending the names of the “appellants”.

10 The order was not general in nature and did not cast an obligation upon the BSSC to recommend names of candidates other than the appellants in LPA No 1021 of 2016. petitioner’s counsel, however, submits that having regard to the observations of the Division Bench in paragraphs 33 and 34 of the said judgment, the Authorities are obliged to take a policy decision and fill up the vacancies in public interest. It is the submission of the petitioner’s counsel that by not recommending candidates against all the vacancies remaining unfilled due to non-joining in the 2010 Selection Process, Authorities are in fact overlooking mandate of the Division Bench in LPA No 1021 of 2016. It is submitted that in view of the observations made by the Division Bench and the order passed by the Division Bench, Authorities were obliged to



send recommendation against all vacancies remaining unfilled on account of non-joining. By not doing so, they are depriving the petitioner consideration and appointment against vacancies which have remained unfilled on account of non-joining.

11 State Authorities including the BSSC have appeared and filed affidavits. The stand of the respondent-authorities is that the merit list prepared in 2013 in respect of Advertisement issued in the year, 2010 cannot be made a perennial source for making recommendation against vacancies for ever. The State Government, on 16.07.2007, had issued Resolution No 2374 which clearly specified that posts remaining unfilled due to non-joining were to be carried forward to the next selection process. The said Resolution and judgment of this Court in CWJC No 19346 of 2010 affirming the policy of the State Government to carry forward such vacancies, unfortunately could not be brought before this Court in the LPA proceedings in LPA No 1021 of 2016. The counsels appearing for the BSSC and the State have submitted that a select list cannot be treated as a reservoir for the purpose of filling of vacancies for appointment for all times to come. Reliance is placed on a decision of the Apex Court in the case of State of Orissa & Another -Versus- Rajkishore Nanda & Others reported in (2010) 6 Supreme Court Cases 777. The judgment of



the Division Bench in LPA No 1021 of 2016 even otherwise has not given any direction in general. The direction to make recommendation is only in favour of the appellants therein. Petitioner, therefore, cannot rely upon the directions of the Division Bench.

12 It is also submitted that subsequent events are also such that the petitioner cannot be granted the relief. One such subsequent event is that the post of Circle Inspector has since been declared as a Gazetted Post on 01.04.2015. Since then recommendation for appointment on the post of Revenue Officer (erstwhile post of Circle Inspector) is to be made by the Bihar Public Service Commission. A new roster, category wise has been prepared for the posts against which the petitioner is claiming a right of recommendation. The petitioner, therefore, in the changed circumstances, is not in a position to claim an appointment on the basis of recommendation made by BSSC in the year, 2013. It is also submitted that after the Advertisement No 110 of 2010, the second GLC Examination has also been conducted by the BSSC. Recommendations, pursuant to the process, had already been forwarded to the Principal Secretary, Cooperative Department for appointment against the vacant posts of Cooperative Extension Officer. Relief claimed has become infructuous as already there



are recommendation in favour of the successful candidates in the second GLC Main Examination for appointment against the post of Cooperative Extension Officer.

13 Having heard the parties and on perusal of the material on record, this Court would accept the submissions advanced by the learned counsel for the respondents.

14 Petitioner has no right to claim appointment or recommendation for appointment against the vacancies remaining unfilled on account of non-joining on the basis of judgment of the Division Bench of this Court in LPA No 1021 of 2016. The judgment is a judgment confined to the appellants therein. There is no general direction for recommendation of remaining persons against vacancies which have remained vacant on account of non-joining of candidates. Further, this Court would observe that already there is a policy decision of the State Government regarding carrying over the vacancies remaining unfilled on account of non-joining to the next selection process. The said policy is only in furtherance of the constitutional objectives under Articles 14 and 16 of the Constitution. It provides opportunity to all other persons who have become eligible for being considered against the unfilled vacancies on account of non-joining. Judgment of the Apex Court relied upon by Mr Satyabir Bharti



appearing for the respondent-BSSC, which has been taken note of herein above in the case of State of Orissa (supra) is also worthy of consideration. By now, it is established that a select list cannot be treated as a reservoir for making recommendation for appointment indefinitely. Due to the change in the Grade of the Post, process of selection for the post and the fact that the subsequent examination for appointment against the post in question has already been conducted, the petitioner cannot claim any right that a direction should be given by this Court exercising jurisdiction under Article 226 of the Constitution to recommend his name for appointment against the vacancies on the post of Circle Inspector/Cooperative Extension Officer which have remained vacant on account of non-joining from the merit list prepared pursuant to selection process of the year, 2010.

15 Writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.09.2019
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