

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1361 of 2018

In

Civil Writ Jurisdiction Case No.4912 of 2016

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1. Rajeev Kumar Verma son of Late Sudhir Kumar Verma, Resident of Village-Lakhram Ward No. 2, P.S.- Shiwan Muffasil, District- Siwan, Bihar.
 2. Amitesh Kumar, Son of Ramashankar Sharma, Resident of Village P.O.- Kamalpura, P.S.- Paru, District- Muzaffarpur, Bihar presently residing at V.A. V.A.S. Darbar Market, Main Road, Brahmpura, P.O.- M.I.T., District- Muzaffarpur, Bihar.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Co-ordination Committee through its Convener-cum-District and Sessions Judge, Patna.
3. The Convener, Co-ordination Committee, Patna-cum-District and Sessions Judge, Patna.
4. The Hon'ble High of Judicature at Patna through the learned Registrar General.
5. Aarti Kumari, D/o Anand Mishra, Resident of C/o Rajkumari Devi (Teacher), Macchharata Gali, Maharaj Ki Deodhi, Patna City, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Kumar Kaushik, Advocate
For the State	:	Mr. Gyan Prakash Ojha, G.A. 7
For the Respondent Nos. 2 to 4/s :		Mr. Bindhyachal Singh, Advocate
		Ms. Smriti Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 19-06-2019

The present Intra Court Appeal has been preferred against the judgment and order dated 16.08.2018 passed in CWJC No. 4912 of 2016 whereby and whereunder the writ application filed by the appellants for being considered



for appointment to the post of Stenographer (Hindi) in the Sub-ordinate Courts, Bihar in pursuance of employment notice dated 07.02.2013 has been rejected.

2. The brief facts which gave rise to the aforementioned writ application from the present appeal is that :-

(i) In pursuance of an advertisement dated 07.02.2013 published in the Hindi newspaper “Dainik Jagran”. The Convener Co-ordination Committee, Patna constituted under Rule 7(3) of the Bihar Civil Court Staff Rules, 2009, inviting application in the prescribed performa for appointment/preparation of a panel, the petitioners along with others applied for appointment to the post of Clerk/Stenographer in the Sub-ordinate Courts of Bihar.

(ii) The vacancy position which was likely to increase or decrease was indicated in the advertisement as 578 and the prescribed qualification was



B.A/B.Sc./B.com or equivalent degree from a recognized university. The further requirement was a certificate of Stenography issued by the Institute of Central Government/State Government was a necessary pre-qualification. The selections were to be made by a written test/test in shorthand and typing for the post of Stenographer which was to be held for 90 marks and another 10 marks were to be awarded for personality test and interview.

(iii) The aforesaid employment notice clearly indicates that a common panel shall be prepared by the Co-ordination Committee in order of merit for each post separately for all the judgeships in the State of Bihar and that the same shall remain valid for a period of two years from the date of preparation thereof. The existing vacancy as also any future vacancies occurring within the period of



two years shall be filled up from amongst the candidates in the said panel in order of merit.

(iv) It is important to indicate here that a corrigendum was issued by the respondent-Committee on 23.12.2013 with respect to the said employment notice which provides that out of the total tentative vacancies 578, the ratio of English stenographer and Hindi Stenographer shall be 75 per cent and 25 per cent respectively and thus, the tentative vacancies for English Stenographer came around 434 and that of Hindi Stenographer was 144.

(v) Shorthand and Typing test was conducted by the committee for Hindi Stenographer on 09.03.2014 and the list of selected candidates for the post of Hindi Stenographer in the Civil Courts, Bihar was published in 27.05.2015. In the said list the name of the appellants/writ



petitioners were as follows :-

(a) Appellant no. 1 who is a general category candidate was placed at Serial No. 135 and had secured 87.33 per cent marks and

(b) Appellant no. 2, who is also a general category candidate, secured 87.33 marks and was placed at Serial No. 139.

(vi) That strangely enough the respondent-Committee issued another merit list for posting of Hindi Stenographer in the Civil Courts of Bihar on 07.08.2015 in which the names of the appellants did not figure as 28 of the candidates of the previous list were dropped and fresh names of 28 candidates found place in the merit list issued for posting of Hindi Stenographer.

(vii) That out of 144 candidates whose



name appeared, many of them did not join and as such the seats remain vacant, in which, the writ petitioners could have well been included as the employment notice itself stipulated that the existing of the future vacancies within the period of two years shall be filled up from amongst the candidates in the panel prepared in pursuance of the aforementioned employment notice.

(viii) Ignoring the aforementioned stipulation in the advertisement of 2013, the respondent Co-ordination Committee then issued another notice bearing Employment Notice No. 2/16 dated 07.02.2016 issued from the office of the Convener inviting applications in prescribed performa for preparation of panel of suitable candidates for appointment of the post of Stenographer (Hindi/English/Bilingual) in the Sub-ordinate Courts of Bihar. The tentative



vacancies were shown to be 1075 out of which 25 per cent posts were to be filled up by recruitment of Hindi Stenographer, which comes about 264 vacancy.

(ix) That many a persons who were selected had not joined. The appellants have learnt information derived under the Right to Information Act from some of the learned Civil Courts that many persons have not joined. The details of the information are as follows:-

(a) It has been informed vide letter number 06/2018 dated 03.01.2018 that out of 5 recommended candidates only 2 have joined

(b) It has been informed by the learned Civil Court Vaishali at Hazipur that out of 4 selected candidate only 2 have joined. One of them Devashish is a candidate of unreserved



category. The aforesaid information was provided vide letter number 01 dated 02.01.2018.

(c) It was informed by learned Civil Court, Motihari that out of selected candidates, 2 have not joined vide letter number 21 dated 06.01.2018 along with its enclosure. The appellants have come to know that the two candidates who have not joined namely, Sri Ranjeet Kumar, and Sri Sanjeev Kumar are both unreserved category candidate.

3. It was thus, submitted by the appellants/writ petitioners that many vacant posts arising out of non-joining of appointed candidates and failure of the respondent-co-ordination committee to prepare a panel is both in teeth of the advertisement as well as the Bihar Civil Courts Staff Rules,



2009.

4. Learned counsel for the Appellants/writ petitioners further alleged that on 02.09.2018, the authorities have taken a fresh examination even those candidates whose marks are found to be less than 20 per cent in the Hindi Stenography have been found fit for selection, which is against the rules.

5. Learned counsel for the appellants/writ petitioners contended that since many of the persons out of the 144 mentioned in the aforesaid list did not join the posts remained vacant but instead of filling up the said posts in accordance with the employment notice that existing the future posts occurring within a period of two years shall be filled up from amongst the candidates in the panel prepared, the respondent-Co-ordination Committee proceeded to issue another notice bearing Employment Notice No. 2/2016 dated 07.02.2016 from the office of the Convener inviting applications for filling up the post of 1075 stenographer (Hindi/English/Bilingual) in the Sub-ordinate Courts of Bihar. Within the said 1075 vacancies, 25 per cent posts were to be filled up by the Recruitment Committee of Hindi Stenographer which comes around 264 vacancies (tentative).



6. Learned counsel for the appellants/writ petitioners contended before the writ Court that the earlier panel was to remain and was to be followed for a period of two years but the respondent-committee proceeded to issue fresh employment notice before the lapse of two years which was contrary to the stipulation of the previous employment notice, which clearly indicates that the existing vacancies, as also future vacancies occurring within the period of two years shall be filled up from amongst the candidates placed in the panel. The relevant portion of the advertisement indicating above is extracted hereinunder for ready reference.

“After the selection test (both written and viva-voce) are over on the basis of marks of both written vice-voce, a common panel shall be prepared by the Co-ordination Committee in order of merit for each post separately for all the Judgeships in the State of Bihar. The aforesaid panel shall remain valid for a period of 2 years from the date of preparation thereof. The existing vacancies as also any future vacancies occurring within the period of 2 years shall be filled up from amongst the candidates in the said panel in order of merit. The candidate shall not be paid any T.A. for attending written test of interview”.

7. Learned counsel for the appellants/writ



petitioners further contended that the action of the respondent-authorities is in the teeth of Rules 7(14) of the Bihar Civil Courts Staff Rules 2009 which provides that all existing vacancies and future vacancies occurring within the period of two years from the date of preparation thereof shall be filled up from amongst the candidates of the aforesaid panel.

8. Being aggrieved by the issuance of the second Employment Notice No. 2/2016 dated 07.02.2016 by the co-ordination Committee inviting applications from a total number of 1075 tentative vacancies of stenographers, the writ petitioners came to this Court to challenge the said advertisement and prayed for quashing the Employment Notice No. 2/2016 and also for restraining the respondents in proceeding with the Employment Notice No. 2/2016 and also from giving effect to the conditions of the employment notice issued on 07.02.2016 and to consider the petitioners for the appointment to the post of Stenographer.

9. Learned counsel for the Appellants-writ petitioners contended that despite the fact that the Standing Committee had resolved to appoint those candidates whose mistakes were found to be 20 per cent or below and that the appellants-writ petitioners mistakes were also found within that



category of having less than 20 per cent mistakes, they were entitled to be considered for appointment in place of non-joining candidates. It was further contended that the respondents had also failed to apply with the provisions of Rule 7 (14) of the Bihar Civil Courts Staff (Class-III and IV) Rules, 2009 which clearly casts an obligation upon the respondent authorities to prepare a panel for filling up the existing as also the anticipated vacancies occurring within the aforementioned period of two years from the date of preparation of panel and thus, the appellants had a right to be considered for appointment to the existing vacancies as also the anticipated vacancies occurring with the in the aforementioned period.

10. Learned counsel for the appellants-writ petitioners also contended that in pursuance of the fresh employment notice dated 07.02.2016, the respondent authorities were proceeding to appoint persons whose mistakes have been found to be 20 per cent or below and thus, it is unreasonable to contend that the appellants were not eligible for consideration of their candidature.

11. Learned counsel for the appellants-writ petitioners further contended that the authorities had also failed to consider that the names of the present appellants figured in



the first select list and it was only due to roster error in the select list that their names were omitted in the revised merit list. Though they had earlier been found suitable for appointment to the post of English/Hindi Stenographer by the respondents. It was further averred that once the authority had fixed an eligibility criteria and relaxed the same in favour of the candidates, it was to be applicable to all the candidates and there could be no discrimination amongst them on the basis of their eligibility. Thus, it was contended by the learned counsel for the appellants-writ petitioners that the appellants have a valid and legal cause for adjudicating the claim which deserves to be noticed by the writ court and appropriate relief be granted to them.

12. Per contra, the respondents have also filed their counter affidavit and stated that the advertisement was issued for 578 posts stenographer out of which 434 posts were of the English Stenographer and 144 posts were for the post of Hindi Stenographer. However, no eligible candidates were found for the said post and hence, having considered the urgency of the matter and acute shortage of stenographer in the Civil Courts of Bihar, the Standing Committee in its meeting held on 11.03.2015 resolved as follows:-



“ In view of the acute shortage of stenographers in the Subordinate Courts all over the State, it is resolved to provisionally appoint such of the candidates whose mistakes found to be 20 per cent or below.

A condition shall be incorporated to the effect that the orders of regular appointment shall be given on satisfactory performance in a test that may be conducted after six months from the date of appointment.

The revised list be placed before the Committee before the orders are issued.”

13. Consequent to the aforementioned resolution, learned counsel for the respondents contended that only 42 candidates in the English stenography were selected and out of 144 posts of Hindi stenographers after filling up the vacancies 12 posts remained vacant which belonged to the reserved category.

14. In view of the non-availability of candidates the matter was once again placed before the Standing Committee on 19.05.2015 wherein another resolution was taken which reads as follows:-

“Approved subject to the condition that the probation of the candidates appointed herein shall be declared only if they clear the prescribed text without any relaxation.”



15. Learned counsel appearing on behalf of the Co-ordination Committee thus, submits that despite the resolution of provisionally appointing such candidates whose mistake were found to be 20 per cent or below, 144 posts of Hindi stenographers could not be completely filled up.

16. It was pointed out by learned counsel for the respondents-co-ordination committee that despite such relaxation by the Standing Committee, the requisites number of posts of Hindi Stenographers could not be completely filled up for want of proper candidates and thus, the select list 27.05.2015 was published and later the merit list according to roster have been published by the District and Sessions Judge, Patna-cum-Convener Co-ordination Committee, Patna on 07.08.2015. In the said list, which was published in the aforementioned selection process no waiting list was prepared for filling up the future vacancies and out of 144 vacancies for the post of Hindi stenographer as per the advertisement only 132 candidates were selected and 12 posts were remaining vacant.

17. Learned counsel for the respondents further contended that in view of the acute shortage of stenographers and for the purpose of meeting the administrative exigency, a further Employment Notice No. 2/16 was published by the



Convener Co-ordination Committee inviting online application in prescribed performa for appointment of the post of stenographer in the Sub-ordinate Courts of Bihar as per the Bihar Civil Court Staff (Class III & IV) Rules, 2009 which is wholly in the interest of institution and will also provide employment to other desirous/deserving candidates and accordingly, as per the direction of the District and Sessions Judge, Patna-cum- Convener Co-ordination Committee had initiated steps for appointment of staff in the Civil Courts of Bihar.

18. Clarifying further with regard to the earlier vacancies, it was submitted by the respondents that a select list dated 27.05.2015 (Annexure-3) was published and merit list according to roster came to be published on 07.08.2015 by the District and Sessions Judge, Patna-cum-Convener Co-ordination Committee. In the final merit list as per roster, certain posts of reserve category have been kept reserved as no suitable candidates have been found and in the said selection no waiting list has been prepared for filling up the future vacancies. It was further submitted that Writ petitioner No. 1 Rajiv Kumar, Writ petitioner No. 2 Aarti Kumari and Writ petitioner no. 3 Amitesh Kumar were all of general category (un-reserved candidates)



secured 87.33, 88.00 and 87.33 marks respectively but the last general category candidate, namely, Gulub Chandra Vishwakarma had secured 88.33 marks and thus, there is no violation of rules as no eligible candidates were found and the list was prepared in accordance with the decision of the Standing Committee to provisionally appointed the candidates whose mistakes have been found to be 20 per cent or below and it was for the said reason alone that the subsequent reducing were found to be 20 per cent or below and even after reducing the marks criteria, the vacant posts could not be filled up. Thus, the respondents have no option but to issue the Employment Notice No. 2/16. Thus there arose no reason for interference by this Court in its writ jurisdiction and the writ petition was fit to be dismissed.

19. During the pendency of the writ application, candidates obtained materials from the Right to Information Act that some of the stenographers so selected had not joined.

Details of information were furnished as hereinunder:-

“ It has been informed vide letter number 06/2018 dated 03.01.2018 that out of 5 recommended candidates, only 2 have joined.

ii. It has been informed by the learned Civil Court, Vaishalli at Hazipur that out of 4 selected candidates only 2



have joined. One of them Devashish is a candidate of unreserved category. The aforesaid information was provided vide letter number 01 dated 02.01.2018.

iii. It was informed by learned Civil Court, MOtihari that out of 4 selected candidates, 2 have not joined vide letter number 21 dated 06.01.2018 along with its enclosure. The petitioners have come to know that the two candidates who have not joined namely Sri Ranjeet Kumar and Sri Sanjeev Kumar are both unreserved category candidates.”

20. It was thus, submitted that the appellants-writ petitioners that the appellants having obtained above 80 per cent marks as was admitted by the respondents were eligible for consideration of their case as against the vacancies under which they had applied and in view of the non joining of the unreserved candidates, the appellant-writ petitioners ought to be accommodated in the wake of existing vacancies which had arisen out non joining of candidates. It was contended that the appellants were in fact found eligible by the respondents in the first merit list as contained in Annexure-3 dated 09.03.2014 and it was only due to certain error in the application of the roster that the appellant's name did not figure in the second merit list of 07.08.2015.



21. Learned counsel for the appellants-writ petitioners contended that though the writ application was heard at length but the learned Single Judge failed to appreciate the case of the appellants/writ petitioners and held that the respondents had rightly published the fresh employment notice as the writ petitioners have been found to be ineligible in the earlier examination.

22. We have heard learned counsel for the parties and given a deep consideration to the arguments advanced on both sides. In order to proceed further to decide the present lis, we deem it would be appropriate to refer to the Bihar Civil Court Staff (Class-III & IV) Rules, 2009 which provides for the preparation of panel of successful candidates which would remain valid for a period of 2 years and the existing vacancies as also the anticipated vacancies occurring within the aforesaid period may be filled up from amongst the candidates of the said panel. The relevant Rule of Rule -7 of the Bihar Civil Court Staff (Class-III & IV) Rules 2009 are quoted hereinunder :-

“7 (12) A panel of successful candidates shall be prepared on the basis of total marks obtained in written examination as also in the interview. After the selection tests (both written and oral) are over, a common panel shall be prepared by the Co-ordination



Committee in order of merit for all the Judgeship in the State of Bihar.

(13) The aforesaid panel shall remain valid for a period of two years.

(14) the existing vacancies as also the anticipated vacancies occurring within the aforementioned period may be filled up from amongst the candidates in the said panel in order of merit.”

23. This Court while hearing the appeal preferred by the writ petitioners and taking into consideration the contention that on account of non joining, many posts had been remained vacant, directed and called upon the respondents to file their affidavits bringing on record the number of candidates who did not join in spite of having offered appointment against the respective category of vacancies. The respondents have filed an affidavit in the appeal (Annexure-A) which reveals that a total number of 53 candidates did not join but in view of the fact that there was no waiting list, subsequent advertisement was issued. It was thus, submitted that there is no merit list and since the subsequent advertisement has also been issued, there was no question regarding appointment of the present appellants.

24. We are unable to appreciate as to under what circumstances, the respondents did not prepare a waiting list when the relevant rules as well as advertisement specifically provide for the same and the action of the respondents keeping



in posts vacant despite the decision of the Standing Committee to lower down the marks and bring in the candidates into the ambit of the select zone by including those who had less than 20 per cent mistakes and both the appellants having earlier been selected and having secured 87.33 marks, the non preparation of the panel does not seem to have any rationale and must be deprecated. The said action of the respondents is not only in violation of the rules as has been quoted hereinabove but is also clearly in derogation of the instructions issued by the Standing Committee.

25. The question, however, now arise as to whether these appellants, who were eligible on the said date and having not been selected could be made to join on the post of stenographer in the vacancies which have now been amalgamated with the subsequent vacancies of the advertisement of 2016. We are informed that the vacancies which could not be filled up in the year 2013 have been added to the number of vacancies which were advertised in the year 2016 and for which selection process had already started and culminated in the year 2018. Moreover, such posts having already been filled up, to issue any directions to the respondents or to issue appointment letters in favour of the present



appellants would mean upsetting the appointment of those who have now been appointed in the later advertisement. At best, these appellants may be permitted to appear in any future examination which may be conducted for the selection of stenographer for which they must duly apply and their cases should be considered subject to fulfilling other conditions.

In the result, for the reasons aforementioned, we are not inclined to interfere in the decision of the learned single Judge, the Appeal fails with the aforesaid observations/directions.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	
CAV DATE	16.05.2019
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Transmission Date	

