

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.582 of 2018

In
Civil Writ Jurisdiction Case No.5041 of 2016

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Devashish Thakur, S/o Awadhesh Thakur, Resident of Mohalla-Chunabhathi,
Near Mithu Mandir Chowk, S. University Campus, District-Darbhanga.

... .. Petitioner-Appellant/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Chairman-Cum-Managing Director, Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna, Successor of the Erstwhile Bihar State Electricity Board, Patna
3. The Secretary, Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna, Successor of the Erstwhile Bihar State Electricity Board, Patna.
4. The General Manager, (Human Resources and Administration), Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna, Successor of the Erstwhile Bihar State Electricity Board, Patna
5. The Deputy General Manager, (Human Resources and Administration), Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna, Successor of the Erstwhile Bihar State Electricity Board, Patna
6. The Officer on Special Duty, (Human Resources and Administration), Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna, Successor of the Erstwhile Bihar State Electricity Board, Patna.
7. The Principal Secretary, Energy Department, Govt. of Bihar, Patna.

... .. Respondents-Respondent/s

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with

Letters Patent Appeal No. 622 of 2018

In
Civil Writ Jurisdiction Case No.7113 of 2016

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1. Harihardatt Vatsa Kumar Pankaj, Son of Sahu Staram Pankaj, resident of Village- Nawadakalan, Police Station Ganga Bridge, District- Vaishali.
 2. Ramkrit Sah, Son of Ramsajiban Sah, resident of Village- Rampura, Police Station- Singhwara, District- Darbhanga.
 3. Md. Shahzad Salim Azmi, Son of Late Salim Ahmad, resident of Village- Imampur, Near Sr. Academy, Police Station - Habibpur, District - Bhagalpur.
 4. Utsav Kumar, Son of Birendra Kumar Singh, resident of Magadh Electric, Gur Ki Mandi, Shershah Road, Police Station - Alamganj, District - Patna.



5. Nitesh Kumar, Son of Ram Bilash Pandit, resident of Mohalla- Teachers Colony, Mirzanhatt, Jagdishpur, Police Station- Mirzanhatt, District- Bhagalpur.
6. Birendra Kumar, Son of Diwakar Prasad Gupta, resident of Village- Nayagaon, Police Station- Aurai, District- Muzaffarpur.

... .. Appellant/s

Versus

1. The Bihar State Power Holding Company Ltd. Through its Chairman Cum Managing Director
2. The Chairman-cum-Managing Director, Bihar State Power Housing Company Ltd, Vidyut Bhawan, Bailey Road, Patna.
3. The Deputy General Manager, (Human Resources and Administration), Bihar State Power Holding Company Ltd. Vidyut Bhawan, Bailey Road, Patna.

... Respondents/ Respondents.

4. Rakesh Kumar, Son of Nagendra Prasad, resident of Village - Banchauri Dholi, Police Station - Dumra, District - Sitamarhi.
5. Saroj Kumar Yadav, Son of Gopal Krishna Yadav, resident of Village - Bharauli, Police Station - Shahpur, District - Bhojpur.
6. Pancham Kumar Singh, Son of Mangal Kishore Singh, resident of Village - Hemja, Police Station - Haidarnagar, District - Palamu, Jharkhand.
7. Surendra Kumar Singh, Son of Yamuna Prasad Singh, resident of Village - Katahan, Police Station - Mehshi, District - East Champaran.
8. Krishna Kumar, Son of Ramashrey Prasad, resident of Village - Abdulpur, Police Station - Fatuha, District - Patna.
9. Rajesh Kumar Mahto, Son of Dinesh Mahto, resident of Mohalla - Laxmisagar, Saidpur DAV Road, Police Station - L.N.M.U., Darbhanga, District - Darbhanga.
10. Ravikant Kumar, Son of Vimal Prasad, C/o Dinanath Prasad, Resident of Road No. - 2, Near Boys Middle School, Police Station - Gidhaour, District - Jamui.
11. Jitendra Kumar, Son of Shahsi Bhushan Singh, resident of Village - Sambey, Police Station - Warsaliganj, District - Nawada.
12. Prem Kumar, Son of Ramashish Prasad, resident of Mohalla - Tarchha, Police Station - Sheikhpura, District - Sheikhpura.
13. Rakesh Kumar, Son of Late Aditya Sahu, resident of House No. 138, Kumhrar Toli, Melatar, Police Station - Khunti, District - Khunti, Jharkhand.
14. Mrinalini Bhaskar, Son of Late Shiv Narayan Tanti, resident of Village - Rahmatpur, Dhangola Asarganj, Police Station - Asarganj, District - Munger.
15. Dheeraj Kumar, Son of Gaya Prasad Singh, resident of Mohalla - Indira



Nagar, Road No. - 1, Postal Park, Police Station - Jakkanpur, District - Patna.

... .. Petitioners- Respondent/s

Appearance :

(In Letters Patent Appeal No. 582 of 2018)

For the Appellant/s : Mr. Bindhyachal Singh, Advocate
Mr. Ratanakar Jha, Advocate

For the BSPHCL : Mr. A. K. Ojha, Advocate
Mr. A. K. Karna, Advocate

For the State : Mr. Y. P. Sinha, AAG-7

(In Letters Patent Appeal No. 622 of 2018)

For the Appellant/s : Mr. Bindhyachal Singh, Advocate
Mr. Satya Prakash, Advocate
Mr. Raj Kumar, Advocate

For the BSPHCL : Mr. A. K. Ojha, Advocate
Mr. A. K. Karna, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-06-2019

Heard Shri Bindhayachal Singh, learned counsel for the appellants and Shri A. K. Ojha, learned counsel for the respondent-Company.

We had adjourned the matter after posing a couple of questions that arose for consideration in these appeals whereupon after hearing the arguments and the affidavits exchanged between the parties it is evident that the plea taken by the appellants that



some candidates from the same select list had been appointed does not emerge to be correct.

We have considered the next argument of the learned counsel for the appellants which is to the effect that the respondent Power Holding Company Limited has proceeded to make appointments on the basis of the same select list in the contingency of certain candidates having not joined after having been offered appointment in respect of the selection of the post of Assistant Operator and IT Manager. In this regard, it is relevant to refer to the representation filed by the appellants, a copy whereof has been filed as Annexure-6 to the writ petition being CWJC No.7113 of 2016. The contents of the said representation do indicate the raising of this issue before the authority after the decision delivered by this Court in CWJC No.6902 of 2015 on 16.09.2015. The impugned order in the writ petition being CWJC No.7113 of 2016, which is Annexure-7, proceeds to deal with the representation recording that since no panel of candidates was notified so as to continue the appointment any further, therefore, the claim of the appellants to consider the filling up of the left over posts from the same panel does not arise. This has been again reiterated further with an additional reason that since the service conditions of the candidates already selected had been notified as



per order of the Board of the Directors and consolidated pay structure has been converted into regular pay scale, this plea of the appellants cannot be accepted. The impugned order dated 15th February, 2016 is reproduced hereinunder:-

“Order

In CWJC No.6902 of 2015- Harihar Datt Vatsa Kumar Pankaj & others the order of the Hon’ble Court dated 16.09.2015 reads as follows:-

“After much persuasive arguments made by the learned senior counsel for the petitioners and after having delved in the diverse decisions rendered in this regard by various courts, the maximum which can be done in favour of the petitioners is to issue direction upon the respondent Power Holding Company to consider the efficacy of filling up the left over posts by short-listed candidates. Whether they have a right of appointment as such is debatable.”

Bihar State Power (Holding) Company Limited, on behalf of its subsidiary companies namely North Bihar Power Distribution Company Ltd. (NBPDC), South Bihar Power Distribution Company Ltd. (SBPDCL) and Bihar State Power Transmission Company Limited (BSPTCL) invited applications from eligible candidates for appointment to the post of Junior Accounts Assistant (Post-339 nos.) on Consolidated pay including HRA (Rs.8000-13500) against employment Notice No.-01/2014.

The facts in this matter is that the applicants were shortlisted on the basis of written test and were called for documents verification in the ratio of 1:1.25. Out of 504 total 481 candidates appeared for documents verification and 23 remained absent.

A merit list of 481 nos. of candidates was prepared on the basis of marks obtained in the written test. Accordingly category wise all advertised posts were filled up. Thereafter all newly recruited JAA were directed to join to GM (HR &Adm.) of the respective company allotted to them.



After completion of the recruitment process, it was reported by the companies that many of the candidates did not join and many of them remained absent after submission of their joining. Total vacancy due to non-joining and non-continuing after joining was calculated as 137 (UR-75, SC-21, ST-01, EBC-23, BC-14, BC(F)-3).

The result of Employment Notice No.-01/2014 was prepared on the basis of written examination conducted for selection of suitable candidates to fill the advertised no. of posts in one transaction only and **no panel of candidates was notified so as to continue the appointment furthermore on the basis of panel.**

Now the service conditions of the candidates selected and recruited on the basis of the written examination conducted in pursuance of Employment Notice No.-01/14 stands notified as per the order of the Board of Directors of BSPHCL issued vide Office order no.-01 dt. 01.01.2015. The consolidated pay structure has been converted into Regular Pay Scale.

Since the recruitment process was completed according to the no. of posts advertised and no panel was prepared for the recruitment in future and the service condition has also changed since then, it is not possible to recruit any other candidates on the basis of the result of Employment Notice No.01/2014.

The application of Sri Harihar Datt Vats and 15 others requesting for appointment on the basis of Employment Notice No.-01/2014 has been considered and found not acceptable in the light of the above facts.

Hence, the representation of Mr. Vats and others is rejected.

Sd/
(Pratyaya Amrit)
Chairman-cum-MD

Memo No.74 Patna/ dated 15.02.2016.

Copy forwarded to All GM (HR & Adm.), BSPHCL/BSPGCL/BSPTCL/NBPDCL/SBPDCL/ Law Advisor, BSPHCL/ Sri Manoj Kumar, Legal Supervisor I, BSPHCL for information and necessary action.



2. Sri Manoj Kumar, LS-I is requested to forward a copy of this order to the concerned Additional Standing Council and Advocate of the petitioners for necessary action.

Sd/ (Rakesh Ranjan)
OSD (HR & Adm.)”

It is the above quoted order which came to be challenged in the writ petition and a supplementary affidavit was filed in CWJC No.7113 of 2016 in which Annexure-10/1 was appended indicating that against Employment Notice No.3/16, the respondent-Power Holding Company Limited itself came out with an offer that some of the candidates who had not submitted their joining on the post of IT Manager, the Company in view of its requirement has decided to fill up the vacant posts from the merit list already published. With the aid of the said document, learned counsel for the appellants contends that the claim of the appellants survives as the respondent-Company cannot be permitted to discriminate in the matter of selections and make appointments against the posts which were vacant due to non-joining of candidates in one category and deny the same to the other. This, according to him, violates Articles 14 and 16 of the Constitution of India and consequently, the decision making process is vitiated on the facts as disclosed and pleaded before them as well as before this Court.



Learned counsel for the appellants further contends that the learned Single Judge has also not considered the aforesaid aspect of the matter and consequently for the same reason, the impugned judgements dated 23.08.2017 and 26.03.2018 of the learned Single Judge in CWJC No.7113 of 2016 and CWJC No.5041 of 2016 respectively also deserve to be set aside.

Sri Bindhyachal Singh has also urged that merely because the selected candidates have been appointed and the selections have been stated to have been finalized with future advertisements having been made, the same cannot take away the rights of the appellants to be considered for appointment keeping in view the fact that there was a mandate issued by this Court in the previous round of litigation for taking a decision in accordance with law. The claim, therefore, survives and, therefore, the respondents cannot deny the consideration as was directed by this Court. He has also invited the attention of the Court to the judgement of the Apex Court in the case of **Dinesh Kumar Kashyap & Ors. Versus South East Central Railway & Ors.**, reported in **AIR 2019 SC 24 : 2019 (1) PLJR 332 (SC): 2018 SCC Online SC 2569.**

Replying to the contentions, Sri Ojha submits that there is no infeasible right available to the appellants to claim



appointment and valid and cogent reasons have been given in the impugned order that have been upheld by the learned Single Judge, hence neither the impugned order nor the judgement of the learned Single Judge deserves any interference. He has also cited the judgement in the case of **Bihar State Electricity Board & Ors. Vs. Abhishek Ranjan & Anr, (L.P.A. No.289 of 2014)** decided on 28.06.2016 to urge that the aforesaid Division Bench judgement squarely applies on the facts of the present case and, therefore, the appeals deserve to be dismissed.

Having considered the submissions raised and having gone through the judgements cited at the Bar, we clearly find that the issue raised with regard to appointment from the same merit list in respect of the posts that had been left un-filled due to non-joining had been raised in the representation, in the writ petition as well as in the supplementary affidavit filed before the learned Single Judge. We do not find any consideration of the said issue either in the order impugned passed by the Chairman-Managing Director or in the impugned judgement. The reason given in the impugned order by the Chairman-cum-Managing Director to the effect that no panel of candidates was notified so as to continue the appointment furthermore is clearly contradicted by the action of the respondent-Power Holding Company Limited in matters of



such appointment as is clearly established from a perusal of Annexure-10/1 appended along with the supplementary affidavit filed in CWJC No.7113 of 2016. The reason, therefore, given by the Chairman-cum-Managing Director in the order dated 15.02.2016 is unsustainable. The second reason given that the service conditions of the candidates already selected has intervened and their consolidated pay structure has been converted into regular pay scale also does not stand to reason inasmuch as the same absolutely has no nexus with the nature of the issue raised, namely, if the post has been left unfilled and is vacant then it can be offered to the candidate from the same merit list. The reason, therefore, having no nexus with the direction given by this Court for consideration also does not stand to reason. Thus the order dated 15th February, 2016 on both counts cannot be upheld. The learned Single Judge has also not delved into this issue and has not recorded any finding.

Consequently, for the aforesaid reasons, the order dated 15th February, 2016 as well as the impugned judgements dated 23.08.2017 and 26.03.2018 of the learned Single Judge in CWJC No.7113 of 2016 and CWJC No.5041 of 2016 respectively cannot be sustained and are hereby set aside. The appeals are allowed.



The respondent-Chairman-cum-Managing Director is commanded to take a fresh decision keeping in view the aforesaid facts and circumstances within a period of three months in the light of the observations made hereinabove and intimate the appellants accordingly.

Allowed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.06.2019
Transmission Date	

