

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5434 of 2020

1. Chandrashekhar Singh Son of Sukhram Singh, Resident of Village- Saraiya, P.O. Umapur, P.S. Bhagwanpur, District-Kaimur(Bhabhua), Pin -821102
2. Shweta, D/o late Ganesh Prasad, C/o Late Narayan Shaw, Langartoly Gali, Opposite Pole No. 9, P.S. Kadamkuan, P.O. Bankipur, District- Patna, Pin-800004
3. Sudhanshu Kumar Singh Son of Late Paras Nath Singh, Resident of Kashipur,P.O. Bidupur (R.S.), P.S. Rajapakar, District- Vaishali, Pin- 844502
4. Suresh Chandra Thakur, Son of Bishwanath Thakur, Resident of Village-Chamrahra,P.O. Mahnar Road(R.S.), P.S. Mahnar, District- Vaishali, Pin-845507
5. Manoj Kumar, Son of Sarwan Kumar, Resident of Village- Meura, P.O. Derwan, P.S. Kudra, District- Kaimur(Bhabhua), Pin- 821108.
6. Uday Kumar, Son of Shiboo Pandit, Resident of Village- Atasaray, P.O. Islampur, P.S. Islampur, District- Nalanda, Pin-200019

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar,Patna.
2. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
3. The Joint Secretary, Department of Finance, Government of Bihar, Patna.
4. The Secretary (Resource/Expenditure), Department of Finance, Government of Bihar, Patna.
5. The Additional Chief Secretary, General Administrative Department, Government of Bihar, Patna.
6. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Satya Prakash Sinha, Advocate
For the Respondent State:		Mr. Raghuvendra Kumar, SC-22
For the Respondent BPSC:		Mr. Sanjay Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 06-10-2020 Heard Mr. Alok Kumar Rahi, learned counsel

 appearing on behalf of the petitioners, Mr. Raghuvendra Kumar,

 learned Standing Counsel No. 22 for the State and Mr. Sanjay

 Pandey, learned counsel representing the Bihar Public Service



Commission.

2. The facts of the case, which are germane for the present adjudication, are short and are being taken note of at the outset before coming to the relief, which the petitioners have sought for. The Bihar Public Service Commission (BPSC) came out with an Advertisement No. 03 of 2015 for selection/appointment against 100 posts of Accounts Officer under the Department of Finance, Government of Bihar. In terms of the advertisement, candidates having qualification of graduation in either of the subjects viz. Commerce, Economics, Mathematics or Statistics from a recognized University could apply.

3. It is the case of the six petitioners before this Court in the present matter that they were eligible and they had applied pursuant to the said advertisement. They were declared successful in the written examination. They participated in the interview. A final result of 100 candidates was published on 01.08.2018 by the Bihar Public Service Commission based on which the BPSC made recommendations to the State Government for their appointment. Out of 100 candidates, so recommended, it is the petitioners' case, 11 did not join and, therefore, further recommendations were made of 11 candidates



on the basis of their respective merit, in the light of orders passed by this Court dated 25.10.2019, 20.12.2019 and 13.01.2020 respectively in C.W.J.C. No. 19220 of 2019 (***Prabhash Pathak Vs. The State of Bihar and Others***) and C.W.J.C. No. 25018 of 2019 (***Pawan Kumar Vs. The State of Bihar and Others***).

4. This is to be noted that recruitment to the posts advertised are governed by the Bihar Accounts Service Rules, 2015 (hereinafter to be referred to as 'the Rules'). Rule 15 of the Rules requires the Commission to prepare merit list on the basis of marks obtained in the written examination and *viva-voce* test. It further requires the Commission to recommend such number of candidates from the merit list so prepared, as is reported in case of non-joining of any candidate or increase in vacancy, within a year or till the further advertisement is issued, whichever is earlier.

5. It is the petitioners' case that seven candidates had joined and subsequently they resigned, therefore, the said posts became vacant. It is also the petitioners' case that 77 posts had become vacant because of promotion and thus there are 84 posts now available due to increase in vacancy, for recommendation on the basis of the said advertisement.



6. In this background, the present writ application has been filed seeking following relief : -

“That this is an application for issuance of an appropriate writ, order or direction particularly in the nature of writ of mandamus commanding the respondents to recommend the petitioners for appointment as Accounts Officer on the basis of process of selection undertaken by the Bihar Public Service Commission against the Advertisement No.03 of 2015 for such post after adding all the vacancies existed due to increase in vacancy till the final publication of result as they are successful candidates from the merit list since about 100 posts are remained vacant.”

7. The petitioners are thus seeking a direction to the respondent Bihar Public Service Commission to recommend names of 184 candidates against 100 posts, which were originally advertised. The petitioners have relied on Rule 15 of the Rules to contend that the recommendation of candidate can be made “for further vacancy of vacant seat/post, which exists in the Department”.

8. It is not the case of the petitioners that on the basis of recommendations made by the Bihar Public Service Commission, the 100 posts so advertised have not been filled up with the candidates having joined their respective posts after recommendation made by the BPSC. It is their case, however, that since some of the candidates have resigned after joining the posts, the resultant vacancies should be filled up from the same



merit list prepared by the Commission. It is also their case that the existing vacancies of the posts in the Department should be directed to be filled from the same merit list in view of Rule 15 of the Rules.

9. In my opinion, the relief, which the petitioners are seeking, is completely misconceived in the light of clear pronouncement by the Supreme Court in case of ***Rakhi Roy vs. High Court of Delhi***, reported in (2010) 2 SCC 637 and ***Amar Jyoti Barua Vs. State of Assam***, reported in (2009) 3 SCC 227. The Supreme Court has clearly held that filling of vacancies in excess of advertised/notified vacancies is without jurisdiction. In a subsequent decision, in case of ***Arup Das vs. State of Assam***, reported in (2012) 5 SCC 559, the Supreme Court has reiterated that appointment beyond advertised vacancies is impermissible. In a recent decision, the Supreme Court, in case of ***Anupal Singh vs. State of U.P.***, reported in (2020) 2 SCC 173, has taken the same view and has held that the existing/future vacancies cannot be filled up pursuant to advertisement already issued. The Supreme Court, in case of ***Anupal Singh*** (supra), has further reiterated the legal position that even the selected candidates do not have any indefeasible right to be appointed merely because their names were included



in the provisional select list.

10. This is settled legal principle that once a candidate joins on the basis of recommendation against a vacant post, the vacancy stands exhausted. His subsequent resignation will create future vacancy and cannot be treated to be a vacancy for the purpose of the posts advertised. In any view of the matter, the life of the panel has expired and the petitioners have approached this Court after expiry of the life of the panel. For this reason also their plea cannot be entertained.

11. Considering the law laid down by the Supreme Court and the facts as noted above, I do not find it to be a fit case for interference in a proceeding under Article 226 of the Constitution of India.

12. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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