IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4096 of 2020

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1. Zaffir Ahmad Ansari Son of Azizul Haque, Resident of Sitalpur, P.S.- Dighwara, District- Saran (Chhapra)
2. Ali Akbar son of Mohammad Islam Resident of 86 KH, Chhitauli, P.S.- Pasrampur, District- Gopalganj

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna
3. The Joint Secretary, Department of Finance, Govt. of Bihar, Patna
4. The Secretary (Resource/expenditure) Finance Department, Bihar
5. The Additional Chief Secretary General Administration Department, Bihar, Patna
6. The Bihar Public Service Commission, through its Secretary, Bailey Road, Patna, Bihar

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Chandra, Advocate
For the State	:	Mr. Raghwendra Kumar, SC 22
For the BPSC	:	Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

Date : 27-07-2021

Heard learned counsel for the petitioners, learned Standing Counsel for the State and learned counsel for the Bihar Public Service Commission.

The petitioners have filed the instant application for the following reliefs:

i. For directions to the respondents concerned to recommend the name of the petitioners and to issue appointment letter to the post of Accounts Officer.

ii. For direction to the respondent to appoint the petitioner in light of Rule 15 of Bihar Accounts Services Rules 2000 (as Amended from time to time).

iii. For directions to respondents to recommend the name of the petitioners for appointment on the post remained vacant due to non-joining of the some of the earlier recommended candidates.

iv. For holding and a declaration of Rule 15 of Bihar Accounts Services Rules 2000 (as amended) and recommendation of the petitioners name for appointment, as he is eligible to be appointed on the post, after vacancy due to non-joining of recommended candidates.

v. For holding and a declaration with regard to the petitioners' candidature as eligible who is placed at Sl. No.- 129 and 135 respectively in combined merit list and now is fit to be appointed in his own category due to non-joining of some of the successful candidates of his category.

vi. For directions upon the respondents to complete the process of appointment in light of the Rules and to consider the representation of the petitioners filed before the concerned authority.

vii. For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of the case.

The case of the petitioners in brief is that pursuant to the vacancy on the post of Accounts Officer under the Finance Department, Government of Bihar, the Bihar Public Service Commission (hereinafter referred to as "the Commission") came out with Advertisement no. 3/2015 for filling up 100 posts which included 18 seats under the Extremely Backward Class (EBC) category to which the petitioners belong. The petitioners being eligible filed their applications and appeared in the preliminary test. On being declared successful, both the petitioners appeared in the main written test. Once again they were declared successful and were called for interview by the Commission wherein they appeared along with the documents of their educational qualifications. The result against 100 advertised vacant posts including 18 under the EBC category was published on 1.10.2018. This was from the combined merit test of 195 candidates for all category of Account Officer competitive examination (Advertisement no.

03/ 2015) published by the Commission.

It is further case of the petitioners that vide letter no. 10135 dated 19.12.2019 the candidature of altogether 11 recommended candidates were cancelled by the Finance Department. Four out of the eleven candidates belonged to the EBC category.

In the meantime, a writ application being C.W.J.C. No. 19220 of 2019 (Prabhas Pathak versus State of Bihar and others) was filed in this Court seeking a direction to the respondents to recommend his name for appointment as Account Officer against such posts which remained vacant because of non-joining of the recommended candidates. Pursuant to the direction of this Court in the said writ application, the Commission came out with a revised result on 16.1.2020, whereby the earlier result was revised. It is the case of the petitioners that on perusal of the revised result dated 16.1.2020 it would transpire that the candidates, namely, Shiv Shankar and Kamal Nath Thakur who were earlier placed in the EBC category, in the revised result were in the general category. Thus, these two vacancies together with the four earlier vacancies on account of non-joining, a total of 6 vacancies came to be created in the EBC category. In the EBC category of the amended result dated 16.1.2020 the last candidate to be adjusted was one Vinod Kumar. In the combined merit list Vinod Kumar was at serial number 128, the petitioner no.1 Zaffir Ahmad Ansari was at serial number 129 and petitioner no. 2 Ali Akbar at serial number 135.

It is submitted on behalf of the petitioners that the revised result having been published on 16.1.2020, in terms of Rule 15 of the Bihar Accounts Service Rules 2000, amended from time to time, the life of the panel was extended for one year from the date of the said revised result i.e. till 15.1.2021. It was submitted that the revised result could not be said to be an amended revised result for the reason that the Commission had not made a recommendation for only 11 candidates but had recommended once again for 100 candidates with categories of some of them having been changed. Further 8.10.2020 was the last date for the new candidates to join but as they did not join, the petitioners who were next in the merit list were entitled for being recommended for appointment w.e.f. 9.10.2020 itself. For the delay having been caused by the respondents, the petitioners had been illegally denied opportunity and, thus, the instant writ application for the reliefs prayed for, as quoted above. In support of his contention learned counsel for the petitioners relied on the judgment in the case of Vijay Kumar Sharma and others versus Chairman, Food Service Commission and others (2001)4 SCC 289.

On the other hand, learned counsel for the Commission submits that the Commission is a recommending body in matters of appointment which is done in accordance with the rules and regulations made by the State Government. The Commission received requisition from the Finance Department, Government of Bihar for appointment on 54 posts of Account Officer. The number of vacancies were subsequently increased to 100. The Commission came out with Advertisement no.3/2015 for appointment on the post of Accounts Officer under the Bihar Accounts Service Rules, 2000. The petitioners belonging to the EBC category applied against the said advertisement and were allotted roll number 200293 and 202852. Both the petitioners appeared and passed the preliminary and mains written examination and were called for interview. They appeared in the interview and thereafter, a combined merit list was prepared on the basis of the marks obtained in the written examination and interview and selection were made as per merit list. One hundred candidates were declared successful and selected with their result published on

1.10.2018 and their recommendations sent to the department concerned on 21.12.2018. By letter dated 19.12.2019, the department informed the Commission regarding non-joining of 11 candidates who had been recommended earlier and requested to take necessary action. Pursuant to the said letter of the department as also the order dated 19.12.2019 passed in C.W.J.C. no.19220 of 2019, the Commission on 15.1.2020 published the revised result and sent the same to the department on 31.1.2020. The petitioners once again could not be declared successful as their mark were less than the new cut of mark for their EBC category. It is submitted by learned counsel appearing for the Commission that in terms of Rule 15 of the Bihar Accounts Service Rules, 2000, the life of the panel being one year or till the next advertisement, whichever is earlier, so far as the instant panel is concerned exhausted itself on 1.10.2019 that is on completion of one year from the date of the final result. It is submitted that there is no merit in the writ application and the same be dismissed. In support of his contention learned counsel for the Commission relied on the judgments in the case A.P Public Service Commission, Hyderabad and another versus B.Shant Chand and others (1990) 2 SCC 669, the State of Bihar and others versus Amrendra Kumar Mishra 2006 (4) PLJR 182

SC, Dr Poonam Kumari versus State of Bihar and others 2011 (1) PLJR 283, Raj Rishi Mehra versus State of Punjab and another (2013) 12 SCC 246, Pramod Kumar versus State of Bihar and others 2020 (2) PLJR 647, Kulvinder Paul Singh versus State of Punjab and another (2016) 6 SCC 532 as also order dated 6.10.2020 passed in C.W.J.C. no. 5434 of 2020 Chandra Shekhar Singh and others versus State of Bihar and others.

Having heard learned counsel for the parties and having gone through the materials on record, the facts not in dispute are that on a requisition having been received from the Finance Department, Government of Bihar, for appointment on the 54 posts of Account Officer which was subsequently increased to 100, the Commission came out with Advertisement no.3/ 2015 for filling up the posts in accordance with the Bihar Accounts Service Rules, 2000. Rule 15 of the said Rules which deals with the life of the panel being relevant for the instant case is being quoted here in below for ready reference: –

> *“Recommendation of candidates by the Commission:– The Commission shall prepare a merit list on the basis of mark obtained in the written examination and Viva-Voce Test. The Commission shall recommend such number of candidates from the list so prepared as to the*

Government as reported in case of non-joining of any candidate or increase in vacancies. The recommendation of candidates may be made from the merit list (panel) within a year or till further, advertisement whichever is earlier."

So far as the instant case is concerned a combined merit list of Accounts Officer competitive examination (Advertisement no.3/2015) was prepared and a recommendation was made by the Commission to the Government in different categories of a total number of 100 posts. This included 18 persons under the Extremely Backward Class to which the two petitioners belong. It would be relevant to mention here itself that although the combined merit list has been brought on record as Annexure-B/6 along with the covering letter dated 9.1.2019 of the Commission, however, the first recommendation of the Commission as contained in Annexure-B/5 having been made on 1.10.2018, the date of the combined merit list would be of 1.10.2018 or earlier.

Rule 15 of the Bihar Accounts Service Rule 2000 (Annexure B/1) is very clear in so far as it categorically states that in case of non-joining of any candidate or increase in vacancies, the recommendation of the candidates may be made from the merit list (panel) within a year or till further advertisement whichever is earlier. Thus, the combined merit list/ first recommendation being of the date 1.10.2018, the merit list exhausted itself on 30.9.2019. No recommendation by the Commission nor any appointment could have been made after 30.9.2019.

So far as the contention of the petitioners that the revised result having been published by the Commission on 16.1.2020 in terms of Rule 15 of the Bihar Accounts Service Rules, 2000 the life of the panel got extended till 15.1.2021 is concerned, it would be relevant to look at the contents of the revised result issued by the Commission. From perusal of the amended final result (Annexure C/11) it would clearly be evident that firstly the heading itself speaks about the final result having been amended and the contents of the said result dated 16.1.2020 clearly mentions that the final result has been amended in view of non-joining of some of the candidates, consequent cancellation by the Commission and the direction of this Court in the orders passed in writ application. The very fact that it was the final result which has been amended clearly shows that it was not a fresh result and there is no merit in this contention of the petitioners. Here also it would be relevant to mention that Rule 15 of the Bihar Accounts Service Rules 2000 talks about recommendation of candidates to be made by the Commission from the merit list (panel) within a year. Publication of a revised or amended final result on 16.1.2020 would have no bearing as Rule 15 contemplates that no recommendation of candidates is to be made from the merit list, meaning the combined merit list, beyond a year.

Coming to the judgment in the case of Vijay Kumar Sharma and others versus Chairman, School Service Commission and others (2001) 4 SCC 289 relied on by the petitioners, it is stated that the same is of no assistance to the petitioners in the facts of this case. In paragraph no.8 of the said case the Hon’ble Apex Court observes that the appellant no.1 belongs to the OBC category and for reasons best known to the respondents, even though the life of the panel for General Category had been extended to 2.2.2002, the same was not done for the panel of the OBC Category. Thus, it proceeded to direct that the Appellant no.1 be appointed against the vacancies which are available in the OBC Category. The facts of the instant case being different and distinct, the said judgment has no applicability herein.

From the case of State of Bihar versus Amrendra Kumar Mishra 2006 PLJR 182 (SC), paragraph nos.

9, 12 and 13 are being quoted here in below for ready reference:

> *“ 9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel.”*
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> *“12. Yet again in* ***Surinder Singh and Ors. vs. State of Punjab and Anr****. [(1997)8 SCC 488], this Court stated the law thus :*
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> *"Prem Singh case was decided on the facts of that case and those facts do not hold good in the present case. In the case of Gujarat State Dy. Executive Engineers' Assn. this Court has explained the scope and intent of a waiting list and how it is to operate in service jurisprudence. It cannot be used as a perennial source of recruitment filling up the vacancies not advertised. The Court also did not approve the view of the High Court that since vacancies had not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed. Candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative.*
>
> *13. The decisions noticed hereinbefore are authorities for the proposition that even the wait-list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period.”*

Further paragraph no.15 in the case of Raj Rishi Mehra and others versus State of Punjab and another (2013)12

SCC 243 relied on by learned counsel for the Commission is being quoted here in below :-

> *"**15**. The question whether the candidates whose names are included in the waiting list are entitled to be appointed against the unfilled posts as of right is no longer res integra and must be answered in negative in view of the judgments of this Court in Union of India v. Ishwar Singh Khatri, Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat, State of Bihar v. Secretariat Asstt. Successful Examinees Union 1986, Prem Singh v. Haryana SEB, Ashok Kumar v. Chairman, Banking Service Recruitment Board, Surinder Singh v. State of Punjab, Madan Lal v. State of J&K, Kamlesh Kumar Sharma v. Yogesh Kumar Gupta, State of J&K v. Sanjeev Kumar, State of U.P. v. Rajkumar Sharma, Ram Avtar Patwari v. State of Haryana and Rakhi Ray v. High Court of Delhi."*

Thus, from the facts and the contentions of the parties having been dealt with herein above together with the judgments relied on by the learned counsel for the Commission, it is clear that Rule 15 of the Bihar Accounts Service Rules, 2000 clearly stipulates that no recommendation for appointment can be made by the Commission from the combined merit list/ panel beyond the period of one year. The combined merit list/panel having been published on or before 1.10.2018, the life of the panel having exhausted itself in terms of the Rules, no recommendation or appointment could have been made from the same after 30.9.2019.

Thus, the Court finds no merit in the case of the petitioners and the application is dismissed.

(Partha Sarthy, J)

Spd/-

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