

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8311 of 2020

Manoj Kumar Tiwari, aged about 38 years, Male, son of Ravindra Kumar Tiwari, resident of House No. 315, Azad Nagar Colony, Nahar Road, Post-Shivpuri New Colony, District- Gorakhpur, State- Uttar Pradesh, Pin- 273016, currently posted as Assistant District Prosecution Officer, Rewa, M.P., Pin- 486001.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna, Bihar.
2. Department of General Administration through Principal Secretary, Government of Bihar, Patna.
3. The High Court of Judicature at Patna in its administrative side through the Registrar General, Patna High Court, Patna.
4. Smt. Protima Parihar bearing Roll no. 11401 at Sl. No. 11 of Tabulation chart (merit wise) list of the final result of Advertisement No. BSJS/1/2019, currently posted as 5th Additional District and Sessions Judge (ADJ), Vaishali, (Bihar).

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Abhinay Raj, Advocate
For the High court	:	Mr. Piyush Lall, Advocate
For the State	:	Mr. Sanjay Kumar Ghosarvey, A.C. to A.A.G.-3
For Private Respondent	:	Mr. Tej Bahadur Singh, Sr. Advocate
		Mrs. Rasika, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 23-02-2021

Heard learned counsel for the petitioner, learned
counsel for High Court, learned counsel for the State and



learned senior counsel for the private respondent no.4.

2. In the present case, the petitioner is claiming that he should be appointed on the post of Additional District and Sessions Judge. The ground has been taken on two folds; firstly, the appointment of Smt. Protima Parihar, private respondent no.4, is completely illegal as the petitioner has obtained higher marks than to private respondent no.4, so in place of private respondent no.4, the petitioner should be appointed on the said post. Another ground has been taken that as per the advertisement issued by the High Court of Judicature at Patna for appointment of District Judge (Entry Level), Direct From Bar Exam-2019, total 14 vacancies were notified as on 31.03.2019 but, three more posts ought to have been added but, in that place only two posts have been added, so in such a situation, total 17 posts should be treated to be the number of total vacancies. Since 16 posts have been filled up, one post should go in favour of petitioner as he is the next person in merit list under unreserved category (Male).

3. The High Court had advertised 14 vacancies of Additional District and Sessions Judge but, during the process of selection two more vacancies were added. In the preliminary examination the petitioner appeared successfully. After mains



examination, the result was published. The position of the present petitioner in the merit list is at serial no.9 of unreserved category (Male). As per the High Court, five vacancies were meant for unreserved category candidates (Male) and in the unreserved category candidates (Male), one Lakhwinder Singh Sood did not join after finally declared selected and in his place one Dushyant Kumar has been adjusted. One Namrata Kumari who is in unreserved category (female) also did not join and in her place Smt. Protima Parihar, respondent no.4 has been adjusted. Admittedly, the petitioner cannot claim the post meant for the female in which Namrata Kumari was appointed as it is reserved for female category in the shape of 35% horizontal reservation. The petitioner was to compete only within five candidates meant for the unreserved category candidates (Male).

4. Another point has been raised that as the vacancies in the earlier examination remained vacant. As per the Selection and Appointment Committee of the High Court four posts were to be added in the subsequent examination but, two representations were pending, so only two more vacancies were added in the existing 14 available vacancies, so it become 16 vacancies. However, as per the petitioner the representation of



4th one was also disposed of, so this vacancy should have been added and next post will fall under the unreserved category, so certainly that post will go to the unreserved category candidates (Male) and the petitioner should be adjusted against the said post.

5. It has further been submitted that the Hon'ble Supreme Court in the case of *Malik Mazhar Sultan (3) and Anr. vs. Uttar Pradesh Public Service Commission* reported in *(2008) 17 SCC 703* has held that sufficient number of persons should be added as waiting list candidates and that list should remain in operation till the next examination.

6. Learned counsel for the High Court submits that so far as the vacancy created after non-joining of Namrata Kumari is concerned, the same has been filled up by appointing private respondent no.4 and one Lakhwinder Singh Sood also did not join and in his place one Dushyant Kumar has been appointed but, the 17th post which is claiming by the petitioner was never under consideration for recruitment by the High Court, inasmuch as, the vacancies which have been created were added and two more persons under the unreserved category have been appointed as of now. He further submits that even if the name of the petitioner is standing in the wait list or the merit list, will not



create vested or indefeasible right to claim appointment.

7. In support of his submission, he has placed reliance on a decision of the Hon'ble Supreme Court rendered in the case of *Shamkarshan Dash vs. Union of India* reported in *(1991) 3 SCC 47* wherein the Hon'ble Supreme Court has held that person whose name is standing in the merit list does not create indefeasible right to claim appointment but, it is expected that employer should act reasonably not in arbitrary manner.

8. Admittedly, the petitioner cannot be adjusted on the post remain for the unreserved category candidates (female). At the same time, his claim to issue writ of *mandamus* to the High Court in Administrative side to fill up 17th post cannot be accepted on the ground that 17th post is not available and merely his name is standing in the merit list will not create indefeasible right to claim appointment on the post of Additional District and Sessions Judge.

9. One of the points has been raised by learned counsel for the petitioner that Smt. Protima Parihar, private respondent no.4, does not have requisite qualification but, has wrongly been appointed. However, the facts remains that even if Smt. Protima Parihar, private respondent no.4, is terminated that



will not help to the petitioner in any manner, inasmuch as, no female candidate has challenged the appointment of private respondent no.4. Had there been any female candidate challenged the appointment of private respondent no.4, the Court would consider that aspect of the matter.

10. For the foregoing discussions, we are of the considered view that this writ petition is devoid of merit and, accordingly, the same is dismissed.

(Shivaji Pandey, J)

(Partha Sarthy, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	08.03.2021
Transmission Date	N/A.

