

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.641 of 2019

In

Civil Writ Jurisdiction Case No.6781 of 2019

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Amir Suhail S/o Mohammad Wakil Ansari At Present residing at Motizen Cottage, Old Azimabad Colony, Near Star Lodge, P.S.- Sultanganj, Mahendru, District- Patna.

...Writ petitioner ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, The General Administration Department, Bihar, Patna
2. The Bihar Public Service Commission Patna through its Secretary
3. The Secretary Bihar Public Service Commission, Patna
4. The Chairman Bihar Public Service Commission, Patna
5. The Joint Secretary-cum-Examination Controller Bihar Public Service Commission, Patna
6. Shivanand Singh S/o Kapil Muni Singh R/o Azad Nagar, Ward No. 01, Distt.- Kaimur at Bhabhua

... Respondents ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Y. V. Giri, Sr. Advocate Mr. Pranav Kumar, Advocate
For the B.P.S.C.	:	Mr. Lalit Kishore, Sr. Advocate Mr. Sanjay Pandey, Mr. Vikash Kumar, Advocates
For the State	:	Mr. Suman Kumar Jha, A.C. to A.A.G. 3 Ms. Divya Verma, A.C. to A.A.G. 3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 22-03-2021

Heard the parties.

Aggrieved by the judgment and order dated
09.05.2019 passed in C.W.J.C. No.6781 of 2019 passed by
learned Single Judge of this Hon'ble Court dismissing the writ



petition, the appellant has preferred this LPA.

Briefly stated the facts of the case is that Bihar Public Service Commission (B.P.S.C.) published an advertisement inviting application from suitable candidates for the 56th to 59th Common Combined Examination and appellant applied as EBC candidate, however, he was selected as a General category candidate being above in merit.

On basis of marks obtained in Mains (Written Examination) and interview, a merit list dated 18.8.2018 was prepared for 736 candidates in which appellant figured at merit serial no.107 but his name was not considered for the post of Bihar Police Service (Dy. Superintendent of Police) despite giving first preference in the prescribed form at the time of interview although candidates below in merit list under General category as well as EBC category were allotted Bihar Police Service. Appellant had given his second preference as Dy. Superintendent of Police (Vigilance Department) and his third preference as Dy. Commandant but he was given his fourth choice of Municipal Executive.

Appellant filed an application on 31.8.2018 under the Right to Information Act, 2005 for obtaining report of medical examination and same was made available to appellant



under letter dated 19.11.2018 from which, he could know that in medical report dated 9.6.2018, appellant was found unfit for Bihar Police Service due to Myopia.

Appellant thereafter appeared in the 60th to 62nd B.P.S.C. examination in which also, he was declared successful and was subjected to medical examination but medical board found him fit for all posts in its medical report dated 4.12.2018 unlike the medical report of 56th to 59th Common Combined Examination in which he was found fit for all the posts except Bihar Police Service due to myopia.

Appellant had filed a representation dated 31.8.2018 to the Examination Controller, BPSC, Patna for non-grant of his first, second and third preference although said choices were given to candidates who were low in the merit list but said representation was never answered.

Counter affidavit was filed on behalf of BPSC in which it has been stated that medical board found appellant unfit for Bihar Police Services due to Myopia, as such, his first three choices could not be offered and he was offered his fourth choice, i.e. Municipal Executive.

It has been further stated that medical report given by the medical board is a confidential report which is opened at



the time of preparation of final result and at the time of allotment of services and not before it. Candidates are never reported about their medical reports before result. Commission acted as per medical report given by the medical board.

It was argued before writ court that medical reasons for which appellant was declared medically unfit due to myopia was a curable medical unfitness, however, from the medical report, as enclosed, no opinion has been given by the medical board that medical unfitness found was of permanent nature or temporary and curable, as such, same cannot be adjudged in present proceeding.

The writ court dismissed the writ petition and relevant paragraphs are reproduced below:-

“7. If the petitioner has not yet accepted the offer of appointment in the earlier examination process, this Court can, on the asking of the petitioner, direct the respondent to offer him any post according to his merit which he has obtained in the later examination. This obviously would not be acceptable to the petitioner for the reason that in the later examination, his position in the merit-list is way below, which would not fetch him any service in the police department, which is normally the preferential choice of the candidate.

8. Since there is nothing on record to believe that the later report is correct and the earlier report was wrong, this Court would not like to interfere with the decision taken by the BPSC. No



mandamus can be issued to the concerned respondents for treating the medical report of the petitioner in the later examination process to be correct for giving him a posting according to his choice in the earlier appointment process.

9. There is no merit in the petition and it is accordingly dismissed.

10. Before parting, it is made clear that whatever observation has been made in this order would not be to the prejudice of the petitioner, who has sought extension of time for joining on the post, which has been offered to him for his having been successful in the 56th-59th Common Combined Competitive Examination.”

After hearing the parties and considering the materials available on record, this Court is not inclined to interfere in the order passed by the learned learned Single Judge and, accordingly, this LPA is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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