

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2748 of 2019

In

Civil Writ Jurisdiction Case No.14283 of 2017

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1. Gautam Kumar Sharma, male, aged about 33 years, Son of Sri Lal Bihari Sharma, Resident of Village- Patouna, Police Station- Khiri More, District- Patna.
 2. Samresh Singh, male, aged about 35 years, Son of Sri Bhola Singh, Resident of Village- Parora, Police Station- Sahebpur Kamal and District- Begusarai.
 3. Om Kumar, male, aged about 35 years, Son of Sri Devendra Singh, Resident of House No. 312, Basant Vihar Colony, RPS More, Police Station- Danapur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Mr. Pankaj Kumar, Son of not known to the Petitioners, the Principal Secretary, Department of Food and Consumer Protection Department, Government of Bihar, Patna.
3. Mr. Pankaj Kumar, Son of not known to the Petitioners, the Managing Director, Bihar State Food and Civil Supplies Corporation Limited, having office at Daroga Rai Path, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Anand Kumar Ojha, Adv. Mr. Prakash Kumar, Adv.
For the State	:	Md. Kamil Akhtar, AC to AAG-5
For the BSFC	:	Mr. Shailendra Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 24-11-2021



Mr. Shailendra Kumar Singh, the learned counsel for the respondent/Bihar State Food and Civil Supplies Corporation Ltd. files the response to this petition across the Board. Let it be taken on record. The aforesaid affidavit has also been filed on-line.

2. In response to the aforesaid affidavit, Mr. Anand Kumar Ojha, the learned Advocate for the petitioners has furnished his rejoinder affidavit, which is not on record. That affidavit has also been filed on-line. Let that also be placed on record.

3. The hard-copy of the affidavit filed on behalf of the petitioners has been supplied by Mr. Ojha, the learned Advocate, during the course of hearing. Let that also be taken on record.

4. Heard Mr. Anand Kumar Ojha, the learned Advocate for the petitioners and Mr. Shailendra Kumar Singh, the learned counsel for the respondent/Corporation. The State is represented by Md. Kamil Akhtar, learned A.C. to A.A.G.-5.

5. The petitioners had earlier approached this



Court *vide* C.W.J.C. No. 14283 of 2017 in which this Court had directed them to approach the Managing Director of the respondent/Corporation along with the entire facts which was brought to the notice of this Court and seek their accommodation against the vacant positions as their names fell in the merit list which was prepared against the Advertisement No. BSFCSCCL/2015/1, dated 13.08.2015, which had been issued for filling up the posts of Four Hundred Seven Assistant Managers and Fifty Assistant Accountants. The Managing Director of the respondent/Corporation was further directed to take a call on the facts placed before him within a specified time frame, after taking into account the legitimate expectation of the petitioners that they also had obtained the same marks on which other applicants had been accommodated against the existing vacancies.

6. The petitioners approached the Managing Director of the respondent/Corporation within time, but their representations were disposed off by a reasoned order beyond the time frame fixed by this Court.



7. Mr. Ojha, the learned Advocate for the petitioners has drawn the attention of this Court to the order passed by the Managing Director of the respondent/Corporation on 15.09.2021 and has submitted that the direction of this Court has not at all been complied with except for the fact that the representations of the petitioners have been disposed off beyond the time frame. He further submits that such mechanical disposal of representations is no way to purge the contempt and the reasoning given in the order, disentitling the petitioners to be accommodated as against the vacant position, is also, to say the least, meretricious.

8. Mr. Ojha further submits that it was categorically averred before this Court and which statement was not denied by the respondent/Corporation that eighteen vacant posts were available on the date when the petition was decided. Persons from the same merit list were called as late as in the year 2018 against the existing vacant posts. The petitioners had information that last of such persons who was called for being adjusted against the existing



vacancy was the one with sixty four marks, which is the marks of all the applicants before this Court. The Managing Director of the respondent/Corporation has clarified the position and has stated that several other persons had sixty four marks. The last person who was called against the existing vacancy of the advertisement in question was placed at Serial No. 323. The petitioners' position in that merit list was 342, 340 and 349 respectively. It was, therefore, concluded by the Managing Director that only because one the persons who was accommodated against the existing vacancy had the same marks as that of the petitioners, that would not entitle them to be accommodated against such vacancies, especially in view of the fact that existing vacancies were clubbed with the future vacancies and requisition has been sent to the BPSC for conducting suitable examination for preparation of merit list from where candidates would be selected against the vacancies.

9. Mr. Ojha submits that the attempt at sending requisition for future vacancy by clubbing the existing vacancy is nothing short of an attempt to overreach the



orders of this Court. He, therefore, concludes that notwithstanding the initiation of the process for filling up the posts, the Managing Director of the respondent/Corporation has not been able to come out of the dragnet of the contempt jurisdiction of this Court. The explanation offered by the Managing Director of the respondent/Corporation, it has been submitted, is not worth accepting.

10. As opposed to the aforesaid contention, Mr. Shailendra Kumar Singh, the learned counsel for the respondent/Corporation has submitted that the Corporation is highly penitent for not having passed the order within the stipulated time frame fixed by the order of this Court. Nonetheless, it has been submitted, the explanation given for not accommodating the petitioners against the vacant position has been very well explained. Not only the petitioners, but fifteen others have the same marks and the petitioners are not in a position to controvert that anybody after the Merit Position No. 323 has been called for being given employment on the respective existing posts. The last person who has been accommodated against the existing



vacancy was at Merit Position No. 323, whereas the petitioners are much below in that list.

11. After having gone through the explanation given by the Managing Director of the respondent/Corporation, this Court does not consider it to be a fit case to proceed against the respondent/Corporation in a contempt jurisdiction.

12. All that this Court can say is that if the candidates were called from the same merit list with same marks, it would have been more desirable for the respondent/Corporation to have devised some mechanism of selecting amongst persons with same marks. The persons with same marks should have been classified into a separate category with special mechanism for identifying who amongst them should be called first for being accommodated. That not having been done by the respondent/Corporation, it only demonstrates that there was some lack of application of mind while dealing with the future of meritorious persons who had passed the examination and their names were included in the merit list.



13. However, that lapse cannot now be remedied.

14. The only observation which this Court can give in this jurisdiction is that since the petitioners were successful in passing the examination and their names were included in the merit list, if they apply afresh and are found to be overage, the respondent/Corporation can consider giving relaxation to them so far age requirement is concerned.

15. With the aforesaid observation/direction, this contempt petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	26.11.2021
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