

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.520 of 2018

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1. Abhinav Chandramohan, son of Kapil Singh, resident of Village- Makdumpur, P.O.- Chabilapur, P.S.- Manpur, District- Nalanda.
 2. Nitish Kumar, son of Chandrika Yadav, resident of Village- Rasai Bigha, P.O.- Keshopur, P.S.- Hilsa, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar, through the Chief Secretary, Government of Bihar, Patna
2. The Secretary, Central Selection Board of Constable, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr. Manoj Kumar, Advocate
For the C.S.B.C.	:	Mr. Sanjay Pandey, Advocate
		Mr. Binod Kumar Mishra, Advocate
		Mr. Vivek Anand Amritesh, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

5 02-08-2022 Heard learned counsel for the petitioners and the learned counsel for the respondent-Board.

The petitioners have participated in the selection process for appointment of Constable Drivers. The selection process is based on Advertisement No.01/2016 and was comprising of three stages. The first stage was Physical Eligibility Test, thereafter document verification and finally, the candidates were subjected to their Driving Efficiency Test.

The petitioners have stated in the writ petition that they have participated in all the three stages and though they have qualified, selection letter or joining letter has not been issued to the petitioners.



There is nothing on record to show that the petitioners were declared successful in the process of selection.

On a query being made in this regard, it is submitted that had the authority made available all the vacancies which have remained unfilled and which were existing in 2016, the cut-off marks would have fallen and the petitioners would have emerged successful.

In the instant case, actually there is no declaration of the petitioners emerging successful or being empanelled. In fact, it is the specific uncontroverted stand in the counter affidavit that both petitioners have secured lesser marks than the last recommended candidate. That being so, no case is made out for directing the respondents to select the petitioners.

In the instant case, no subsisting/vested right has been made out by the petitioners, based on which they can claim a direction upon the authorities to make appointment against all the existing vacancies. The authorities have decided to make appointment against specific number of posts. The petitioners subsequent to their participation in the proceedings have been assessed to be having lesser marks than the last candidate recommended for selection in the category for which both the petitioners have applied.



The submission of the petitioners' counsel that had the authorities made available all the existing vacancies, the cut-off would have dipped and the petitioners would have emerged successful, is nothing but an assumption of the petitioners, based on non est facts. It cannot be said with any certainty whatsoever today that even if all the vacancies were included in the selection process, what would be the marks obtained by the last candidate for the category in which the petitioners applied.

Existence of a right and infringement thereof, is now settled to be the requisite foundation for the exercise of jurisdiction under Article 226 of the Constitution of India. No such right has been demonstrated by the petitioners justifying exercise of jurisdiction under Article 226 of the Constitution of India in their favour.

The writ petition is accordingly dismissed.

(Madhuresh Prasad, J)

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