

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1146 of 2018**

**In**  
**Civil Writ Jurisdiction Case No.3234 of 2017**

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Chandan Kumar S/o Sri Mahendra Rai @ Ray, Resident of Village- Madhuban, P.O.- Kalbari, P.S.- Kanti, District- Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Chairman, Central Selection Board of Constable, Sai Complex, Jawaharlal Nehru Marg, Beli Road,
3. The Secretary, Central Selection Board of Constable, Sai Complex, Jawaharlal Nehru Marg, Beli Road,

... .. Respondent/s

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**Appearance :**

|                     |   |                                     |
|---------------------|---|-------------------------------------|
| For the Appellant/s | : | Mr. Shashi Bhushan Singh, Advocate  |
|                     |   | Mr. Dilip Kumar Tewari, Advocate    |
| For the State       | : | Mr. Lalit Kishore -AG               |
| For the CSBC        | : | Mr. Sanjay Pandey, Advocate         |
|                     |   | Mr. Binod Kumar Mishra, Advocate    |
|                     |   | Mr. Vivek Anand Amrithesh, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**

**and**

**HONOURABLE MR. JUSTICE RAJIV ROY**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 28-07-2022**

Heard learned counsels for the respective parties.

02. In the instant Letters Patent Appeal, appellant has questioned the validity of the order of the learned Single Judge dated 13.07.2018 passed in CWJC No. 3234 of 2017. Learned Single Judge has rejected the petitioner's claim for selection and appointment to the post of Excise Constable, thus, the present appeal.



03. The official respondents have notified Excise Constable post on 16.07.2015, thereafter, they have conducted various tests. The appellant who claimed under general category and who was unsuccessful filed a writ petition alleging that one Ram Bahadur Paswan who has secured 144 marks and so also the appellant.

04. Learned counsel for the appellant submitted that Ram Bahadur Paswan was overage as he had completed 28 years 8 months and 13 days as on the last date of submission of application, therefore, Central Selection Board should have rejected the application of Ram Bahadur Paswan. If the selection process was in accordance with law, in that event appellant is next merited candidate so as to consider under general category. It is submitted that Ram Bahadur Paswan claim was under SC category, however, he has been accommodated against one of the general merit category vacancy having regard to the merit.

05. In the light of these facts and circumstances, question for consideration is whether Appellant-Chandan Kumar under general merit category would question the selection and appointment of Ram Bahadur Paswan or not? Firstly, Appellant-Chandan Kumar has no locus standi to question the selection and appointment of Ram Bahadur Paswan whose claim is under SC category



and selected against the general merit category with reference to merit. The appellant has not impleaded Ram Bahadur Paswan and not questioned the final select list and his appointment order in the writ petition. Hon'ble Apex Court in the case of **Ranjan Kumar vs. State of Bihar** reported in (2014) 16 SCC 187 held that, if writ petition is allowed in such an event if any right of person is affected in that event he should be necessary and proper party. Non-impleading of such of those persons whose rights are likely to be affected in allowing the petition it is not curable defect. In para 4 to 6 and 9 it is held as under:-

*“4. On a perusal of the orders impugned, we find that only 40 persons were made respondents before the High Court and hardly a few appointees filed applications for intervention. It is well settled in law that no adverse order can be passed against persons who were not made parties to the litigation. In this context, we may refer with profit to the authority in Prabodh Verma v. State of U.P. [Prabodh Verma v. State of U.P., (1984) 4 SCC 251 : 1984 SCC (L&S) 704] , wherein a three-Judge Bench was dealing with the constitutional validity of two Uttar Pradesh Ordinances which had been struck down by the Division Bench of the Allahabad High Court on the ground that the provisions therein were violative of Articles 14 and 16(1) of the Constitution of India. In that context, a question arose whether the termination of the services of the appellants and the petitioners*



*therein as secondary school teachers and intermediate college lecturers following upon the High Court judgment was valid without making the said appointees as parties. The learned Judges observed that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects; the core defect was that of non-joinder of necessary parties, for respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned and those who were vitally concerned, namely, the reserve pool teachers, were not made parties — not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. Thereafter the Court ruled thus: (Prabodh Verma case [Prabodh Verma v. State of U.P., (1984) 4 SCC 251 : 1984 SCC (L&S) 704] , SCC pp. 273-74, para 28)*

*“28. ... The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that pe-*



*tition for non-joinder of necessary parties.”*

*5. In the case at hand neither was any rule nor any regulation challenged. In fact, we have been apprised that at the time of selection and appointment there was no rule or regulation. A procedure used to be adopted by the administrative instructions. That apart, it was not a large body of appointees but only 182 appointees. Quite apart from that the persons who were impleaded, were not treated to be in the representative capacity. In this regard, it is profitable to refer to some authorities.*

*6. In Indu Shekhar Singh v. State of U.P. [Indu Shekhar Singh v. State of U.P., (2006) 8 SCC 129 : 2006 SCC (L&S) 1916] it has been held thus: (SCC p. 151, para 56)*

*“56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.”*

*9. In Public Service Commission v. Mamta Bisht [Public Service Commission v. Mamta Bisht, (2010) 12 SCC 204 : (2011) 1 SCC (L&S) 208] this Court, while dealing with the concept of necessary parties and the effect of non-implementation of such a party in the matter when the selection process is assailed, observed thus: (SCC pp. 207-08, para 9)*

*“9. ... in Udit Narain Singh Malpaharia v. Board of Revenue [Udit Narain Singh Malpaharia v. Board of Revenue, AIR 1963 SC 786] , wherein the Court has explained the distinction between necessary party, proper party*



*and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'Code of Civil Procedure') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of the Code of Civil Procedure are not applicable in writ jurisdiction by virtue of the provision of Section 141 of the Code of Civil Procedure but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat [Gulabchand Chhotalal Parikh v. State of Gujarat, AIR 1965 SC 1153] , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Sarguja Transport Service v. STAT [Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19] .)”*

06. In the facts and circumstances of the case no interference is called for in the order of learned Single Judge dated 13.07.2018 passed in CWJC No. 3234 of 2017. Accordingly, Letters Patent Appeal No. 1146 of 2018 stands dismissed.

07. At this stage, learned counsel for the appellant submitted that one Excise Constable post is still vacant for which he can be accommodated.



08. Such contention cannot be appreciated for the reasons that State has evolved a policy in the year 1977 and 2016 that whatever the vacancies which are left out due to administrative difficulties in not filling up of left over vacancy the same is to be carried forward to the next recruitment. In the light of the State policy decision supported by Hon’ble Apex Court decision in the case of **State of Rajasthan vs. Kiran Meena and Anr.** reported in **(2018) 12 SCC 503** the contention of the appellant stands rejected.

**(P. B. Bajanthri, J)**

**(Rajiv Roy, J)**

Vikash/-

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| Uploading Date    |      |
| Transmission Date | N/A  |

