

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.555 of 2019

In
Civil Writ Jurisdiction Case No.15651 of 2013

-
-
1. Nilesh Sharan Srivastava Son of Dr. Shambhoo Sharan Srivastava Resident of Ambedkar Chowk, P.S- Gopalganj, District- Gopalganj.
 2. Bishnu Deo Tiwari Son of Paras Nath Tiwari Resident Of Village- Tiwaripur, P.S- Dahiwar, District- Buxar.
 3. Gopal Prasad Pandey Son of Late Joytish Chandra Pandey Resident of Mohalla- Ghorikitta, P.S- Balbadda, District- Godda.
 4. Deva Nand Das Son of Sri Ganour Panjiyar Residing At Bhagwanpurkanju, P.S- Patepur, District- Vaishali.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Commissioner- Cum- Secretary Department of Personnel And Administrative Reforms, Government of Bihar.
3. The Additional Secretary Department of Personnel And Administrative Reforms, Government of Bihar.
4. The Commissioner- Cum- Secretary Finance Department, Government of Bihar, Patna.
5. Jayant Kumar Sinha Son of Umeshwar Bihari Resident of Village- Dhanwara, P.S.- Lakhmohan, District- Nawada.
6. Vinod Kumar Verma Son of Ram Pratap Verma Resident of Vikramshila Nagar, P.S.- Kahalgaon, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Kumar Kaushik, Advocate
For the Respondent/s : Mr. Sanjay Kumar Ghosarvey, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

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

Date : 22-08-2022

Heard learned counsels for the parties.

2. In the present Letters Patent Appeal,
appellants have questioned the validity of the order dated



03.04.2019 passed by the learned single Judge in C.W.J.C. No. 15651 of 2013.

3. Pursuant to the advertisement issued in the year 1993, the appellants were candidates for recruitment to the post of Assistant. During pendency of the process of recruitment, certain issues were cropped up relating to number of vacancies to be followed and other issues, like State of Bihar bifurcation into State of Bihar and State of Jharkhand on 15.11.2000. Final select list of Assistant was notified on 20th May, 2004 in which appellants' name were not reflected. Thereafter, they have approached this Court and similarly situated persons approached this Court and matter was taken up to the Hon'ble Supreme Court. The Hon'ble Supreme Court has directed the selecting and appointing authority to find out the number of vacancies available during the period from 01.01.1989 to 31.12.1993. The selecting and appointing authority have undertaken such exercise and proceeded to issue another list on 11.08.2000. The appellants' name were reflected in the additional select list. However, only 161 candidates were appointed. The remaining 88 were not appointed may be due to the bifurcation of State of Bihar. In other words, such 88 vacancies were stated to have been transmitted to the State of



Jharkhand.

4. Learned counsel for the appellants vehemently contended that the appellants are entitled to appointment with reference to non-joining of selected candidates. The selecting and appointing authority could accommodate appellants against non-joining of candidates. The State Government had evolved policy decision in the year 1997 and it has been reiterated in the year 2016 that unfilled vacancies cannot be operated and it should be carried forward to the next recruitment.

5. Learned counsel for the appellants has not pointed out any material information that in the event of candidates not joined the appointed post in that event such post is required to be filled up by appointing next more merited candidates. In the absence of material information or policy decision in respect of filling up of non-joining of candidates, the appellants have not made out a case. In fact, Apex Court in the case of *State of Rajasthan V. Kiran Meena and another* reported in *AIR 2017 SC 2432* held that in the absence of any Rules or policy decision of the State, the Court cannot give a direction to selecting and appointing authority to select and appoint next merited candidate as against vacancies accrued on account of non-joining of candidates.



6. In the light of these facts and circumstances, no interference is called for in so far as learned single Judge’s order dated 03.04.2019 passed in C.W.J.C. No. 15651 of 2013.

7. Accordingly, the present Letters Patent Appeal stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.08.2022
Transmission Date	

