

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4669 of 2018

Yogendra Ram Son of Hari Lal Ram alias Hari Ram, resident of Village- Jhauwari, Ward No. 7, P.O.-
Maharajganj-2, P.S.- Banmankhi, District- Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors.
2. Divisional Commissioner, Purnea Division, Purnea-cum-1st Appellate Authority.
3. District Magistrate-cum-Collector, Purnea.
4. District Education Officer, Purnea.
5. District Programme Officer Literacy, Purnea.
6. Headmaster, Middle School- Jhauwari-cum-Member Secretary, Selection Committee, Mahadalit,
Minoritie
7. Sunil Kumar Ram alias Sunil Kumar, Son of Sri Parmanand Ram, resident of Village- Jhauwari, Ward
No.- 7, P.O.- Maharajganj-2, P.S.- Banmankhi, District- Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Adv.
For the Respondent/s : Mr. Ashutosh Ranjan Pandey -Aag15

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

- 4 14-11-2022 1. The petitioner participated in the selection process for appointment on the post of Tola Sewak but instead of him respondent no. 7 who was minor, was appointed. Admittedly, Sunil Kumar Ram was higher in merit and as per merit he was appointed. Later on, the petitioner submitted a representation and also took up the matter before the Public Grievance Officer and after enquiry, it was revealed that the respondent no. 7 Sunil Kumar Ram was less than 18 years of age when he was appointed. Resultantly, the respondents have passed an order on 20th April 2016 cancelling his appointment.
2. At the same time, the respondents have taken a decision not to fill the position of Tola Sevak in terms of the orders issued by the Director General, Education dated 08.08.2016.
3. Learned counsel for the petitioner submits that if the



respondents had taken a decision to cancel the appointment of respondent no. 7, the petitioner was required to be offered the said post and the respondents could not have arbitrarily decided not to fill the post.

4. Learned counsel submits that the impugned order dated 20th December 2016 be quashed to the extent of decision taken not to fill the post.

5. Learned counsel further submits that the order passed by the Director dated 08.08.2016 is subsequent to the selection process and the same would therefore not apply on the said selections.

6. I have considered the submission. In **Shankarsan Dash Vs. Union of India** as reported in **1991(3) SCC 47** the Supreme Court held as under :-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash



*Chander Marwaha, Neelima Shangla v. State of Haryana,
or Jatinder Kumar v. State of Punjab.”*

The same has been followed in subsequent judgements of Supreme Court namely **Kulwinder Pal Singh & Anr. V. State of Punjab & Ors. 2016 (6)SCC 532, Dinesh Kumar Kashyap & Ors. V. South East Central Railway & Ors. 2019 (12) SCC 798 and Mohd. Rashid V. Director, Local Bodies, New Secretariat & Ors. 2020 (2) SCC 582.**

7. Keeping in view, law laid down by the apex court it is now well settled that the employer can decide not to fill a post and no person whose name may fall in merit or in select list has a right to claim appointment. The only right available to an individual is for consideration for appointment but not a right to be appointed.

8. In view thereof, decision of the respondents not to fill the post of Tola Sevak cannot be treated as illegal. An employer having absolute right not to fill the post no claim against such decision is made out in favour of the petitioner.

9. In view thereof, the writ petition fails and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

Sachin/-
Item No. 101

U			
---	--	--	--

