

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10480 of 2020

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Pritam Kumari W/o Rajeev Kumar resident of Bye Pass Road, near Circuit House, Mahisauri, P.S. and Dist.- Jamui

... .. Petitioner/s

Versus

1. Bihar Staff Selection Commission, Patna through its Secretary
2. Secretary, Bihar Staff Selection Commission, Veterinary College, Patna
3. Institute of Public Health and Hygiene, a recognized Vocational Education Institute, RZA-44, Mahipalpur, Hew Delhi-110037 through its Registrar
4. Registrar, Institute of Public Health and Hygiene, a recognized Vocational Education Institute, RZ A-44, Mahipalpur, Hew Delhi-110037
5. Controller of Examination, Institute of Public Health and Hygiene, a recognized Vocational Education Institute, RZ A-44, Mahipalpur, Hew Delhi-110037

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhat Ranjan Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 11-01-2022

The matter is heard via video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“1. That, respondent selection commission may kindly be directed to include the name of petitioner in the list published for interview of the other similarly candidates, with whom petitioner has also participated in the counselling under advertisement No. 05010115 issued by respondent No. 1 for the post of Lab Technician (Prayogshala Pravaidhik). Petitioner has all requisite qualification for the said post, she has participated in the counselling and as per mode provided



in the advertisement itself petitioner's qualification score will be 39.17% i.e. more than required percentage of 36.5%.

II. That, during pendency of this petition respondent commission may kindly be directed to not publish final result of the instant post of Lab. Technician under advertisement No. 0510115.

III. That, for any other relief(s) for which petitioner is found entitled on the fact and circumstances of this case and also in the eye of law."

3. Petitioner has not impleaded necessary and proper party in other words, last selected candidate in the particular category so as to examine whether petitioner is more meritorious than the last selected candidate in the merit list or not? It is not proper to entertain the present petition in the light of Apex Court decision ***Ranjan Kumar vs. State of Bihar*** reported in (2014) 16 SCC 187, in paragraphs nos. 4 to 13 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 petition 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.”

7. In Rashmi Mishra v. M.P. Public Service Commission [Rashmi Mishra v. M.P. Public Service Commission, (2006)



12 SCC 724 : (2007) 2 SCC (L&S) 345] , after referring to Prabodh Verma [Prabodh Verma v. State of U.P., (1984) 4 SCC 251 : 1984 SCC (L&S) 704] and Indu Shekhar Singh [Indu Shekhar Singh v. State of U.P., (2006) 8 SCC 129 : 2006 SCC (L&S) 1916] , the Court took note of the fact that when no steps had been taken in terms of Order 1 Rule 8 of the Code of Civil Procedure or the principles analogous thereto all the seventeen selected candidates were necessary parties in the writ petition. It was further observed that the number of selected candidates was not many and there was no difficulty for the appellant to implead them as parties in the proceeding. Ultimately, the Court held that when all the selected candidates were not impleaded as parties to the writ petition, no relief could be granted to the appellant therein.

8. In *Tridip Kumar Dingal v. State of W.B.* [Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] , this Court approved the view expressed by the tribunal which had opined that for absence of selected and appointed candidates and without affording an opportunity of hearing to them, the selection could not be set aside.

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] .)”

10. *In J.S. Yadav v. State of U.P. [J.S. Yadav v. State of U.P., (2011) 6 SCC 570 : (2011) 2 SCC (L&S) 140] , it has been held that: (SCC p. 583, para 31)*

“31. No order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice.”

It was further held that: (SCC p. 583, para 31)

“31. ... The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity.”

11. *In Vijay Kumar Kaul v. Union of India [Vijay Kumar Kaul v. Union of India, (2012) 7 SCC 610 : (2012) 2 SCC (L&S) 491] it has been ruled thus: (SCC p. 619, para 36)*

“36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.”

12. *Recently in State of Rajasthan v. Ucchab Lal Chhanwal [State of Rajasthan v. Ucchab Lal Chhanwal, (2014) 1 SCC 144 : (2014) 1 SCC (L&S) 34] , it has been opined that: (SCC p. 149, para 14)*

“14. ... Despite the indefatigable effort, we are not persuaded to accept the aforesaid proponent, for once



the respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice.”

13. In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioners.

4. Accordingly, writ petition stands dismissed for non-joinder of necessary and proper party, reserving liberty to the petitioner to file a fresh petition in accordance with law.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	19.01.2022
Transmission Date	

