

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.761 of 2021

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Anil Kumar Kushwaha @ Dr. A.K. Kushwaha S/O Late Yogendra Prasad Kushwaha resident of - Duncan Hospital Road, Tumaria Tola, (Ward No. 4), P.S. - Raxaul, District- East Champaran, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary.
2. Principal Secretary, Social Welfare Department, Bihar.
3. Additional Chief Secretary, Department of Social Welfare-cum-Chairman, Executive Committee (SAKSHAM), Bihar.
4. Chief Executive Officer (SAKSHAM), Bihar.
5. Senior Administrative Officer (SAKSHAM), Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhakar Nath Rai
For the Respondent/s : Mr. S.K. Mandal, SC-3

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

Date : 17-01-2022

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 following reliefs:

“i. For direction to the respondent authorities to appoint petitioner on the post of Case Manager who is at serial No. 13 in the merit list published for counseling under Bihar Integrated Social Protection Strengthening Project.

ii. For any other relief or reliefs for which the petitioner is entitled in the facts and circumstances of the case.”

3. Petitioner’s grievance is relating to selection and



appointment to the post of Case Manager.

4. Learned counsel for the petitioner submitted that petitioner is fully eligible to be selected and appointed pursuant to the advertisement invited in the year 2019.

5. Petitioner is not entitled to relief sought in the present petition for the reasons that he has not impleaded/arrayed the last selected candidate under particular category.

6. The Apex Court in the case of ***Ranjan Kumar & Ors Vs. State of Bihar & Ors.*** reported in ***(2014) 16 SCC 187*** in para 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 and others v. State of Uttar Pradesh and others* [(1984) 4 SCC 251], 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: -

“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 any rule nor regulation was 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 and others v. State of U.P.* 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*, after referring to *Prabodh Verma* (supra) and *Indu Shekhar Singh* (supra), 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 and others v. State of W. B.*, 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, Uttaranchal v. Mamta Bisht and others* [(2010) 12 SCC 204] 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:

“9....in *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 Code of Civil Procedure are not applicable in writ jurisdiction by virtue of the provision of Section 141 Code of Civil Procedure but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh v. State of Gujarat* [AIR 1965 SC 1153], *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [(1974) 2 SCC 706] and *Sarguja Transport Service v. STAT* [(1987) 1 SCC 5])

10. In *J.S. Yadav v. State of Uttar Pradesh* [(2011) 6 SCC 570] it has been held that:

“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:

“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 and Ors. v. Union of India* [(2012) 7 SCC 610] it has been ruled thus:

“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*



[(2014) 1 SCC 144], it has been opined that:

“14. ...Despite the indefatigable effort, we are not persuaded to accept the aforesaid preponement, 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.

7. In the light of aforesaid decision of the Apex Court, the petitioner has not made out a case.

8. Accordingly, the instant petition stands dismissed reserving liberty to the petitioner to file a fresh petition in accordance with law.

(P. B. Bajanthri, J)

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