

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10546 of 2020

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Jai Prakash Sinha @ Dr. Jai Prakash Sinha Son of Bishwanath Prasad Sinha
Residing at- 71, Vikramshila Colony, P.S.- Tilkamanjhi, District- Bhagalpur,
Bihar- 812001.

... .. Petitioner/s

Versus

1. The State of Bihar Represented through the Principal Secretary, Department of Health, Patna, Bihar.
2. The Principal Secretary General Administration Department, Govt. of Bihar, Patna.
3. The Principal Secretary Department of Medical Education and Family welfare, Govt. of Bihar, Patna.
4. The Bihar Public Service Commission Through its Secretary, Bailey Road, Patna, Bihar.
5. The Special Secretary-cum- examination Controller Bihar Public Service Commission, Bailey Road, Patna, Bihar.
6. The Joint Secretary-cum- examination controller Bihar Public Service Commission, Bailey Road, Patna, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bipin Bihari
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

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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
following reliefs:

“1. By way of this writ
application being filed invoking the
extraordinary discretionary writ jurisdiction
of this Hon’ble Court as envisaged under
article 226 of the constitution of India,
1950, the sole petitioner above named most
humbly seeks for following relief(s):-



(i) To issue a writ of Mandamus or Certiorari by quashing and setting aside thereby Annexure-4 i.e. the impugned selection/Merit list dated 23-01-2020 issued and published by the respondent no. -6 – The Joint secretary-cum-examination controller, Bihar Public Service Commission, Bailey Road, Patna, Bihar whereby and where under without adhering to the norms as provided, in sub-clause (ka) of Clause-3 of the advertisement no. - 18/2017, and in the circular no. MCI-12(1)/2015-TEQ/131880 Dated 03-09-2015 of the Medical council of India, addressed to the health secretary of all the states with regard to research publications in the matter of promotion for Teaching faculty in a medical college/ institutions and without assigning any reason for not considering the total 7 published journal, submitted by the petitioner, gave only 4 marks against the total maximum 12 extra marks allocated for the published journals, the merit list of the selected candidates for the appointment on the post of assistant professor (Surgery) in unreserved category in the Medical colleges and hospitals of the state under The department of Health, Bihar, was prepared, finalized and published on 23-01-2020 excluding the name of the petitioner who happens to be the only eligible candidate available amongst all the shortlisted candidate under unreserved category.

(ii) To direct the Respondents particularly the Respondent no.- 5 and 6 to produce the guidelines and criterion issued by the Medical council of India and Department of Medical Education and Family welfare, Govt. of Bihar, Patna with regard to allocation of extra marks with regard to research publications in the matter of promotion for Teaching faculty in a medical college/institutions, which has been followed, while selecting and preparing the merit list of the selected



candidate for the appointment on the post of assistant professor (Surgery) in the Medical colleges and hospitals of the state under The department of Health, Bihar against the advertisement no. - 18/2017.

(iii) To hold and declare the impugned action of the respondents particularly The Joint secretary-cum-examination controller, Bihar Public Service Commission, Bailey Road, Patna, Bihar as illegal, bad in law and against the norms of the sub-clause (ka) of Clause-3 of the advertisement no. 18/2017 as well as against the circular no. MCI-12(1)/2015-TEQ/131880 Dated 03-09-2015 of the Medical council of India, addressed to the health secretary of all the states with regard to research publications in the matter of promotion for Teaching faculty in a medical college/institutions and contrary to the mandate and provision of article 14 as enshrined in the constitution of India.

(iv) To consequentially direct the respondents particularly The Joint secretary-cum-examination controller, Bihar Public Service Commission, Bailey Road, Patna, Bihar and its official to prepare and publish a fresh merit list by granting full 12 marks with respect to published journals in place of 4 marks given to this petitioner by granting due weightage, to all the 7 published journals, submitted by the petitioner, for the appointment on the post of assistant professor (Surgery) in the Medical colleges and hospitals of the state under The department of Health, Bihar under unreserved category and to take joining of this petitioner with attached benefits with effect from the date of joining of the other candidates.

(v) Any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case.”



3. Learned counsel for the petitioner has not arrayed selected candidates as necessary and proper party in respect of seeking quashing of selected merit list published on 23.01.2020 by 6th respondent-Joint Secretary-cum-examination controller, BPSC, Bihar, Patna (Annexure-4).

4. In the light of Apex Court's decision rendered in the case of *Ranjan Kumar & Ors Vs. State of Bihar & Ors.* reported in (2014) 16 SCC 187 wherein para 4 to 13 read 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.

5. In the result, present petition stands dismissed for non-joinder of necessary and proper party reserving liberty to the petitioner to file fresh petition in accordance with law.

(P. B. Bajanthri, J)

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Transmission Date	

