

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.93 of 2022

In
Civil Writ Jurisdiction Case No.7751 of 2020

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The State of Bihar, through the Principal Secretary, General Administration
Department, Government of Bihar, Patna. Petitioner

Versus

1. Smt. Jyoti Joshi, Daughter of Ashok Kumar Joshi, Resident of Near Suj
Factory, EPCL Colony, Dehri - on - Sone, District - Rohtas at present, R/o
Near Saraswati Vidyalaya, Dhanraj Singh Path, Punai Chak, Bailey Road,
Patna.
2. The High Court of Judicature at Patna through its Registrar General.
3. The Bihar Public Service Commission, through its Chairman.
4. The Chairman Bihar Public Service Commission, Patna.
5. The Secretary, Bihar Public Service Commission, Patna.
6. The Joint Secretary - Cum - Examination Controller, Bihar Public Service
Commission, Bihar, Patna.

... .. Opposite Parties

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with

Miscellaneous Jurisdiction Case No. 1238 of 2022

In
Civil Writ Jurisdiction Case No.7751 of 2020

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Jyoti Joshi D/o Ashok Kumar Joshi, Resident of near Suj Factory, P.P.C.L.
colony, Dehri on Sone, District- Rohtas at present R/o near Saraswati
Vidyalay, Dhanraj Singh Path, Punaichak, Bailey Road, Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, General Administration
Department, Bihar, Patna.
2. The High Court of Judicature at Patna, through its Registrar General.
3. The Bihar Public Services Commission, through its Chairman.
4. The Chairman, Bihar Public Service Commission, Patna.
5. The Secretary, Bihar Public Service Commission, Patna.
6. The Joint Secretary-cum-Examination Controller, Bihar Public Service
Commission, Bihar, Patna.

... .. Opposite Parties

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Appearance :

(In CIVIL REVIEW No. 93 of 2022)

For the Petitioner/s : Mr. Prabhat Kumar Verma, AAG-3

For the Opposite Party/s : Mr. Praveen Kumar, Advocate

(In Miscellaneous Jurisdiction Case No. 1238 of 2022)

For the Petitioner/s : Mr. Jagarnath Singh, Advocate

For the State : Mr. Prabhat Kumar Verma (AAG-3)

For the BPSC : Mr. Sanjay Pandey, Advocate



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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

Date : 12-10-2022

**MJC 1238 of 2022 in CWJC No. 7751 of 2020 and
C.Rev. No. 93 of 2022 arising out of judgment dated 09.02.2022
passed in CWJC No. 7751 of 2020.**

The MJC application has been filed on behalf of respondent nos. 3 to 6 (Bihar Public Service Commission (hereinafter referred to as as the 'BPSC') for modification of the order dated 09.02.2022 passed in CWJC No. 7751 of 2020 by this Court whereby the writ petition filed by the petitioner was allowed and a direction was issued to the State Government to send requisition for all the posts which had remained vacant due to non-joining of the recommended candidates. The BPSC and its authorities were directed to recommend the name of the candidates from the combined merit list/select list in order of merit for appointment on the post of Civil Judge (Junior Division) against Advertisement No. 6 of 2018.

2. The Civil Review No. 93 of 2022 has been filed on behalf of the State of Bihar for review of the aforesaid judgment dated 09.02.2022 passed in CWJC No. 7751 of 2020.



3. Since the facts involved in both the applications are common and the relief sought for is also common, they have been heard together and are being disposed of by a common order.

4. The facts of the case in brief are that CWJC No. 7751 of 2020 was filed by the petitioner Jyoti Joshi for quashing the final selection list prepared for reserved category in unreserved category whereby and whereunder altogether 36 reserved category candidates had been considered for appointment to the post of Civil Judge (Junior Division) in pursuance of the Advertisement No. 6 of 2018 published by the BPSC to fill up the vacancy of 349 posts of Civil Judge (Junior Division) under the Bihar Judicial Service through competitive examination and further for direction upon the respondents to appoint the petitioner to the post of Civil Judge (Junior Division) who had obtained a total 516 marks i.e. 456 in written examination and 60 in interview and had been placed at Serial No. 180 in the merit list prepared by the BPSC.

5. Subsequently, the petitioner filed an interlocutory application vide I.A. No. 1 of 2021 seeking to add one more relief. The additional relief sought for was as under:-

“For issuance of appropriate writ (writs), order (orders) in the nature of mandamus to direct the respondents to appoint the petitioner on the vacant post due to non-joining of candidates in the 30th Bihar Judicial Service Examination in view of the order



dated 01.03.2021 passed in CWJC No. 3952 of 2020 passed by this Hon'ble Court. That the petitioner has secured 516 marks and her rank is 180 in the merit list and she is the next candidate in line who is ought to be appointed on the vacant posts as per the merit list.”

6. The contention of the petitioner in CWJC No. 7751 of 2020 was that seven successful candidates did not join as a result of which those posts remained vacant. Out of them six belong to the unreserved category. This Court had already passed an order in CWJC No. 3952 of 2020 in favour of one of the candidates who was next in line in the merit list. Hence, it was contended that still five vacant posts were available for appointment and the petitioner having secured 180 rank in the merit list would be next in line because the next two candidates standing at Serial Nos. 176 and 177 had already been appointed in the reserved category.

7. Considering the submission advanced at the Bar and the pleadings made in the writ petition and the counter affidavit and regard being had to the judgment of the Hon'ble Supreme Court in the case of **Swati Chaturvedi versus The State of Bihar & Ors. (CWJC No. 3952 of 2020)** reported in **2021 (2) PLJR 53**, this Court directed the State Government to send the requisition for all the posts which had remained vacant due to non-joining of the recommended candidates and the BPSC and its authorities were directed to recommend the name of the candidates from the



combined merit list/selection list in order of merit for appointment on the post of Civil Judge (Junior Division) against Advertisement No. 6 of 2018.

8. This Court was never apprised of the fact by any of the parties that any interim order in case of any candidate who was declared successful in the final result published by the BPSC in 30th Bihar Judicial Service Competitive Examination was passed by the Hon'ble Supreme Court whereas the fact of the matter is that CWJC No. 24282 of 2019 (Aarav Jain versus The Bihar Service Commission and Ors.), CWJC No. 25241 of 2019 (Sumit Kumar versus The State of Bihar and Ors.) and CWJC No. 4222 of 2020 (Amit Kumar versus The State of Bihar and Ors.) were filed before this Court for declaring them successful in the final result published by the Commission in the 30th Bihar Judicial Service Competitive Examination under Advertisement No. 6 of 2018 and their candidatures were rejected on account of non-submission of relevant certificates in original for verification at the time of interview and as a consequence thereof they were not selected in the final result published by the Commission under the said advertisement.

9. The aforesaid three writ applications were dismissed by this Court on different dates and the petitioners of those cases



preferred special leave to appeal before the Hon'ble Supreme Court vide SLP (C) No. 10776 of 2021 (Aarav Jain versus The Bihar Public Service Commission and others) against the order dated 04.05.2021 passed in CWJC No. 24282 of 2019, SLP (C) No. 15809 of 2021 against the order dated 02.09.2021 passed in CWJC No. 25241 of 2019 (Sumit Kumar versus The State of Bihar and others) and SLP (C) No. 809 of 2021 against the order dated 02.11.2021 passed in CWJC No. 4222 of 2020 (Anita Kumar versus The State of Bihar and others) and the Hon'ble Supreme Court vide order dated 23.07.2021 passed in SLP (C) No. 10776 of 2021 along with SLP (C) No. 11089 of 2021 directed that three posts of Civil Judge (Junior Division) under the BPSC in the category to which the petitioners belong be kept vacant till the disposal of the petitions. Further, the Hon'ble Supreme Court vide order dated 08.10.2021 passed in SLP (C) No. 15809 of 2021 along with SLP (C) No. 16198 of 2021 and SLP (C) No.15819 of 2021 directed that four posts of Civil Judge (Junior Division) under BPSC in the category to which the petitioners belong be kept vacant till the disposal of the petitions.

10. Furthermore, the Hon'ble Supreme Court vide order dated 07.02.2022 passed in SLP (C) No. 809 of 2022 directed that one post of Civil Judge (Junior Division) under the BPSC in the



category to which the petitioner belongs be kept vacant till the disposal of the petition. Thus, in view of the aforesaid directions given in the above-mentioned special leave appeals altogether 8 seats were ordered to be kept vacant by the respondents concerned under Advertisement No. 6 of 2018 in the categories to which the appellants therein belonged. Under the directions given by the Hon'ble Supreme Court, it is reiterated that though the State of Bihar and the BPSC were made respondents in those special leave appeals before the Hon'ble Supreme Court and they had contested those special leave appeals, this Court was never apprised of the aforesaid orders of the Hon'ble Supreme Court passed in the above-mentioned special leave appeals. It would be pertinent to note here that in CWJC No. 7751 of 2020 both the State of Bihar and the BPSC had filed counter affidavit, supplementary counter affidavit and second supplementary counter affidavit much after the aforesaid interim orders were passed by the Hon'ble Supreme Court. No whisper was made in the pleadings about the interim orders passed by the Hon'ble Supreme Court as a result of which this Court allowed the writ petition observing as under:-

“61. It is well settled that a writ court may in order to grant appropriate relief, mould the relief keeping in mind the larger public interest. Reference in this regard may be made to the judgments of the Hon'ble Supreme Court in the case of **Competent Authority v.**



Barangore Jute Factory, reported in (2005) 13 SCC 477 followed in the case of **Special Agricultural Produce Market Committee For Fruits and Vegetables, Golimangla Vs. N. Krishnappa and Others.** reported in (2017) 13 SCC 239. In the present case I have noticed that it is in the larger interest of strengthening the judicial system that the Hon'ble Apex Court has issued general directions for filling up the vacancies. The whole endeavour of the Hon'ble Supreme Court is to ensure that all the existing vacant post are filled up. I am thus, inclined to mould the relief in the present case by directing the State respondents to fill up all the posts lying vacant due to non-joining of the recommended candidates and consider the case of the petitioner as well as others who are above the petitioner in the combined merit list/select list against the Advertisement No.06 of 2018.

62. In result, I direct the State Government to send the requisition for all the posts which have remained vacant due to non-joining of the recommended candidates and the Bihar Public Service Commission (3rd Respondent) and it's authorities are directed to recommend the name of the candidates from the combined merit list/select list in order of merit for appointment on the post of Civil Judge (Junior Division) against Advisement No. 06 of 2018.

63. This writ application stands allowed.”

11. In the background of the facts as stated above when Civil Appeal No. 4242 of 2022 arising out of SLP (C) No. 10776 of 2021 Aarav Jain versus Bihar Public Service Commission and Ors. (2022 SCC Online SC 686) were taken up before the Hon'ble



Supreme Court, the petitioner of CWJC No. 7751 of 2020 intervened and after hearing the parties, the Hon'ble Supreme Court observed that the judgment dated 09.02.2022 passed in CWJC No. 7751 of 2020 and the directions contained therein were in direct conflict with the interim orders passed by the Hon'ble Supreme Court on 23.07.2021, 08.10.2021 and 07.02.2022. It further observed that the application for directions filed by the intervenor seeking directions to the State Government to send requisition for all the posts which had remained vacant due to non-joining of the recommended candidates and to direct the BPSC to recommend the name of the candidates from the combined merit list/select list in order of merit for appointment on the post of Civil Judge (Junior Division) against Advertisement No. 6 of 2018 cannot be granted nor can she claim parity or any benefit from the judgment of Swati Chaturvedi which was passed much before and interlocutory application for directions stood rejected. The operative part of the Hon'ble Supreme Court's order is as under:-

“27. The intervenor Jyoti Joshi filed a writ petition before the Patna High Court registered as CWJC No. 7751 of 2020. The petition was finally decided vide judgment of the Division Bench dated 09.02.2022 at a time when there were interim orders already passed by this Court right from 23.07.2021 till 07.02.2022. The Division Bench of the Patna High Court vide judgment dated 09.02.2022 allowed the



said writ petition and directed the State Government to send the requisition for all the posts which have remained vacant due to non-joining of the recommended candidates and the BPSC was directed to recommend the name of the candidates from the combined merit list in order of merit for appointment against Advertisement No. 6 of 2018. The operative portion of the said judgment as contained in paragraph 62 thereon is reproduced below:

“62. In result, I direct the State Government to send the requisition for all the posts which have remained vacant due to non-joining of the recommended candidates and the Bihar Public Service Commission (3rd Respondent) and it's authorities are directed to recommend the name of the candidates from the combined merit list/select list in order of merit for appointment on the post of Civil Judge (Junior Division) against Advertisement No. 06 of 2018.”

28. This judgment dated 09.02.2022 and the directions contained therein were in direct conflict to the interim orders passed by this Court on 23.07.2021, 08.10.2021 and 07.02.2022. Apparently, these orders were not placed before the Division Bench, and in ignorance of the same the directions were issued. As such the BPSC has already moved an application to modify the judgment and order dated 09.02.2022 taking into consideration the interim order passed by this Court referred to above. The said modification application is still pending before the High Court.

29. Thus, the application for directions filed by Jyoti Joshi seeking the directions as such cannot be granted nor can she claim parity or any benefit from the judgment of Swati Chaturvedi which was passed



much before the impugned judgment of the Division Bench of the Patna High Court or the interim orders passed by this Court. Accordingly, the Interlocutory application for directions stands rejected.”

12. On 27.07.2022 when Civil Review Application No. 93 of 2022 was taken up by this Court, we had directed the State of Bihar and the BPSC to file a show cause as to why appropriate cost be not awarded against them for not bringing to the notice of the Court regarding the interim orders passed by the Hon’ble Supreme Court in SLP (C) Nos. 10776 of 2021, 11089 of 2021, 15809 of 2021, 15819 of 2021 and 16198 of 2021 in which they were party respondents at the time of hearing of CWJC No. 7751 of 2020.

13. In compliance with the aforesaid order dated 27.07.2022, the State of Bihar and the BPSC have filed their respective show cause and on perusal of the show cause reply, we find that a lame excuse has been made that due to inadvertence, this Court could not be apprised of the interim orders passed in the aforesaid special leave petitions. It is also been averred that there was no element of deliberate concealment of the aforesaid interim orders and there was no deliberate lapses/laches on their part.

14. We have heard Mr. P.K. Verma, learned AAG-3 for the State, Mr. Sanjay Pandey, learned Advocate for the BPSC and



Mr. Jagarnath Singh, learned counsel for Smt. Jyoti Joshi, petitioner in CWJC No. 7751 of 2020. Mr. Verma, learned AAG-3 and Mr. Sanjay Pandey, learned Advocate have tried to persuade us that no cost be imposed against the State or the BPSC as there was no deliberate laches and only because of inadvertence on the part of the counsel, the parties should not suffer whereas Mr. Jagarnath Singh, learned counsel for the petitioner of CWJC No. 7751 of 2020 submitted that because of the suppression of material fact by the BPSC and the State of Bihar, the writ petitioner has suffered a lot in litigating the matter before the Court. He contended that due to lapses on the part of the State and the BPSC, the precious time of the Court has been wasted.

15. Having heard the parties and perused the materials on record, we are of the opinion that the State and the BPSC have casually contested the writ petition. It is because of their fault that the Court heard the parties in CWJC No. 7751 of 2020 on several dates and a considerable period of precious time, when some other important matter could have been disposed of, has been wasted. Had there been any knowledge to this Court regarding the interim orders passed by the Hon'ble Supreme Court in the special leave petitions quoted above, this Court would not have entertained the writ petition vide CWJC No. 7751 of 2020. We are not convinced



with the show cause reply filed on behalf of the State and the BPSC. We strongly deprecate the casual manner in which the State and the BPSC have conducted the case.

16. In view of the order passed by the Hon’ble Supreme Court in Civil Appeal No. 4242 of 2022 and analogous cases, we recall the judgment dated 09.02.2022 passed in CWJC no. 7751 of 2020 and dismiss the writ petition. However, we impose a cost of Rs. 25,000/- (Rupees Twenty Five Thousand Only) each on the State of Bihar and the BPSC for suppressing the material fact which caused substantial loss of the precious time of the Court. The cost so imposed must be deposited in the account of the Patna High Court, Legal Services Committee within 30 days from today.

17. In view of the dismissal of the writ petition, the MJC No. 1238 of 2022 and Civil Review No. 93 of 2022 stand disposed of.

(Ashwani Kumar Singh, J)

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.10.2022
Transmission Date	

