

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7367 of 2008

1. Vinod Kumar Pathak son of Shri Uma Nath Pathak, resident of Village Markan, P.O. Markan, Police Station Hussenganj, District-Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, old Secretariat, Bihar, Patna.
2. Secretary-cum-Commissioner, Personnel and Administrative Reforms Department, old Secretariat, Bihar, Patna.
3. Deputy Secretary, Personnel and Administrative Reforms Department, old Secretariat, Bihar, Patna.
4. Secretary-cum-Commissioner, Finance Department, old Secretariat, Bihar, Patna.
5. Chairman, Bihar Public Service Commission, Jawahar Lal Nehru Marg, Bihar, Patna.
6. Secretary, Bihar Public Service Commission, Jawahar Lal Nehru Marg, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gautam Saha, Advocate
For the State	:	Mr. P.K. Verma, AAG-3
		Mr. Sanjay Kumar Ghosarvey, AC to AAG-3
For the BPSC	:	Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kumar Jha, Advocate
For G.A.D.	:	Mr. B. Rajendra, Addl. Chief Secretary.

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

Date : 16-08-2022

Heard learned counsels for the parties.

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

“1. That this writ petition has been filed, for quashing the order as contained in Memo No. 3341 dated 03.10.2007, issued by the respondent No.3, Deputy Secretary, Personnel and Administrative Reforms Department, Bihar, Patna, as per directions by the competent authorities by which the genuine claim/case of the petitioners has illegally, arbitrarily and malafidely been



rejected.

This writ petition has also been filed, for direction upon the respondents to grant the petitioners appointment to the post of Assistant with effect from December, 1995 alongwith all consequential benefits.

This writ petition has also been filed, for directions upon the respondents, to make payment of pay and salary to the petitioners, similar to the pay and salary of similarly situated person appointed in December, 1995, including the arrears of salaries.

For any other appropriate relief or reliefs, which this Hon'ble Court may deem fit and proper, in the facts and circumstances of the case."

3. Crux of the matter in the present petition is whether petitioner is entitled to appointment to the post of Assistant from 11.12.1995 instead of 14.10.2004/12.09.2006 or not?

4. Undisputedly, by Advertisement No. 11/1985 Assistant posts were advertised to the extent of 357 vacancies. It was subject-matter up to the Hon'ble Supreme Court in the case of *State of Bihar and Others Vs. the Secretariat Assistant Successful Examinees Union, 1986 and others* reported in *AIR (1994) 1 SCC 736*.

5. Pursuant to the aforesaid decision the State proceeded to pass order on 16.07.1994 (as contained in Annexure-R/10).

6. In the year 1994, 591 vacancies were notified and



it was reduced to 483 on 26.07.1994 in the guise of implementation of the Apex Court's decision (supra) to the extent of 108 vacancies. Thereby Advertisement No. 11/85 was restricted to 483 vacancies. Petitioner's name is at serial no. 322 under open category whereas the number of vacancies filled up under open category is 296. Thereby, the petitioner was not appointed.

7. The petitioner and others approached this Court in the case of *Sati Ranjan Jamaiyar and others Vs. the State of Bihar & Others* reported in *2000(1) PLJR 269* in which it is directed as under:-

“On such enquiry if further vacancy is traced out, including non-joining vacancies, on its communication to B.P.S.C. (which is to be made within four months), the B.P.S.C. will recommend the names of rest of the successful candidates on the basis of merit list/panel prepared in pursuance of Advertisement no. 1/93, within one month thereof.

In such case, the appointing authority will issue appropriate orders of appointment in favour of recommended candidates within two weeks from the date of receipt of such recommendation.

In view of the fact that the subsequent advertisements have been issued in 1999 to fill up subsequent vacancies occurred from 1.1.1994 onwards, the total exercise to be completed and appointment, if any, in pursuance of Advertisement no. 1/93 to be closed, within a period of six months from the date of receipt/production of a copy of this judgment.”

8. In the light of the aforesaid directions of this Court,



the State-respondent proceeded to calculate number of vacancies available as on 31.12.1993 and they found out that 241 vacancies were available. To that extent, decision has been taken on 26.06.2000.

9. In view of 241 vacancies which were created to fill up with reference to Advertisement No. 01/1993, petitioner's name was reflected and he was appointed on 14.10.2004 to the LDC post and thereafter it was rectified on 12.09.2006 while appointing him against Assistant post.

10. In the light of these facts and circumstances, having regard to the merit of the petitioner that his name reflected at serial no. 322 under open category whereas initially among 483 vacancies 296 were earmarked for open category. Therefore, petitioner's name was considered against newly added 241 vacancies on 26.06.2000 which were filled up on 14.10.2004 read with 12.09.2006.

11. In the light of these facts and circumstances, petitioner has not made out a *prima facie* case so as to consider his appointment to the post of Assistant w.e.f 11.12.1995. His right has accrued for selection and appointment to the post of Assistant pursuant to creation of 241 vacancies dated 26.06.2000 with reference to decision in the case of Sati Raman Jamaiyar and others cited (supra)



12. Accordingly, the present writ petition stands dismissed.

13. At this stage, learned counsel for the petitioner submitted that petitioner is entitled to difference of salary from 14.10.2004 to 12.09.2006. On 14.10.2004 he was appointed to the post of LDC instead of Assistant and it was rectified on 12.09.2006. For no fault of the petitioner he was initially appointed as LDC on 14.10.2004 instead of appointing to the post of Assistant. Accordingly, concerned officials are hereby directed to pay the difference of salary during the intervening period from 14.10.2004 to 12.09.2006, if not already paid. Petitioner is entitled to pay fixation, seniority and other service benefits from 14.10.2004 in the cadre of Assistant.

(P. B. Bajanthri, J)

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CAV DATE	
Uploading Date	25.08.2022
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