

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1661 of 2023

Akhilesh Kumar, Son of Krishna Prasad, Resident of Village- Purani Sahar,
Ward No.- 06, Post Office and Police Station- Aurangabad, District-
Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Additional Chief Secretary, Department of Agriculture, Government of Bihar, Patna.
2. The Secretary, Department of Agriculture, Government of Bihar, Patna.
3. The Joint Secretary, Department of Agriculture, Government of Bihar, Patna.
4. The Director, Department of Agriculture, Government of Bihar, Patna.
5. The Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, (Bailey Road), Patna- 800001.
6. The Chairman, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, (Bailey Road), Patna- 800001.
7. The Joint Secretary-cum-Examination Controller, 15, Jawahar Lal Nehru Marg, (Bailey Road), Patna- 800001.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr.Dhanendra Chaubey, Advocate
For the State	:	Mr.Sarvesh Kumar Singh, AAG-13 Mr.Tej Pratap Singh, AC to AAG-13
For B.P.S.C.	:	Mr.K.K.Jha, Sr. Advocate Mr.Amish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 24-07-2023

1. Heard learned counsel for the petitioner and learned counsel for the State, as well as learned senior counsel for the Bihar Public Service Commission (hereinafter referred as “Commission”).

2. The petitioner participated in process initiated under Advertisement No. 86 of 2014 for selection of Sub-Divisional Agriculture Officer/Deputy Project Director,



ATMA/Assistant Director, Agriculture Services, Category-1 (Agronomy and equivalent). He has approached this court being aggrieved by his non-selection and seeks a direction upon the respondents to allow the petitioner to join services for which the selection process was conducted. The joining is claimed with effect from the date on which others selected candidates have joined in the Agriculture Department.

3. The process of selection comprised of written test and interview. Against total 235 vacancies advertised, 231 candidates were declared successful. It is an admitted position that the petitioner's name was not recommended and he was not declared a successful candidate in the process. It is an admitted position that he had secured 246 marks. It is also an admitted position that the petitioner is a candidate in the Extremely Backward Caste (hereinafter referred as "EBC") and in the EBC category, the cutoff marks based on which the final result was prepared was 248.

4. It is the petitioner's contention that seats remained vacant due to non-joining of three candidates, out of which two were in the EBC category. He claims to be the next candidate in the wait list and as such, entitled to be recommended for joining in the Agriculture Department on the posts for which the



selection process was conducted.

5. In support of his contention, learned counsel for the petitioner has relied upon decision of the Hon'ble Apex Court in the case of ***Manoj Manu and Another versus Union of India and Others*** reported in ***(2013) 12 SCC 171***. He has also relied on an unreported decision of this court in the case of ***Sudhir Kumar Tiwary versus The State of Bihar and Others*** in ***C.W.J.C. No. 7419 of 2020*** (Annexure-10). Learned counsel for the petitioner has also relied upon decisions of Division Benches of this court in the case of ***Akash Kumar versus The State of Bihar and Others*** and analogous case arising out of ***C.W.J.C. No. 1586 of 2023*** as well as in the case of ***Prince and Others versus State of Bihar and Others*** reported in ***2023 (4) BLJ 137***.

6. Learned counsel for the petitioner has also referred to an order dated 28.02.2023 bearing No. 1466 issued by the Agriculture Department based on which he submits that opportunity was being granted to the selected candidates to submit their joining up until 28.02.2023. Nearly 30 candidates have not joined as per his assertion. The petitioner has also annexed the merit wise list of all EBC category candidates from the process in question wherein his name finds place at Serial



No. 378 having total marks 246. It is his case that the last candidate recommended from his category was Raju Kumar Gupta at Serial No. 375, who did not join. He, therefore, submits that the two vacancies left on account of non-joining of the two candidates in the merit wise list at Serial No. 256 and 291 should be filled up by recommending the petitioner since he was the next candidate after Raju Kumar Gupta in the merit wise list.

7. Learned counsels for the State and Commission have opposed the prayer. It is their contention that cutoff marks in the petitioner's category as per the final result is 248. The same is apparent from the result dated 24.12.2021 (Annexure-5). The petitioner as per his own claim has secured less than cutoff marks (246). He is not a candidate declared successful in the process of selection. The merit wise list relied upon by the petitioner is showing the merit performance of all the EBC category candidates who participated in the process of selection. The list contains marks of all the candidates of the EBC category and the last candidate in the list has secured 192 marks. The same is neither a select list nor a wait list. The cutoff marks having been determined, no candidate, let alone the petitioner, having less than cutoff marks can be considered



for appointment.

8. It is further submitted that the decisions relied upon by learned counsel for the petitioner do not support the case. The decisions are distinguishable from the facts and circumstances of the present case. Petitioner was never declared a successful candidate based on the cutoff marks. The last successful candidate who was recommended had secured 248 marks, two marks more than the petitioner. Having obtained lesser marks than cutoff, the petitioner has no enforceable claim for being appointed. Insofar as the issue regarding 231 candidates having been declared successful against 235 vacancies advertised, it is submitted that four posts of unreserved category were kept reserved on account of non-availability of candidates under physically handicapped category in view of the policy/decision of the General Administrative Department to this effect in memo No. 962 dated 22.01.2021. It is further the case of the authorities that the resolution of the Government of Bihar in the Personnel and Administrative Reforms Department dated 16.07.2007 bearing memo No. 2374 is to the effect that vacancies which remain unfilled due to non-joining or for other reasons are to be carried forward for the next requisition.



9. This court has given due consideration to the above noted submissions and the judgments relied upon by learned counsel for the petitioner. The petitioner does not dispute that cutoff marks in his category (EBC) was 248. He also does not dispute the fact that he has obtained less than cutoff marks i.e. 246. Once he has failed to obtain the cutoff marks based on which candidates have been declared successful, he cannot by any stretch of imagination claim to be considered, let alone appointed in the process. Had the petitioners obtained cutoff marks, the issue may have been different, but it is not so. The merit wise list relied upon by the petitioner to contend that he was the next person in order of merit after Raju Kumar Gupta is also unsustainable. The merit wise list is merely a list containing the marks obtained by all candidates in his category. It is not a wait list based on merit. The petitioner is not in a position to claim any right for consideration, as it is not in dispute that his name does not find place in the final result of candidates who had secured above cutoff marks.

10. The decisions relied upon by the learned counsel for the petitioner also do not support the petitioner's contention. Decision of this court in the case of ***Sudhir Kumar Tiwary***



(supra), is inapplicable to the facts and circumstances of the instant case. In the case of ***Sudhir Kumar Tiwary*** (supra), the court considered the fact that the petitioner therein had obtained the same marks as the last candidate. Such is not the position in the instant case where admittedly the petitioner has obtained 246 marks whereas the cutoff marks for candidates in the petitioner's category (EBC) was 248. The instant case is not a case of tie up. The decision in the case of ***Akash Kumar*** (supra) is also inapplicable to the facts and circumstances of the instant case, for the reason that division bench in that case had also considered the petitioner's case as the petitioner therein had obtained the same marks (536) as that of the last selected candidate in his category (Backward Class Category). It is in this circumstance that the division bench held the petitioner entitled to consideration. Once again the division bench as in the case of ***Sudhir Kumar Tiwary*** (supra) has considered the fact that the petitioner was having same marks as the last selected candidate, which is not the position in the instant case. Similar was the situation in the case of ***Manoj Manu and Another*** (supra). It is in this context that the Hon'ble Apex Court in paragraphs 16 and 17 of the said judgment has considered and directed as follows:-

“16. It is not the case of UPSC that under no



circumstances the names are sent by way of supplementary list, after sending the names of the candidates equal to the vacancies. As per UPSC itself, names of “repeat/common” candidates are sent and in the present case itself, three names belonging to such category were sent. However, exclusion of the persons like the appellants has clearly resulted in discrimination as one of those three candidates Rajesh Kumar Yadav had also secured 305 marks and once he was appointed to the post in question, the appellants with same marks have been left out even when the vacancies were available.

17. We are, therefore, of the opinion in the facts of the present case, the decision of UPSC in forwarding three names against requisition of DoPT for six vacancies was inappropriate. We, accordingly, allow the present appeal, set aside the order of the High Court [Manoj Manu v. Union of India, WP (C) No. 3297 of 2011, decided on 16-5-2011 (Del)] as well as the Tribunal [Manoj Manu v. Deptt. of Personnel and Training, OA No. 3511 of 2010, order dated 29-3-2011 (CAT)] and issue a mandamus to UPSC to forward the names of the next three candidates to DoPT for appointment to the post of Section Officer's grade. They shall get the seniority from the date when Rajesh Kumar Yadav was appointed to the said post. Their pay shall notionally be fixed, without any arrears of the pay and other allowances. No costs.”

11. Another judgment relied upon by learned counsel

for the petitioner is that of ***Prince and Others*** (supra). This judgment also does not apply to the facts of the instant case. The division bench in that case had considered the statutory rules wherein there was a requirement of operating a wait list/panel for a period of two years in respect of the anticipated vacancies occurring within this period for being filled up in the said manner in order of merit. No such rule has been brought to



the notice of this court by learned counsel for the petitioner, based on which the petitioner can claim that the authorities were obliged to maintain a wait list or panel. In fact, it is an admitted position that final result of selected candidates was to the exclusion of the petitioner. The last candidate selected in his category was having more marks than him. The petitioner in fact was having less than cutoff marks based on which the final result was published.

12. It is, therefore, this court’s considered opinion that the petitioner has not been able to make out any case for issuance of a direction upon the respondents to recommend him or appoint him in the process of selection pursuant to Advertisement No. 86 of 2014.

13. The writ petition is devoid of merit and dismissed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.08.2023
Transmission Date	NA

