

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15229 of 2015

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Chandra Bhushan Kumar Son of Sri Siya Ram Yadav resident of village -
Balha, Post office Gadhia, Police Station - Bangaon, District - Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Human Resources Department, Government of Bihar, Patna
3. The Director, Secondary Education, Government of Bihar, Patna
4. The Secretary, Vidyalaya Sewa Board, Government of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anil Kumar, Advocate
For the Respondent/s : Mr.Pankaj Kumar Singh, AC to GA 9

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

- 2 22-02-2023 The Petitioner had participated in the selection process for appointment on the post of Teacher in Economics, the notification whereof was issued on 24.11.1994. It is the case of the petitioner that he was placed in the panel prepared of selected candidates by the concerned Board in the year, 2000. The said panel was prepared on 13th March, 2000 and sent to the higher official for implementation and appointment of the candidates but the department concerned found irregularities and illegalities in preparation of such panel and after inquiry, it was returned to the School Education Board vide its letter dated 28.02.2001, whereafter the School Education Board did not send a fresh panel to the department.



2. Learned counsel submits that not sending of the panel to the department by the School Education Board would not deprive the petitioner's right of consideration for appointment and prays that candidates selected in Science and Mathematics were offered appointment subsequently the appointment of the petitioner too should be considered. He had preferred earlier a writ petition before this Court, wherein the Court directed him to file a representation and a decision has been taken by the Director on 10.12.2014 and rejected his claim, therefore, the petitioner has filed this writ petition for assailing the order rejecting his claim as well as he prays for his appointment.

3. In *Shankarsan Dash V. Union of India* case reported in *(1991)3 SCC 47*, the Constitution Bench has held as under :

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the



vacancies has to be taken *bona fide* for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha*, *Neelima Shangla v. State of Haryana* or *Jatendra Kumar v. State of Punjab*.”

4. Thus, no person has right of appointment, the only right available is for consideration of appointment. At the same time, the employer can take a decision not to fill up the post and such decision would not be available for judicial review. It is only if the appointment of any person is given from the panel, a case of discrimination can be said to be made out.

5. Admittedly, the panel prepared for appointment of teachers in Economics subject was scrapped and no fresh panel was prepared. At the same time, after 2006 new Rules came into force, whereby the mode of appointment was changed and the right of appointing teachers was handed over to the concerned Panchayat Units treating them as separate employment units. In the circumstances, the respondents have rejected the representation of the petitioner.

6. In the opinion of this Court, no interference on account of above reasons is warranted. The writ petition is



wholly misconceived, the same is, accordingly, dismissed.

(Sanjeev Prakash Sharma, J)

Chn/-
Item No.53

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