

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9565 of 2022

Mintullah Rahmani Son of Md. Muslim, Resident of Village - Darjiya, P.O. - Bhitha Bhagwanpur, P.S. - Madhepur, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The Bihar Staff Selection Commisioner, through its Secretary, Veterinary College, Patna.
4. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Shakir Ahmad, Adv.
For the B.S.S.C.	:	Mr. Rewti Kant Suman, Adv.
For the State	:	Mr. Gajendra Kumar, Adv.
For the State	:	Ms. Namrata Singh, AC to GA-12

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

3 04-01-2023 1. Learned counsel for the petitioner fairly concedes that the case stands covered by the Judgement passed by this Court in **C.W.J.C. No. 12436/2019** dated **17.11.2022** in bunch of writ petitions decided wherein the issue and claim taken up by the petitioner was examined and the same was rejected with following observations for the said reasons :

“16. The oral contention of learned counsel for the petitioner that there are several posts lying vacant on account of removal of candidates having fake documents and the petitioners to be considered against those posts has been delved. This Court reaches to the conclusion that the advertisement relating to such posts was done in 2010. More than 12 years have passed by. Appointments under a selection process cannot be allowed to be continued for years together. A select list has to be treated to be alive only for a particular period. In the opinion of this Court, even if there is no statutory period laid down, a reasonable period of three years can be treated as sufficient for completing the



*process of selection after the select list is finally prepared. Rights of participation and consideration of persons who have become otherwise eligible during the pendency of such selection process, is seriously jeopardized on account of such selection process being allowed to be continued for several years. Candidates who may have been within age say in the year 2013, may become overage, if the fresh selection process is not initiated by the State Government for more than 10 years. If the prayer of the petitioner is allowed and directions are given to the respondent to fill up the post from the same selection process now, it would amount to reverse discrimination vis-a-vis prospective candidates who may be now be eligible to participate in selection process against the vacant posts. For the said reasons this Court would not issue a writ of mandamus to direct the State to fill up all the posts. The State Government may choose validly not to fill the post from the said selection on account of the long delay and choose to conduct a fresh selection exercise. In **Shankarsan Das vs. Union of India**, as reported in **1991 (3) SCC 47** Constitution Bench of the Apex Court held as under:*

*“Para 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 not 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. Subash Chander Marwaha*, *Neelima Shangla v. State of Haryana*, or *Jatinder Kumar v. State of Punjab*.” The same view has been reiterated in three Judge Bench judgment of the Apex Court in the case of **Dinesh Kr Kashyap & ors. Vs. South East Central Railways 2019 (12) SCC 798** & subsequent*



judgment in Mohd. Rashid vs. Director, Local Bodies, New Secretariat & Ors. 2020 (2) SCC 582.”

17. Keeping in view thereto, this Court finds that a quietus should now be given to the selection process initiated in the year 2010. All the writ petitions are accordingly dismissed. No cost”

2. The present writ petition is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

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