

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12799 of 2022

Chandan Kumar, Son of Rama Shankar Sharma, Resident of Village-
Gokhula, Police Station - Bhagwanganj, District - Patna.

... .. 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/s	:	Mr.Dhanendra Chaubey, Advocate
For the State	:	Mr. Rajni Kant Jha, Advocate
For the Respondent/s	:	Mr. Nilotpal Sharma, AC to GP-21

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

Date : 12-09-2023

1. The petitioner participated in the appointment process for appointment on the post of Bihar Agricultural Services, category-1 (agronomy) pursuant to advertisement No. 86 of 2014 issued by the respondent- Bihar Public Service Commission (BPSC). On completion of the process of selection, the petitioner got 319 marks (284 in written and 35 in



interview).The petitioner is candidate in the unreserved category. The final result is dated 24-12-2021 (Annexure-7). Names of 99 candidates based on cut off marks in the petitioner's unreserved category appeared in the final result. The cut off marks was 263 for written examination and 319 for the final examination.

2. It is the petitioner's case that petitioner has secured 319 marks in the final examination. The last selected candidate in the unreserved category was at serial No. 99, whereas the petitioner's name figured at serial No. 101, in the combined merit list before the final result. Since he was having the cut off marks and one candidate at serial no. 59 did not participate in the process of document verification and did not join, the petitioner being the next candidate in the unreserved category, as per combined merit list (Annexure-6), was required to be recommended.

3. Learned counsel for the petitioner has relied upon the judgment of the Court in the case of ***Sudhir Kumar Tiwary vs. the State of Bihar & Ors.*** in ***CWJC No. 7419 of 2020***. Copy of the judgment is Annexure-14 of the writ petition. Relying on this judgment, he seeks a direction from this Court in favour of the petitioner's appointment in the above noted circumstances.



4. The respondents, State of Bihar as well as BPSC have filed separate counter-affidavit/s.

5. The stand of the State of Bihar is that an appointment letter can be issued only if the BPSC, which has conducted the process of selection declares a candidate selected based on the cut off marks and vacancy position, in terms of Rules and advertisement, pursuant to which the selection process is conducted. The petitioner has not been recommended by the BPSC. He, therefore, cannot claim any right to be appointed.

6. The BPSC has taken a stand that against 103 vacancies in the unreserved category, total 99 candidates were declared successful. On account of non-availability of handicapped candidates, four posts of the unreserved category have not been filled up, but kept reserved under the physical handicapped category, in terms of the General Administration Department letter bearing memo No. 962 dated 22-01-2021.

7. The petitioner, admittedly, is at serial No. 101, below the last selected candidate, though having the same marks as the last selected candidate. The merit based vacancies in the unreserved category was thus exhausted/saturated by recommendation of the candidate at serial No. 99, i.e., above the



petitioner. Based on merit, therefore, the petitioner has no claim.

8. In so far as the vacancy remaining due to non-joining of candidate, it is the specific stand of the BPSC that the resolution of Personnel & Administrative Reforms Department of the State Government dated 16-7-2007, bearing memo No. 2374 in clause 16 lays down that vacancies arising due to non-joining of any candidate, either within the time limit or due to any other reason are to be carried forward for the next requisition. The petitioner, therefore, cannot stake any claim to the post remaining vacant due to non-joining.

9. Clause 16 of Resolution dated 16-07-2007 (supra) reads as follows:-

"किसी उम्मीदवार या उम्मीदवारों द्वारा निर्धारित समय -सीमा के अंदर योगदान नहीं देने या अन्य कारणों से रिक्तियाँ भरी नहीं जा सकने की स्थिति में ऐसी रिक्तियाँ अगली अधियाचना के लिए अग्रणीत की जायेंगी /"

10. On consideration of rival submissions, this Court is in agreement with the stand taken by the respondents, which is based on the petitioner's position in the final result *vis-a-vis* the number of vacancies available; as well as the decision of the State Government in the Personnel and Administrative Reforms



Department, as contained in the memo No. 2374 (supra).

11. It is not in dispute that the petitioner was at serial No. 101. The last candidate recommended for selection was at serial No. 99 in the petitioner's category (unreserved). The petitioner, therefore, was next below the last selected candidate of his category in the final result, though having the same marks as the last selected candidate. Petitioner is thus claiming that the vacancy arising in his category due to non joining of one candidate should be made available for his appointment.

12. The Court would find that such claim is not based on any provision in the advertisement or the Rules under which the process of selection was carried out. In fact, the State Government decision contained in resolution bearing No. 2374 (supra) is clear in its intent that the vacancies remaining, due to non-joining, are to be carried forward for the next requisition. This decision of the State Government is not denied or disputed by the petitioner. He, therefore, is not in a position to stake any claim to the post remaining vacant due to non-joining of one person in his category.

13. In so far as the petitioner's reliance placed on decision in the case of *Sudhir Kumar Tiwary (supra)*, this Court would find that the same does not help the petitioner's



case. In the case of ***Sudhir Kumar Tiwary (supra)***, the Court has not issued any positive direction for recommending the petitioner against post remaining vacant as is prayed for in the instant proceedings. In the case of ***Sudhir Kumar Tiwary (supra)***, recommendation was made by the respondent-Commission based on revised result. Perusal of the order dated 19-03-2021, passed in the case of ***Sudhir Kumar Tiwary (supra)***, makes it clear that in the said case a revised result was brought out by the BPSC, wherein, the name of that petitioner was included along with another candidate in another category. It was, in such circumstance, that this Court disposed of the petition by recording expectation that the Government will act accordingly and issue appointment letter to the petitioner therein.

14. The judgment in the case of ***Sudhir Kumar Tiwary (supra)*** relied upon by the petitioner, therefore, is inapplicable to the facts and circumstances of the instant case.

15. The Court, therefore, does not find any merit in the petitioner's claim made in the instant proceeding for issuance of direction in favour of the petitioner's appointment or joining on the vacancy arising due to non-joining of one candidate in petitioner's category.



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

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	31.07.2023
Uploading Date	12.09.2023
Transmission Date	NA

