

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13041 of 2022

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Krishna Kumar Sah S/o Shri Ram Kumar Sah Resident of Village - Banua,
P.O. - Turki Khararu, P.S. - Minapur, Block-Minapur, District - Muzaffarpur,
State - Bihar, Pin - 843126.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Bihar, Patna.
3. The Chairman, Bihar Staff Selection Commission, Bihar, Patna.
4. The Secretary, Bihar Staff Selection Commission, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nalin Kumar, Advocate
For the Respondent/s	:	Mrs. Binita Singh, SC-28
		Mr. Kumar Kamal Nayan, AC to SC-28
		Mr. Shashi Shekhar Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 21-02-2023

Heard the parties.

2. Both the counsels agree that the facts of this case are covered by the Judgment dated 17-11-2022, passed in **C.W.J.C. No. 12436 of 2019 (Samrendra Kumar Choudhary Vs. The State of Bihar & ors.)**, wherein the Court the has held as under:

“1. The petitioner by way of this bunch of writ petition, prays for quashing of the merit list published by the Bihar Staff Selection Commission dated 07.05.2019,



whereby, out of the 2204 vacant posts remaining to be filled under the advertisement issued by the Education Department in the year 2010, 1916 candidates have been recommended for appointment.

2. Learned counsel appearing for the petitioner submits that the list contains names of persons who were not originally included in the list prepared of about 1,23,000 candidates under the advertisement of 2010. He submits that out of approximately 1,23,000 candidates, about 94,000 candidates were found to have genuine certificates and from the said 94,000 candidates about 32,127 persons were offered appointment.

3. Even from the said 32,127 appointees, about 10,000 candidates were later on found to be having forged documents and their appointments were cancelled.

4. Learned counsel submits that even in the present list, there are persons who were included, although they possessed fake documents. Learned counsel submits



that the petitioner name has not been included in the said list wrongfully. Although he possess genuine certificates and in normal course if the State would not have included names of candidates who possess fake documents, the petitioners would have found place in the merit list and would have been appointed.

*5. In writ petition no. 14418/2019 **Arvind Kumar Vs. State of Bihar**, the learned counsel has pointed out that a list of candidates having fake certificates was published earlier which included names of some candidates whose names are now being included in the present merit list. He therefore prays for revising of the merit list and including names of the candidates who possess genuine certificates alone.*

6. Learned counsel submits that before making appointments the documents of each and every candidate ought to be verified and if found to be fake, he or she should not be offered appointment.

7. Per contra, learned counsel appearing for the commission submits that in



the year 2010 selection process for 34540 Assistant teachers was undertaken out of which 2024 posts remained unfilled vide order dated 23.05.2019, 24.06.2020, 21.03.2022 and 08.09.2022, in all 2178 posts have been directed to be filled.

8. As regards, the submission by the learned counsel for the petitioner with regard to candidates recommended having forged/fake documents are concerned, learned counsel submits that it is at the level of the State Government to verify the documents before finally giving them appointment. It is submitted that even if appointment is given and later on the documents are found to be fake/forged the concerned appointment shall stand cancelled. He therefore submits that merely on the said basis the entire process cannot be stopped.

9. Learned counsel has further submitted that so far as petitioners are concerned, they are from the batch of 1985-87, from General category, whereas the appointments have been given by way of cut-off in General category only upto batch of



session 1984-86. The departure is only where a candidate is appointed under a separate quota like disabled quota or otherwise.

10. Keeping in view thereto, learned counsel submits that no discrepancy can be said to have been committed while making recommendations for appointment. The entire process has now been completed and appointments have also been granted. He therefore submits that no further interference is warranted.

11. I have considered the submissions, this Court by way of order passed in Review Petition No. 16/2016 dated 19.10.2016 directed the State authorities to conduct an exercise for filling up the remaining posts. This Court notices, that a long time has elapsed since 2016 for filling up the post. However appointments have now been recommended and persons have also joined. None of the person who were appointed has been impleaded as a party to the present petitions.

12. Keeping in view, the law laid down by the Apex Court in case of Prabodh



Verma Vs. State of U.P. & Ors. 1984 (4) SCC 251 no order can be passed cancelling or setting aside the appointments given to the concerned persons as they are not before this Court. In absence of any of the candidate before this Court, no finding can be given of their having been appointed on the basis of forged documents.

13. Keeping in view thereto, the contentions raised by the petitioners are found to be untenable and have to be rejected. However, at the same time the respondents State is cautioned not to allow candidates who were found to have obtained employment by fake documents.

14. While the appointments in some cases may not be withheld on account of the delay in verification of documents, it is always appropriate to get the documents verified. With the advance technology available with the State, such verification can be done at the earliest, circulars in this regard ought to be issued by the Education Department for the purpose.

15. Be that as it may, so far as the petitioners are concerned who are before



this Court, no case is found to be made out in their favour since they have not been able to show that any candidate higher in merit has been appointed as against them.

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.”

3. Keeping in view the above and the similar prayer made by the petitioner, the writ petition is dismissed.

(Sanjeev Prakash Sharma, J)

Amrendra/-
Item No. 18

AFR/NAFR	
CAV DATE	
Uploading Date	24.02.2023
Transmission Date	

