

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14189 of 2024

Ritesh Kumar Son of Rakesh Kumar Resident of Bharawas (145), Rewari,
Haryana, P.S.- Rampura Rewari, District- Haryana.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Director, Directorate of Prosecution, Home Department, Government of Bihar, Patna.
3. The Chairman, Bihar Public Service Commission, Nehru Path, Patna.
4. The Joint Secretary -cum- Controller of Examination, Bihar Public Service Commission, Nehru Path, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shashank Chandra, Advocate
For the Respondent/s : Ms. Binita Singh, SC 28
For the BPSC : Mr. Sanjay Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 19-09-2024 Heard Mr. Shashank Chandra, learned counsel

appearing on behalf of the petitioner; Ms. Binita Singh, learned

SC 28 for the State and Mr. Sanjay Pandey, learned counsel for

the BPSC.

2. The petitioner in paragraph no.1 of the present writ
petition *inter alia* has sought for the following reliefs:-

*"1. That this is an application has been filed seeking
following reliefs:-*

*(i). For issuance of a Writ in the nature of a Writ of
Certiorari, or any other appropriate Writ, order,
direction, Quashing the decision of the Respondent
BPSC notified in the Final Selection List dated
02.12.2023 (Annexure P/5) of the Assistant Prosecution*



Officer; whereby 10 seats of Unreserved Category has been forwarded in the next selection process by applying the subsequent resolution dated 22.01.2021 which was notified by the General Administration Department, Govt. of Bihar during the pendency of the selection process and also to quash the decision of the BPSC reserving one seat of Unreserved Category for a PH Category Candidate contained in the same Final Selection List dated 02.12.2023.

(ii). For issuance of a Writ in the nature of a Writ of Mandamus, or any other appropriate Writ, order, direction, directing the Respondent BPSC to recommend the Petitioner for appointment on the Post of Assistant Prosecution Officer and to direct the Respondent No. 1 and 2 to appoint the Petitioner on the Post of Assistant Prosecution Officer under Unreserved Category in pursuance of selection process initiated by the Respondent No. 3 vide Advertisement No. 1 of 2020, against 7 vacant seats of the General Category, which have fallen vacant, as 3 Male Candidates did not participated in document verification process and 4 Male candidates have not joined on the post in question, simultaneously the BPSC has also illegally carry forwarded 10 seats of unreserved category for next selection process by tinkering with the terms and conditions of recruitment of the selection in middle of the selection process. The Petitioner also prays for a direction upon the Respondent No.1 and 2 to grant him seniority as well as other consequential benefits, at par with similarly situated candidates who have been appointed in the same selection process and also to act strictly an accordance with.”

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner has been discriminated as the petitioner has not been selected on the post of Assistant Prosecution Officer, despite of the fact that petitioner obtained 450 marks and his name is at serial No.178 in the merit list and the last candidate, who has been selected, also obtained 450 marks, similar to the petitioner and, as such, non-selection of the petitioner is against the mandate of Articles 14 and 16 of the Constitution of India. Learned counsel further submitted that even from the selected candidates, among general male



category, 7 candidates have not joined. Learned counsel further submitted that 10 seats of disabled candidates have been carried forward for the next selection year. In light of the said fact, learned counsel submitted that inspite of the fact the petitioner has become eligible in terms of the subsequent clarification, contained in Memo No.962 dated 22.01.2021 and in view of the saving Clause as contained in clause 3(17) therein the petitioner qualifies in term of 2017 Resolution.

4. Learned counsel submitted that in this regard, the petitioner has already filed a detailed representation before respondent no.2, the Director, Directorate of Prosecution, Home Department, Government of Bihar but the same is pending as yet. However, petitioner again seeks to file a detailed representation before him for the relief, as prayed for in the present writ petition.

5. *Per contra*, learned counsel appearing on behalf of the respondents submitted that right to be considered for promotion occurs on the date of consideration of eligible candidates. In the present case, the Government has taken a conscious policy decision not to fill up vacancy arising prior to the amendment of rules. The employee does not acquire any vested right to be considered for promotion in accordance with



the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointment as per the old rules. The petitioner has not been able to make out a case and, hence, the writ petition is fit to be dismissed.

6. Heard the parties.

7. It is well settled principle of law that the employee does not acquire any vested right to be appointed and Government has no obligation unless the petitioner is able to make out a case that the petitioner has been discriminated in an unfair and unreasonable manner which has to be justified on the touchstone of Article 14. In the present case, the petitioner has claimed in view of the old rules, which has been repealed in view of the saving clause contained in Clause 3(17).

8. I need not want to go into the issue to decide the right of the petitioner, as to whether, same has been taken away by amended rules and petitioner is entitled for being considered in accordance with the old rules in view of the saving clause as contained in Clause 3(17) or any change midway the selection process will amount to change of *Rule of game*.

9. In view of the fact that the petitioner, for the relief as prayed for, in the present writ petition, seeks to file a



comprehensive representation before the Director, Directorate of Prosecution, Home Department, Government of Bihar, the writ petition stands disposed of with a direction to the Director, Directorate of Prosecution, Home Department, Government of Bihar to examine the case of the petitioner and take a final decision, considering the fact that the right to be considered for appointment should not be defeated by discriminating the petitioner in any manner and also considering the fact that a similar candidate obtaining 450 marks has already been issued letter of appointment.

10. In case, the Director, Directorate of Prosecution, Home Department, Government of Bihar, takes undesirable time in considering the representation of the petitioner, the petitioner may take appropriate action against him.

11. The writ petition stands disposed of.

(Purnendu Singh, J)

Sanjay/-

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