

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15989 of 2024**

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Md. Abulais, Son of Kasim, Resident of Ward no. 7 Karanmeyaa, Lalgarh,  
West Champaran, Bihar, 845438.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of police, Home Guard, Bihar, Patna.
2. The Director General of Police, Home Guards, Bihar, Patna.
3. The Division Commissioner, Tirhut Division, Muzaffarpur
4. The Collector-cum District Magistrate, West Champaran at Bettiah.
5. The District Commandant, Home Guard, Bettiah, West Champaran, Bihar.
6. The Superintendent of Police, Bettiah, West Champaran, Bihar
7. The District Welfare Officer, Bettiah, West Champaran

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Rishabh Mishra, Advocate |
| For the Respondent/s | : | Mr. Ajay Behari Sinha, GA-8  |
|                      |   | Mr. Neeraj Raj, AC to GA-8   |

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL ORDER**

2      21-10-2024                      Heard Mr. Rishabh Mishra through the online mode,  
  
learned Advocate for the petitioner and Mr. Ajay Behari Sinha,  
  
Learned Senior Counsel, Government Advocate No. 8.

2. The petitioner by invoking the prerogative writ jurisdiction of this Court seeking a direction upon the respondent to appoint the petitioner on the post of Home Guard in the respective category in the District of Bettiah (West Champaran) pursuant to the selection process of advertisement No. 02/2011 dated 16.07.2011.

3. Learned Advocate for the petitioner contended that



pursuant to an advertisement No. 02/2011 the applications were invited from eligible candidate. The petitioner having found eligible, applied for the post of Home Guard. Out of the total number of vacancies for Bettiah (West Champaran), the final merit list of the selected candidates have been published on 26.09.2023 which clearly reveals that against 230 post only 198 candidates find place in the merit list. The other unfilled up posts left vacant.

4. The petitioner on being aggrieved by the inaction of the respondents in keeping the post vacant, filed objection along with others. The official respondent has disposed of the objection of the petitioner with a response that the same shall be filled up after following the roster clearance in the light of reservation policy, after receipt of the guideline.

5. Learned Senior Counsel representing the State submits at the Bar that well settled it is that the respondent State is under no legal obligation to fill up all or any of the posts and there are various other reasons; moreover till date, only 198 of the candidates have been found eligible and accordingly merit list has been prepared.

6. Be that as it may, irrespective of the fact that the State has ample authority not to fill up all or any of the post, but



the decision not to fill up the posts, must be bonafide based upon cogent and appropriate reasons. The issue has already been crystallized by the Constitution Bench of the Hon'ble Apex Court in the case of ***Shankarsan Das vs. Union of India***, reported in ***AIR 1991 SC 1612*** which explicitly observed as follows:-

*“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. Subash Chander  
Marwaha [(1974) 3 SCC 220 : 1973  
SCC (L&S) 488 : (1974) 1 SCR 165]"*

7. In view of the settled legal position and the limited grievance of the petitioner, the writ petition stands disposed off with a direction to the respondent no. 2 to come out with a final decision with respect to the left over vacancies in terms of the judgment passed by the Constitution Bench of the Hon’ble Supreme Court as noted hereinabove within a period of 12 weeks.

8. The writ petition stands disposed off.

**(Harish Kumar, J)**

supratim/-

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