

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1181 of 2023

In

Civil Writ Jurisdiction Case No.12799 of 2022

Chandan Kumar, Son of Rama Shankar Sharma, Resident of Village-
Gokhula, Police Station- Bhagwanganj, District- Patna, Pin Code- 804454.

... .. Appellant/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 Appellant/s : Mr. Rohit Mishra, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG- 13
For the BPSC : Mr. Rajni Kant Jha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 22-02-2024

Heard the parties.

2. The challenge in the present Letters Patent Appeal is made to an order/judgment dated 12.09.2023 passed by a learned Single Judge of this Court in C.W.J.C. No. 12799 of 2022, whereby the claim of the petitioner-appellant herein for his appointment or joining on the vacancy arising due to non-



joining of one candidate in petitioner's category has been rejected.

3. Learned counsel for the appellant while questioning the impugned order contended that, pursuant to the Advertisement No. 86 of 2014 published by the Bihar Public Service Commission (for the brevity 'the BPSC') for appointment to the post of Bihar Agricultural Services-II, the appellant applied for appointment to the post of Bihar Agricultural Services, category-1 (Agronomy). After having completed the process of selection, the BPSC recommended the names of 235 suitable candidates, out of which 103 candidates against unreserved category. The appellant claims to be a candidate of unreserved category.

4. Submission has been made that the appellant secured total 319 marks and finds his place at serial no. 101 in the combined merit list (Annexure-6 to the writ petition). Against the 103 vacancies under the unreserved category, 99 candidates were declared successful and their names were recommended by the BPSC. Out of 99 candidates, one candidate at serial no. 59 of the combined merit list did not appear for verification of the documents and other credentials, leading to her non-joining. In such circumstances, learned



counsel for the appellant contended that the candidate at serial no. 99 has been selected and the candidate at serial no. 100 belongs to EBC category and, as such, the appellant was the next candidate under the general category, thus the vacant post ought to have been offered to him.

5. Learned counsel for the appellant also contended that the panel / select list is prepared with a purpose and when the post remained vacant on or before completion of the appointment process, the respondents cannot of their whims and fancies keep the advertised post vacant when the select list is operative. It is informed to this Court that in the entire selection process altogether 28 candidates did not join. Thus, it cannot be said that the appointment/selection process was completed. The post, which fell vacant even prior to completion of the appointment process could not be carried forward for next appointment/ next requisition and the same is arbitrary and motivated. Moreover the petitioner had legitimate right for consideration on the post remained vacant due to non-joining of a candidate under the unreserved category.

6. Learned counsel appearing on behalf of the State as well as the BPSC referring to the order/judgment under challenge have submitted that admittedly the appellant was at



serial no. 101 of the combined merit list, below the last selected candidate under the General category, though having the same marks, as the last selected candidate. However, the merit based vacancies in the unreserved category was exhausted by the recommendation of the candidate at serial no. 99, above the appellant. Moreover, there was no provision for preparation of wait list, rather in terms of the resolution of the State Government dated 16.07.2007, bearing Memo No. 2374, the vacancies arising due to non-joining of any candidate, either within time limit or due to any other reason are to be carried forward for the next requisition. The aforesaid facts have been taken note of while negating the claim of the appellant for appointment.

7. We have heard the parties. Time without number, the Hon'ble Supreme Court has reiterated that mere existence of vacancies or empanelment does not create any indefeasible or vested right to appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection. There is a long list of judgments in this line [vide **Madan Lal and Others Vs. State of J & K and Others, (1995) 3 SCC 486, Prem Singh and Others Vs. Haryana State Electricity Board and Others**



(1996) 4 SCC 319, State of U.P. and Others Vs. Raj Kumar Sharma and Others, (2006) 3 SCC 330 and Mukul Saikia and Others Vs. State of Assam and Others (2009) 1 SCC 386].

8. It is further noted that the appellant could have claimed the appointment to the post which remained unfilled provided there is a provision for appointment from waiting list in case of non-joining of any other selected candidate as per the advertisement or the statutory rules governing the selection process. There is absence of any specific provision for waiting list and, on the contrary, there is a specific provision prescribed under the resolution issued by the State Government in the Department of Personnel and Administrative Reforms Department that the vacancies due to non-joining of any candidate either within time limit or due to any other reason are to be carried forward for the next requisition. Identical question came to be considered by the Hon'ble Supreme Court in the case of **Bihar State Electricity Board Vs. Suresh Prasad & Others, (2004) 2 SCC 681**, wherein it is specifically held that even in case candidates selected for appointment have not joined in absence of statutory rules to the contrary, the employer is not bound to offer the unfilled vacancy to the candidates next



below the said candidates in the merit list. In absence of any provision, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and to appoint a candidate from the waiting list in case the candidates from the panel do not join. The aforesaid decision of this Court in **Suresh Prasad** (Supra) has been subsequently reiterated in the case of **Vallampati Sathish Babu Vs. State of Andhra Pradesh & Others, (2022) 13 SCC 193**.

9. It is trite that the process of selection begins with the issuance of advertisement and ends with the filling with the notified vacancies.

10. In view of the aforesaid facts and the settled proposition, this Court does not find any error in the impugned order. Accordingly, the present Letters Patent Appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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