

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12457 of 2021**

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Dr. Ashok Kumar son of late Moti Lal resident of C/o Shri Bharat Pandit, Near Lalpura Chowk, Village- Paharpur, Post Office- Prataptand, District- Vaishali, Pin- 844123 and presently residing at Krishi Vigyan Kendra, Manpur, Gaya- Nawada Road (Opp. Mehta Petrol Pump), Post Office- Buniyadganj, District- Gaya, Pin- 823003.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Agriculture Department, Bihar, Patna.
2. The Chancellor of Universities, Raj Bhawan, Patna.
3. Bihar Agricultural University, Sabour through its Registrar.
4. Vice Chancellor, Bihar Agricultural University, Sabour.
5. Director Administration, Bihar Agricultural University, Sabour.
6. Chairman, Grievance Redressal Committee, Bihar Agricultural University, Sabour.
7. Officer-in- Charge, Recruitment, Bihar Agricultural University, Sabour.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Abhinav Srivastava, Sr. Advocate |
| For the Respondent/s | : | Mr. Nilotpal Sharma, AC to GP 21     |

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**CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR**

**ORAL JUDGMENT**

**14-10-2025**

Heard learned senior counsel for the petitioner and  
learned counsel for the respondents.

2. The petitioner has filed the instant writ petition for  
the following relief(s) :

*“Issuance of a direction, order or writ, including writ in the nature of certiorari quashing that part of the report dated 06/01/2021 submitted by the Grievance Redressal Committee, Bihar*

*Agricultural University, Sabour (hereinafter referred to as "the University"), by which it has been recommended that the request of the petitioner for consideration of his case for appointment against the posts of Senior Scientist and Head for KVK in the services of the University could not be considered on account of the panel prepared in the said respect being more than one year old;*

*ii Issuance of a direction, order or writ in the nature of mandamus commanding the concerned respondent authorities under the University to take steps towards appointing the petitioner on the post of Senior Scientist and Head for KVK against the seat reserved for a candidate belonging to Extremely Backward Category on the basis of the performance of the petitioner in the process of selection conducted by the concerned authorities under the University pursuant to Advertisement No. 04/2018 dated 22/09/2018;*

*iii Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities to take steps towards extending all the consequential benefits in favour of the petitioner in terms of continuity and length of service, payment of salary, seniority, and other consequential benefits*

*after appointing him against the post of Senior Scientist and Head for KVK in the services of the University;*

*iv. Issuance of a declaration holding that the petitioner is entitled for being appointed against the post of Senior Scientist and Head for KVK in the services of the University on the basis of his performance in the process of selection conducted by the concerned authorities pursuant to Advertisement No. 04/2018 dated 22/09/2018 along with all consequential benefits;*

*V. Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case.”*

3. Learned senior counsel for the petitioner submits that pursuant to Advertisement No. 4 of 2018 dated 22.09.2018, the petitioner had applied for the post of *Senior Scientist and Head, Krishi Vigyan Kendra* against the seat reserved for a candidate belonging to the Extremely Backward Category (EBC). It is submitted that a person not belonging to the State of Bihar was candidate for appointment against a post reserved for the Extremely Backward Category. Accordingly, one Dr. Deokaran Singh, son of Shri Gaya Dian, who was a resident of the State of Uttar Pradesh, was appointed by wrongly extending the benefit

of reservation. Subsequently, realizing the irregularity in his appointment, the said candidate did not join the post, and as such, the post continues to remain vacant till date, from the date of recommendation and his consequential provisional appointment.

4. It is next submitted that the reasons assigned in the impugned order as contained in Memo No. 1982 dated 13.01.2021, at serial no. 5, stating that the application of the petitioner could not be considered as the period of validity of the panel had expired, is wholly untenable. The petitioner, immediately within a month of preparation of merit panel and upon learning that the name of Dr. Deokaran had been recommended for appointment against the EBC post, submitted several representations including a representation dated 25.07.2019 before respondent no. 4, referring to the provisions of the *Bihar Reservation of Vacancies in Posts and Services (for SCs, STs and OBCs) Act, 1991*, and bringing to notice that Dr. Deokaran, being a resident of Uttar Pradesh, was not entitled to reservation benefit. These representations have been annexed as Annexure-4 series to the writ petition.

5. Pursuant to such representations, the University, vide letter no. 692 dated 01.08.2019 issued by the Director

(Administration), instructed the petitioner to submit an affidavit in support of his assertions within 15 days. The petitioner duly complied and filed an affidavit (appended at page 40 of the writ petition). However, it appears that the exercise directed to be carried out by the petitioner, which having been complied but was never considered.

6. Learned counsel for the respondent University, on the other hand during the course of hearing has referred to paragraphs 7 to 11 of the counter affidavit and submitted that the petitioner could not be appointed as he had secured marks lower than other candidates in the merit list. It is submitted that one Dr. Bipul Kumar Mandal, who scored 65.03 out of 100 marks, was appointed, while Dr. Deokaran Singh had secured 56.02 marks, and the petitioner had obtained only 55.47 marks out of 100 in the Extremely Backward Category. It is further submitted that the Selection Committee prepared the merit list on the basis of current and backlog vacancies and did not find any candidate fit for inclusion in the waiting list. Accordingly, the petitioner's grievance was rejected by the Grievance Redressal Committee vide order impugned at Annexure-17, page 114.

7. At this stage, learned counsel for the University

submits that the petitioner's representation may be directed to be considered afresh, since the vacancy created due to non-joining of Dr. Deokaran still exists.

8. Having heard learned counsel for the parties and upon perusal of the record, this Court finds that the entire confusion was created with the illegal appointment of Dr. Deokaran, who never joined the post and whose appointment was also never confirmed, as is evident from paragraph 10 of the counter affidavit. The materials on record show that immediately after Dr. Deokaran was recommended for appointment from the merit list (Annexure-15), the petitioner made representation before the University authorities, which was under consideration for a considerable period, and the final rejection order was communicated only after about one and a half years. Hence, the plea of the University that the panel had expired after one year is wholly unacceptable, particularly when the University itself continued to entertain and process the petitioner's claim as against the vacant post of EBC. The delay being attributable to the inaction of the University, the petitioner cannot be penalized for the same.

9. Learned counsel for the University, does not dispute the fact that after the recommendation for appointment against

the EBC category having been made in respect of Dr. Devkaran, the said candidate was issued a letter to submit requisite documents for availing benefit of reservation, which he did not provide to the University and further he did not join the said post against which the appointment was made. It has also not been disputed by the learned counsel representing the University that the vacancy under EBC category which was notified for being filled up by a suitable candidate from the merit list so prepared, remained vacant since the date of recommendation and consequential provisional appointment, which was never confirmed and as such eligible candidate next to Dr. Devkaran was Dr. Ashok Kumar, who is the petitioner in this case and therefore, subject to fulfillment of other conditions on merit, this petitioner was entitled to the said post.

10. In the case of **Manoj Manu and Others vs Union of India** reported in **(2013) 12 SCC 171**, the Hon'ble Apex Court has held that a decision not to fill up the post or the vacancies must be supported with valid reasons and based on sound, rational and consistent decision of the authorities with full application of mind but in the present case, there is no such decision where the authorities with valid reason have decided not to fill-up the said post under EBC category, for which Dr.

Deokaran was not legally entitled, and knowingly he did not join the post realising the consequence, as such, the appointing authority was under legal obligation to have recommended the next candidate for the said post. Rather, the reason for not filling up the vacancy has arisen only because of inaction by the authorities of the University in deciding the representation filed by the petitioner and because of the delay caused by the University in deciding the claim, the period of validity of the panel got expired and the same is now being made a reason by the University for not considering the case of the petitioner and in view of settled legal position, the authority of the University cannot be allowed to approbate and reprobate at the same time, when it was a legal duty of the authorities under University to have acted immediately after the recommended candidate having been found not eligible, in view of his inability having been communicated in submitting the requisite documents, showing his bona fide to hold the post of EBC *vide* his communication dated 24/9/2019.

11. In view of the peculiar facts and circumstances where the authorities of the University continued to consider the case of the petitioner which was ultimately decided not to consider in the year 2021 by indicating a reason that panel prepared with

respect to appointment has become more than a year old and no appointment from the said panel can be made, is wholly unsustainable ground and is contrary to the dictum of Hon'ble Apex Court and deserves to be interfered with by directing the petitioner's candidature for its consideration as per his eligibility for which the counsel for the University has submitted that the representation which is pending can be directed to be considered in accordance with law.

12. Admittedly, in the present case, the name of the petitioner finds place in the merit panel, which has been prepared by the appointing authority. But, for the reason indicated hereinabove that a person who was not legally entitled to the benefit of reservation was allowed appointment against the reserved post and on his non-joining, the post of EBC remained unfilled and the petitioner's representation was considered and being entertained at the level of the appointing authority by asking the petitioner to submit requisite documents through affidavit, which having been complied by this petitioner and because of the timely action having not been taken by the appointing authority, the period of one year was consumed and the appointment as against the post advertised, in the reserved category could not be offered to him despite being eligible to the

said post.

13. In view of judgment of Hon'ble Apex Court as rendered in the case of **R.S. Mittal vs Union of India** reported in **(1995) Supplementary 2 SCC 230**, wherein it has been held that it can safely be declared that a person on the select panel has no vested right to be appointed to the post for which he has been selected, but the appointing authority cannot ignore the select panel or on its whims decline to make the appointment, when a person has been selected by the duly constituted Selection body and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there would be no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person, who is in the select panel.

14. It is worth to refer judgment of Hon'ble Apex Court rendered in **Malik Mazhar Sultan and Anr. vs. U.P. Public Service Commission & Ors** reported in **(2008) 17 SCC 703** wherein it has been held that the vacancy ought to be filled up in the same examination process and taking cue from the same, this Hon'ble Court in the case of **Akash Kumar vs. the State of Bihar and Ors** passed in **CWJC No. 1586 of 2013 dated 18.04.2023** has directed the following, which is quoted herein

below :

*“Be that as it may, because of non-joining of one Ashish Chandra, one position definitely falls vacant which should go to the first of the Backward category candidate who has obtained 536 marks and in this case the candidate is one Nishant Ranjan.”*

15. And accordingly, in the aforesaid case, the Hon’ble Division Bench directed the State to take a decision to this effect and same be communicated to the Commission for doing needful.

16. In the present case, it’s mere inaction on the part of the appointing authority to have immediately addressed the issues after it was realized by them that a wrong person has been recommended but that having not been done and no prudent reason has been assigned as to why the appointment as against the post of EBC was not offered expeditiously to this petitioner , who was next to Dr. Deokaran and as such, the approach of the University, is wholly unjustifiable and is unsustainable in law, in rejecting the claim by assigning a reason, which is contrary to law.

17. Accordingly, this Court finds the grounds taken for

rejection of the petitioner's claim to be unsustainable and contrary to the settled legal position. Consequently, Annexure-17, to the extent it relates to the petitioner as contained in Memo No. 1982 dated 13/01/2021, is set aside. The respondent University is directed to consider the petitioner's representation afresh, keeping in view that the post in question remains vacant due to wrong recommendation of Dr. Deokaran, who having not fulfilled the criteria for claiming reservation, did not join the post and the post under EBC category remained vacant since the date of his recommendation. So the petitioner being next in the merit becomes eligible to the said post in his category and accordingly his case is required to be considered in accordance with law laid down in this regard.

18. Consequently, the University shall, therefore, examine the eligibility of the petitioner in the light of the materials available on record as well as and the merit list, prepared against the said advertisement and if it is found that the petitioner is eligible for appointment against the said post, necessary orders shall be passed and communicated within a period of eight weeks from the date of receipt or production of this order. While doing so, the authorities shall also consider the petitioner's claim for consequential benefits, including continuity of service,

for which if this petitioner is otherwise eligible.

**19.** The writ application is, accordingly, allowed.

**(Ajit Kumar, J)**

Prakash/-

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