

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.519 of 2022

In
Civil Writ Jurisdiction Case No.7367 of 2008

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1. Vinod Kumar Pathak Son of Shri Uma Nath Pathak Resident of Village- Markan, P.O.- Markan, P.S.- Husainganj, District- Siwan presently residing at Flat No.- 302, Kamalkunj, Saubhagya Sharma Path, Rukanpura, P.S.- Rupaspur, District- Patna, Bihar- 800014.
 2. Sanjeev Kumar, Son of Late Shankar Prasad C/o Shri Sunil Kumar Srivastava, 2, Mahaveer Vihar, Rukanpura, P.O.- B.V. College, P.S.- Rupaspur, District- Patna presently residing at B-302, Radhya Shyam Apartment, Lohia Path, Jagdev Path, P.S.- Rupaspur, District- Patna.
 3. Pramod Kumar, Son of Sri Prabha Kant Jha Resident of Village- Abhuar, P.O.- Abhuar, P.S.- Kishanpur, District- Supaul.
 4. Raj Kishore Tiwary, S/o Shri Hardeo Tiwari Resident of Village- Pauni Hasanpur, P.O.- Pauni Hassanpur, P.S.- Vaishali, District- Vaishali.
 5. Rabindra Kumar Singh, S/o Late Ram Kishun Singh R/o Village- Karsar, P.O.- Karsar, P.S.- Raghunathpur, District- Siwan.
 6. Ramayan Thakur, Son of Late Amar Nath Thakur Resident of Village- Rajpur, P.O.- Rajpur, P.S.- Raghunathpur, District- Siwan.
 7. Chandra Shekhar Prasad Rajak, Son of Shri Parikshan Baitha Resident of Village- Rasalpur, P.O. and P.S.- Jandaha, District- Vaishali.
 8. Sheojee Singh, S/o Late Haridwar Singh Resident of Village- Ubudhi, P.O.- Kaniyari, P.S.- Karagahar, District- Rohtas (Sasaram).
 9. Saroj Kumar Karna, S/o Shri Parmanand Lal Karna Resident of Village- Chatra, P.O.- Chatra, P.S.- Anrer, District- Madhubani.
 10. Gopesh Kumar Pandey, S/o Shri Satya Nand Pandey Resident of Village- Risiap, P.O.- Risiap, P.S.- Risiap, District- Aurangabad.
 11. Umang, Son of Shri Rajendra Prasad Das Resident of Village- Belarahi, P.O.- Belarahi, P.S.- Jhanjharpur, District- Madhubani.
 12. Amrendra Nath Tiwary S/o Shri Kameshwar Nath Tiwary Resident of Village- Chandwa, P.O.- Chandwa, P.S.- Nawada, District- Bhojpur (Arrah).

... .. Appellant/s

Versus

1. The State of Bihar through its Chief Secretary Old Secretariat, Bihar, Patna.
2. The Secretary-cum- Commissioner, Personnel and Administrative Reforms Department (now known as General Administration Department), Old Secretariat, Bihar, Patna.
3. The Deputy Secretary, Personnel and Administrative Reforms Department (now known as General Administration Department), Old Secretariat, Bihar, Patna.
4. The Secretary-cum-Commissioner, Finance Department, Old Secretariat, Bihar, Patna.



5. The Chairman, Bihar Public Service Commission, Jawahar Lal Nehru Marg, Bihar, Patna.
6. The Secretary, Bihar Public Service Commission, Jawahar Lal Nehru Marg, Bihar, Patna.
7. Ramesh Thakur, Son of Shri Ram Nihora Thakur Resident of Village- Bikrampur, P.O.- Sahadai Buzurg, P.S.- Desari, District- Vaishali.
8. Baldeo Chaudhary, Son of Shri Ram Pyare Chaudhary Resident of Village- Benasagar, P.O.- Benasagar, P.S.- Karakat (Gorari), District- Rohtas.
9. Manoj Kumar, S/o Late Badri Lal Das Resident of Mohalla- East Patel Nagar, Road No.- 3, P.O.- Shastri Nagar, P.S.- Shastri Nagar, District- Patna.
10. Ajit Kumar, Son of Late Duja Ram Resident of Village- Nawada (Arrah), P.O.- Arrah, P.S.- Nawada (Arrah), District- Bhojpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Kumar Kaushik, Advocate
For the State	:	Mr. Sanjay Kumar Ghosarvey, AC to AAG-3
For the B.P.S.C	:	Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kr. Jha, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 16-04-2025

Re: Interlocutory Application No. 1 of
2025.

The aforementioned interlocutory application has been pressed for condoning the delay of 12 days in filing this appeal.

2. For the reasons stated in the application, the delay is condoned.

3. Interlocutory Application No.1 of 2025 stands



allowed.

LPA No. 519 of 2022.

4. We have heard Mr. Kumar Kaushik, the learned Advocate for the appellants/writ petitioner and Mr. S.K. Ghosarvey, the learned AC to AAG-3 for the State.

5. The challenge in this appeal is to the judgment dated 16.08.2022 passed by a learned Single Judge of this Court in CWJC No. 7367 of 2008, whereby the prayer made on behalf of the writ petitioner / appellants of counting his services from 11.12.1995 instead of 14.10.2004, has been rejected.

6. The appellant no.1/Vinod Kumar Pathak had approached this Court vide CWJC No. 7367 of 2008, referred to above against an order passed by the Deputy Secretary, Personnel & Administrative Reforms Department, Old Secretariat, Govt. of Bihar, Patna refusing to treat the writ petitioner as having been appointed from 1995.



7. It appears from the records that in the year 1985, an advertisement (11/1985) was brought out for filling up 357 vacancies of Assistants. The aspirants for the said posts, approached the Supreme Court wherein the issue with respect to calculating the exact number of vacancies were racked up and an order was passed directing the State to calculate the number of vacancies first and then complete the process of appointment.

8. Pursuant to the aforementioned directions of the Supreme Court, in ***State of Bihar and Others vs. the Secretariat Assistant Successful Examinees Union, 1986 and Others; AIR (1994) 1 SCC 376, 591*** vacancies were notified in the year 1993. However later, on re-calibration, it was reduced to 483 vacancies.

9. Precisely for this reason, the selection process against advertisement no. 1/1993 was concluded with respect to the reduced 483 vacancies only. The appellants did not fall within the zone of consideration in that selection process for the reason that appellant no. 1/ writ



petitioner stood at sl. no. 322 in the unreserved category.

10. The entire process was challenged in several writ petitions. However, what is relevant to note is that the appellants/writ petitioner and many others came before this Court in the year 2000.

11. A bench of this Court in ***Sati Ranjan Jamaiyar and Others vs. the State of Bihar and Others; 2000 (1) PLJR 269*** found that the vacancies had not been correctly calculated. A time limit was given to the BPSC to re-calculate the vacancies and against such recalculated vacant posts, recommendations be made.

12. Considering the aforementioned directions, further 241 vacancies were calculated which were found to be unfilled. Against the aforementioned 241 vacancies (Advertisement No.1/1993), the writ petitioners were appointed on the post of LDC vide order dated 14.10.2004, which was rectified on 12.9.2006, on which date, they were appointed as Assistants (instead of LDC).



13. Mr. Kaushik, while assailing the judgment of the learned Single Judge has submitted that the learned Single Judge did not look into the series of orders passed by different Benches of this Court in the interregnum directing the State and the BPSC to calculate the vacancies and recommend the names of the persons in the merit list against those vacancies within the stipulated time frame.

14. For all practical purposes, since a time limit was given to the selecting agency and the employer, it had to be understood as the continuation of the same selection process because the vacancies were not properly calculated. Merely because the vacancies were re-calculated pursuant to the orders passed by the Courts, for which a separate advertisement was brought out, that ought not to make the appointment of the appellants and other similarly situated appointees to be counted from 2004 when the actual appointments were made.

15. The learned Single Judge has clearly held



that merely because the vacancies were carved out on the orders of the Court when 591 vacancies were advertised in the year 1994, which was later reduced to 483 and again 241 vacancies were advertised (Advertisement No.1/1993), the appellants / writ petitioner could not have laid claim to have been appointed in the year 1995.

16. No doubt specific time limits were prescribed in the judgments of this Court, in the interregnum, but the actual appointment against the Advertisement No. 01/1993 of the appellants took place only on 14.10.2004 which was rectified in some measure on 12.09.2006. The date of appointment of the appellants cannot relate back to the same appointment process of advertisement no.11/1985. It is true that it was not the fault of the appellants, nonetheless, considering the orders of this Court, the vacancies were recalculated and the necessary advertisement against such unfilled vacancies were taken out in the year 1993 (Advertisement no.1/1993). Against the aforementioned advertisement, there was a delay in



process of appointment notwithstanding the directions of this Court to complete the appointment process within a time frame.

17. However, considering the fact that the appellants/writ petitioner were appointed on 14.10.2004, their prayer for their appointment to relate back to December, 1995 cannot be allowed.

18. For the aforementioned reasons, we find no fault with the judgment impugned in the present appeal.

19. The appeal is dismissed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	N/A
Uploading Date	19.04.2025
Transmission Date	

