

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17590 of 2023**

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Rohit Kumar Tripathi S/o Vimal Kumar Tripathi, Resident of Quarter No. - B-5/15, I.G.I.M.S Campus, Sheikhpura, P.S.- Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, General Administration, Government of Bihar, Patna.
2. The Chairman, Bihar Public Service Commission, Patna.
3. The Registrar General, Patna High Court.

... .. Respondent/s

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**Appearance :**

|                      |   |                                                                                                            |
|----------------------|---|------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Vishwajeet Kumar Mishra, Advocate<br>Mr. Ashutosh Tripathi, Advocate<br>Mr. Aakash Choudhary, Advocate |
| For the High Court   | : | Mr. Piyush Lall, Advocate                                                                                  |
| For the State        | : | Mr. Raghwanand (GA-11)<br>Mr. Pratik Kumar, AC to GA-11<br>Mr. Prabhat Kumar, Advocate                     |
| For the BPSC         | : | Mr. Rajni Kant Jha, Advocate<br>Mr. Sanjay Kumar Pandey, 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 : 07-02-2025**

We have heard Mr. Vishwajeet Kumar Mishra, the learned Advocate for the petitioner, Mr. Piyush Lall, the learned Advocate for the High Court, Mr. Prabhat Kumar, the learned Advocate for the State of Bihar and Mr. Rajni Kant Jha, the learned Advocate for the Bihar Public Service Commission.

2. The petitioner has come before this Court



seeking his appointment to the post of Civil Judge (Junior Division), as he was ranked No. 35 in the merit-list issued by the BPSC against Advertisement No. 04/2020 [31<sup>st</sup> Bihar Judicial Service Competitive Examination for the post of Civil Judges (Junior Division)].

3. Some facts would be necessary to understand the reason for his having approached this Court seeking such relief.

4. On 12.05.2023, after the publishing of the results, a communication was made to the High Court by the General Administration Department (GAD) of the Government of Bihar that the case of the petitioner for appointment has been kept in abeyance for the reason of a criminal case pending against him vide Khagaul P.S. Case No. 109/2022 dated 21.04.2022, instituted for the offences under Sections 304(B) and 34 of the Indian Penal Code. The petitioner was arraigned as an accused in his capacity as the brother-in-law of the deceased. Incidentally, the case was lodged just before the petitioner was to appear in the interview for such competitive examination. Despite the



efforts of the petitioner, who had made several representations to the BPSC as also before the other authorities to consider his case, the same was not done. Ultimately, his candidature was cancelled vide decision of the GAD of the State on 05.01.2024 on the ground of his having been charge-sheeted in that case.

5. Without referring to the various orders of this Court whereby the petitioner was granted anticipatory bail and was given the liberty to approach the authorities to consider his case in the light of the merits of the criminal case and the stay granted by the Courts, nothing had happened.

6. However, the prosecution against the petitioner has ultimately been quashed by order dated 13.08.2024 passed by a Bench of this Court in Cr. Misc. No. 78007 of 2023, which order was upheld by the Hon'ble Supreme Court.

7. Coming back to the vacancy position, it appears that vide Advertisement No. 04/2020, 221 posts of the Civil Judges (Junior Division) was advertised. 88 seats were



earmarked for Unreserved category candidates which included 33 posts for women.

8. We have referred to this position for the reason that the petitioner falls in Unreserved category.

9. The final results were published by the BPSC and 214 candidates were found to be successful. Out of the 88 seats earmarked for Unreserved category, the petitioner was also found to be successful and was placed at Serial No. 35 in the merit-list. Finally, out of 214 successful candidates, 211 were notified to join on probation. Since the candidature of the petitioner was kept on hold, his name was not included.

10. On 30.12.2022, vide a notification contained in Letter No. 23512 of the GAD, Government of Bihar, the High Court was informed that one Rakhi Kumari, falling under EBC category, was also not recommended for being appointed because of a criminal case pending against her. Later, it was discovered that one of the successful candidates in the Unreserved category, namely, Ashish Chandra did not appear before the Commission for verification of his certificates and,



therefore, his candidature also was cancelled. In the meantime, two of the unsuccessful candidates, namely, Akash Kumar and Harindra Kumar Rai approached this Court vide CWJC No. 1586 of 2023 and CWJC No. 4680 of 2023 respectively. While considering their cases, this Court found that with the candidature of Ashish Chandra (Unreserved category) having been cancelled because of his not appearing before the Commission, one Unreserved category post had become vacant. It was further found out that another candidate, namely, Nishant Ranjan, who belonged to the Backward category and had obtained 536 marks, which was the cut-off marks for Unreserved category, would be required to be accommodated on the seat earmarked for Unreserved category, and that, in turn, would leave one vacancy in the Backward Class category, which would go to the next candidate in the Backward Class category placed below Nishant Ranjan. Finding Akash Kumar to be the person who was just below Nishant Ranjan, he was accommodated as the candidate in the Backward Class category.

11. While dealing with the case of Harindra Kumar



Rai (Unreserved category), who too had not been appointed for the reason of pendency of a criminal case against him, this Court had directed the Government to take a decision within a stipulated time-frame whether he would be considered to be appointed and in case such a decision was taken, aforementioned Harindra Kumar Rai be considered as he was waiting in the wings as the first wait-list candidate having the cut-off marks, but not listed in the merit-list because of the horizontal reservation to women.

12. Almost simultaneously, two other writ petitions came up before this Court for consideration by Heena Naz and Aditi and Ankita in CWJC No. 15325 of 2022 and CWJC No. 17276 of 2022 respectively.

13. On finding that Heena Naz and Aditi, even though had obtained marks above the cut-off in their respective categories of EBC and EWS, were not considered for recommendation on the ground that on the last date of registration, they did not possess LL.B. certificate even though the certificates were issued to them by the University later, but before the last date of submission of application



forms, the High Court found that such reason to non-suit them was not justified.

14. It was thus directed that Heena Naz, belonging to EBC category, be considered if Rakhi Kumari is not appointed because of the pendency of criminal case against her. With that position going vacant, she could have been accommodated in such category.

15. However, Rakhi Kumari was also considered and later appointed on the condition that if any adverse result comes in the criminal litigation, her appointment shall be cancelled. That left Heena Naz completely high and dry.

16. Since Aditi belonged to EWS category and this Court had found that all 23 posts in that category had been filled up, no order was passed with respect to her. However, later the Hon'ble Supreme Court directed that vacancy of the future date be borrowed and Aditi be accommodated on the said post. This was done and Aditi also got appointed.

17. Along with the aforementioned instances, one Ankita, belonging to SC category, also staked her claim for being appointed. Her candidature was rejected by the BPSC



on the ground that she had filed her mark-sheet instead of certificate of LL.B. along with her application form. This objection by the BPSC was not considered to be tenable. Six posts in the category of SC was found to be vacant. Therefore, this Court had directed that she also be appointed on one of such posts, rejecting the stand of the State that the un-filled vacancy of 31<sup>st</sup> Competitive Examination had been carried over in accordance with the Circular of 1977 to the subsequent 32<sup>nd</sup> Competitive Examination, which was at that time under way.

18. This Court, relying on the judgment in **Aarav Jain v. Bihar Public Service Commission and Others. (2022) 14 SCC 35** held that such circular was not applicable to Judicial Service as it was neither statutory in nature nor could have been given effect to in view of the judgment of the Hon'ble Supreme Court in **Malik Mazhar Sultan (3) v. U.P. Public Service Commission (2008) 17 SCC 703**. Thus, Ankita too was appointed.

19. The challenge to her appointment before the Hon'ble Supreme Court by the State could not be sustained.



20. By this time, aforesaid Harindra Kumar Rai had also been appointed with the condition that in case the criminal case against the petitioner (Rohit Kumar Tripathi) ends in acquittal, his appointment would be terminated.

21. Precisely, for this reason, the petitioner mid-way sought and was granted permission to implead Harindra Kumar Rai as one of the party-respondents in this proceeding.

22. Afterwards, three notifications came from the GAD of the Government of Bihar on 15.09.2023, relieving three of the candidates who were selected and were offered appointment, namely, Diwanshu Gupta; Riya Singh and one Anup Singh Bhukhani. Diwanshu Gupta and Riya Singh, both falling under Unreserved category, had resigned from their services. Anup Singh Bhukhani but had never joined and, therefore, that position remained vacant, which vacancy was never carried forward to the next competitive examination.

23. Thus, for all practical purposes, one post against the aforementioned Advertisement No. 04/2020 remains vacant as on date.



24. Considering this aspect of the matter, we deem it appropriate to and direct that the post be filled up and the petitioner be recommended and appointed on the said post.

25. We have not given the details of the merits of the criminal case, except to the extent that the accusation of the petitioner in the criminal case was ultimately found to be false and the F.I.R. with respect to him was quashed and which order was upheld, as noted above, by the Hon'ble Supreme Court.

26. There does not appear to be any effective objection of either the BPSC or the State with respect to the vacancy and the appointment of the petitioner against such vacant post in the Unreserved category.

27. The seniority position of the petitioner shall be in accordance with inter-se merit vis-a-vis the other officers but shall not be entitled to any arrears of pay. Other benefits accruing to him on the basis of his seniority shall be given to him notionally.

28. The necessary sequel orders and formalities be completed within a period of a fortnight.



29. We also make it clear that since the petitioner is now being directed to be considered and appointed against the vacant position arising out of the cancellation of the candidature of Anup Singh Bhukhani, which vacancy has not been carried forward in the next competitive examination, there would be no necessity of disturbing the appointment of Harindra Kumar Rai.

30. We express our deep satisfaction at the efforts of Shri Piyush Lall, learned Advocate for the High Court in collating all these information in chronological order.

31. The writ petition stands allowed.

**(Ashutosh Kumar, ACJ)**

**(Partha Sarthy, J)**

P.K.P./Krishna

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