

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15651 of 2013

1. Nilesh Sharan Srivastava and Ors S/O Dr. Shambhoo Sharan Srivastava Resident Of Ambedkar Chowk, P.S- Gopalganj, District- Gopalganj.
2. Jayant Kumar Sinha S/O Umeshwar Bihari Resident Of Village- Dhanwara, P.S- Lakhmohan, District- Nawada
3. Bishnu Deo Tiwari S/O Paras Nath Tiwari Resident Of Village- Tiwaripur, P.S- Dahiwar, District- Buxar.
4. Gopal Prasad Pandey S/O Late Jyotish Chandra Pandey Resident Of Mohalla- Ghorikitta, P.S- Balbadda, District- Godda.
5. Deva Nand Das S/O Sri Ganour Panjiyar Residing At Bhagwanpurkanju, P.S- Patepur, District- Vaishali.
6. Vinod Kumar Verma S/O Ram Pratap Verma Resident Of Vikramshila Nagar, P.S- Kahalgaon, Distt- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Commissioner- Cum- Secretary, Department Of Personnel And Administrative Reforms, Government Of Bihar
3. The Additional Secretary, Department Of Personnel And Administrative Reforms, Government Of Bihar,
4. The Commissioner- Cum- Secretary, Finance Department, Government Of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Srivastava, Advocate
For the Respondent/s : Mr.Sajid Salim Khan, Sc 25

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 03-04-2019

The petitioners were applicants in response to Advertisement no. 1 of 1993. The process was undertaken to select candidates for appointment to the post of Assistant.

2. The brief background is that before the petitioners could be appointed the State of Bihar, which had undertaken the process of selection was bifurcated with effect from 15.11.2000



into two states namely, the State of Bihar and the State of Jharkhand as per the provisions contained in the Bihar Reorganization Act, 2000. Another significant development was that upon adoption of the Central Pay Structure the post of Assistant was demerged into LDC and UDC.

3. The petitioners who were empanelled in the process of selection conducted by the Bihar Public Commission (for short 'BPSC') approached this Court by filing a writ petition seeking a direction upon the respondent authorities to issue appointment letters to them in view of their selection pursuant to Advertisement no. 1 of 1993. Writ Petition no. 10627 of 2001 filed by the petitioners was allowed on 10.09.2001 and a direction was issued by the writ Court to issue appointment letters to the petitioners as well as other eligible candidates for the post of Assistant in the Secretariat.

4. Decision of the Writ Court dated 10.09.2001 (Annexure 5) was assailed by the State of Bihar by way of intra Court appeal. The Letters Patent Appeal No. 109 of 2002 filed by the State of Bihar was finally decided after hearing the parties on 10.05.2002. Having regard to the facts taken note of herein above the Division Bench of this Court allowed in part the appeal filed by the State of Bihar by its order dated



10.05.2002 (Annexure 6). The relevant extract of the order of the Division Bench is being reproduced herein :

“22in view of the decision of the Central Government after bifurcation of the State only 2/3rd vacancies will be treated to have been allocated to the State of Bihar. The State Government shall not be obliged to consider the question of appointment of the empanelled candidates to the post of LDC on the said 2/3rd vacancies which had fallen in the share of the State of Bihar. As the writ petitioners were empanelled for their appointment as Assistant but now the entry point is the post of LDC, the State Government shall consider the cases of empanelled candidates for their appointment to the post of LDC and pass suitable orders within a period of one month from the date of this order.

23. In the result, this appeal is partly allowed with the directions and observations made above. There shall be no order as to costs.”

5. Aggrieved by the said order passed in LPA No. 109 of 2002 petitioners herein approached the Apex Court by preferring a special leave petition. Civil Appeal No. 1274 of 2003 filed by the instant petitioners was disposed off with



certain observations. The order of the Apex Court disposing off the Civil Appeal dated 22.04.2013 has considered the fact that the Division Bench in LPA No. 109 of 2002 has held that only 2/3rd vacancies will be treated to have been allocated to the State of Bihar out of the total posts advertised under Advertisement no. 1 of the year 1993 as also the fact that the State Government would be obliged to consider the question of appointment of empanelled candidates to the post of LDC against the 2/3rd vacancies falling in the share of the State of Bihar.

6. Before the Apex Court petitioners submitted that despite a direction of the High Court to consider the question of appointment of empanelled candidates on the post of LDC against the 2/3rd vacancies falling in the share of State of Bihar, some of the empanelled candidates could not have been appointed. Taking note of such submission made by petitioners before the Apex Court, the Apex Court in its order dated 22.04.2013 has disposed off the Civil Appeal with certain observations. Relevant extract of the order of the Apex Court for the purposes of claim of empanelled candidates against the 2/3rd vacancies falling in the State of Bihar is being extracted and reproduced herein :



“We have also been told that despite the direction of the High Court , some of the empanelled candidates have not been appointed. No details thereof have been given. If that be so, they are also given liberty to approach the High Court for the appropriate relief. In case they do so, the High Court shall examine the same on merit in accordance with law.

We dispose of these appeals with the observations aforesaid.”

7. Availing of the aforesaid liberty the instant writ petition has been filed seeking an appropriate writ or direction upon the respondents to consider the case of the petitioners in light of the order dated 22.04.2013 passed in Civil Appeal No. 1274 of 2003.

8. Counsel for the petitioners submits that in view of the expressed liberty granted to the petitioners by the Apex Court and the direction of the Apex Court that High Court “shall examine the same on merits in accordance with law”, consideration of the petitioners’ claim could not be restricted to the 2/3rd vacancies falling in the State of Bihar. The petitioners’ name admittedly figured in the earlier merit list, and as such they could not have been ousted by restricting the number of



vacancies to 2/3rd of the original number of vacancies.

9. Mr. Singh appearing for the petitioners has submitted that the Division Bench was wrong in dividing the total number of vacancies for appointment on the ratio of 2:1. The petitioners were entitled to be considered for their appointment on the basis of the undivided merit list/panel containing 241 candidates and if the claim of the petitioner is considered on the basis of the undivided panel prepared prior to bifurcation of the State of Bihar they would come within the zone of consideration and entitled to appointment.

10. Learned counsel appearing for the State, on the other hand, relying upon a recent decision of the Division Bench in the case of **Krishan Murari Kumar vs. State of Bihar** reported in **2019 (1) PLJR 80**, submits that Division Bench of this Court has recently rejected claim of other petitioners seeking appointment on the basis of the same Advertisement no. 01 of 1993 having regard to the developments subsequent thereto. The Division Bench has considered that subsequent to Advertisement no. 01 of 1993, other processes for appointment have taken place for appointment to the post in question. As such the claim of other similarly situated as the petitioner has already been rejected recently by a Division Bench of this



Court. In the circumstance claim of the petitioners in the instant writ petition must also meet the same fate.

11. Further submission of counsel for the respondent State is that the panel of 161 candidates in compliance of the directions issued by the Division Bench in LPA No. 109 of 2002 has already been sent by the BPSC way back on 20.05.2004. The issue stands concluded. In compliance of the order in LPA No. 109 of 2002 the panel of 161 candidates has been prepared wherein on the basis of merit the petitioners' name could not figure. Since none inferior to the petitioners in merit has been included in the panel of 161 candidates dated 20.05.2004 (Annexure A to the 3rd Supplementary counter affidavit filed on behalf of the State), the petitioners cannot have any grievance in respect of their non- inclusion in the panel.

12. In view of the long lapse of time since advertisement was issued in the year 1993, this Court should not issue any further directions in favour of the petitioners having regard to the fact that their empanellment in the panel prepared in the undivided State of Bihar cannot be treated as a perpetual reservoir about 23 years after their empanellement.

13. Having heard the rival submissions this Court would observe that the claim of the petitioners for appointment, in



view of the order of the Division Bench in LPA No. 109 of 2002 was restricted to the 2/3rd vacancies falling in the share of the State of Bihar. The Apex Court in the appeal arising out of the Division Bench order has not interfered with the order of the Division Bench. The liberty granted by the Apex Court was taking note of submission made on behalf of the very same petitioners before the Apex Court that “despite the direction of the High Court some of the empanelled candidates have not been appointed”. The direction of the High Court which have been referred to by the petitioners in their submission before the Apex Court is none other than the directions of the Division Bench in the order dated 10.05.2002 passed in LPA No. 109 of 2002. Since the submission of these petitioners before the Apex Court was raising a grievance that they had not been appointed in spite of directions of the High Court, it is clear that the petitioners were raising a grievance regarding their non-appointment against the 2/3rd vacancies falling in the State of Bihar, as according to the direction of the High Court consideration for appointment was restricted to 2/3rd vacancies falling in the State of Bihar. It is taking note of such submission of the instant petitioners that the Apex Court has granted liberty to the petitioners to approach the High Court for appropriate



relief.

14. In the circumstance, submission of the petitioners now, that the High Court (Division Bench) could not have bifurcated the vacancies and limited the posts for consideration of the petitioners to 2/3rd is clearly unsustainable. Such a submission of the petitioners would be contrary to the submission made before the Apex Court taken note of in the order dated 22.04.2013 in Civil Appeal No. 1274 of 2003 on the basis of which they have obtained the liberty to approach the High Court.

15. Another hurdle standing in the way of the petitioners' claim for being considered for appointment against all posts, without giving effect to 2/3rd share in favour of the State of Bihar, is that the Division Bench in LPA No. 109 of 2002 has clearly restricted the claim of the petitioner for consideration on only 2/3rd vacancies allocated to the State of Bihar. The writ petition therefore, is actually seeking a relief contrary to the decision of the Division Bench in LPA No. 109 of 2002 and also contrary to, and in excess of the liberty taken by the petitioners from the Apex Court in Civil Appeal No. 1274 of 2003.

16. Another aspect of the matter is that if the claim of the petitioners is restricted to the 2/3rd vacancies allocated to the



State of Bihar, then admittedly none inferior in merit to the petitioners has been empanelled in the panel of 161 candidates dated 20.05.2004 prepared in compliance of the order passed in LPA No. 109 of 2002.

17. The petitioners in view of the preceding consideration are not in a position to stake a claim now to the entire vacancies without giving effect to the division on the principle of of 2 :1 by allotting 2/3rd vacancies to the State of Bihar, in view of the order of the Division Bench passed in LPA No. 109 of 2002 as also in view of the scope of the liberty obtained by the petitioners before the Apex Court in SLP No. 1274 of 2003.

18. In view of the aforesaid consideration, the petitioners are not entitled to the relief prayed for in the instant writ petition.

19. Writ petition is dismissed.

(Madhuresh Prasad, J)

Prakash/-

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CAV DATE	
Uploading Date	
Transmission Date	

