

(2010) 10 PAT CK 0105

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 218 of 1998

Kamlesh Jha

APPELLANT

Vs

The Bihar College Service  
Commission and Others

RESPONDENT

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**Date of Decision:** Oct. 26, 2010

**Hon'ble Judges:** Navaniti Prasad Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### Judgement

Navaniti Prasad Singh, J.

The Petitioner seeks appointment on the first post of Lecturer in Vyakaran (Grammar) of the Dr. Jagannath Mishra Sanskrit College, Pastan, Nabtoli, District-Madhubani.

2. An intervention application has been filed on behalf of one Pawan Kumar Jha in which it was stated that so far as first post of Lecturer in Vyakaran in the said College is concerned, he was appointed in the year 1980 and has been working there regularly. That post was not vacant and the Petitioner cannot be permitted to seek appointment to the said post. The said intervention application was allowed.

3. A counter affidavit has been filed by the intervener- Respondent. Reply thereto has been filed. Bihar College Service Commission was also made a party and has filed counter affidavit and the whole mess is a creation of the Commission, which has since seized to exist.

4. Heard the parties.

5. Mr. Tej Bahadur Singh, learned Senior Counsel, appearing for the intervener-Respondent submits that the Petitioner must first show that not only he was entitled for appointment, he was, in fact, recommended for appointment by the College Service Commission and only when he succeed in showing that he was duly recommended and was liable to be appointed, would the question of intervener's

appointment to the said post could be questioned. He further submits that in the entire pleading of the parties there is not a cheat of paper showing any recommendation by the College Service Commission in favor of the Petitioner and that being so , the College is not bound to consider the Petitioner for the purposes of appointment. If that be so then the Petitioner cannot challenge the appointment of the intervener- respondent.

6. Mr. Dharendra Kumar Jha No. 2, in support of the writ Petitioner, submits with reference to the trilogy of Annexures being Annexures 4, 6 and Annexure A to the first counter affidavit of the Commission. That if one reads three Annexures together it would clearly be seen that his name was recommended.

7. Mr. Tej Bahadur Singh, learned Senior Counsel, for the intervener -Respondent contends to the contrary. He submits that if one refers to the said three Annexures it would be clear that the writ Petitioner was not recommended. It is the correctness of this claim and counter claims that, in my view, to decide the case.

8. It is not in dispute that the College, in question, being Dr Jagannath Mishra Sanskrit College, is situated at Pastan, Nabtoli, District- Madhubani and is a private affiliated college having its own Governing Body. It is not in dispute that it has two posts of Lecturer Vyakaran duly sanctioned. It is not disputed that the intervener-Respondent (Pawan Kumar Jha) was appointed to the said post in 1980. It has not been disputed that Sri Pawan Kumar Jha, the intervenor- Respondent has been getting his remuneration regularly for the said post.

9. Petitioner's case is that towards the end of 1989, an advertisement was issued by the Bihar College Service Commission in respect of large number of vacancies in different colleges of different universities (Annexure 1). This advertisement included within it advertisement No. 1098 of 1989 in relation to the post of Lecturers in Vyakaran in relation to Dr. Jagannath Mishra Sanskrit College " Pastan Barauni (Beguarai)". Petitioner's case is that every one knew that Dr Jagannath Mishra Sanskrit College was, in fact, at Madhubani and not at Begusarai. Every body acted accordingly. Thus, the Petitioner effectively has his own case, applied for the post of Lecturer Vyakaran pursuant to advertisement No. 1098 of 1989. Further the case of the Petitioner is that pursuant to the aforesaid advertisement, Petitioner having applied and the Petitioner was called for interview in the year 1994 (Annexure 2) and ultimately was informed by the letter of the Bihar College Service Commission No. 663, dated 11.5.1993 that pursuant to advertisement No. 1098 of 1989, his name was being recommended for appointment to the post of Lecturer Vyakaran. In the said college at Madhubani (Annexure 3), the recommendation of the College Service Commission is Annexure 4, which contained memo No. 661, dated 11.5.1996 of the Commission . A reference to the said recommendation would show that it makes a recommendation in respects of advertisement No. 1098 of 1989 and that too for the first post showing one Sushil Jha as a first recommended and the Petitioner as the second recommended candidate. Petitioner's further case is that on seeing the

recommendation, he protested pointing out that the said Sushil Jha had not applied nor was he interviewed pursuant to advertisement No. 1098 of 1989 and as such his name should be deleted. This led to issuance of memo No. 853 dated 20.9.1996 by the Commission (Annexure 6). A reference to this annexure would show that there was serious confusion prevailing at the Commission letter. This letter clearly refers to the Commission recommendation, as contained in memo No. 661, dated 11.5.1996 (Annexure 4) and it says that in that recommendation by mistake reference to advertisement no 1098 of 1989 has been made. It should be read as advertisement No. 269 of 1987. It clarified that Sushil Jha had applied against advertisement No. 269 of 1987. It, therefore, makes a fresh recommendation clearly stating that the earlier recommendation, as made by memo No. 661, dated 11.5.1996 (Annexure 4), is cancelled. The recommendation under this memo is in respect of advertisement No. 269 of 1987 and the persons recommended are Sushil Jha and Udeswar Mishra, both in the seriatim for the second post.

10. At this stage it would be better if I refer now to the clarification sought to be issued by the Commission, as contained in Annexure A to its counter affidavit, this is the issue during the pendency of the writ petition on 19th December, 1998 under memo No. 1418. Here again it is reiterated that Sushil Jha had applied and was considered against advertisement No. 269 of 1987 and there was no question of recommending his name as against advertisement No. 1098 of 1989. In my view, the effect of the three aforesaid Annexures being Annexures 4,6 and Annexure A is that Annexure 4 is to be read as recommendation as against advertisement No. 269 of 1987, which recommended the names being Sushil Jha and another person with whom is not concerned. If that be so, then there is no recommendation in respect of advertisement No. 1098 of 1989. In response to which the Petitioner had applied his application. Thus seen, on record there is not a cheat of paper to show any recommendation in favor of the Petitioner. They say that the advertisement No. 1098 of 1989 was issued in the name of a wrong college as Dr. Jagannath Mishra Sanskrit College was not at Barauni but at Madhubani. The Commission ultimately chose not to proceed with. There had been earlier an advertisement only with regard to one post, which was the second post, for which, admittedly, the Petitioner did not apply.

11. Thus, having considered the matter, in my view, on Petitioner's own showing that the Petitioner had applied as against advertisement no, 1098 of 1989. Against the said advertisement neither the Petitioner nor the Commission has brought on record the recommendation. That being the position, the Petitioner being unable to bring on record any recommendation from the Commission in his favor, the Petitioner is not entitled any relief from this Court. As a consequence thereof if the Petitioner is not entitled to any relief from this Court, he cannot be permitted to challenge the appointment of the intervener- Respondent and make it an issue before this Court in this writ petition because this writ petition is essentially for seeking his appointment. That being so, the writ petition merits no consideration

and is dismissed accordingly.