

A BIHAR STATE UNEMPLOYED CIVIL ENGINEERS  
ASSOCIATION THROUGH ITS GENERAL SECRETARY, SH.  
RANJIT RANA AND ORS. ETC.

v.

THE STATE OF BIHAR AND ORS.

B APRIL 8, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Service Law :*

C *Road/Building construction and Public Works Department of State  
Government of Bihar—Assistant Engineers in waiting list prepared by Public  
Service Commission for appointment—High Court giving direction to State  
Government to identify vacancies existing as on 31.12.1987 and available for  
appointment from among candidates in waiting list—High Court not satisfied  
D with the stand of the State that no vacancies existed—Held, Government  
would make fresh exercise to identify the vacancies.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7516-17  
of 1996 Etc.

E From the Judgment and Order dated 21.11.93 of the Patna High  
Court in C.W.J.C. No. 2093 of 1989 and 3072 of 1990.

Gopal Subramaniam, Santosh Kumar and K.L. Mehta & Co for  
Appellants.

F B.B. Singh and R.P. Wadhvani for the Respondents.

The following Order of the Court was delivered :

Delay condoned.

G Leave granted.

We have heard learned counsel on both sides.

The writ petitioners in the High Court as well as the State have come  
up in these appeals. It is not necessary for us to elaborate all the material  
H facts and also the contentions advanced in the High Court. Suffice it to

state that the High Court of Patna in the impugned order dated November 21, 1995 in CWJC Nos. 2093/89 and 3072/90 directed the Government to identify the vacancies existing as on December 31, 1987 and available for appointment from among the candidates in the waiting list as recommended by the Public Service Commission to the Assistant Engineers (Civil). The High Court also found that the 200 posts earmarked by the Government in their resolution dated June 16, 1987 were intended for Engineers in Rural Engineering Organisation but the writ petitioners have no right to be appointed up to those posts from the wait listed candidates.

Shri Gopal Subramaniam, learned senior counsel appearing for the writ petitioners contended that since the Public Service Commission had rejected the request of the State Government to regularise the *ad hoc* employees holding these 200 posts in the Government Resolution dated June 16, 1987, those posts should be made available to the candidates who are wait listed. We find no force in the contention. It is seen that those 200 posts are meant to the Rural Engineering Organisation and not for Road/Building Construction and Public Works Department. Under those circumstances, the necessary consequence would be that those 200 posts should be made available for direct recruitment through the Public Service Commission and the eligible candidates would apply for and get the selection according to rules for appointment to those posts. It would be open to the *ad hoc* employees also to apply for direct recruitment and seek selection according to rules.

With regard to the direction given by the High Court to identify the existing vacancies as on December 31, 1987 as per the Resolution of the Government for being filled up by the wait listed candidates, we find no exception to the direction given by the High Court, on the peculiar facts in this case. It is true that the court cannot give direction to fill up vacancies from the waiting list after the lapse of one year. But in this case, the High Court had given exception to the principle. An interim direction given earlier to keep the waiting list alive was in operation till the disposal of the writ petition. The High Court has also found that on the basis of the material on record, it was not possible for the court to record any finding as to the number of vacancies existing as on December 31, 1987 so as to give direction to fill up those posts from the candidates available in the waiting list.

It is then contended for the State that a positive stand taken and the

- A material placed before the High Court was that the vacancies meant for the general candidates have already been filled up and that there were no vacancies existing as on that date. It is true that the State has taken that stand. But the High Court did not feel satisfied to accept the Government's contention that no posts were available for appointment. Under those circumstances, it would be for the Government to make afresh exercise to
- B identify where there exist vacancies meant either for general candidates or for the reserved candidates and, if so, how many of them do exist so as to fill up the vacancies, if so identified, from among the candidates from waiting list. If the Government finds that there are no vacancies existing, the Government would place a report in this behalf before the High Court
- C accordingly.

The appeals are dismissed with the above observations. No costs.

R.P.

Appeals dismissed.