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STATE OF BIHAR

v.

THE SECRETARIAT ASSISTANT SUCCESSFUL EXAMINEES
UNION 1986 AND ORS.

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OCTOBER 8, 1993

[M.N. VENKATACHALIAH, CJ AND DR. A.S. ANAND, J.]

Service Law

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Bihar State Subordinate Services—Appointment to the post of Assistants in the Secretariat—Candidates empanelled on the select list, Whether acquire a right of appointment.

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The Bihar State Subordinate Services Selection Board invited applications from unemployed Graduates for appointment to the post of Assistants in the Secretariat and other connected offices of the Government of Bihar in the vacancies up to the year 1985-86. 309 candidates out of those who had qualified in the examination were given appointments as against the 357 vacancies notified by the Government. Candidates securing more than 50 per cent marks in the general category and whose names were in the select list were empanelled and made to wait in anticipation of the release of further vacancies. The empanelled candidates represented to the State Government for appointment against the vacancies as available on the date of the publication of the result. The representation was rejected. The State Government, on 8.8.91 issued a letter to the Board to issue a fresh advertisement for appointment of Secretariat Assistants. The empanelled selectees who were not appointed filed a writ petition before the High Court seeking a direction to appoint them. The High Court directed the Board to fill up the vacancies up to 1991 from the list of selected candidates who were empanelled after the declaration of the result in 1990.

Disposing of the appeal, by special leave, [preferred] by the State, this Court.

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HELD: 1.1. A person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility for purposes of appoint-

ment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary. [138-C-D] A

1.2. In the instant case, the directions given by the High Court for appointment of the empanelled candidates according to their position in the merit list against the vacancies till 1991 was not proper. Since no examination has been held since 1987, persons who became eligible to compete for appointments were denied the opportunity to take the examination and the direction of the High Court would prejudicially affect them for no fault of theirs. [138-E-F] B

1.3. There is no justification for holding the examination two years after the publication of advertisement and declare the result almost three years after the holding of the examination for making selections. The callousness of the State has caused great hardship to the successful candidates. The State was expected not to act in such a leisurely manner and treat the matter of selection for appointment to services in such a causal manner. [138-F-H] C D

Shankarsan Dash v. Union of India, [1991] 3 S.C.C. 47 and *Sabita Prasad & Ors. v. State of Bihar & Ors.*, [1992] 3 Scale 361.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5298 of 1993. E

From the Judgment and order dated 11-10-91 of the Patna High Court in C.W.J. C.No. 2912/91.

P.P. Rao and B.B. Singh for the appellants. F

Govinda Mukhoty, A. Sharan, Anil Tiwary, S.P. Singh and Irshad Ahmad for the respondents.

The Judgement of the Court was delivered by

DR. ANAND, J. Leave granted. G

The Bihar State Subordinate Services Selection Board (hereinafter referred to as the 'Board') issued advertisement No.11/85 inviting applications from unemployed Graduates for appointment to the post of Assistants in the Secretariat and other connected offices of the Government of H

- A Bihar. It was stated in the advertisement the vacancies upto the year 1985-86 were to be filled up, after holding an examination. The number of vacancies, however, was not notified. The examination was held at different examination centers within the State in November, 1987. The result of the examination, however, was published only in July, 1990. Vide a communication dated 25.8.1997 issued by the Joint Secretary in the Department of Personnel and Administrative Reforms to the Secretary of the Board, the break-up of the vacancies in a tabulated form, indicating the total number of vacancies, as then existing, to be 357, was provided. On the recommendation of the Board dated 31.7.1990, 309 candidates out of those who had qualified in the examination were given appointments. Candidates securing more than 50 per cent marks in the general category and whose names were in the select list were empanelled and made to wait in anticipation of the release of further vacancies by the State. Since, the vacancies available upto 31.12.1988 were not disclosed or communicated to the Board despite enquiries, no further appointments could be made. Candidates who had applied for employment in response to the advertisement published in 1985 and were selected and empanelled after being brought on the select list in the order of their merit after the result was declared in 1990, found their expectations and hopes being belied and frustrated. They represented to the State Government for appointment against the vacancies as available on the date of the publication of the result. Their representation was rejected. On 8.8.1991 a letter was issued by the State Government requiring the Board to issue fresh advertisement for appointment of Secretariat Assistants and holding of fresh competitive examination. The aggrieved empanelled selectees, accordingly, approached the High Court of Patna through Civil Writ Petition No.291/91 seeking a direction to appoint them.
- D In the High Court a plea was raised by the writ petitioners that since normal practice and procedure being followed by the State over the years had been that the vacancies available *till* the date of the publication of the result were filled up by the candidates brought on the merit list, all the empanelled candidates on the select list were entitled to be appointed against the vacancies as existing on the date of the publication of the result in 1990. The plea of the State on the other hand was that though number of vacancies had arising during the period 1985-90 that fact alone could not clothe the empanelled candidates on the select list with any right to appointment or claim adjustment against the vacancies arising after 1988.
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- H The High Court noticed that there had been no fresh advertisement

after 1985; that the result of the examination held in 1987 was declared in 1990; that there were existing vacancies and that the empanelled candidates had been waiting in the wings all through for no fault of theirs expecting their appointments. The High Court, therefore, held: A

"Considering the peculiar circumstances of the present case, therefore, we quash Annexure 16 dated 8.8.1991 and in order to do justice between the parties and not to leave these young graduates, in lurch, we direct the Board to recommend the names of these petitioners in accordance with their seniority in the merit list for appointment on the posts of Secretariat Assistants in accordance with the existing vacancies as available on the date of publication of their result, i.e. July, 1990." B C

The High Court also directed the filling up of the vacancies upto 1991 from the list of selected candidates who had been empanelled after the declaration of the result in 1990. D

The State of Bihar has, through the present appeal, challenged the judgment of the High Court.

On 12.5.1992, after considering the facts and circumstances of the case and hearing learned counsel for the parties, we made the following order : E

"We are not in agreement with Mr. Rao's stand that the entire impugned judgment is erroneous and requires reconsideration. However, we do consider that notice should be issued asking the respondents to show cause as to why special leave may not be granted against that part of the judgment which directs all the vacancies upto 1991 to be filled up from the list of candidates who had appeared in the examination held in 1987 and why the impugned judgment may not be modified so as to remain operative with respect to the vacancies arising up to 31.12.88 only. Since the respondents are already appearing through counsel, they may get already with this aspect of the case. The case may be finally disposed of at the present state of found practicable. F G

There is some controversy with respect to the number of vacancies available upto 31.12.88. The parties may file further H

A affidavits dealing with this question."

We directed the stay of that part of the impugned judgment under which the State was obliged to fill up the vacancies which arose in the years 1989, 1990 and 1991. Directions were, however, issued by this Court on 12.5.92 to fill up the vacancies as existing till 1988 promptly.

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Counters and rejoinders have been filed but the confusion as regards the actual number of vacancies persists and there is a serious dispute between the parties on that score.

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In the view that we propose to take, we need not detain ourselves to sort out that wrangle or consider the elaborate submissions made at the bar.

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It is now well settled that a person who is selected does not, on account of being empanelled alone, acquire any indefeasable right of appointment. Empanelment is at the best a condition of eligibility for purposes of appointment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary. (See *Shankarsan Dash v. Union of India*, [1991] 3 SCC 47 and *Sabita Prasad & Ors. v. State in Bihar & Ors.*, [1992] 3 Scale 361).

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We are, therefore, of the opinion that the directions given by the High Court for appointment of the empanelled candidates according to their position in the merit list against the vacancies till 1991 was not proper and cannot be sustained. Since, no examination has been held since 1987, persons who became eligible to compete for appointments were denied the opportunity to take the examination and the direction of the High Court would prejudicially effect them for no fault of theirs. At the same time, due to the callousness of the State in holding the examination in 1987 for the vacancies advertised in 1985 and declaring the result almost three years later in 1990 has caused great hardship to the successful candidates. The State was expected not to act in the such a leisurely manner and treat the matter of selection for appointment to services in such a causal manner.

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We must record our unhappiness on this state of affairs. There is no justification for holding the examination two years after the publication of advertisement and declare the result almost three years after the holding of the examination and not issuing any fresh advertisement between 1985 and 1991 or holding examination for making selections. We expect the State

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Government to act in a better manner, at least, hereinafter and since Mr. Rao, and learned senior counsel has shared our concern and assured us of advising the State Government accordingly, we say no more on that aspect at this stage. A

Keeping in view the fact situation and the circumstances of the case and having been informed by Mr. P.P. Rao, the learned senior counsel appearing for the State that there are a large number of vacancies which are required to be filled up, the order which commends and appears appropriate to us is too modify the judgment of the High Court dated 11.10.91 by setting aside that part of the judgment which directs the filling up of the vacancies of 1989, 1990 and 1991 from out of the list of the candidates who had appeared in the examination held in 1987. We accordingly, set aside that portion of the judgment but uphold the judgment in all other respects including the filling up of the vacancies which existed till 31.12.1988. Further, with a view to do justice between the parties and balance the equities, we issue the following directions: B C

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- (i) That the appellant State of Bihar shall issue an advertisement inviting applications for the posts of Assistants within 4 weeks from the date of this judgment.
 - (ii) That the advertisement shall indicate the total number of vacancies actually existing and likely to arise in the cadre till 31.12.1993 which are required to be filled up. Thus, apart from the existing vacancies of 1989-1992 the probable vacancies till 31.12.93, shall also be included while indicating the number of vacancies to be filled up. E
 - (iii) That the age bar shall be relaxed in favour of candidates of the 1987 examination who had secured 40% or above marks in that examination, to enable them to appear in the fresh examination, if they so choose. F
 - (iv) That the selection process including the holding of the examination and publication of the select list shall be completed within a period of 9 months from the date of the publication of the advertisement/notification inviting applications. G
 - (v) That after the publication of the select list, the appointments H

A shall be made within 4 weeks from the date of the publication of the select list.

(vi) That, the rules relating to reservation etc. shall apply to the selections to be made.

B With the above modification and direction, the appeal is disposed of.
There shall be no order as to costs.

B.V.B.

Appeal disposed of.