

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION(CIVIL) NO(S). 798 OF 2020**

**SUBHASH KUMAR**

**...Petitioner(s)**

**VERSUS**

**THE STATE OF BIHAR & ORS.**

**...Respondent(s)**

**J U D G M E N T**

**Rastogi, J.**

The instant petition is directed against the order dated 23<sup>rd</sup> July, 2020 passed by the first respondent relegating the petitioner after serving as member of the Bihar Administrative service for almost 15 years to Bihar Education Service without affording an opportunity of hearing to him in alleged compliance of the order of this Court stated 23<sup>rd</sup> October 2019 in Civil Appeal No. 3307 of 2015 left with no option with the petitioner to approach this Court for redressal of his grievance.

2. The brief facts of the case led to filing of this petition are that Bihar Public Service Commission (hereinafter referred to as the “Commission”) published an advertisement dated 29<sup>th</sup> December, 2001 in various newspapers inviting applications from eligible candidates for conducting the 45<sup>th</sup> Combined Competitive Examination. The petitioner had participated in the selection process and after being finally selected and as per his placement in the order of merit, was appointed into Bihar Administrative Service vide order dated 21<sup>st</sup> March, 2005 and after successful period of probation, became a substantive member of Bihar Administrative Service (BAS).

3. Shri Baldeo Choudhary (respondent no. 5) had also participated along with the petitioner in the 45<sup>th</sup> Combined Competitive Examination held by the Commission pursuant to an advertisement dated 29<sup>th</sup> December 2001, could not succeeded in fulfilling his wishes to become a member of Bihar Administrative Service. He challenged his unsuitability held by

the Commission after almost four years of the process attain finality by filing a writ petition before the High Court of Patna in the year 2008 and finally succeeded in persuading the learned Single Judge vide judgment dated 19<sup>th</sup> March, 2012 in holding that an error has been committed by the Commission in evaluation of his answer script of Paper-II General Studies.

It may be noted that none of the selected candidates including the present petitioner who on their selection, being appointed and became member of Bihar Administrative Service, were impleaded as a party to the writ petition.

4. The order of the learned Single Judge dated 19<sup>th</sup> March, 2012 was the subject matter of challenge in Letters Patent Appeal filed at the instance of the Commission which came to be decided vide judgment dated 29<sup>th</sup> November 2012 wherein the Division Bench of the High Court of Patna moulded the relief granted by the learned Single Judge under its order dated 19<sup>th</sup> March, 2012. The relevant extract is reproduced hereunder:-

“We are alive that the writ petitioner has approached the Court after a considerable delay i.e. by the time the writ petition was filed, the result was declared and all appointments were made. We are, therefore, not inclined to grant relief to the writ petitioner with retrospective effect.

In the event after declaring the result as directed by the learned single judge, the writ petitioner, on account of his placement in the select list becomes entitled to appointment in a particular service: the writ petitioner will be appointed as such: but the writ petitioner will not be entitled to retrospective benefit. In other words, the writ petitioner will take seniority and other service benefits from the date of his appointment and not from any earlier date.”

5. The order of the Division Bench became the subject matter of challenge at the instance of the Commission before this Court in Civil Appeal No. 3307 of 2015 and while dismissing the appeal, this Court in its order dated 23<sup>rd</sup> October, 2019 ruled out the apprehension exhibited by the Commission and the extract of the order is reproduced hereunder:-

“It is brought to the notice of the Court by learned counsel for the respondent that had the respondent been selected in the examination in question, he would have been ranked second. The same is, however, disputed by learned counsel appearing for the Commission. Be that as it may, it is brought to the notice of this Court that the respondent is already working in the Sales Tax Department of the State. Having regard to the totality of facts and circumstances of the case, interest of justice would be met in case the respondent is declared qualified

to be appointed from the date of the judgment of the Division Bench, i.e. from 29<sup>th</sup> November, 2012. From that day onwards, the respondent should be given notional benefits of service such as continuity of service, increments etc. Since the respondent is already in service, he is not awarded any salary. Since, now he stands qualified for appointment, the State shall consider the respondent's case for appointment on a suitable place and pay him salary. The process shall be completed within a period of three months from this day and the salary will be paid from the date of his joining the duty.”

The bare reading of the order passed by the Division Bench which has been confirmed by this Court with a clarification under its order dated 23<sup>rd</sup> October, 2019 remained restricted to revise the placement of original writ petitioner (Baldeo Choudhary) who was aggrieved of his own rights in reference to the alleged error which had been committed in proper evaluation of his answer script for his placement in the select list published by the Commission pursuant to which the appointments were made in reference to an advertisement dated 29<sup>th</sup> December, 2001 and this Court taking note of the apprehension which was intended by the Commission, made a clarification that the appointment pursuant to a judgment of the Division Bench of the High Court has to be offered to the writ petitioner (Baldeo Choudhary) w.e.f. 29<sup>th</sup> November 2012

(i.e. date of Judgment of the Division Bench) with notional benefits of service such as continuity of service, increment, etc. as he was already in service, no salary for the interregnum period be awarded to him.

6. The Commission under the guise of the order of this Court dated 23<sup>rd</sup> October, 2019 revised the recommendations of 45<sup>th</sup> Combined Competitive Examination held pursuant to an advertisement dated 29<sup>th</sup> December, 2001 and forwarded it to the Government of Bihar, Patna vide letter dated 4<sup>th</sup> May, 2020 while placing the original writ petitioner (Baldeo Choudhary) in the revised recommendations at Sl. No. 2 and displacing the petitioner relegating his placement from Bihar Administrative Service to Bihar Education Service. In furtherance thereof, the State Government vide its order dated 23<sup>rd</sup> July, 2020 relegated the petitioner to Bihar Education Service on a justification being tendered that action has been taken in compliance of the order of this Court dated 23<sup>rd</sup> October, 2019 which is a subject matter of challenge at the instance of the petitioner in the instant proceedings.

7. Learned counsel for the petitioner submits that petitioner has no demur regarding appointment of Baldeo Choudhary who has finally succeeded in his own rights on dismissal of the appeal preferred by the Commission before this Court in Civil Appeal No.3307 of 2015 but he is aggrieved of relegating his cadre from Bihar Administrative Service to Bihar Education Service after he had rendered almost 15 years' of service who was neither arrayed as a party to the writ petition nor been heard at any stage, is in violation of the principles of natural justice and in disregard of the order of this Court dated 23<sup>rd</sup> October, 2019.

8. Learned counsel further submits that this Court under its order dated 23<sup>rd</sup> October, 2019 confined consideration for appointment of Baldeo Choudhary in his own rights w.e.f. 29<sup>th</sup> November, 2012 but the directions of this Court have been completely misread by the authorities and the wholesome revision of the merit list has been undertaken by the Commission which was never intended by this Court in its order dated 23<sup>rd</sup>

October, 2019 disturbing the cadre allotment of the persons who were selected on the recommendation made by the Commission held pursuant to an advertisement dated 29<sup>th</sup> December, 2001 and rightly so, since none of them was arrayed as party to the writ petition nor been heard and further submits that overturning the select list after 15 years and passing of an order dated 23<sup>rd</sup> July, 2020 having adverse civil consequences without hearing the person is indeed in violation of principles of natural Justice and such action of the respondents in the given facts and circumstances at least qua the petitioner is not sustainable in law.

9. Per contra, learned counsel for the respondents, while supporting the order impugned, submits that the commission has no option but to revise the select list in compliance of the order of this Court dated 23<sup>rd</sup> October, 2019 after placing Baldeo Choudhary at his place in the order of merit and in consequence, the petitioner being last in the open category in Bihar Administrative Service, rightly relegated from Bihar Administrative Service to Bihar Education Service vide order



dated 23<sup>rd</sup> July, 2020 and submits that their action being in compliance of the order of this Court needs no interference.

10. We have heard the learned counsel for the parties and with their assistance perused the material available on record.

11. This Court was conscious of the fact that although the Division Bench of the High Court in its judgment dated 29<sup>th</sup> November, 2012 moulded the relief confined to the writ petitioner Baldeo Choudhary as his case is *sui generis*, disturbing the select list which was recommended by the Commission of the candidates who had participated in the 45<sup>th</sup> Combined Competitive Examination held pursuant to an advertisement dated 29<sup>th</sup> December, 2001 after serving for almost 15 years in their respective cadre assigned by the State Government will not be in the interest of justice. But as the Commission had an apprehension in implementing order of the Division Bench dated 29<sup>th</sup> November, 2012, this Court ruled out the apprehension and

made a further clarification under its order dated 23<sup>rd</sup> October, 2019.

12. In the given circumstances, what was required for the respondents was to place the writ petitioner (Baldeo Choudhary) at the appropriate place in the select list which was recommended by the Commission in reference to 45<sup>th</sup> Combined Competitive Examination and to be considered for appointment to a particular service to whom he was suitable as per his revised placement in the select list with seniority and other notional benefits of service including continuity of service, increment, etc., to which he was entitled for in compliance of the order of this Court dated 23<sup>rd</sup> October, 2019.

13. We find justification in what being contended by learned counsel for the petitioner to hold that relegating the petitioner to Bihar Education Service after he had rendered 15 years of service as member of the Bihar Administrative Service entail adverse civil consequences and indeed the order impugned dated 23<sup>rd</sup> July,

2020 could not have been passed by the respondents without affording him an opportunity of hearing and is in violation of the principles of natural justice.

14. The defence which has been tendered by the respondents in their counter affidavit that impugned action has been taken in compliance of the order of this Court dated 23<sup>rd</sup> October, 2019 which in our view is completely misplaced and this Court under its order dated 23<sup>rd</sup> October, 2019, left no manner of doubt in its implementation and there was no justification left for the Commission to hold an exercise and revise the select list of 45<sup>th</sup> Combined Competitive Examination held pursuant to the advertisement dated 29<sup>th</sup> December, 2001 and acted upon in 2005 after a lapse of 15 years at the same time the case of Baldeo Choudhary being *sui generis* was to be considered for appointment w.e.f. 29<sup>th</sup> November, 2012 in terms of the revised recommendations made by the Commission qua him without disturbing the cadre/seniority of the persons including the petitioner in Bihar Administrative Service to which he was otherwise entitled for in compliance of the order of this Court

dated 23<sup>rd</sup> October, 2019 assigning him seniority and the consequential benefits etc. w.e.f. 29<sup>th</sup> November, 2012.

15. The respondents in our view, were not at all justified in passing of the order impugned dated 23<sup>rd</sup> July, 2020 which was neither observed by the Division Bench of the High Court nor expressed by this Court in its order dated 23<sup>rd</sup> October, 2019 relegating the petitioner from Bihar Administrative Service to Bihar Education Service after he had rendered 15 years' of substantive service in the cadre of Bihar Administrative Service.

16. Consequently, in our considered view, the writ petition deserves to succeed and is accordingly allowed and the order impugned dated 23<sup>rd</sup> July, 2020 qua the petitioner is hereby quashed. No costs.

.....**J.**  
**(L. NAGESWARA RAO)**

.....**J.**  
**(HEMANT GUPTA)**

.....**J.**  
**(AJAY RASTOGI)**

**NEW DELHI**  
**November 17, 2020**