IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6073 of 2014

CNR No. BRHC010814102014

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Bihar Public Service Commission Through its Secretary, 15, Bailey Road, Jawaharlal Nehru Marg, P.S.- Sachiwalay, Patna-800001

... ... Petitioner/s

Versus

1. Bihar State Minorities Commission through Its Chairman, Old Secretariat, Patna- 800015.
2. Member Secretary, Bihar State Minorities Commission, Old Secretariat, Patna - 800015
3. Motiur Rehman Ansari Son of Late Mohammad Siddique Ansari Resident Of Village - Akhiyarpur, P.O. And P.S. - Garkha, District - Siwan
4. The Chief Secretary, Government of Bihar, Patna
5. The General Administration Department, Through Its Principle Secretary, Government Of Bihar, Patna
6. The Principle Secretary The General Administration Department, Government of Bihar, Patna

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. K.K. Jha, Sr. Advocate
Mr. Anish Kumar, Advocate
For the Respondent/s : Mr. Md. Nadim Seraj, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 02-11-2026

Despite paper publication notice, no one appears on behalf of Respondent No. 3.

2. Heard Mr. K.K. Jha, learned senior counsel assisted by Mr. Anish Kumar, learned counsel for the petitioner/BPSC and Mr. Md. Nadim Seraj, learned counsel for the Bihar State Minorities Commission (hereinafter referred to as "Commission").

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3. The present writ petition has been filed for the following reliefs:

> *"(i) quashing of the order dated 30.12.13 issued vide ref. no. 435 dated 30.12.13 passed by Learned Member, Bihar State Minorities Commission, Md. Shamshad Alam (Advocate) in M. Case No. 225/13 whereby and where under the Learned Member has exceeded its jurisdiction directing the Bihar Public Service Commission, Bihar, Patna to take decision and make recommendation to the Science and Technology Department to appoint Respondent no.3 in derogation of the order dated 13.3.12 passed in CWJC no.8411 of 2007.*
>
> *(ii) For grant of any other incidental, consequential or other appropriate relief / reliefs to which the petitioner may be found entitled in the facts and circumstances of the case."*

4. Learned counsel for the petitioner/BPSC submits that the petitioner/BPSC is an autonomous constitutional body created under Article 315 of the Constitution of India to carry on its functions independently, fairly and impartially for which it is constituted of persons of high integrity and qualification. The purpose of creating such autonomous body is to maintain democratic system for appointing civil servants solely on the basis of merit and open competition, only so that they could carry on administration independently and impartially.

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5. Learned counsel for the petitioner/BPSC submits the petitioner/BPSC has been empowered by article 320 of the constitution of India to conduct the examination for selection for appointment to the public services of the state, to convene departmental promotion committee meetings for promotion of Public Servants (Gazetted), to recommend punishment to the Government regarding delinquent Public Servants (Gazetted) and to also give advice to the Government in matter of public service whenever is required.

6. The present case relates to the Advertisement No. 26 of 1999. The same was published in the light of the request made by the Science & Technology Department, Bihar, Patna vide its Requisition letter no. 999 dated 21.04.1999. The petitioner/BPSC was requested to make available the recommendation of suitable candidates by effecting due selection process against the reported 5 vacancies of the Assistant Professor (Physics) in Engineering Colleges of Bihar.

7. Learned counsel for the petitioner/BPSC submits that the respondent No. 3 had applied against the advertised post as mentioned aforesaid. Meanwhile there was division of the State and as such the petitioner/BPSC requested the Science & Technology Department, Government of Bihar, Patna to make

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available the revised requisition vide petitioner's letter No. 2492 dated 22.01.2001, but the same was not made available to the Commission (petitioner) till the publication of the result. The P.T./Screening Test for suitable candidates was held on 24.02.2002. The Respondent No. 3 was declared successful in the screening test and called for interview on 09.09.2002. Merit list was prepared by adding the total marks achieved on the basis of the academic records in accordance with the prescribed norms and the interview marks. Finally the result of successful candidates was published on 21.09.2002 as per the earlier requisition of the Science & Technology Department, Bihar.

8. Learned counsel for the petitioner/BPSC submits that the petitioner/BPSC vide its letter No. 68 dated 19.10.2002 sent the recommendation of the successful candidates for appointment to the post of Assistant Professor (Physics) to the concerned department. The name of respondent No. 3 was not recommended because he was placed lower in the merit list. He further submits the respondent No. 3 has filed a representation to the petitioner-Commission that the name of one candidate namely, Sri Janardan Prasad Mahato has been recommended against the reserved category, though he has made declaration in his application of being a resident of Jharkhand. Notification for

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appointment of all the recommended candidates was issued by the Science & Technology Department vide memo No. 1652 dated 14.10.2004. Despite number of reminders, Sri Janardan Prasad Mahato did not join the post in question. The concerned department has cancelled his appointment vide memo No. 1093 dated 31.05.2006.

9. Learned counsel for the petitioner/BPSC submits that the respondent No. 3 intimated the petitioner/BPSC that one post of Assistant Professor (Physics) in Engineering College is vacant under category 04 (EBC) due to cancellation of the appointment of Sri Janardan Prasad Mahato. Respondent No. 3 also requested to recommend his name for appointment taking into consideration whatever was said in his representation. The petitioner/BPSC vide its letter No. 124 dated 07.10.2006 decided to take consent of the concerned department to recommend it against the said vacant post of category 04 (EBC), which was vacant due to cancellation of appointment of Sri Janardan Prasad Mahato.

10. Learned counsel for the petitioner/BPSC submits that it is pertinent to mention here that the respondent No. 3 has secured only 96.04 marks which is less than one Sri Ravindra Lal who has secured 99.86 marks. That is why the

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name of respondent No. 3 was not recommended for the post in question. The respondent No. 3 had filed C.W.J.C. No. 8411 of 2007 for quashing the recommendation letter No. 190 dated 09.02.2007. The aforesaid writ petition was disposed of vide order dated 13.03.2012 with the direction to the petitioner (herein respondent No. 3) to represent before the Principal Secretary, Science & Technology Department of State Government of Bihar. The respondent No. 3 represented before the Principal Secretary, General Administration Department, Government of Bihar, Patna vide his representation dated 26.03.2012 enclosing the order dated 13.03.2012 passed in C.W.J.C. No. 8411 of 2007. The same was rejected vide order dated 28.09.2012. The Respondent No. 3 has filed contempt petition bearing M.J.C. No. 4761 of 2012 for non-compliance of the aforesaid order dated 13.03.2012 passed in C.W.J.C. No. 8411 of 2007. The aforesaid contempt petition was disposed of vide order dated 28.09.2012 with liberty to the petitioner to challenge the same. The Respondent No. 3 has challenged the same in C.W.J.C. No. 11749 of 2013. In the meantime, the respondent No. 3 has filed complaint dated 29.05.2013 before the Minorities Commission requesting to issue direction to fill up the vacancy arising due to non-joining of the candidate for

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the post of Assistant Professor in the Most Backward Category pursuant to Advertisement No. 26 of 1999.

11. The Minorities Commission registered M. Case No. 152 of 2013 and issued notice dated 13.06.2013 in exercise of power under Section 6(e) of the Bihar State Minorities Commission Act, 1991. The Minorities Commission took cognizance of letter No. 2342 dated 27.11.2006 of the Science & Technology Department, Government of Bihar, Patna and held that the Bihar Public Service Commission is making discrimination in the selection of minority candidate. The Minorities Commission also directed the petitioner-Commission to decide the case of the respondent No. 3 by 30.06.2013 and inform the Minorities Commission by 15.07.2013. The Commission as well as Science & Technology Department had clarified the factual aspect of the issue to the learned Minorities Commission and informed that the claim of the respondent No. 3 is unconstitutional and not acceptable.

12. Learned counsel for the petitioner/BPSC submits that considering the replies of the petitioner/BPSC and Director, Science & Technology Department, Bihar, Patna, the learned Member, Minorities Commission, Bihar, Patna vide impugned letter No. 434 dated 30.12.2013 directed the

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petitioner/BPSC to take decision and make recommendation to the appointing department to appoint respondent No. 3.

13. The learned Minorities Commission vide its letter No. 18 dated 29.01.2014 also issued reminder notice to the petitioner/BPSC wherein the learned Minorities Commission is insisting to comply order dated 30.12.2013.

14. Learned counsel for the petitioner/BPSC submits the learned Minorities Commission had no jurisdiction to entertain the complaint of the private respondent and issue direction to the petitioner in the matter of public appointments as the Minorities Commission is recommending body to the Government only. The learned Minorities Commission has no jurisdiction to act as super adjudicatory body in the facts and circumstances of the case.

15. Apart from that, a counter affidavit has been filed on behalf of the Respondent No. 2 of which relevant paragraphs are extracted hereinbelow:-

> *"5. That at the outset it is submitted that the action and omission of Learned Member, Bihar State Minorities Commission, Md. Shamshad Alam (Advocate) in passing the order impugned is uncalled for and unwarranted and the answering respondents are not at all endorsed the same, rather the order impugned has been passed by the Learned Member, Bihar State Minorities*

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Commission, Md. Shamshad Alam (Advocate) in his individual capacity and has never been brought into the notice of the answering respondents which is apparent from the recitation of the order as the same is dispatched by Learned Member, Bihar State Minorities Commission, Md. Shamshad Alam (Advocate) himself on his letter head and neither the Bihar State Minorities Commission (herein after referred for the sake of brevity as 'Commission') nor the Chairman has given their consent in issuance of the impugned order.

6. That it is further submitted that the reference of file number given by the Learned Member, Bihar State Minorities Commission, Md. Shamshad Alam (Advocate) has not even found in the Office of the Commission and it appears that the so-called file has been opened by the Learned Member, in his individual capacity and the same against the settled rule of Minorities Commission Act, 1991.

7. That it is further submitted that under the Minorities Commission Act, 1991 the Commission is vested with certain work as provided under Section 5 and the same does not gives power to any of the person much less the answering respondents to act against the said Act/Rules.

8. That it is further submitted that the Learned Member, Bihar State Minorities Commission, Md. Shamshad Alam (Advocate) has violated the rules provided under the Act, 1991 because of the fact that Section 8 of the Act, 1991 clarifies that the Commission shall not investigate into any such matter which is pending before any Court or Tribunal or Quasi Judicial body and in other words the order impugned has been issued in an individual capacity by the Learned Member,

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Bihar State Minorities Commission, Md. Shamshad Alam (Advocate) of which the Commission has no endorsement, therefore, the order under challenge issued by the Learned Member, Bihar State Minorities Commission, Md. Shamshad Alam (Advocate) is not legal, valid and justified in law and in this regard file noting has been forwarded and is accepted by the answering respondents under order dated 21.08.2014.

9. That it is not out of place to submit that on earlier occasion, some Members issued certain directions/orders without the authority of respondent no.1, than a letter no.208 dated 13.12.2013 was issued by the Principal Secretary, Minority Welfare Department addressed to all the Departmental Heads besides all Commissioners, District Magistrates and Police Superintendents with request not to take cognizance of any direction/order issued by any Member of the Commission.

10. That it is further stated and submitted that the factual position in the matter is this that the Learned Member, Bihar State Minorities Commission, Md. Shamshad Alam (Advocate) has not been vested with any power or authority to issue such order or direction on his behalf being Member of the Commission or on behalf of the Commission and as such the answering respondents are not supporting the order impugned rather prays for quashing of the same in the interest of justice.

11. That besides above, the memo no.2312 dated 28.09.2012 has been assailed by the respondent no.3 in an independent writ application bearing CWJC No.11749/2013 pending adjudication by the Hon'ble Court and despite this fact the order dated 30.12.2013 passed in Misc Case No.225/2013 by the Learned Member is bad in law and hence the Hon'ble Court may pass necessary

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order."

16. Having heard learned counsel for the parties and the stand taken by the Bihar State Minorities Commission in the counter affidavit, it transpire that the letter issued by the Minorities Commission by Md. Shamshad Alam (Advocate) in his individual capacity and without the consent of the Chairman of the Minorities Commission and the file in question opened by the learned Member in his individual capacity which is against the settled law of Minorities Commission Act, 1991. Apart from aforesaid, Section 8 of the Act, 1991 clarifies that the Minorities Commission shall not investigate into any such matter which is pending before any Court or Tribunal or Quasi-Judicial Body. In other words, the order impugned has been issued in an individual capacity by the learned Member, Bihar State Minorities Commission, Mohammad Shamshad Alam (Advocate). The learned Member, Bihar State Minorities Commission, Mohammad Shamshad Alam (Advocate) has not been vested with any power or authority to issue such order or direction on his behalf being member of the Commission or on behalf of the Commission, and as such the Minorities Commission is not supporting the order impugned which was issued by the respondent No. 3, learned Member, Bihar State

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Minorities Commission, Mohammad Shamshad Alam, Advocate.

17. In view of aforesaid facts and circumstances, order dated 30.12.2013 is hereby set aside and the present application stands allowed.

18. Pending application(s), if any, shall also stand disposed of.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.11.2026
Transmission Date	NA

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