



2026:PATHC:38676

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7137 of 2018

Saiyad Ali Ansari S/o Salamatula Ansari, Resident of Village- Murlipur, P.O.-
Baddi, P.S.Block- Shivsagar, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home,
Govt. of Bihar, Patna
2. The Chairman, Bihar Public Service Commission, 15, Jawaharlal Nehru
Marg Bailey Road, Patna- 80000
3. The Secretary, Bihar Public Service Commission, Jawaharlal Nehru Marg
Bailey Road, Patna- 800001.
4. The Director, The Directorate of Prosecution, Home Department, Patna Old
Secretariat, Govt. of Bihar
5. The Principal Secretary, General Administrative Department, Old
Secretariat, Govt. of Bihar at Patna
6. Rajesh Kumar, S/o Rameshwar Prasad, Resident of Village- Malbigaha, P.O.-
Kaliachak, P.S.- Hilsa, District- Nalanda, Pin- 801302.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kuber Pathak, Advocate
For the State	:	Mr. Pratik Kumar, AC to GA 11
For the BPSC	:	Mr. Sanjay Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 23-04-2026

Heard Mr. Kuber pathak, learned counsel for the
petitioner and Mr. Pratik Kumar, learned AC to GA-11 and Mr.
Sanjay pandey, learned counsel for the Bihar Public Service
Commission (hereinafter referred as "BPSC").

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

*"1. For directing the respondent BPSC and its
officials to publish the result of the petitioner being a*





successful candidate against post of Asst. Prosecution Officer, which is still vacant due to non-joining of a successful candidate on the post of Asst. Prosecution Officer, in post published vide advertisement No. 42 of 2011, issued from Home Department, Govt. of Bihar.

II. For directing the respondents to accept the joining of petitioner being successful candidate against the post of Asst. Prosecution Officer, Home Department Govt. of Bihar against Adv. 42 of 2011.

III. For granting any other relief or reliefs for which the petitioner is entitled for."

3. Learned counsel for the petitioner submits that pursuant to Advertisement No. 42 of 2011 for the post of Assistant Prosecution Officer, Government of Bihar (hereinafter referred as "APO"). The petitioner had appeared and cleared the written test and appeared for the interview. Learned counsel for the petitioner submits that it is pertinent to mention here that the said Advertisement No. 42 of 2011 was only for the vacancy of 80 seats and total number of candidates participated in the interview were only 80. Out of 80 seats, only 75 candidates have finally selected. The final result was published on 14-06-2017 (Annexure-3). Learned counsel for the petitioner further submits that in the said advertisement, 14 seats have been reserved for the post of Extremely Backward Class, and against these 14 seats, finally 14 candidates have been declared successful on 14-06-2017 for the post in question. He further





summits, that private respondent namely Rajesh Kumar has also appeared in the said examination for the post in question conducted by the BPSC against Advertisement No. 41 of 2011 and he also appeared for the examination of BPSC for the post in question against Advertisement No. 42 of 2011 and he was declared successful in both the examination i.e, Advertisement No. 41 of 2011 and Advertisement No. 42 of 2011. Learned counsel for the petitioner submits that the said Rajesh Kumar has joined the post in question against the selection under the extremely backward class towards Advertisement No. 41 of 2011 and due to his joining in Advertisement No. 41 of 2011, one post advertised in the Advertisement No. 42 of 2011 became vacant. He further submits that the petitioner and private respondent both belong to Extremely Backward Class and due to which respondent no. 6 joined the post in Advertisement No. 41 of 2011 was against EBC category. As a result, one post of the EBC category became vacant in vacancy existed towards Advertisement No. 42 of 2011. The said private respondent has obtained total 503 marks in Advertisement No. 42 of 2011 and petitioner got 498 marks and he is the only candidate left in EBC category.

4. Learned counsel for the state as well as learned





counsel for the BPSC have filed their respective counter affidavit as well as supplementary counter affidavit stating therein that the petitioner had applied for the advertisement in question for the post of Assistant Prosecution Officer. The roster of reservation wise vacancy was General (01)-40, SC (02)-14, ST (03)-00, EBC(04)-14, BC (05)-10 and BCL (06)-02 total- 80 and out of total 80 posts/vacancies, 3% were admissible for the disabled candidates. Petitioner has applied under the EBC (04) category and he could not be declared successful finally because petitioner has secured only 498 marks which is less than cut off marks i.e., 503 of his reserved category i.e., EBC(04). The final result was published on 14-06-2017 and five vacancies (BC-3 & BCL-2) remained vacant due to unavailability of the suitable candidates and now the selection process is over. In fact the petitioner had applied for Advertisement No. 39 of 2009, Advertisement No. 41 of 2011 and Advertisement No. 42 of 2011 but he could not be finally selected and so far as the Advertisement No. 42 of 2011 is concerned (subject matter of the writ petition), the petitioner did not find any place in the selection list. Learned counsel for the BPSC further submits that so far as the vacancy of the seat due to non-joining is concerned, there is resolution bearing Memo No. 2374





dated 16-06-2017 issued by the Department of Personnel & Administrative Reform, Government of Bihar whereby as per Clause-3 (16), it provides that due to non-joining within the stipulated time or due to any reasons, vacant seat would be carried forward for next requisition/advertisement. He further submits that due to Resolution dated 16-07-2007, there is no provision for keeping the vacant seat as it is carried forward to next requisition/advertisement.

5. Learned counsel for the BPSC further submits that a letter no. 53 dated 04-04-2005 of BPSC was sent to the Additional Chief Secretary, Department of Home, Bihar for informing the Commission whether the post in question was carried forward to the next advertisement or not. He further submits that vide letter No. 900 dated 09-04-2025 of the Department of Home, Directorate of Prosecution, Government of Bihar as received by the BPSC, the Government of Bihar has informed that post remained vacant in Advertisement No. 42 of 2011 (subject matter of the writ petition) had been carried forward to the next vacancy through Advertisement No. 1 of 2020. The letter dated 09.04.2025 is reproduced hereinbelow:-





पत्रांक. अ0नि0 (01) 04 / 2024 / स्था0.....900

**बिहार सरकार
गृह विभाग
अभियोजन निदेशालय**

मुख्य सचिवालय, ब्लॉक-2, द्वितीय तल, पटना-15।

प्रेषक,

प्रभारी निदेशक,
अभियोजन निदेशालय,
बिहार, पटना।

सेवा में,

सचिव
बिहार लोक सेवा आयोग,
पटना।

पटना, दिनांक.....9/4/25

विषय:-

CWJC No- 7137/2018, Saiyad Ali Ansari Vrs. The State of Bihar & Ors. में दिनांक 19.03.2025 को पारित न्यायादेश के अनुपालन के सम्बन्ध में

प्रसंग:-

आपका पत्रांक 53 दिनांक 04.04.2025

महाशय,

उपर्युक्त विषयक प्रासंगिक पत्र के संबंध में कहना है कि विज्ञापन संख्या- 42/2011, सहायक अभियोजन पदाधिकारी प्रतियोगिता परीक्षा में रिक्त पदों को अगली अध्यायना में अग्रणीत कर लिया गया है तथा इस पद पर विज्ञापन संख्या- 01/2020 के माध्यम से नियुक्ति कर लिया गया है।

कृपया सूचनार्थ।

विश्वासभाजन

[Signature]
09.4.25
प्रभारी निदेशक।

ज्ञापक पत्रांक अ0नि0(01) 04 / 2024 / स्था0.....900/

दिनांक.....9/4/25/

प्रतिलिपि:-

1. अपर मुख्य सचिव, गृह विभाग, बिहार, पटना के विशेष कार्य पदाधिकारी को सूचनार्थ प्रेषित।
2. सचिव, गृह विभाग, बिहार, पटना के आप्त सचिव को सूचनार्थ प्रेषित।

[Signature]
09.4.25
प्रभारी निदेशक।





6. Having heard learned counsel for the parties and perused the material available on record, it appears that the petitioner had applied for the post in question and he has obtained only 498 marks (EBC-04) and last selected candidate has obtained 503 marks (EBC-04) which is higher than that of petitioner. It is also clear that the vacancy which was not filled in the Advertisement No. 42 of 2011 is carried forward in the next vacancy i.e., Advertisement No. 1 of 2020 in terms of resolution bearing Memo No. 2374 dated 16-06-2017 and now the selection process is over and no vacancy is remained vacant.

7. In view of the aforesaid, no case is made out for interference of this Court.

8. Accordingly, the present writ petition stands dismissed.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01.05.2026
Transmission Date	N.A.

