

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16332/2012

(From the judgement and order dated 16/02/2012 in CWJC No.19346/2010 of  
The HIGH COURT OF PATNA)

SUBODH KUMAR

Petitioner(s)

VERSUS

STATE OF BIHAR & ORS.

Respondent(s)

(With prayer for interim relief and office report )

WITH SLP(C) NO. 33090 of 2012  
(With office report)

Date: 16/09/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR  
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Petitioner(s)

Mr. Fakhruddin, Sr.Adv.  
Mr. Lalit Jha, Adv.  
Mr. Raj Kishore, Adv.  
Mr. Aftab Ali Khan,Adv.

For Respondent(s)

Mr. Navin Prakash,Adv.  
  
Mr. Ardhendumauli Kumar Prasad,Adv.

Mr. Abhishek Singh, Adv.  
Mr. Samir Ali Khan, Adv.

UPON hearing counsel the Court made the following  
O R D E R

S.L.P.(C) No. 16332/2012  
Leave granted.  
The appeal is disposed of in terms of the signed order.  
S.L.P.(C) No. 33090/2012

Leave granted.

-2-

The appeal is disposed of in terms of the signed order.

(Sukhbir Paul Kaur)  
Court Master

(Indu Bala Kapur)  
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8358 OF 2013  
(Arising out of S.L.P.(C) No.16332 OF 2012)

|SUBODH KUMAR

|Appellant(s) |

Versus

|STATE OF BIHAR AND OTHERS

|Respondent(s) |

W I T H

CIVIL APPEAL NO.8359 OF 2013  
(Arising out of S.L.P.(C) No.33090 OF 2012)

VINIT PRAKASH

Appellant(s)

Versus

STATE OF BIHAR AND OTHERS

Respondent(s)

O R D E R

S.L.P.(C) No. 16332 of 2012

Leave granted.

Admittedly, the appellant was at No.1 of the waiting list. The

last candidate selected, however, did not join. The appellant, therefore, sought appointment in place of the candidate who had not joined. The claim was rejected by the respondents on the ground that there is no wait list and the recommendations by the Commission are made only with respect to the number of vacancies. The vacancy that occurred due to non joining of the selected candidate has to be carried forward, under the executive instructions contained in Memo No.

-2-

3/RI-302/77/Ka110018 Patna-15, dated June 17, 1977 and Memo No. 3/M/63/2005 Ka-2374 Patna dated July 16, 2007. It is reiterated that therefore, the appellant does not have any legal right to claim an appointment. In any event there is no vacancy on which the appellant can be accommodated.

We are of the considered opinion that in view of the aforesaid instructions, the appellant, strictly speaking, may not have a legal right. However in equity, the respondents certainly ought to consider the claim made by the appellant without treating the said consideration as a precedent.

We dispose of this appeal with a direction to the respondent-State to consider the appellant for appointment on the post which was left vacant as the last candidate selected had not joined.

It is made clear that the aforesaid order is made in the peculiar facts and circumstances of the case and shall not be treated as a precedent.

With the above observations, this appeal is disposed of.

S.L.P.(C) No. 33090 of 2012

Leave granted.

In this appeal, the impugned order is based on a decision of the High Court, which is the subject matter

-3-

of Civil Appeal No.8358/2013 arising out of S.L.P.(C) No. 16332 of 2012. The said appeal has been disposed of by a separate detailed order. Accordingly, this appeal is also disposed of in terms of the order passed in Civil Appeal No.8358/2013 arising out of S.L.P.(C) No. 16332 of 2012.

.....J.  
(SURINDER SINGH NIJJAR)

.....J.  
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

New Delhi,  
September 16, 2013