

PETITIONER:  
BIHAR PUBLIC SERVICE COMMN. & ANR.

Vs.

RESPONDENT:  
STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 22/11/1996

BENCH:  
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

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

PATTANAIK, J.  
Leave granted.

This appeal by special leave is directed against the judgement of the Patna High Court dated 26th September, 1994 passed in CWJC No. 379 of 1993.

The short facts of the case are that the Bihar State Subordinate Services Selection Board was constituted by the Government of Bihar on 20th April, 1981 for selecting candidates and recommending their names to various posts in class-III in various departments of the Government. On 13th May, 1987 the said Selection Board issued an advertisement inviting applications from eligible candidates is the prescribed proforma and the last date for receipt of the applications was 6th June, 1987. The Board conducted a written examination on 27/28th February, 1988 and the result of the written exhumation was announced on 7th April, 1991. Candidates were required to appear for physical test on 21st April, 1991. A list of 199 successful candidates was placed on the Notice Board on 17th May, 1991. Out of the said list names of 26 persons were recommended for being appointed as Assistant Jailor to the Inspector General, prisons on 17th July, 1991. The Government of Bihar issued a resolution on 22nd October, 1991 deciding to abolish the Subordinate Service Selection Board and the job of the Subordinate Services Selection Board was entrusted to Bihar Public Service Commission. It was however, indicated in the said resolution that the examination which has already been conducted by the Board, the result thereof will be published by 27th February, 1992 and thereafter, all personnels and assets of the Board shall be deemed to have been transferred to Bihar Public Service Commission. On 6th December, 1991 on the recommendation of the Service Selection Board 11 persons were appointed as Assistant Jailor and again on 20th December, 1991, 4 persons were appointed to the said post of Assistant Jailor. The Service Selection Board published a revised list of successful candidates containing 238 candidates on 28th February, 1992. The government of Bihar in the Personnel & Administrative Reforms Department found that while recommending the names for appointment, the

Service Selection Board is not adhering to the roster point and, therefore, under the order of the Government the Inspector General of prisons wrote a letter to the Service Selection Board on 29th February, 1991 requesting the Board to recommend 8 Scheduled Castes and Scheduled Tribes candidates for being appointed as Assistant Jailors. The Board recommended 15 candidates by its letter dated 4th March, 1992 but the said recommendation did not contain the names of Scheduled Castes and Scheduled Tribes persons. The respondent's name was included in the said list submitted on the 4th March, 1992. The Inspector General of prisons by this letter dated 8th May, 1992 did not act upon the said list and again requested the Board to send Scheduled Castes and Scheduled Tribes candidates. As the respondent could not be appointed, he filed a writ petition in the High Court alleging therein that persons securing less marks and occupying position below him have been appointed else where and yet he has not been appointed and, therefore, sought for issuance of a writ of mandamus. By the impugned order the High Court having directed the Public Service Commission and the State to consider the case of the respondent for appointment against a vacant post of Assistant Jailor or any other equivalent post, the present appeal has been preferred.

During the pendency of the writ petition filed by the respondent, in another proceeding registered as CWJC No. 1412 of 1992 several allegations of favouritism and nepotism having been made against the Service Selection Board, a Bench of the Patna High Court had appointed Shri S.N. Biswas, Commissioner & Secretary to the Government, Department of Personnel and Administrative Reforms to enquire into the correctness of the allegations made pertaining to the examination conducted by the Bihar State Service Selection Board and submit a report to the court. Said Shri S.N. Biswas pursuant to the aforesaid order of the High Court enquired into the matter and submitted a report which clearly indicated gross irregularities committed by the Subordinate Service Selection Board in conducting test pursuant to the advertisement issued on 13th May, 1987 and recommending names for being appointed to different posts in class-III under the Bihar Government. It is indeed surprising to note that the Subordinate Service Selection Board even though was dissolved by the Government of Bihar with effect from 22nd October, 1991, Yet in February 1992 the Board published a revised list of 238 persons. Shri S.N. Biswas, the Commissioner appointed by the High Court ultimately came to the conclusion that no credence should be given to the examination and subsequent actions of the Board and recommended cancellation of the result of the examination and for filling up the vacancies by issuing a fresh advertisement and holding a fresh examination. On the basis of the aforesaid report and considering rival submissions of the parties the Patna High Court in CWJC No. 7141 of 1991 came to conclusion as under:

From the report of Sh. Biswas there cannot be any doubt whatsoever that a great deal of bungling had been done by the officers of the State of Bihar. It is really surprising as to how the State of Bihar had been tolerating such Officers and as to why the services of all such persons who had illegally been appointed had not been terminated.

The said writ application was ultimately disposed of

with the direction that the State should immediately take remedial measures by cancelling the result of the examination for which three merit lists had been prepared and by filling up the vacancies by fresh advertisement and upon taking a fresh examination. Notwithstanding the aforesaid judgement of the Patna High Court dated 23rd March, 1994 passed in CWJC No. 7141 of 1991, by the impugned judgement dated 26th September, 1994 the writ application was allowed solely on the ground that some persons lower in the rank than the respondent had been appointed.

Mr. L.R. Singh the learned counsel appearing for the appellants contented that in view of the irregularities pointed out by the Biswas Committee no court could issue a mandamus for giving appointment to an applicant from the recommendations made by the Subordinate Service Selection Board as that would tantamount to legalising and accepting the gross irregularities and illegalities committed by the Service Selection Board in the matter of selection of persons. He further contended that the Service Selection Board having been dissolved on 22nd October, 1991, the said board had no jurisdiction to send fresh recommendations on 4th March, 1992 containing the name of the respondent and, therefore, the said list submitted by Service Selection Board could not have conferred any right of appointment upon the respondent. Lastly, he submitted that the Inspector General of Prisons having requested the Board to recommend 8 Scheduled Castes and 8 Scheduled Tribes candidates as the Board had not followed the roster while recommending earlier, the Board could not have sent a list of the respondent and, therefore, no enforceable right can be said to have been conferred upon the respondent for being appointed. Mr. Sharan, learned counsel appearing for the respondent on the other hand contented that no credence should be given to the said report of Shri S.N. Biswas as he had been indicated by the High Court in some other case. He also submitted that when persons junior to the respondent in the list submitted by the Service Selection Board have already been appointed and the State's special Leave petition against the similar order has been dismissed by this Court, the present appeal should also be dismissed.

Having given our anxious consideration to the rival contentions of the parties and on carefully examining the materials on record we find sufficient force in the contentions raised by the learned counsel for the appellant and we are unable to agree with the submissions of Mr. Sharan, the learned counsel for the respondent. True it is, this court did not entertain a special leave petition on September 5, 1994 when State of Bihar had challenged an order of the Patna High Court. But it is crystal clear that when the Court did not entertain the special leave petition, the report of Shri Biswas had not been brought to the notice of the Court nor the Court was aware of the gross irregularities and illegalities committed by the Subordinate Service Selection Board in the matter of making selections and recommending names for different posts in class-III. We have no doubt in our mind that if the irregularities and illegalities found by Shri Biswas would have been placed before the Court, the Court would not have hesitated in entertaining the matter and cancelling the list altogether. Be that as it may, we are of the considered opinion that the High Court committed gross error of law in issuing the mandamus requiring the Public Service Commission and the State to give appointment to the respondent even after going through the Biswas Committee report which in no uncertain terms indicates the gross irregularities and illegalities

committed by the Service Selection Board in the matter of holding the examination and drawing the list of successful candidates. Further the Board having been abolished by the Government decision dated 22nd October, 1991 had no further jurisdiction to publish a revised list of 238 persons on 28th February, 1992 and in recommending 15 candidates on 4th March, 1992 including the respondent. The said list of 15 persons containing the respondent's name recommended on 4th March, 1992 is a list wholly without jurisdiction and the persons recommended thereunder including the respondent had no enforceable right for which a mandamus could have been issued by the High Court. In the aforesaid premises, we set aside the impugned order of the Patna High Court and the writ petition filed by the respondent stands dismissed. We also further direct that the Bihar Public Service Commission need not take any further act upon the lists prepared by the State Service Selection Board or recommend any names for different posts in class-III from three lists. But so far as the appointments already made from out of the said lists, since in several cases appointments have been made pursuant to the orders of the court and in some cases those orders have not been interfered with by this Court though not being aware of the illegalities and irregularities in the matter of conducting the examination and we are not annulling the appointments already made. But so far as respondent No. 5 Shri Krishna Singh Vimal is concerned, though he has been appointed by the Government of Bihar by letter dated 30th May, 1995, but the said appointment had been made because of the impugned direction of the Patna High Court in CWJC No. 379 of 1993 and it was specifically indicated in the letter of appointment that the appointment would be subject to the decision of the Supreme Court in the special leave petition filed by the Bihar Public Service Commission. In this view of the matter the appointment of said respondent No. 5 makes a fresh application to the Bihar Public Service Commission pursuant to any advertisement and is found to be overaged then the period which the respondent has spent in pursuing the present litigation should be excluded by the Public Service Commission. This appeal is allowed with the aforesaid directions and observations but in the circumstances there will be no order as to costs.