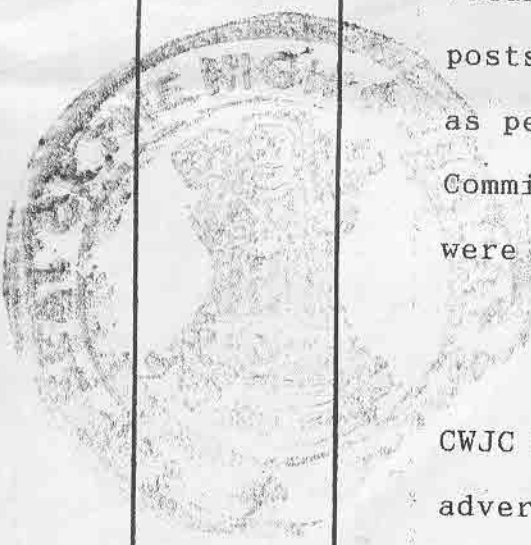


Serial No. of Order	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order:
<p>34 सायब 17/7/04 1166 15/9 877/71 199/04</p>	<p>4. 30.06.2004</p>	<p>IN THE HIGH COURT OF JUDICATURE AT PATNA C.W.J.C.No.10006 of 2003 Tribhuvan Singh & ors. The State of Bihar & others With C.W.J.C.No. 14514 of 2003 Satish Kumar Singh Vrs. The State of Bihar & others *** For the Petitioners : Mr.Vinod Kumar Kanth, Sr.Advocate with (In CWJC 10006/2003) Mr.Bindhyachal Singh, Advocate For Intervenors : Mr.Ram Balak Mahto, Sr.Advocate with (In CWJC 10006/2003) Mr.Ajay, Advocate For the State : Mr.A.K.Singh, S.C.III with (In CWJC 10006/2003) Mr.Ranjit Sinha, J.C.to S.C.III *** For the Petitioner : Mr.Ganesh Pd.Singh, Sr.Advocate with (In CWJC 14514/2003) Mr.Manish Kumar, Advocate For the State : Mr.S.J.Rahman, C.P.VII (In CWJC 14514/2003) For the Commission : Mr.Nadim Seraj, Advocate (In both petitions) *** <u>ORDER</u> Heard counsel for the parties. In both these writ applications, the facts involved are common and therefore, they have been heard together and are being disposed of by this order. In both these writ applications, the petitioners have prayed for issuance of a writ of mandamus commanding upon the respondents to appoint them on the post of Assistant Jailors pursuant to advertisement no.21/99/. In CWJC No. 10006/2003 a further prayer has also been made to quash letter contained in Memo No.2435</p>	

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		<p style="text-align: center;">2</p> <p>dated 23.6.2003 whereby and whereunder fresh communication has been sent to the Commission to recommend only 29 persons for appointment on the post of Assistant Jailors. In CWJC No.10006 of 2003 an intervention petition being I.A.No.4424 of 2003 has also been filed on behalf of nine persons to add them as intervenors as they are successful candidates and they have been recommended for their appointment by the Bihar Public Service Commission (hereinafter referred to as "the Commission").</p> <p>From the pleadings of the parties, it appears that the writ petitioners as well as intervenors had applied for their appointment on the post of Assistant Jailors pursuant to advertisement no.21/99 and, therefore, preliminary and main examinations were held and the petitioners are claiming to be successful candidates pursuant to which they seek direction upon the respondents to appoint them on the post of Assistant Jailors. It further appears that only 28 posts of Assistant Jailors were advertised and it was stipulated in the advertisement that number of vacancies may be increased or decreased and subsequently, 20 posts of Assistant Jailors were added in the aforesaid advertisement making it total number of posts as 48 out of which 14 posts belonged to</p>	

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		<p style="text-align: center;">3</p> <p>general category and 14 posts were reserved for scheduled caste, scheduled tribe and extremely backward class I. It further appears that the result of the examination was published by the Commission on 9.6.2002 and before necessary recommendation was made by the Commission to the State Government for appointment, Bihar Reorganisation Act, 2000 came into operation by virtue of which the State of Jharkhand was bifurcated from Bihar with effect from 14th November, 2000 and accordingly, Department of Home (Special) Prison, Government of Bihar sent letter vide memo no.1699 dated 19.12.2000 to the Commission to send the recommendation after receiving revised requisition only for filling up the vacancies of remaining State of Bihar out of 48 vacancies. However, the Commission being oblivious of letter vide memo no.1699 dated 19.12.200 made recommendation to the State Government on 3.7.2002 to fill up 48 vacancies. The Commission, however, realised its mistake and in view of the letter of the Home (Special) Prison Department vide Memo No.1699 dated 19.12.2000 made a fresh recommendation vide Memo No.2435 dated 23rd June, 2003 recommending 28 persons for appointment on the post of Assistant Jailors in the State of Bihar.</p>	

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It further appears that out of 48 vacancies as notified in the advertisement, 29 posts were made available to the State of Bihar, as per directive issued by the State Advisory Committee and the remaining vacancies, thus, were to be filled up by the State of Jharkhand.



Learned counsel for the petitioners of CWJC No.10006 of 2003 submitted that posts were advertised in 1999 and pursuant to that, the petitioners appeared in the examinations held by the Commission and their names were recommended along with other successful candidates and, therefore, they are entitled to be appointed as process of appointment started much before bifurcation of the State of Jharkhand. It is further submitted that once recommendation was made by the Commission, it cannot be altered or changed as it would be opposed to the spirit of the advertisement.

Learned counsel for the petitioner of CWJC No.14514 of 2003 and also learned counsel for the intervenors, on the contrary, submitted that the Commission vide its recommendation dated 23.6.2003 has recommended 28 candidates including writ petitioner and the intervenors and, therefore, they would be entitled for appointment and writ petitioners of CWJC

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		<p style="text-align: center;">5</p> <p>No.10006 of 2003 do not have any legitimate claim for the post aforesaid as their names do not find place in the recommendation of the Commission dated 23.6.2003 and previous recommendation of the Commission dated 3.7.2002 cannot be acted upon and the same has been revised by virtue of the letter vide Memo No.2435 dated 23.6.2003.</p> <p>From the materials on record and the counter affidavit filed on behalf of the State and the Commission, it is manifest that before any recommendation was made by the Commission for appointment, Home (Special) Department vide letter vide Memo no.1699 dated 19.12.2000 requested the Commission apprising the fact that the State of Jharkhand has been bifurcated by virtue of the Bihar Reorganisation Act, 2000 and 29 vacancies would be filled up by the State of Bihar. It is further manifest that earlier recommendation sent by the Commission dated 3.7.2002 was revised and a fresh recommendation was made to the State Government vide Memo No.2435 dated 23.6.2003 recommending 28 persons for appointment on the post of Assistant Jailors. It is also manifest that the State Advisory Committee had apportioned the vacancies and 29 posts were made available for the State</p>	

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		<p style="text-align: center;">6</p> <p>of Bihar and accordingly, the Commission recommended 28 names as no female candidate was available as against 29 vacancies.</p> <p>From the facts enumerated above, it appears that after advertisement no.21/99, Bihar Reorganisation Act, 2000 came into operation and vacancies meant for Assistant Jailors were apportioned proportionately and only 29 posts were made available to the State of Bihar to be filled up and the recommendation, accordingly, was sent by the Commission and, therefore, earlier recommendation of the Commission dated -3.7.2002 would not be binding upon the State of Jharkhand. In view of the changed situation, I do not find any force in the submission of the learned counsel for the petitioners of CWJC. No.10006 of 2003 and writ petitioners are held to be not entitled to be appointed as against remaining vacancies in the State of Bihar as they have not been recommended by the Commission.</p> <p>So far as petitioner of CWJC No.14514 of 2003 and intervenors are concerned, it appears that their names have been recommended by the Commission vide Memo No.2435 dated 23.6.2003 as against vacancies available to the</p>	

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		<p style="text-align: center;">7</p> <p>State of Bihar . Thus, they are entitled to be considered for appointment on the post of Assistant Jailors.</p> <p>For the reasons and discussions made above, CWJC No.10006 of 2003 is dismissed. The interim order dated 17.9.2003 is vacated. CWJC No.14514 of 2003 and the intervention petition being I.A.No.4424 of 2003 are allowed and the concerned respondents are directed to consider the cases of the petitioner and intervenors for appointment on the post of Assistant Jailors pursuant to the recommendation of the Commission as contained in Memo No.2435 dated 23.6.2003. No costs.</p>	<p style="text-align: right;"><i>sd/ (Munaysh Roy)</i></p> <p style="text-align: center;"><i>True copy</i></p> <p style="text-align: center;"><i>Bisheshwar Roy</i></p> <p style="text-align: center;"><i>P.A.</i></p> <p style="text-align: center;"><i>7-7-2004</i></p>

B.T.