

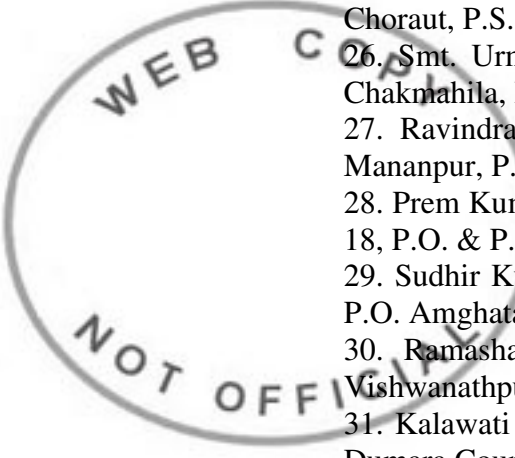
IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1182 of 2015

IN

Civil Writ Jurisdiction Case No. 5449 of 2007

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1. Harishankar Ojha son of Late Rambriksha Ojha, resident of village- Tirkaulia, P.O. Madhopur, P.S. Bathanaha, District- Sitamarhi.
 2. Gajendra Rai son of Kishori Rai, resident of village- Laudih, P.O. Bishanpur, P.S. Dumra, District- Sitamarhi.
 3. Kameshwar Rai son of Brahmdeo Rai, resident of village- Dumra, P.S. Dumra, District- Sitamarhi.
 4. Shankar Kumar Jha son of Parmanand Jha, resident of village & P.O. Rajiyari , P.S. Ghanshyampur, District- Darbhanga.
 5. Kishori Ram son of Sukhlal Mehtar, Resident of village & P.O. Dumra , P.S. Dumra , District - Sitamarhi.
 6. Surendra Rai son of Shivdhyhan Rai, resident of village Vishwanathpur, P.O. Sitamarhi (Dumra), P.S. Dumra, District- Sitamarhi
 7. Harihar Rai son of Radhey Rai, resident of village- Bhisha (Madhopur Rausan) P.S. Dumra , District - Sitamarhi.
 8. Sudhir Mahto son of Aklu Mahto, resident of village- Parori (East) P.O. Dumra Court, P.S. Sitamarhi, District - Sitamarhi.
 9. Subodh Kumar Jha son of Vedanand Jha, resident of village & P.O. Parsauni, P.S. Dumra, District - Sitamarhi.
 10. Ram Pramod Thakur son of Rajnandan Thakur, resident of village Tola Bahori, P.O. Premnagar, P.S. Runisaidpur, District - Sitamarhi.
 11. Shiv Kumar Jha son of Kamaldev Jha, resident of village & P.O. Parsauni, P.S. Dumra, District - Sitamarhi.
 12. Shyam Chandra Choudhary son of Yogendra Choudhary, resident of village - Karnahia, P.O. Raghobpur Bakhri, P.S. Sitamarhi, District - Sitamarhi.
 13. Mahesh Pathak son of Madhur Pathak, resident of village & P.O. Bathanha, P.S. Bathanha, District - Sitamarhi.
 14. Arvind Kumar Singh son of Ramchandra Singh, resident of village- Lalgargh Yogiya, P.O. Maksudpur Karariya, P.S. Shyampur Bhataha, , District - Sheohar.
 15. Lakshman Jha son of Sukeshwar Jha, resident of village - Purnahia, P.O. Kishanpur, P.S. Bathnaha, District- Sitamarhi.
 16. Shiv Shankar Jha son of Ram Lakhan Jha, resident of village & P.O. Jafarpur, P.S. Belsand, District - Sitamarhi.
 17. Dineshwar Prasad son of Mahendra Prasad, resident of village & P.O. Jafarpur, P.S. Belsand, District - Sitamarhi.
 18. Umesh Paswan son of Yogendra Paswan, resident of village & P.O. Kumma, P.S. Susrsand, District - Sitamarhi.
 19. Virendra Prasad Srivastava son of Nag Narayan Prasad, resident of village - Bhoraha, P.O. & P.S. Belsand , District- Sitamarhi.
 20. Nagendra Singh son of Singheshwar Singh, resident of village- Rupaulil Ruphara, P.O. Koili , P.S. Bathnaha, District - Sitamarhi.
 21. Arun Kumar Verma son of Ram Bhawan Prasad Verma, resident of village- Paharpur, P.O. Jahangirpur, P.S. Shyampur Bhataha, District- Sheohar.
 22. Geeta Kumari wife of Shankar Prasad Singh, resident of village Punaure, P.O. Punaure, P.S. Sitamarhi, District - Sitamarhi.
 23. Ramashankar Prasad Srivastava son of Kalika Prasad, resident of village - Kailashpuri Dumara, P.S. Dumara, District- Sitamarhi

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24. Phulwati Devi wife of Bindeshwar Raut, resident of village , P.O. & P.S. Parihar, District - Sitamarhi .
 25. Abhiram Devi wife of Maheshwar Jha, resident of village- Amanpur, P.O. Choraut, P.S. Pupari, District - Sitamarhi.
 26. Smt. Urmila Kumari wife of Nageshwar Sah, resident of village & P.O. Chakmahila, P.S. Sitamarhi, District - Sigtamarhi.
 27. Ravindra Mandal son of Jhagaru Mandal, resident of village- Dhangar Mananpur, P.O. Dhangar, P.S. Parsauni, District- Sitamarhi.
 28. Prem Kumar Sharma son of Rajdeo Singh, resident of Bhavdevpur Ward No. 18, P.O. & P.S. Sitamarhi, District- Sitamarhi.
 29. Sudhir Kumar son of Awadh Lal, resident of village- Madhopur Raushan , P.O. Amghata, P.S. Dumara, District- Sitamarhi
 30. Ramashankar Singh son of Kamaldhari Singh, resident of village- Vishwanathpur, P.O. Dumara Court , P.S. Dumara, District- Sitamarhi.
 31. Kalawati Devi wife of Bhola Rai, resident of village - Vishwanathpur, P.O. Dumara Court , P.S. Dumara, District- Sitamarhi.
 32. Harendra Rai son of Devnarayan Rai, resident of village- Vishwanathpur, P.O. Dumara Court , P.S. Dumara, District- Sitamarhi.
 33. Chotan Rai son of Jai Kishan Rai, resident of village- Vishwanathpur, P.O. Dumara Court , P.S. Dumara, District- Sitamarhi.
 34. Chote Lal Rai son of Ram Kumar Rai, resident of village- Bhavprasad, P.O. Dumara, P.S. Dumara, District - Sitamarhi.
 35. Subodh Jha son of Bachacha Jha, resident of village & P.O. Rasalpur, P.S. Dumara , District - Sitamarhi.
 36. Birendra Nath Singh son of Manager Singh, resident of village- Rampur Majhaulia , P.O. Rasalpur, P.S. Dumara, District- Sitamarhi.
 37. Brij Mohan Jha son of Bhagwan Datta Jha, resident of village- Vishwanathpur, P.O. Dumara Court , P.S. Dumara, District- Sitamarhi.
 38. Dinesh Kumar Singh son of Harinandan Singh, resident of village- Halimpur, P.O. Dumri Kala , P.S. Majorganj, District - Sitamarhi.
 39. Amiri Lal Rai son of Sahdev Rai, resident of village- Laudih, P.O. Bishanpur, P.S. Dumra, District- Sitamarhi.
 40. Dinesh Rai son of Fakira Rai, resident of village & P.O. Amghata, P.S. Sitamarhi, District - Sitamarhi.
 41. Bindeshwar Rai son of Majhi Rai, resident of village - Mirjapur, P.O. Bathnaha, P.S. Bathnaha, District- Sitamarhi
 42. Jagannath Rai son of Saryug Raut, resident of Village - Talkhapur Dumara Ward No. 7 , P.O. Dumara, P.S. Sitamarhi, District - Sitamarhi.
 43. Jagannath Rai son of Mahendra Rai, resident of village- Vishwanathpur, P.O. Dumara Court , P.S. Dumara, District- Sitamarhi.
 44. Ram Narayan Singh son of Dasai Singh, resident of village- Muradpur Tola , P.O. Dumara P.S. District - Sitamarhi.
 45. Rup Lal Sah son of Gulam Sah, resident of village- Bhavprasad, P.O. Dumara, P.S. Dumara, District - Sitamarhi.
 46. Pramod Thakur son of Gajendra Thakur, resident of Village Narayanpur, P.O. Dumara, P.S. Dumra, District- Sitamarhi.
 47. Vishwanath Kumar son of Parmeshwar Mahto, resident of village- Madhopur Raushan , P.O. Amghata, P.S. Dumara, District- Sitamarhi
 48. Dharmnath Singh son of Ramkhelawan Mahto, resident of village- Rampur Parauri (East), P.O. Banchauri, P.S. Sitamarhi, District- Sitamarhi.
 49. Gajendra Mahto son of Ramashish Mahto, resident of village- Bajitpur, P.O. Lagma, P.S. Dumara, District- Sitamarhi.

50. Ganesh Ram son of Rambriksha Ram, resident of Village- Rampur Parouri, P.O. Banchauri, P.S. Sitamarhi, District- Sitamarhi.
51. Ramlakhan Paswan son of Ramchandra Paswan, resident of village & P.O. Rasalpur, P.S. Dumara, District - Sitamarhi.
52. Sahdev Paswan son of Chandar Paswan, Resident of village & P.O. Dumra, P.S. Dumra, District - Sitamarhi.
53. Rambabu Chaoudhary son of Bhutar Choudhary, resident of village - Vishwanathpur Chowk, P.O. Dumara P.S. Dumara, District - Sitamarhi
54. Shivji Ram son of Mauje Ram, resident of village - Bariyarpur Tole Jawabipur, P.O. Bariyarpur, P.S. Sitamarhi, District - Sitamarhi.
55. Bhola Mehtar son of Asarfi Mehtar, resident of village- Belsand, P.O. & P.S. Belsand, District - Sitamarhi.
56. Ram Lakshan Singh son of Rajnandan Singh, resident of village Majhaulia Tola Chakka, P.O. Rasalpur, P.S. Dumara, District- Sitamarhi.
57. Chandeshwar Sah son of Nageshwar Sah, resident of village- Bhaoprasad, P.O. Parmanandpur, P.S. Dumara, District- Sitamarhi.
58. Shambhu Thakur son of Bujhawan Thakur, resident of Village Narayanpur, P.O. Dumara, P.S. Dumra, District- Sitamarhi.
59. Mohan Paswan son of Lakhan Paswan, resident of village- Gangwara, P.O. Bishanpur, P.S. Pupari, District- Sitamarhi.
60. Ravi Shankar Sharma son of Kameshwar Pandey, resident of f village- Vishe - Ladugama, P.O. Agai, P.S. Benipatti, District- Madhubani.
61. Ishwar Nath Jha son of Rajkant Jha, resident of village & P.O. Rampur Hari, P.S. Minapur, District- Muzaffarpur.
62. Ishwar Ram son of Rajendra Ram, resident of village- Husena, P.O. Mehshaul, P.S. Sitamarhi, District - Sitamarhi.
63. Ramashankar Baitha son of Bhitlal Baitha, resident of village - Kharka, P.O. Punaura, P.S. Sitamarhi, District- Sitamarhi.
64. Jitendra Kumar Rai son of Ram Bilash Rai, resident of village- Bhaoprasad, P.O. Parmanandpur, P.S. Dumara, District- Sitamarhi.
65. Sadan Mandal son Jainandan Mandal, resident of village, P.O. & P.S. Sursand, District- Sitamarhi.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Bihar, Secretariat Building, Patna.
3. The Commissioner, Tirhut Commissioner, Muzaffarpur
4. The District Magistrate -cum- Collector, Sitamarhi.
5. The District Nazarat Deputy Collector, Sitamarhi.
6. The District Panchayat Raj Officer, Sitamarhi.
7. The District Land Acquisition Officer, Sitamarhi.

.... Respondents- Respondents

8. Arun Kumar Jha, son of Rajdeo Jha, resident of village- Vishwanathpur, P.O. & P.S. Dumara, District - Sitamarhi.

.... Petitioner- Respondent

Appearance :

For the Appellant/s : Mr. Y. V. Giri, Senior Advocate
Mr. Ashish Giri, Advocate

For the Respondent/s : Mr. Sunil Kumar, A.C. to S.C.-2

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 17-07-2015

I.A. No.5007 of 2015

This application is filed, with a prayer to grant leave to the applicants to prefer an appeal, against the order dated 04.11.2011 passed by the learned Single Judge in CWJC No.5449 of 2007. The petitioners submit that on account of observations made and the directions issued in the said order, they are sought to be removed from service, and they are immediately affected by the said order. It is also stated that since they came to know about the order in the writ petition and the steps taken in pursuance of the order in the writ petition, they preferred the appeal.

After hearing learned counsel for the parties, we are satisfied that the petitioners have genuine grievance vis-à-vis the order in the writ petition. Hence, the leave is granted.

Interlocutory application shall stand disposed of.

L.P.A. No.1182 of 2015

Quite large number of persons were working as Attendants in the Collectorate and other offices of the Revenue



Department in the Sitamarhi district. All of them approached this Court by filing writ petitions, being CWJC Nos.9816 of 1996 and 4739 of 1999, with a prayer to direct the Government to regularise their services. This Court declined the prayer, but directed the Government to frame a policy in such a way that as and when the regular appointments are made, persons working on adhoc basis are given some weightage. Accordingly, the Government issued advertisement dated 23.11.2004 inviting applications for the post of Attendants in the Collectorate and its attached offices of the Sitamarhi district. It was mentioned that the persons, who were working on ad hoc basis in the Collectorate and its attached offices of Sitamarhi District, would be awarded two marks, for each completed year of service, and other similarly situated persons who worked at different places would be entitled to be awarded one mark of weightage for each completed year of service. In the process, the appellants herein have been selected and appointed as Attendants in the year 2007.

8th respondent, by name Arun Kumar Jha, was one of the applicants, but was not appointed. He filed CWJC No.5449 of 2007 ventilating his grievance. In the counter affidavit, it was mentioned that though the 8th respondent secured fairly good marks in the written test, he could not be selected, due to addition of



weightage marks to the attendants working on ad hoc basis. Taking that aspect into account, the learned Single Judge observed that addition of weightage marks is contrary to law. The writ petition was disposed of directing the 8th respondent to appear before the Collector, Sitamarhi and further directing that the all the appointments shall be re-examined in the light of the observation, viz. addition of weightage marks is not proper.

In compliance of the direction issued by this Court through order dated 04.11.2011 in CWJC No.5449 of 2007, the District Collector issued order dated 06.05.2015 (Annexure-6) cancelling the panel prepared in the year 2005. Hence, this appeal.

Heard Sri Y.V. Giri, learned senior counsel for the appellants and Sri Sunil Kumar, learned A.C. to S.C.-2, for the respondent-State.

It is common that the persons, who are engaged on contractual or ad hoc basis, make efforts to get their service regularised. Almost in a uniform manner, the Courts decline to accede to such request, but some relief is given to such candidates in the form of weightage marks. The efforts made by the appellants in the years 1996 and 1999 lead to the same result. The Government advertised the posts in the year 2004 stipulating the conditions and providing for addition of weightage marks to the experienced

candidates.

In case, the 8th respondent or other similarly situated candidates felt aggrieved by such condition, it was open to them to challenge it, at the threshold. However, he participated in the selection process without any demur. He was not selected, on account of his position in the merit list being down below. Even in CWJC No.5449 of 2007, the 8th respondent did not challenge the validity of any Service Rules or the condition incorporated in the advertisement. Except that he ventilated his grievance, he did not assail any particular provision of law. However, the learned Single Judge straightaway proceeded to observe that addition of such weightage marks is contrary to law. Neither any provision of law was referred to; nor any precedent was relied upon, in this regard.

In another context, a Division Bench of this Court in CWJC No.855 of 2015, to which one of us (Hon'ble Chief Justice) was a party, observed that it is always competent for the appointing authority to stipulate the procedure for selecting the candidates, and award of weightage marks upto to certain limit, is within its prerogative. At any rate, neither advertisement; nor any provision of law was in challenge in the writ petition; nor the affected persons were made parties.

We, therefore, allow the Letters Patent Appeal setting

aside that part of the order dated 04.11.2011 passed in CWJC No.5449 of 2007, which is to the effect that addition of weightage marks is contrary to law as well as the direction issued by the learned Single Judge to re-examine appointments already made. As a consequence, we set aside the order dated 06.05.2015 passed by the District Collector, Sitamahri (Annexure-6).

Interlocutory applications, if any, shall stand disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Anjana Mishra, J)

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