

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No. 3923 of 2012

Arising out of

Civil Writ Jurisdiction Case No. 7062 of 1998

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1. Mahendra Das, son of Shree Ganeshi Das, resident of village – Punhi Dharahara, under Gram Panchayat and Post Office Ondwa, Police Station & Block – Mohanpur

2. Ramkrit Das, son of Shree Dulahi Das, resident of Village Sheora (Total Ramchak) under Gram Panchayat Panchmah (Sheora), Post Office Fulwaria, Police Station & Block Dumaria

3. Shyam Nandan Das, son of late Mungeshwar Rabidas, resident of village Simari, under Gram Panchayat Ram Dohar, Post Office Maigra, Police Station & Block Dumaria

4. Suresh Kumar, son of late Baidnath Paswan, resident of village Mahadeopur, under Gram Panchayat Lodipur, Maniyanwa, Post Office Goraru, PS Konch, Block Goraru

5. Birendra Singh, son of Shree Kameshwar Singh, resident of village Pakahi, under Gram Panchayat Bajitpur, PS, PO & Block Belaganj

6. Rishideo Paswan son of Shree Jhakhar Paswan, resident of village Parina, under Gram Panchayat Dhamna, Post Office Patluka, PS and Block Barachatti

7. Surendra Paswan, son of Shree Sitaram Paswan, resident of village & Panchayat Sabasin Dighora, PS & Block Tikari

8. Moti Gahlaut, son of Shree Bilas Gahlaut, resident of village & Gram Panchayat Khatnahi, PO Anti, PS and Block Konch

9. Ram Naresh Das, son of Shree Panchu Das, resident of village Karhani (Tola Bagha Kola), under Gram Panchayat & Post Office Pipara, PS and Block Dumaria

10. Indradeo Choudhary, son of Shree Chaudhary, resident of village Ore, under Gram Panchayat Shekhpura Nihampur, Post Office Neori, PS and Block Belaganj

All belong to the district of Gaya

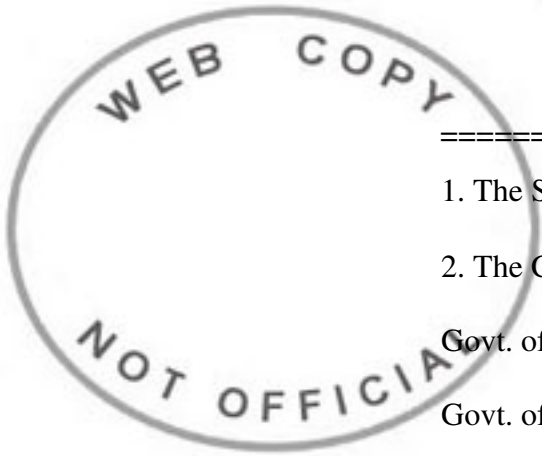
..... Petitioners

Versus

1. The State Of Bihar
2. Mr. Phool Singh, The Commissioner –cum-Secretary, Department of Rural Development (now Panchayt Raj) , Govt. of Bihar, Patna
3. Mr. Phool Singh, The In charge Director, Directorate of Panchayati Raj, Govt. of Bihar, Patna
4. Bandana Preyashi, The District Magistrate, Gaya
5. Jaspati Mishra, The District Panchayat Raj Officer, Gaya
6. Ahok Kumar, The Block Development Officer, Gurua, District Gaya
7. Arun Kumar Chaudhary, The Block Development Officer, Mohanpur, District Gaya
8. Raj Kumar Chaudhary, The Block Development Officer, Konch, District Gaya
9. Alakh Niranjana Prasad, The Block Development Officer, Imamganj, District Gaya

.... Contemnors Opp. Parties

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With
Civil Review No.327 of 2012
Arising out of
Civil Writ Jurisdiction Case No. 9022 of 1998

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1. The State Of Bihar
 2. The Commissioner –cum-Secretary, Department of Rural Development,
Govt. of Bihar, Patna (now Principal Secretary, Panchyati Raj Department,
Govt. of Bihar, Patna).
 3. The Director, Directorate of Panchayat Raj, Govt. of Bihar, Patna
 4. The District Magistrate, Madhepura
 5. The District Panchayat Officer, Madhepura
 6. The Block Development Officer, Madhepura, District Madhepura

.....Petitioners.....Respondents

Versus

Birendra Kumar son of Sri Raghuni Ram, resident of Village, Post Office
and Panchayat Dhurgaon, Police Station, Block and District Madhepura.

.....Respondent.....Petitioner

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With
Civil Review No.328 of 2012
Arising out of
Civil Writ Jurisdiction Case No. 7062 of 1998

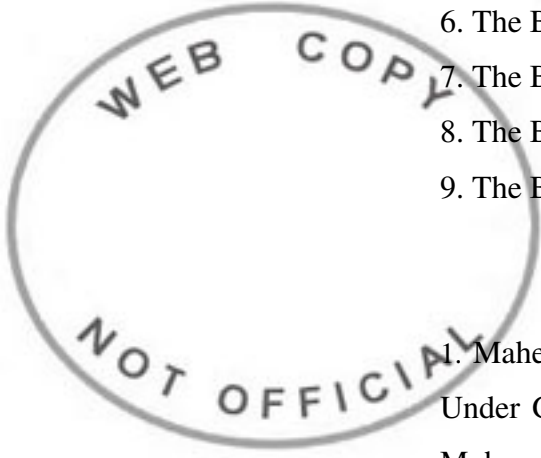
- =====
1. The State Of Bihar
 2. The Commissioner - Cum - Secretary, Department Of Rural
Development, Government Of Bihar, Patna (Now Principal Secretary,
Panchayati Raj Department, Government Of Bihar, Patna)
 3. The Director, Directorate Of Panchayat Raj, Government Of Bihar, Patna

4. The District Magistrate, Gaya
5. The District Panchayat Officer, Gaya
6. The Block Development Officer, Gurua, District - Gaya
7. The Block Development Officer, Mohanpur, District - Gaya
8. The Block Development Officer, Konch, District - Gaya
9. The Block Development Officer, Imamganj, District - Gaya

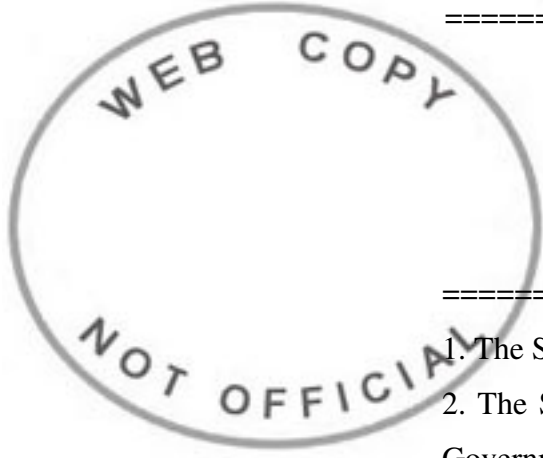
.... Respondents Petitioners

Versus

1. Mahendra Das S/O Shree Ganeshi Das R/O Village - Punhi Dharahara, Under Gram Panchayat And Post Office; Ondwa, Police Station & Block Mohanpur Gaya
2. Ramkrit Das S/O Shree Dulahi Das R/O Village - Sheora (Total Ramchak) Under Gram Panchayat (Sheora), Post Office; Fulwaria, Police Station & Block ; Dumaria, Gaya
3. Shyam Nandan Das S/O Late Mungeshwar Rabidas R/O Village - Simari, Under Gram Panchayat Ram Dohar, Post Office Maigra, Police Station & Block ; Dumaria, Gaya
4. Suresh Kumar S/O Late Baidnath Paswan R/O Village - Mahadeopur, Under Gram Panchayat Lodipur, Maniyanwa, Post Office Goraru, P.S. Konch, Block Goraru, Gaya
5. Birendra Singh S/O Shree Kameshwar Singh R/O Village - Pakahi, Under Gram Panchayat Bajitpur, P.S. P.O. & Block Belaganj, Gaya
6. Rishideo Paswan S/O Shree Jhakhwar Paswan R/O Village - Parina, Under Gram Panchayat Dhamna, Post Office Patluka, P.S. And Block Barachatti, Gaya
7. Surendra Paswan S/O Not Shree Sitaram Paswan R/O Village And Panchayat Sabasin Dighora, P.S. & Block Tikari, Gaya
8. Moti Gahlaut S/O Shree Bilas Gahlaut R/O Village & Gram Panchayat Khatnahi, P.O. Anti, P.S. And Block - Konch, Gaya
9. Ram Naresh Das S/O Shree Panchu Das R/O Village - Karhani (Tola Bagha Kola), Under Gram Panchayat And Post Office Pipari, P.S. And Block Dumaria, Gaya
10. Indradeo Choudhary S/O Shree Chaudhary R/O Village - Ore, Under Gram Panchayat Shekhpura Nihampur, Post Office Neori, P.S. & Block Belaganj, Gaya



.... Petitioners.... Respondents



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With

Civil Review No.366 of 2012

Arising out of

Civil Writ Jurisdiction Case No. 7159 of 1998

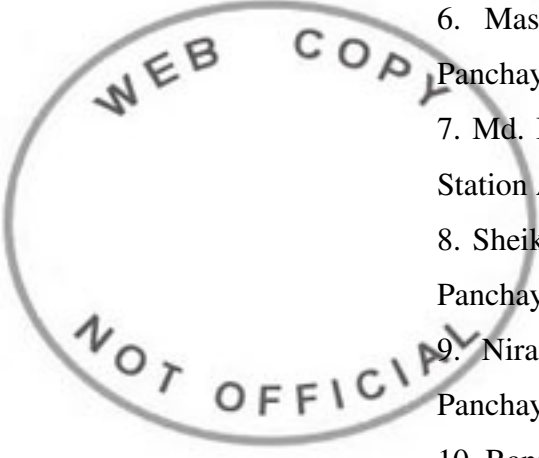
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1. The State Of Bihar.
2. The Secretary Cum Commissioner, Department Of Rural Development, Government Of Bihar, Patna (Now Principal Secretary, Panchayati Raj Department, Government Of Bihar, Patna).
3. The Director, Directorate Of Panchayat Raj, Government Of Bihar, Patna.
4. The Deputy Commissioner, Katihar.
5. The District Panchayat Officer, Katihar.
6. The Block Development Officer, Azamnagar, District Katihar.
7. The Block Development Officer, Amdabad, District Katihar.
8. The Block Development Officer, Manihari, District Katihar.
9. The Block Development Officer, Barshai, District Katihar.
10. The Block Development Officer, Kadwa, District Katihar.
11. The Block Development Officer, Korha, District Katihar.
12. The Block Development Officer, Balrampur, District Katihar.

.... Petitioners.... Respondents

Versus

1. Proshan Kumar Roy S/O Shri Kulesh Chandra Roy Resident Of Gram Panchayat Choulhar, Post Office Azamnagar, Police Station And Block Azamnagar.
2. Abdul Rauf S/O Md. Idris Panchayat Dakra English, Police Station And Block Amdabad.
3. Vimal Kumar Pandey S/O Gopal Chandra Pandey Gram Panchayat Dilarpur, Police Station And Block Manihari.
4. Shish Mohammad S/O Wazit Ali Under Gram Panchayat Roshnamal, Police Station And Block Amdabad.

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5. Atul Chandra Das S/O Jag Bandhu Das Resident Of Gram Panchayat Shiwanandpur, Police Station And Block Barshahi.
 6. Mashroor Alam Sattir S/O Sheikh Nuruddin Resident Of Gram Panchayat Rauniya, Police Station And Block Kadwa.
 7. Md. Ishrail S/O Akbar Ali Resident Of Gram Panchayat Kheria, Police Station And Block Korha.
 8. Sheikh Mojibur Rahman S/O Sheikh Fajlur Rahman Resident Of Gram Panchayat Gwal Toli, Police Station And Block Barshai.
 9. Niranjana Kumar Yadav S/O Nand Lal Yadav Resident Of Gram Panchayat Kalyangaon, Police Station And Block Balrampur.
 10. Ranjit Roy S/O Chulai Roy Resident Of Gram Panchayat Bighor, Police Station And Block Barshai.
 11. Uma Kant Das S/O Shree Khetish Chandra Das Resident Of Gram Panchayat Shikarpur, Police Station And Block Barshai.
 12. Prakash Chandra Poddar S/O Fudan Poddar Resident Of Gram Panchayat Bhelaganj, Police Station And Block Kadwa.
 13. Md. Ishar Shamsh S/O Shamshul Hoda Resident Of Village Deo, Under Gram Panchayat Siktia, Police Station And Block Azamnagar.
 14. Gopal Krishna Roy S/O Indra Mohan Roy Resident Of Gram Panchayat Baliabelon, Police Station And Block Kadwa.
 15. Bidyadhar Ghosh S/O Shree Bhuwan Mohan Ghosh Resident Of Village Kushaha, Under Gram Panchayat Alampur, Police Station And Block Azamnagar.
- All Belong to the District of Katihar.

.... Respondents.... Petitioners

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Appearance :

(In MJC No.3923 of 2012)

For the Petitioner/s :

For the Opp. Party/s :

(In C. REV. No.327 of 2012)

For the Petitioner/s :

For the Respondent/s :

(In C. REV. No.328 of 2012)

For the Petitioner/s :

For the Respondent/s :

(In C. REV. No.366 of 2012)

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL ORDER

19 08-04-2015

Heard learned counsel for the parties.

M.J.C. No. 3923 of 2012 had been filed alleging non-compliance of the Court's judgment and order dated 20.12.2011 passed in C.W.J.C. No. 7062 of 1998. Thereafter, the State has filed Civil Review No. 327 of 2012, Civil Review No. 328 of 2012 and Civil Review No. 366 of 2012, which arise out of the judgment and order passed in C.W.J.C. No. 7062 of 1998 and C.W.J.C. No. 7151 of 1998, both dated 20.12.2011.

The Court had passed the order which is now sought to be reviewed on the basis of material produced before it and basically on the ground that the letter of the State Government dated 09.02.1998 contained in Memo No. 164 insofar as it gives retrospective effect of the new Rule framed under the Bihar Panchayat Raj Act, 1993, could not be sustained and was accordingly set aside.

The sheet anchor of the submission of learned



counsel for the State is the decision of the Division Bench of this Court in the case of **Rohtas Zila Gram Raksha Dal Singh v. State of Bihar** reported in **AIR 2002 PATNA 1** which has upheld the validity of the circular dated 09.02.1998 of the State Government. The same has subsequently been upheld by the Hon'ble Supreme Court in Civil Appeal No. 7992-8028 of 2001. In that view of the matter, the aforesaid orders under review are modified to the extent that the order setting aside the letter of the State dated 09.02.1998 contained in Memo No. 164 is recalled.

After having modified the aforesaid order under review, this Court would like to further hold that even upon upholding the circular of the State dated 09.02.1998 to be valid, in view of there being a stipulation in the said letter that the letter no. 3188 dated 27.06.1994 shall be deemed to be ineffective has to be given a harmonious interpretation balancing the aforesaid Division Bench order of the High Court and the overall contents of the State Government letter dated 09.02.1998. In effect, the letter dated 09.02.1998 had declared that the appointments made since 23.08.1993 were illegal and needed to be set aside. However, requirement of the State to clarify that the letter no. 3188 dated 27.06.1994 would be deemed to be ineffective clearly indicates that such clarification could have been effective from the date of



the issuance of the letter, that is, 09.02.1998. Thus, the validity of the letter dated 09.02.1998 with effect from 23.08.1993 can be sustained together with balancing the right and equity of the persons to whom benefit may have accrued on the basis of letter no. 3188 dated 27.06.1994 inasmuch as from 23.08.1993 till 26.06.1994 whatever appointments were made cannot be sustained and necessarily have to be set aside. However, the appointments made pursuant to the letter no. 3188 dated 27.06.1994 till 08.02.1998 did give power to the concerned Executive Committee of the Panchayat, subject to approval of the District Panchayat Officer, as has been done in the case of the petitioners of the aforesaid writ petitions, and also in view of reasoning given in the judgment of the Court aforesaid dated 20.12.2011 with regard to the issue that the State in absence of any Rule, recruitment could be made as has been held by the Hon'ble Supreme Court in the case of **B. N. Nagarajan vs. State of Mysore** reported in **AIR 1966 SC 1942**.

For the reasons aforesaid, judgment and order under review dated 20.12.2011 stands modified to the aforementioned extent but with the clarification that the orders dated 28.03.1998 and 28.04.1998 stand set aside and the petitioners shall be entitled to all the consequential benefits on account of their being

confirmed on the post of Dalpati from the retrospective date and having subsequently been confirmed and validly appointed to the post of Panchayat Sewak.

Accordingly, Civil Review Nos. 327 of 2012, 328 of 2012 and 366 of 2012 stand disposed off.

M.J.C. No. 3923 of 2012 may now be listed for Admission after four weeks.

It goes without saying that the interim order of stay passed on 03.10.2012 in Civil Review No. 327 of 2012 stands vacated.

(Ahsanuddin Amanullah, J)

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