

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1311 of 2013

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1. Dhananjay Kumar Mitra S/O Sri Gopal Chandra Mitra Resident Of Gandhi Gram, Jail Road, Jawaripur, P.S. Tilkamanjhi, District Bhagalpur
 2. Manoj Kumar Yadav S/O Sri Ram Narayan Yadav Resident Of Village English Farka, P.S. Sabour, District Bhagalpur
 3. Kishore Kumar Yadav S/O Sri Basant Prasad Yadav Resident Of Village Koyalaghat, P.S. Barari (Adampur), District Bhagalpur
 4. The Sanjay Kumar Mishra S/O Sri Bhuneshwar Mishra Resident Of Village Ramangar Colony, P.S. Mojanidpur, P.O. Mirzaghat, District Bhagalpur
 5. Chandra Shekhar Mandal S/O Sri Babu Lal Mandal Resident Of Village Farka, P.S.- Sabour, District- Bhagalpur
 6. Sanjit Kumar Pandey S/O Late Chandeshwar Pandey Vill.- Sitalpur Kothi, P.S.- Dariyapur, Dist.- Saran **Petitioners**

Versus

1. The State Of Bihar, Through The Home Secretary, Old Secretariat Building, Govt. Of Bihar, Patna
 2. The Home Secretary, Government Of Bihar, Patna
 3. The I.G., Prison, Bihar, Old Secretariat, Patna

.... **Respondents**

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Appearance :

For the Petitioner/s : Mr. Gyanand Roy
 For the Respondent/s : Mr. Anil Kr Uapdhyay Sc20

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

5 26-11-2015 The petitioners seek quashing of the order contained in memo No.4472, dated 4.10.2012 passed by the I.G. Prison, Bihar.

Before, I consider the grounds on which the petitioners have assailed the impugned order, it would be appropriate to notice the facts of the case in brief. The petitioners were applicants for the post of Jail Wardens pursuant to the advertisement dated 5.10.1994 (Annexure-1) issued by the I.G. Prison, Bihar. The petitioners participated in the selection process and results were published in the year 1998. The names of the petitioners figured in

the wait list with instruction as and when vacancies would occur during the appointment year, they would be appointed as Jail Wardens.

It appears that within two months of the appointment made pursuant to the Select List, the validity of the appointment was questioned on the ground that some members of the Selection Committee had appointed their own relatives and had also committed other irregularities while conducting the selection process.

In view of numerous complaints, the Government cancelled the select list which was challenged in this Court in C.W.J.C. No.8629 of 2000 which was dismissed by order, dated 21.09.2005. The appointees carried the challenge in appeal being L.P.A. No.1114 of 2005, which was allowed by order dated 15.9.2011, since reported in 2011(4) PLJR 873 (Shri Shankar Prasad & Ors Vs State of Bihar & Ors). The Division Bench directed the authorities to reinstate the appointees except those who were related to the members of the Selection Committee.

It appears that only 149 appointees gave joining, whereas 8 posts remained vacant.

It appears that the remaining 8 vacancies were filled up from the wait list candidates pursuant to the order passed by this Court in C.W.J.C. No.9324 of 2001, disposed of on 22.5.2003.



The case of the petitioners is that they are wait list candidates and they ought to have been appointed against the existing vacancies of the appointment year in view of the instructions issued at the time of preparation of select list. According to them, a large number of vacancies still existed and in support of the submission, the petitioners relied upon letter, dated 17.2.1999 of the Superintendent of Special Central Jail, Bhagalpur, as contained in Annexure-10. As per the said letter even after filling up 157 posts which was advertised, 42 posts of Jail Wardens existed within Bhagalpur Circle.

As nothing positive was forthcoming, the petitioners filed C.W.J.C. No.7073 of 2004. The writ petition was disposed of by order dated 23.4.2012 with a direction to the respondents to consider the case of wait list candidates against the vacancies which arose during the appointment year in accordance with law and in the light of the order of Division Bench of this Court in the case of Shri Shankar Prasad & Ors Vs State of Bihar & Ors.

It appears that pursuant to the direction of this Court, the petitioners filed revision before the IG, Prison who rejected the representation of the petitioners vide order, dated 4.10.2012. According to the IG, Prison, no vacancy existed and all 8 vacancies which existed due to non-joining of the appointed candidates were filled up from the wait list candidates. Besides

this, he also observed that the validity of the wait list candidates was only for a year from the date of the appointment which lapsed in 1999 and as such the petitioners would have no case for consideration after lapse of the validity period.

The State has filed counter affidavit. Counsel for the State supports the impugned action and submits that as per the order of the IG, Prison, all vacancies seem to be filled up and as such the petitioners could not be accommodated.

I have heard learned counsel for the parties.

The petitioners are wait list candidates and as per instruction issued at the time of appointment, they were to be considered against vacancies arising during the appointment year. In case no vacancy arises during the appointment year, the wait list candidates would have no claim. Similarly, if the vacancies were available and the wait list candidates were not considered against those vacancies within a period of one year, the claim of the wait list candidates would not lapse, for fault of the authorities not to make appointments from the wait list candidates during the period. The order of the I.G. Prison that in the year 2012 the case of the petitioners cannot be considered in the eyes of law as the validity of wait list expired after one year from the date of selection/appointment, is not sustainable. However, as submitted by the State, if no vacancy existed within a year of the

appointment, the wait list candidates obviously could not be considered for appointment.

The important issue is whether vacancy existed within a year of the appointment year. The petitioners, prima facie, have been able to demonstrate in view of letter dated 17.2.1999 of the Jail Superintendent, Special Central Jail, Bhagalpur that vacancies existed beyond strength of 157 Jail Wardens for which advertisement was issued.

In backdrop of letter dated 17.2.1999 as contained in Annexure-10 to the rejoinder to the Counter affidavit, the matter is remitted to the I.G. Prison to ascertain whether any vacancy other than 157 vacancies existed within a year of the appointment year as observed in C.W.J.C. No.7073 of 2004 as well as instructions issued at the time of appointment in the year 1998.

It is expected that the I.G. Prison would consider the matter within a period of three months from the date of receipt/production of a copy of this order.

With the aforesaid observations and directions, this writ application stands disposed of.

(Samarendra Pratap Singh, J)

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