

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13984 of 2016

=====

1. Ashok Kumar Chaudhary son of Sri Amit Chaudhary resident of Mohalla- Jai Prakash Nagar, Behind Electricity Board Office, District- Aurangabad
2. Rameshwar Ram Son of Sri Mathura Ram, resident of Hasauli, Kunda, P.S.- Deo District - Aurangabad
3. Ajay Kumar son of late Ramdeo sao resident of Mohalla- Teriya Pokhar, Jai Prakash Nagar, P.S.+ District- Aurangabad
4. Vijay Kumar Mehta son of Sri Chandra Deo Mehta resident of Village- Sargawan, P.S.- Deo District- Aurangabad
5. Angesh Kumar Sinha Son of Sri Manjeshwar Prasad Patwardhan resident of Mohalla- Biratpur, P.S. + District- Aurangabad
6. Rubi Kumari daughter of late Ajay Prasad resident of Village-Mirzapur, P.S. + District- Aurangabad

.... Petitioners

Versus

1. The State of Bihar through Principal Secretary, Health, Department, Government of Bihar, Patna
2. The Director-in-Chief, Health Services, Government of Bihar, Patna.
3. The Regional Additional Director, Health Services, Magadh Division, Gaya
4. The Chief Medical Officer- Cum- Civil Surgeon, Aurangabad

.... Respondents

=====

Appearance :

For the Petitioners : Mr. Rama Kant Sharma, Senior Advocate
Mr. Rakesh Kumar Sharma, Advocate
For the Respondents : Mr. Birju Prasad, GP-13
Mr. Ashok Kumar, AC to GP-13

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT

Date: 07-12-2016

Six petitioners before the High Court are aggrieved because the benefit of promotion, which was extended to them from Class-IV to Class-III post under the Civil Surgeon, Aurangabad vide Notification No. 1722 dated 14.07.2016 has been annulled and all the beneficiaries have been asked to report back to their respective post vide Annexure-1 dated 29.07.2016. Petitioners want quashing of this order.



Submission of learned senior counsel for the petitioners is that after the benefits of promotion was given, in a hurried manner the same was cancelled within days by virtue of Annexure-1 on the basis of so-called complaints received by the Collector of Aurangabad on the ground that the list of promotion has not been fairly and honestly prepared.

Submission of the counsel is that what is already done cannot be undone and right has accrued to the petitioners and, therefore, it should not be taken away in casual and cursory manner without substantive basis thereof.

Counter affidavit came to be filed both on behalf of the Civil Surgeon, Aurangabad as well as the District Magistrate, Aurangabad at the direction and instance of the Court. Since things were amiss at the level of the office of the Civil Surgeon, Aurangabad, the Court was more interested with the stand of the District Magistrate, Aurangabad. From the counter affidavit of respondent No.5, the District Magistrate, Aurangabad, it is evident that the District Magistrate received large number of objections and complaints with regard to the seniority list based on which the promotions had been granted. Looking at the deluge of complaints, the District Magistrate ordered enquiry and a three-member committee was constituted. The Committee came to a considered opinion that pick and choose was used without duly following any



kind of standard yardstick and the whole things seems to have been manipulated to give advantage to the certain people. Based on the report direction was given and Annexure-1 came to be issued.

The petitioners' right for consideration for benefit of promotion is a right, which accrues to each and every eligible candidate. It is not that only a handful are entitled to certain benefits. If an exercise was done for grant of promotion to Class-IV employees to the level of Class-III, then a proper and fair list of eligible candidates was required to be made. It has not been done and there cannot be any arguments on the issue because the enquiry report reveals enough that whoever was responsible for drawing of the list of eligible candidates has not done so in a fair and square manner. In fact, there are always vested interest, who see opportunity in such exercise.

If this is so then any effort to defeat the right of otherwise eligible candidate cannot be ignored and the Court will not look at the right of those who have been wrongly given the benefit of promotion.

There are enough materials, therefore, for a thorough enquiry into the issue and the District Magistrate must ensure that nobody ineligible is allowed to have his way and no eligible person will be ignored in preparation of a fresh merit list and seniority list based on which promotions will be required to be given.



There has to be faith and there has to be transparency in decision making process as well as the final decision. In absence of the same the peoples’ confidence in governance and the rule of law will be shaken.

For these reasons, the Court will not interfere with Annexure-1, but will give a direction to the Civil Surgeon, Aurangabad as well as the District Magistrate, Aurangabad that no hanky panky should be permitted in preparation of the seniority list and list of eligible persons who deserve to be promoted to Class-III post.

The Court is informed by the counsel for the State that the exercise is going on, which should reach finality soon.

In view of the above writ application is dismissed. But a direction is issued to the two respondents to ensure that no kind of scope for any controversy arises if the exercise for grant of promotion afresh is carried out and done which should be done within a reasonable time.

(Ajay Kumar Tripathi, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.12.2016
Transmission Date	N/A

