

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.115 of 2015

Arising out of

Civil Review No. 133 of 2003

Along with

Interlocutory Application No. 489 of 2015

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1. Ratnesh Kumar Mishra son of Laxmi Kant Mishra, Resident of Village Tiswara, P.S.- Harulo Chanpur, District- Samastipur
 2. Arun Kumar Singh Son of Ram Deo Singh Resident of Village- Sonapur, P.S.- Simari, District- Saharsa
 3. Ravindra Kumar Singh, Son of Sukhdeo Prasad, Resident of Village- Sonapura, P.S.- Simari, District- Saharsa
 4. Shankar Prasad Jaiswal, Son of Satya Narayan Jaiswal, Resident of Village- Chaoudhary Chak, P.S.- Town Thana, District- Saharsa

....Writ Petitioners-Opposite Parties 2nd Set- Appellants

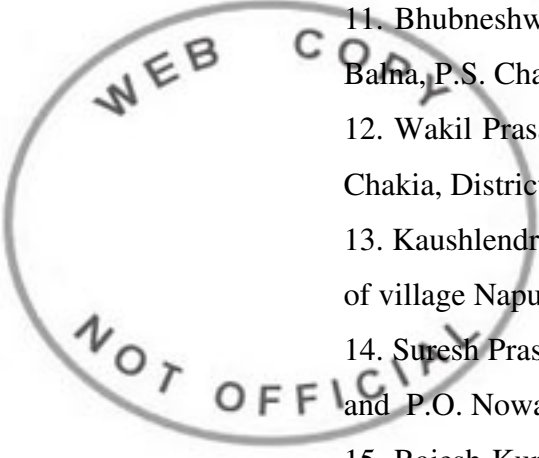
Versus

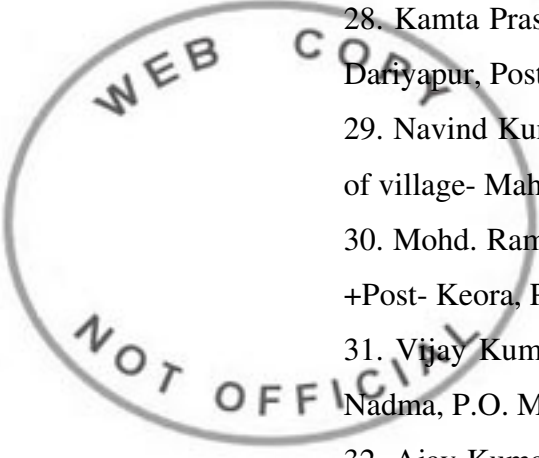
1. The State of Bihar, through the Secretary-cum-Commissioner, Health Department, New Secretariat, Patna
2. The Director-in-Chief, Health Department, New Secretariat, Patna
3. The Deputy Director (Administration), Health Department, New Secretariat, Patna
4. The Deputy Director (TB), Health Services, Bihar, Patna
5. The Chairman, Bihar Public Service Commission, Bailey Road, Patna

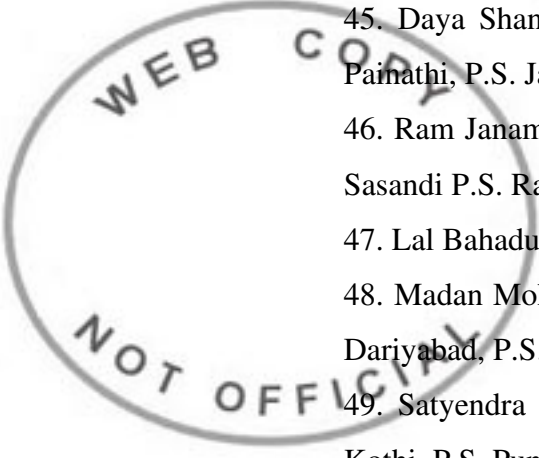
...Respondents-Opposite Parties 1st Set-Respondent-1st Set

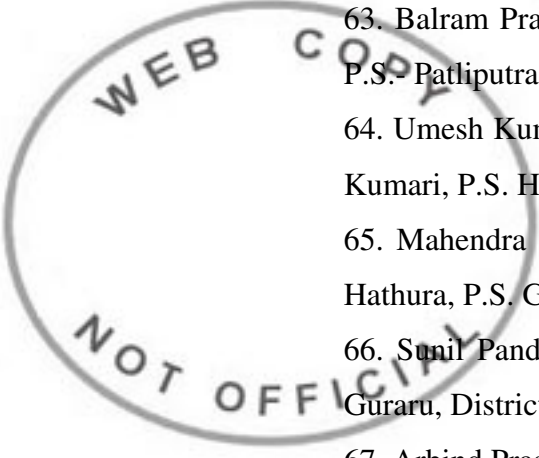
6. Sudarshan Prasad Singh, son of late Baleshwar Prasad Singh, Resident of village- Thanhaurma, P.S. Athmalgola, District Patna.
7. Md. Sayeed Ahmad, son of Md. Suleman, Resident of Ramna Road, P.S. Pirbahore, District Patna.
8. Madan Kumar Thakur, son of late Ijlas Thakur, resident of village Akbarpur, P.S. Rajpur, District Buxar
9. Slauddin Ansari, son of late Chaituddin Ansari, resident of village Mumrejpur, P.S. Naubatpur, District Patna

....Review Petitioners-Respondents

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10. Lakesh Kumar Singh, son of Jai Narayan Singh, resident of village Allula, P.S. Kalyanpur, District East Champaran.
 11. Bhubneshwar Prasad Sah, son of late Keshwar Sah, resident of village Kaila Balna, P.S. Chakia, District East Champaran.
 12. Wakil Prasad, son of Shri Sakaldeo Rai, resident of village Kaila Balna, P.S. Chakia, District East Champaran
 13. Kaushlendra Kumar, Roll No. 46211, son of Shri Braj Kishore Prasad, resident of village Napura, P.O. Asthawan, District Nalanda.
 14. Suresh Prasad, Roll No. 41083, son of Shri Ramdeo Prasad, resident of village and P.O. Nowanwa Pulper, Via Asthawan, District Nalanda
 15. Rajesh Kumar, Roll No. 42295, son of Shri Deo Narayan Prasad, resident of Abulashiana, Mathuatoli (Near Post Office), P.S.- Kadam Kuan, District- Patna
 16. Ramjee Singh, Roll No. 42453, son of Shri Ram Balak Singh `Balak`, resident of village & Post- Baikathpur, District- Patna
 17. Vijay Kumar Verma, Roll No. 46146, son of Late Baldeo Prasad, resident of village Ram Dutt Patti, P.S. Supaul, District Supaul
 18. Smt. Lakshmi Devi, Roll No. 46624, wife of Shri Shethu Baitha, resident of village Gandhi Gram, P.O. Maheshpur, P.S. Angara, District Ranchi.
 19. Jitendra Prasad Singh, Roll No. 44966, son of late Shyam Narayan Sinha, resident of village Chidaulchak, P.O. Bidaul, Via Masaudhi, District Patna
 20. Haridhar Singh, Roll No. 42254, son of Shri Kariman Singh, resident of village Dipardeeh, P.O. Dev, District Aurangabad
 21. Bhagwan Prasad, Roll No. 41960, son of Shri Jairam Prasad, Resident of village Madhyapur-Swarup, P. O. Aliman Chappara, East Champaran, Motihari
 22. Shri Awadesh Singh, Roll No. 44591, son of Shri Ramavtar Singh, resident of village and P.O. Natharpur, Via Mahua, Distt. Vaishali
 23. Abhay Kumar, Roll No. 46676, son of Shri Birendra Kumar Singh, resident of village Leag Gololi, P.O. Jarang Deodhi, District Muzaffarpur
 24. Abbuja Ansari, Roll No. 40929, son of late Abdul Jabbar Ansari, resident of village & Post Keora, P.S. Punpun, District Patna
 25. Hemant Kumar, Roll No. 46926, Son of Shri Vishwanath Prasad Singh, Resident of village Shettam Kurhan, P.O. Manibh Kumar, P.S. Sarai, District Vaishali.
 26. Bhan Pratap Singh, son of Shri Nand Kumar Singh, Resident of village + Post Chaugal, P.S. Murar, District Buxar

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27. Vijay Kumar Singh, Roll No. 43453, son of Shri Dhanushdhari Singh, Resident of village Sevedehi, Post Gandihara, P.S. Masaurhi, District Patna
28. Kamta Prasad, Roll No. 40841, son of Shri Ragho Prasad, resident of village Dariyapur, Post Teranwa, P.S. Manpur, District Nalanda.
29. Navind Kumar Singh, Roll No. 43152, son of late Ramlochan Singh, resident of village- Mahuli, Post Sulga, via- Punpun, P.S. Phulwarisharif, District Patna
30. Mohd. Ramjani, son of Mohd. Allauddin, Roll No. 40380, Resident of village +Post- Keora, P.S. Punpun, District Patna
31. Vijay Kumar, Roll No. 43976, son of Din Dayal Singh, Resident of village Nadma, P.O. Masaurhi, District Patna.
32. Ajay Kumar Singh, Roll No. 46995, son of Sant Narayan Singh, Resident of village Moshiapur, Post- Mathurapur, District Gaya.
33. Subhash Prasad, Roll No. 41552, son of Shri Ram Narayan Singh, Resident of village- Githahara, Post- Maker, District Chapra
34. Chandra Bhushan Singh, Roll No.41995, son of Shri Ram Shobhit Singh, Resident of village & Post- Lahua, via- Halgaha, District Samastipur
35. Krishna Poddar, Roll No. 44511, son of Late Ram Sharan Poddar, Resident of village-Kaithma, Post-Badalpura, District-Begusarai (since dead).
36. Bimal Kumar Pathak, Roll No.41851, son of Shri Bindhyavashani Prasad Pathak, Resident of village- Gaur Kothi, Post- Rampur Awasthi, District- Devria (UP).
37. Laddu Ram, Roll No.40104, son of Late Dashai Ram, Resident of B.M. Das Road, Purandarpur, Post- Bankipur, District-Patna-4.
38. Ashok Kumar Srivastava, Roll No. son of Baleshwar Prasad, Resident of Station Road, Dehri-on-Sone, P.S.- Dehri-on-sone, District-Rohtas
39. Anil Kumar Singh, son of Late Rabidnra Singh, Resident of village- Chatra More, P.S. and District-Aurangabad.
40. Hari Ram Ojha, son of Sri Raj Ballah Ojha, Resident of village- Jaithar, P.S.- Masarakh, District-Saran at Chapra
41. Sheo Dayal Choudhary, son of Nand Lal Choudhary, Resident of village- Kashinagar, P.S. Sonewayee, District- Patna
42. Nageshwar Chaudhary, son of Late Tilak Chaudhary, Resident of Bahadurpur Gumati, P.S.-Sultanganj, District-Patna
43. Ramanand Chaudhary, son of Rampati Chaudhary, Resident of Naya Tola, Saristabad, P.S. Gardanibagh, District Patna

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44. Ranjeet Kumar Chaudhary, son of Late Chamru Chaudhary, Resident of Kharara, P.S. Shahpur, District Patna
45. Daya Shankar Gupta, son of Late Ram Prasad Gupta, Resident of village Painathi, P.S. Jagadishpur, District Patna
46. Ram Janam Prasad, son of Sri Ramawatar Prasad Sinha, Resident of village- Sasandi P.S. Rahui District Nalanda
47. Lal Bahadur Choudhary Son of
48. Madan Mohan Prasad, son of Late Girja Nandan Prasad, Resident of village- Dariyabad, P.S. Barun, District Aurangabad
49. Satyendra Kumar Singh, son of Late Dwarika Singh, Resident of village- Kothi, P.S. Punpun, District Patna
50. Shashi Kumar, son of Sri Satyendra Narain Singh, Resident of Keora, P.S. Punpun, District Patna
51. Rajendra Prasad Singh, son of Late Kauleshwar Singh, Resident of Mohalla- Untta, P.S. Jehanabad, District Jehanabad.
52. Ram Sagar Mahto, son of Bindu Mahto, Resident of Village- Bishanpur, P.S. & District- Samastipur
53. Satish Kumar Ambastha, son of Sri Gukul Prasad, Resident of village & P.O.- Giar, P.S.- Asthawan, District- Nalanda
54. Sudhanshu Bhushan, son of Krishna Mohan Pyare, Resident of Village- Jagdama Printing Press, Dariapur, P.S. Kadam Kuan, District Patna
55. Umesh Kumar, son of Sri Surendra Pd. Singh, resident of village and P.O.- Nirpur, P.S.- Athamal Gola, District Patna
56. Jai Babu Singh, son of Late Sanyogum Singh, Resident of village Keora (Dhanka), P.S. Punpun, District Patna.
57. Raj Kumar Paswan, son of Sri Jag Nandan Paswan, Resident of village- Bapunagar, North Mandiri, P.S. Budha Colony, District-Patna
58. Awanendra Kumar, son of Sri Dwarika Singh, Resident of Sarbahdi, P.S.- Masaurhi, District- Patna
59. Gopal Sharan Singh, son of Sri Jagdeo Singh, Resident of village- Ganga Chak, P.S. Masaurhi, District Patna.
60. Rambali Singh, son of Shyam Sundar Singh, Resident of village- Saraina, P.O. Marachi, P.S.- Punpun, District Patna
61. Jaydeo Kumar, son of Sri Bhrgunath Sharma, Resident of village- Bharthu, P.S.- Ghoshi, District Jehanabad

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62. Arbind Kumar, son of Late Dayanand Purbey, Resident of village & P.S.- Bithan, District Samastipur
63. Balram Prasad, son of Brij Nandan Prasad, resident of Mainpura, (Bagicha), P.S.- Patliputra, Patna
64. Umesh Kumar Patel, son of Late Ram Pukar Patel, Resident of village- Balma Kumari, P.S. Hajipur Sadar, District- Vaishali
65. Mahendra Prasad, son of Sri Bigan Prasad, Resident of village- Mahimpur Hathura, P.S. Guraru, District Gaya
66. Sunil Pandey, son of Sri Paswan Pandey, Resident of village- Dekuli, P.S.- Guraru, District- Patna
67. Arbind Prasad, son of Late Kishun Mahto, Resident of village- Ghamadih, P.S. Noorsarai, District- Nalanda
68. Yadunandan Prasad, son of Late Kalicharan Mahto, Resident of village- Chauria Sonandi, P.S. Bahu, District- Nalanda
69. Md. Kamal Yusuf, son of Ainuddin Mallick, Resident of Ansar Nagar, P.S. Nawadih, District- Nawadah.
70. Sumindar Chaudhary, son of Late Deonandan Chaudhary, Resident of Atapura, P.O. Hazarat Sai, P.S. Dhanarua, District Patna
71. Md. Anwar Khurshid, son of Md. Khurshid Hussain, Resident of village Bardani, P.S. Biharsharif, District- Nalanda
72. Sunil Kumar Shastri, son of Chandramani Sharma, Resident of Oyao, P.S. Asthawan, District Nalanda
73. Arun Kumar, son of Sri Ram Saran Prasad, Resident of village- Sohmajpur Abdachak, P.S. Asthawan, District Nalanda
74. Laxmi Kant Pandey, son of Sri Chandramani Sharma, Resident of Oyao, P.S. Asthawan, District Nalanda
75. Sujay Kumar, son of Sri Shyam Babu, Resident of Mohalla- Karbigahia, P.S. Jakkanpur, District Patna
76. Krishna Prasad, son of Late Damari Prasad, Resident of village- Dariyapur (Mathurapur), P.S. Guraru, District Gaya
77. Ansar Ahmad, son of Abdul Zabbar, Resident of village Chekari, P.S. & District- Gaya
78. Md. Zakir Hussain, son of Md. Islam, Resident of village Bankh, P.S. Biyapur, Danapur Cantt. District- Patna
79. Ram Nandan Choudhary, son of Hero Choudhary, Resident of village

Bhandari, P.S. Rohi, District- Nalanda

80. Mushan Lal, son of Sri Jawala Sahu, Resident of village Rampur Bhandari, P.S. Rahui, District- Nalanda

81. Awadhesh Prasad, son of Sri Sitaram Saw, Resident of Babu Bazar, P.S. Giryak, District- Nalanda

82. Purnendu Narayan Sharma, son of Shree Sita Sharan Sharma, Resident of Quarter No.29/400, Rajbanshinagar, P.O. & P.S. Shastrinagar, District Patna, at present resident of Mohalla Alka Colony, Sandalpur Road, P.O. Mahendru Patna-6, P.S. Pirbahor, District Patna.

83. Md. Nehal, son of Md. Same, Resident of village- Banauliya, P.O. & P.S. Biharsharif, District- Nalanda

84. Md. Zuraid, son of Md. Ashanullah, Resident of village Grill Centre, Mohalla Sandalpur Road, P.O. Mahendru, P.S. Pirbahore, District- Patna

85. Ashok Kumar, son of Sheo Prasad Pandit, Resident of Mohalla Ram Sahay Lane, P.O. Mahendru, P.S. Pirbahore, Patna-6, Patna

....Respondents-Opposite Parties 3rd Set-Respondent 3rd Set

Appearance :

For the Appellants : Mr. Shailendra Kumar Verma, Advocate

For the Respondents No. 1 to 4 : Mr. Kundan Bahadur Singh, SC 22

For the Respondent No. 5 : Mr. Sanjay Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date:- 20-04-2016

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 489 of 2015

The present Interlocutory Application has been filed under Section 5 of the Limitation Act, 1963 seeking condonation of

delay of three days in filing of the Letters Patent Appeal No. 115 of 2015.

Taking into consideration the averments made in the Interlocutory Application and after hearing learned counsel for the parties, we find that sufficient cause has been shown for the appeal being filed beyond the limitation period.

For the reasons aforesaid, the delay in filing of Letters Patent Appeal No. 115 of 2015 stands condoned. Interlocutory Application No. 489 of 2015 stands disposed off.

Re.: Letters Patent Appeal No. 115 of 2015

The present intra-court appeal, under Clause X of the Letters Patent of the Patna High Court, has been filed by the appellants against the order passed by the learned Single Bench of this Court dated 10.09.2014 in Civil Review No. 133 of 2003 by which the earlier order dated 22.05.2002 passed in CWJC No. 9256 of 1999 has been recalled and the writ petition dismissed.

The writ petitioners, who are appellants herein, had preferred CWJC No. 9256 of 1999 for quashing of the result published in the newspaper dated 12.05.1999 and further for a direction to appoint them on the post of B.C.G. (Technician). The writ petition was heard and finally disposed off by judgment dated 22nd November, 2002 by which, though the selection process or the result



of successful candidates was not cancelled but a direction was issued to the State to verify the candidature of each successful candidate already appointed or to be appointed, particularly in reference to their training certificate and those who had not obtained training from the recognized Government Institute, their appointments were directed to be terminated after giving opportunity to them. The review petitioners, who were the selected candidates, then approached this Court in Civil Review No. 133 of 2003 being aggrieved by judgment dated 22.05.2002. The learned Single Bench has allowed the review application by order dated 10.09.2014 and has dismissed the writ petition (CWJC No. 9256 of 1999) after recalling the order dated 22.05.2002. The petitioners in CWJC No. 9256 of 1999 have thus preferred the present appeal being aggrieved by order dated 10.09.2014.

The relevant facts of the case are that about 6000 appointments were made, mostly on non-existing post by the then Deputy Director and the In-charge of the Tuberculosis Centre, Health Department, Government of Bihar way back in the year 1983 and onwards. On controversy being raised, a vigilance enquiry was ordered by the State Government in 1991 which found such appointments to be illegal both in terms of the procedure adopted as well as the number of appointments made which were way beyond the



sanctioned vacancies of 2250 Class IV and Class III posts. The matter travelled to the Hon'ble Supreme Court which, by judgment passed in the case of **Ashwani Kumar v. State of Bihar**, reported in (1997) **2 Supreme Court Cases 1**, though upheld the dismissal, but in view of the human aspect, directed the State of Bihar to undergo fresh exercise for recruiting Class IV and Class III employees in the Tuberculosis Eradication Programme on the available 2250 vacancies or even more, as the case may be, for which certain guidelines were also provided. The exercise having been completed by the State of Bihar and the result declared was subject matter before the Court in CWJC No. 9256 of 1999.

Learned counsel for the appellants submits that the judgment dated 22.05.2002 is well-considered and that only those persons who had training certificate from Government recognized Institutes at Patna and Darbhanga could have been considered, as persons not possessing the same were ineligible as per Advertisement No. 01 of 1997, as has been rightly interpreted by the learned Single Bench in the judgment dated 22.05.2002 relating to the eligibility criteria with regard to such advertisement dated 05.05.1997. It is further submitted that even the judgment of the Hon'ble Supreme Court in the case of **Ashwani Kumar** (*supra*) has to be interpreted in a manner which has been so done in the judgment dated 22.05.2002



and thus the benefit cannot be given to those who did not have such training from the Government recognized Institutes at Patna and Darbhanga. It is submitted that the learned Single Bench has misinterpreted the directions no. 6 and 7 given by the Hon'ble Supreme Court in the case of **Ashwani Kumar** (*supra*). Learned counsel submits that the judgment dated 22.05.2002 in CWJC No. 9256 of 1999 being based on well-founded and cogent reasons was not fit to be interfered with as has been done in the order impugned in Civil Review No. 133 of 2003 dated 10.09.2014.

Learned counsel for the State submits that the reasons mentioned in the order impugned cannot be faulted. It is submitted that the learned Single Bench has rightly noted the fact, relying upon the judgment of the Hon'ble Supreme Court, that it is the basic requirement of law in terms of principles of natural justice that persons who are to be affected by any order/judgment have not only to be or party but also noticed and heard which was the basic infirmity in the judgment dated 22.05.2002. He further submits that even as per the judgment of the Hon'ble Supreme Court in the case of **Ashwani Kumar** (*supra*), the contention that the consideration had to be of persons who had the requisite training from Government recognized Institutes at Patna and Darbhanga, as has been held in the judgment dated 22.05.2002, is erroneous for the reason that the Hon'ble



Supreme Court itself has noticed the direction of the State Government under communication dated 31.01.1987 relating to training being imparted to the candidates and persons who have completed such training were also to be given the benefit of extra 2 marks. Learned counsel submits that the order impugned needs no interference.

Having considered the rival contentions, we are unable to agree with the submissions of learned counsel for the appellants. The fact that the affected persons, who had been successful in the result which was impugned before the learned Single Bench in the writ petition, not having been made party, itself made the writ petition unfit to proceed, moreso if any adverse order or observation was made with regard to such result or any fresh exercise directed with regard to the same was to be issued. Only in the case where the entire writ petition itself was fit to be dismissed, such requirement of making them party stood waived. In the present case, the direction to verify the candidature of each successful candidate already appointed or to be appointed, especially with reference to the training certificate and such training certificate having been defined to imply only those from Government recognized training Institutes at Patna and Darbhanga, did visit the successful candidates with civil consequences which may also have been prejudicial to their interest ought not to have been



done behind their back as they had no opportunity to explain their position or the import of either the judgment of the Hon'ble Supreme Court or the Government decision as contained in letter dated 31.01.1987. Further, the learned Single Bench in the judgment dated 22.05.2002 at paragraph no. 14, though has noticed the Government decision dated 31.01.1987, but has gone on an erroneous presumption that the cases were argued before the Hon'ble Supreme Court on the basis of training qualification mentioned in the advertisement. This distinction appears to us to be contrary to what has been held by the Hon'ble Supreme Court in the case of **Ashwani Kumar** (*supra*) where direction no. 7 clearly stipulates that candidates appointed by Dr. Mallick, who are found to have undertaken training pursuant to the Government decision dated 31.01.1987, may be awarded two additional marks for training so received. We have gone through the Government decision contained in letter dated 31.01.1987 and find that the same clearly stipulates that the Government itself made provision for persons to get training at the Government Tuberculosis Centres and the Hon'ble Supreme Court having clearly mentioned that such training would also be considered, leaves no scope of any ambiguity or doubt that the training for consideration of appointment pursuant to the direction of the Hon'ble Supreme Court was not to be restricted only to those candidates who possess the training certificate

from Government recognized institutes at Patna and Darbhanga. Thus, taking an overall view and considering the totality of the situation, we find that the review application has rightly been allowed and the order dated 10.09.2014 passed in Civil Review No. 133 of 2003 requires no interference.

Accordingly, we find no merit in the present appeal and the same stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J I agree

(Hemant Gupta, J)

Anjani/-

N.A.F.R/A.F.R.

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