

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1604 of 2015

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1. Chandan Kumar Gupta, Son of Shri Jaydev Prasad, Resident of Mohalla- Lal Darwaza, Police Station- Kotwali, Post Office and District- Munger (Bihar) Roll No. 1413
 2. Sukh Sagar Prasad Yadav, Son of Late Madhusadan Prasad Yadav, Resident of Mohalla- Lal Darwaza, Police Station- Kotwali, Post Office and District- Munger (Bihar) Roll No. 1649
 3. Binay Kumar Sharma, Son of Late Nathuni Sharma, Resident of Mohalla- Naya Gaon, Police Station- East Colony Jamalpur, Post Office- Jamalpur, District- Munger (Bihar) Roll No. 1382
 4. Ram Prakash Gupta, Son of Naresh Prasad, Resident of 877, Mogal Bazar, Post Office- Basudeopur, Police Station- Kotwali, District- Munger (Bihar) Roll No. 1547
 5. Subhash Kumar Pandit, Son of Late Mahendra Pandit, Resident of Mohalla- Roysur, Post Office- Basudeopur, Police Station- Kotwali, District- Munger (Bihar) Roll No. 1655
 6. Mahesh Narayan Sahu, son of Shri Shiv Shankar Prasad, Resident of Naya Tola, Dalhatta Bazar, Police Station- Kotwali, Post Office and District- Munger (Bihar) Roll No. 1494
 7. Sachindra Kumar Choudhary, Son of Late Kedarnath Choudhary, Resident of Mohalla- Mokarganj, Post Office, Police Station and District- Katihar (Bihar) Roll No. 1888
 8. Abhay Kumar, son of Late Banarasi Prasad Sinha, Resident of At + Post Office- Khaira, Police Station- H. Kharagpur, District- Munger (Bihar) Roll No. 1342
 9. Naresh Paswan, Son of Late Ram Kishun Paswan, Resident of Fort Area Kast Harni Ghat, Post Office and District- Munger (Bihar), Pin- 811201, Roll No. 1413

.... Petitioner/s

Versus

1. The State of Bihar, through the Home Commissioner, Government of Bihar, Patna Secretariat, Patna (Bihar)
2. The Commissioner-cum-Secretary, Department of Personnel and Administrative Reforms (Now General Administration Department), Government of Bihar, Patna (Bihar)
3. The High Court of Judicature at Patna, through its Registrar General, High Court, Patna (Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Singh, Advocate. Mr. Arvind Kumar Tewary, Advocate
For Respondent Nos. 1 and 2:	:	Mr. P.K. Verma, A.A.G.-3 Mr. Ujjwal Kumar Sinha, A.C. to AAG-3
For the Respondent No. 3	:	Mr. Piyush Lal, Advocate

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 19-12-2016**

Heard learned counsel for the parties.

2. The petitioners claim a writ of mandamus for direction to the respondents to appoint the petitioners to the post of Munsif consequent to the requisition sent by the High Court for filling up of 155 posts on 10th of April, 2002.

3. The brief facts leading to the present petition is that an advertisement was published on 7th of October, 1991 inviting applications to fill up 245 posts of Munsifs. The petitioners are the candidates who applied for appointment in respect to such advertisement.

4. A merit-list of 539 successful candidates was prepared but the Supreme Court in a judgment reported as State of Bihar and another Vs. Bal Mukund Sah and others, A.I.R. 2000 Supreme Court 1296 quashed the reservation made for O.B.C. and all other categories excluding Scheduled Castes and Scheduled Tribes. Subsequently all 245 posts were filled up from 539 successful candidates. The last candidate who has been appointed has obtained 566 marks whereas; the petitioners were lower in merit. Since they were not appointed, the petitioners invoked the writ jurisdiction of this



Court seeking appointment against 155 vacancies, the requisition for which was sent by the High Court when the process of appointment in pursuance of such advertisement was still in process.

5. In the counter affidavit, after giving history of the appointments from time to time it is averred that against the 245 posts for which requisition was sent in pursuance of 24th Bihar Judicial Service Examination, 245 successful candidates have already been appointed in different allotments and phases. The names of the petitioners were not recommended by the Bihar Public Service Commission as successful candidates.

6. The argument of learned counsel for the petitioners is that there was a requisition sent by this Court in respect of 155 posts; therefore, the petitioners have a right to seek appointment against such post for which requisition was sent.

7. It could not be pointed out that in pursuance of such requisition; any advertisement was published inviting applications for appointment to the judicial service. Though after the 24th Bihar Judicial Service Examination, different subsequent examination processes were held i.e. 25th, 26th, 27th and 28th Bihar Judicial Service Examination and candidates were appointed. Therefore, on the basis of requisition once sent by the High Court, the petitioners cannot claim any right of appointment when no advertisement was issued and



the candidates equal to the number of posts stand appointed in the selection process, in which the petitioners were candidates.

8. Still further, 245 advertised posts stand filled up. The petitioners are not meritorious candidates. Therefore, in view of the judgment of the Supreme Court reported as Kulwinder Pal Singh and another Vs. State of Punjab and others, AIR 2016 Supreme Court 2281, the petitioners who are not in merit and are beyond advertised posts cannot claim right of appointment.

9. Consequently, we do not find any merit in the present writ application. The same is dismissed.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	22.12.2016
Transmission Date	

