

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11064 of 2011

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1. Sheo Shankar Saw, son of Late Gaya Saw, resident of Village-Rauna P.S. Belaganj, District Gaya
 2. Ramjee Sharma, son of Late Baldeo Singh, resident of Village Ronashrepur (Rauna Shekhpura new name), P.S. Belaganj, District Gaya.

.... Petitioners

Versus

1. The State of Bihar through the Special Secretary, Department of Energy, Government of Bihar, Patna.
2. The Special Secretary, Department of Energy, Government of Bihar, Patna.
3. The Director, Bihar Renewable Energy Development Agency, Sone Bhawan, 3rd Floor, Virchand Patel Marg, Patna.

.... Respondents

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Appearance :

For the Petitioners : Mr. Abhimanyu Sharma,
Mr. Prakritika Sharma, Advocates.
For the BREDA : Mr. Prasoon Sinha, Advocate.
For the State : Mr. Manish Dhari Singh, AC to PAAG 1

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 19-12-2016

Heard learned counsel for the petitioners and learned
counsel for the respondents.

2. The present writ petition has been filed for the following
reliefs:-

“(i) To command and direct the respondents to consider the candidature of these petitioners for appointment on the sanctioned and vacant posts of Biogas Technicians in Bihar Renewable Energy Development Agency (hereinafter calls as “BREDA”) a State Designated Nodal Agency under the Energy Department, Govt. of Bihar as the petitioner after their selection were sent for special training in the Regional Centre for biogas training in the year 1987 and 1989 respectively with clear undertaking to get appointment after training but thereafter the vacant were never



advertised.

(ii) To command and direct the respondents to advertise the posts of Biogas lying vacant under BREDA for long causing unnecessary hindrance in achieving the aims and objects of the BREDA and consider the candidature of these petitioners even after giving the age relaxation if it is so required.

(iii) To grant any other relief or reliefs to which the petitioners are otherwise found entitled for.”

3. The short facts of the case according to the petitioners are that 118 sanctioned posts of Biogas Technicians were created for the fulfillment of the aims and objects of Bihar Renewable Energy Development Agency (hereafter referred to as “BREDA”) with essential qualification of matriculation with Biogas Training. The State of Bihar initiated the training scheme and appointed the trained persons as Biogas Technicians but in view of some posts remaining unfulfilled, applications were invited in the year 1986 from persons interested in obtaining training for the purpose of being considered for such appointments. The petitioners accordingly sent their applications and were sent for training in the year 1986 and were granted certificates of completion of training but were not appointed even though several other persons similarly situated came to be appointed in the year 1988.

4. Learned counsel for the petitioners submits that some of the posts of Biogas Technicians still remain vacant and the respondents ought to be directed to consider their cases for appointment after granting relaxation of age; alternatively, it is submitted that the respondents be directed to issue fresh advertisement for appointment



to the remaining vacant posts and consider the case of the petitioners after relaxation of age. It is further submitted that work has been taken from the petitioners on contract basis since 1991 which shows that there is need for appointment against the sanctioned posts.

5. Learned counsel for the respondents, on the other hand, opposes the writ petition stating that altogether 118 posts of Biogas Technicians had been sanctioned in respect of 5 programs on purely temporary basis. The Energy Department by letters dated 06.08.1986 and 23.08.1986 categorically provided that the 5 programs were purely on temporary basis and the posts of Biogas Technicians would continue till BREDA gets service charge from MNRE, Government of India. Subsequently, however, the Government of India had stopped the program of improved Chulha by letter dated 27.12.2001. Learned counsel for the respondents invites attention to paragraphs 4, 5 and 6 of the counter affidavit on behalf of respondent no. 3 to submit that the petitioners never applied in the BREDA for their appointment and that the petitioners never worked on contract basis in BREDA and also that the petitioners do not hold the minimum qualification for appointment on the post of Biogas Technician as prescribed by BREDA.

6. Having heard the parties and on a careful consideration of the materials on record, this Court does not find merit in the writ petition. It is well settled that it is for the employer to decide whether or not appointments have to be made against the vacant sanctioned posts and for that purpose whether or not to issue fresh advertisement. In the instant case, it is the stand of the respondents that 118 posts had



been created purely on temporary basis and that the Government of India had subsequently stopped the program of improved Chulha by its letter dated 27.12.2001. From the averments made in the counter affidavit, it is also clear that the claims of the petitioners involve disputed questions of fact as there is denial in the counter affidavit to the effect that the petitioners never applied in the BREDA for their appointments, they never worked on contract basis in BREDA and they do not hold the minimum qualification for appointment on the post of Biogas Technician as prescribed by BREDA. Even otherwise, the claim of the petitioners for being considered for appointment in relation to their applications said to have been filed almost three decades ago cannot be accepted at this belated stage.

7. The writ petition accordingly stands dismissed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21.12.2016
Transmission Date	N.A.

