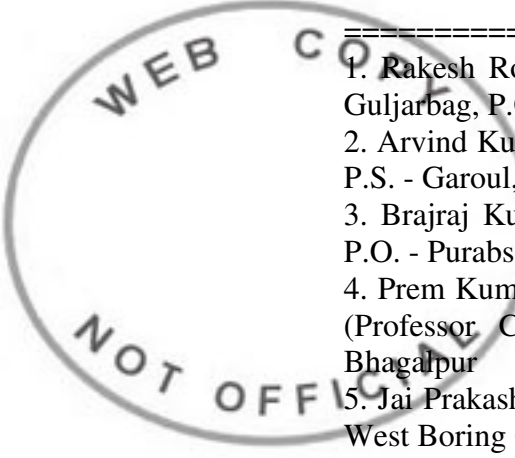


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14034 of 2013

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1. Rakesh Roshan Son of Shri Shyamal Kishore Yadav, Resident of Mohalla - Guljarbag, P.O., P.S. and District - Madhepura
 2. Arvind Kumar Son of Shri Chandrashekhar Prasad, resident of village , P.O. and P.S. - Garoul, District - Vaishali
 3. Brajraj Kumar Son of Umesh Prasad Yadav, resident of mohalla - Hazisujan, P.O. - Purabsarai, P.S. - Kotwali, District - Munger
 4. Prem Kumar Son of Late Pramod Bihari Sinha, resident of mohalla - Sahebganj (Professor Colony), P.O. - Champanagar, P.S. - Vishwavidyala, District - Bhagalpur
 5. Jai Prakash Son of Sri Bhola Lal H/o Sri K.K. Jha Advocate, New Punaichak, West Boring Canal Road, Patna - 23
 6. Manorama Kumari Wife of Arun Kumar, resident of village and P.O. - Mai, P.S. - Hilsa, District - Nalanda
 7. Kanchan Kumari D/o - Shri Basudeo Prasad Yadav resident of village and P.O. - Sahugarh (Bhatu Tola), P.S. and District Madhepura
 8. Anil Kumar Son of Shri Triveni Prasad Yadav resident of village and P.O. - Gaidhela, P.S. And District - Madhepura
 9. Subodh Kumar Son of Late Upendra Prasad Yadav resident of village and P.O. - Kataithi, P.S. - Udakishanganj, District - Madhepura
 10. Rajesh Kumar Ranjan Son of Shri Hira Lal Sah resident of village and P.O. - Kataithi, P.S. - Udakishanganj, District - Madhepura
 11. Deepak Kumar Yadav Son of Late Umesh Prasad Yadav resident of village - Usri, P.O. And P.S. - Gogri, District - Khagaria
 12. Sanjeev Ratna Son of Jagdish Chandra Ghosh resident of village - Dhauni , P.O. And P.S. - Tarapur, District - Munger
 13. Santosh Kumar Srivastava Son of Late Surendra Kumar Srivastava resident of Shree Krishna Path, Vachaspati Nagar, Kumhrar, Patna - 6
 14. Sudama Singh Son of Binod Kumar resident of Chai Tola, Mahendru, Patna - 6
 15. Amrendra Kumar Son of Late Jagdish Sharma resident of village Dher Saiya, P.O. - Kako, District - Jehanabad
 16. Randhir Pratap Singh Son of Sri Collector Singh resident of village - Bahadurpur, P.O. - Makhdamabad, P.S. - Parasi, District - Arwal
 17. Pawan Kumar Son of Rana Pratap Singh resident of village - Haibatpur, P.O. And P.S. - Rampur Chouram, District - Arwal
 18. Santosh Kumar Son of Sri Ram Surat Ram resident of mohalla - Chiknour, P.O. - Hajipur, District - Vaishali
 19. Sunita Kumari Wife of Santosh Kumar resident of mohalla - Chiknour, P.O. - Hajipur, District - Vaishali
 20. Upasana D/o - Prof. K.K. Singh Behind Zenith Petrol Pump, Ramdayalpur, P.O. - Ramna, District - Muzaffarpur
 21. Mukesh Kumar Son of Raj Mohan Sah resident of village - Semra Srirampur, P.O. - Bhiphiharwa Ashram, P.S. - Gaunahr, District - West Champaran
 22. Md. Sadruddin Son of Late Md. Sharfuddin resident of Pathar Ki Masjid, Tekari Road, Patna - 6
 23. Suman Kumar Son of Sri Prabhakar Sharma resident of village - Sherpur, P.O. - Malpur, P.S. - Maranchi, District - Patna
 24. Umesh Kumar Deo Son of Prasadi Sharma resident of village - Nadaura, P.O. - Marui, P.S. and District - Nawada

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department of Education, Government of Bihar, Patna
3. The State Project Director, Bihar Madhyamik Shiksha Parishad, 8th Floor, B.S.E.B. (Higher Secondary) Building, Budh Marg, Patna
4. The Director, Secondary Education, Government of Bihar, Vikash Bhawan, New Secretariat, Patna
5. The Director (Administration)-Cum-Additional Secretary, Department of Education, Government of Bihar, Vikash Bhawan, New Secretariat, Patna
6. The Joint Secretary, Department of Education, Government of Bihar, Vikash Bhawan, New Secretariat, Patna
7. The State Programme Officer, Bihar Madhyamik Shiksha Parishad, 8th Floor, B.S.E.B. (Higher Secondary) Building, Budh Marg, Patna
8. The Advisor, Education Department-Cum-Incharge, External Evaluation and Monitoring Cell, Education Department, Vikash Bhawan, New Secretariat, Patna
9. A.N. Sinha Institute of Social Studies through its Registrar, North West Corner Of Gandhi Maidan, Patna
10. Project-Cum-Cell Director, External Evaluation and Monitoring Cell, A.N. Sinha Institute of Social Studies through its Registrar, North West Corner of Gandhi Maidan, Patna
11. Senior State Monitoring Officer, External Evaluation and Monitoring Cell, 8th Floor, B.S.E.B. (Higher Secondary) Building, Budh Marg, Patna.

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Adv.
Mr. Manoj Kumar Jha, Adv.
For the Respondent/s : Mr. Girijesh Kumar, Adv.
Mr. Jai Prakash Sharma, AC to GP-XI

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 04-02-2016

In the present case, petitioners are seeking relief for quashing the Advertisement dated 7th April 2013 published in Hindi Daily Newspaper “Hindustan” which was issued under the seal and signature of the State Project Director, Bihar Madhyamik Shiksha Parishad. The second relief has been sought for issuance of writ in the nature of mandamus directing the respondents to take work

continuously from the petitioners at par with similarly situated persons who are performing/discharging their satisfactory services for more than four and half years on contract basis.

The Government of India and the State Government jointly initiated various programme in the Secondary School for the purposes of enhancement educational standard of the State. To monitor the progress and function various programme run by Education department, it was decided to hand over the work to External Agency, accordingly, work was assigned to A.N. Sinha Institute of Social Studies, Patna, accordingly, A. N. Sinha Institute constituted Cell called as External Evaluation and Monitoring Cell.

Petitioners were engaged by A.N. Sinha Institute of Social Studies autonomous body for working on the post of Research Officer and Research Investigator with a clear understanding that they were appointed under a scheme being monitored by them as an External Agency. According to the terms of understanding, petitioners cannot claim the right whatsoever if the monitoring of such scheme is withdrawn by the officials of the Agency of the State of Bihar from A.N. Sinha Institute of Social Studies. If the scheme is withdrawn by the Agency of the State Government, petitioners would not claim any right of continuation on the aforesaid post. Subsequently, the State authority with regard to managing the scheme of Evaluation and



Monitoring Cell, gave 1% of budgetary allocation will have to be utilised for the utilization of man power and posts. The work which was assigned to A.N. Sinha Institute of Social Studies was withdrawn and the same was handed over to Bihar Madhyamik Shiksha Parishad and according to the petitioners, for certain period they have worked in the Bihar Madhyamik Shiksha Parishad as Supervisor, but later on, Bihar Shiksha Parishad issued a fresh advertisement for selection of Supervisor which has caused to them heart burning, for that, they approached this Court in CWJC No. 7446 of 2013 claiming that as they have been working as a Supervisor, there should not be a fresh selection and they should be allowed to continue in the same job.

They have realized difficulty and satisfied with a direction that they should be given the opportunity to participate with other person in the selection process against the Advertisement published by the Bihar Madhyamik Shiksha Parishad and this Court after hearing the parties has directed, is as follows:-

“they all have been working to the satisfaction of all.” would be that in view of their maximum working experience ranging for a period three years i.e. 2009-12 at best, this Court would direct for giving them such relaxation of age of three years to anyone of them who may have exceeded the maximum age limit of 52 years

as laid down in the impugned advertisement. In other words, the maximum age limit for the aforesaid 107 members of the petitioner Association shall be 55 years instead of 52 years as prescribed in the advertisement dated 7.4.2013.

In view of the fact that this writ application was filed on 8.4.2013 also assailing the aforementioned employment notice contained in the advertisement dated 7.4.2013 and that this Court has found no flaw in such advertisement, this Court would also give liberty to the aforesaid 107 members of the petitioner Association to file their application by 31.5.2013 if they fulfill all the other terms and conditions of the advertisement dated 7.4.2013. In other words for them the last date of filing the application will be 31st May, 2013 in place of 30th April, 2013 which according to Mr. Grijesh Kumar learned Counsel for Respondent had been extended upto 10th May, 2013 even for other general candidates from open market. It is however, even at the cost of repetition, made clear that barring relaxation of age to the petitioners including 107 of its Members, anyone of them filing application for the post of Assistant Resource

Person, will have to compete with other applicants and appointment on the posts advertised therefore will be made by Parishad strictly on merit.

In terms of the direction of this Court, members of the Association participated in the selection process and tested their luck for appointment on contract basis.

Petitioners again have raised the similar issue before this Court in the present case challenging the Advertisement as well as seeking direction for continuation of their services on adhoc/contractual basis which has been rejected by this Court only with a liberty to participate granting relaxation in age, not otherwise. When the issue has already been concluded, there is no justification for them to approach this Court with regard to the same relief.

In such view of the matter, this issue has already been adjudicated and set at rest by this Court in CWJC No. 7446 of 2013 and inasmuch as the counsel for the Bihar Madhyamik Shiksha Parishad has informed that the selection process has already been completed and those who were appointed on contract basis, are discharging their duties. In the present case those who have been appointed, have not been made party to this proceeding, they are the necessary party, without hearing them no order can be passed. In this facts and circumstances, the petition cannot be proceeded with.

This Court does not find any merit in this case either on merit or any technical ground and the same is, accordingly, dismissed.

(Shivaji Pandey, J)

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