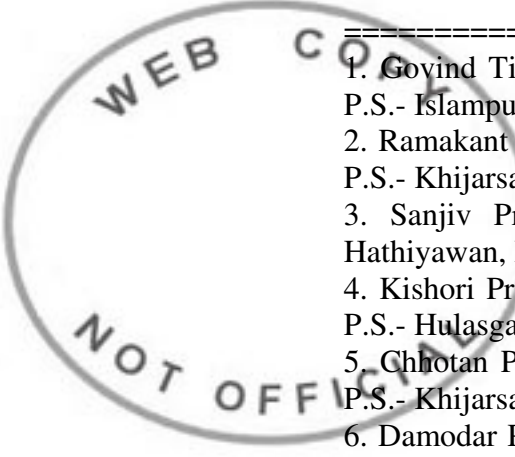


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4239 of 2013

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1. Govind Tiwari Son Of Late Ram Pravesh Tiwari Resident Of Village- Sanda, P.S.- Islampur, District- Nalanda
 2. Ramakant Yadav Son Of Sri Bachchu Yadav Resident Of Village- Baid Bigha, P.S.- Khijarsarai, District- Gaya
 3. Sanjiv Prasad Singh Son Of Late Prasadi Yadav Resident Of Village- Hathiyawan, P.S.- Khijarsarai, District- Gaya
 4. Kishori Prasad Son Of Late Ramdeo Mahto Resident Of Village- Koeri Bigha, P.S.- Hulasganj, District- Jehanabad
 5. Chhotan Prasad Son Of Sri Bhagwat Yadav Resident Of Village- Baid Bigha, P.S.- Khijarsarai, District- Gaya
 6. Damodar Pandey Son Of Sri Baijnath Pandey Resident Of Village- Ibrahimpur, P.S.- Hulasganj, District- Jehanabad
 7. Rambrichh Mali Son Of Jhopari Bhagat Resident Of Village- Ibrahimpur, P.S.- Hulasganj, District- Jehanabad
 8. Rambrichh Yadav Son Of Late Lekha Yadav Resident Of Village- Manubigha, P.S.- Hulasganj, District- Jehanabad
 9. Karu Mali Son Of Late Bangali Mali Resident Of Village- Bauri, P.S.- Hulasganj, District- Jehanabad
 10. Rameshwar Prasad Son Of Late Yugal Prasad Resident Of Village- Enaichak, P.S.- Khijarsarai, District- Gaya
 11. Ganauri Yadav Son Of Late Rameshwar Gope Resident Of Village- Bhatu Bigha, P.S.- Hulasganj, District- Jehanabad
 12. Akhilesh Kewat Son Of Deo Narayan Kewat Resident Of Village- Kanhaiya Bigha, P.S.- Makhdumpur, District- Jehanabad
 13. Banwari Bind Son Of Late Suresh Bind Resident Of Village- Thikraur, P.S.- Ghoshi, District- Jehanabad
 14. Ashok Prasad Son Of Sri Ram Sewak Mahto Resident Of Village- Jaru, P.S.- Hulasganj, District- Jehanabad
 15. Mahesh Manjhi Son Of Late Baldhari Manjhi Resident Of Village- Kamta Nagar, P.S.- Khijarsarai, District- Gaya
 16. Sikandar Prasad Son Of Sri Munni Lal Singh Resident Of Village- Bhatu Bigha, P.S.- Hulasganj, District- Jehanabad
 17. Raj Kumar Singh Son Of Sri Munni Lal Singh Resident Of Village- Bhatu Bigha, P.S.- Hulasganj, District- Jehanabad
 18. Jitendra Sharma Son Of Baban Sharma Resident Of Village- Bira, P.S.- Hulasganj, District- Jehanabad
 19. Sumesh Prasad Son Of Sri Deo Narayan Mahto Resident Of Village- Jaru, P.S.- Hulasganj, District- Jehanabad
 20. Deo Narayan Kewat Son Of Late Lakhan Kewat Resident Of Village- Kanhaiya Bigha, P.S.- Makhdumpur, District- Jehanabad
 21. Upendra Malakar Son Of Sri Brajnandan Malakar Resident Of Village- Naudiha, P.S.- Khijarsarai, District- Gaya
 22. Birendra Sharma Son Of Sri Naresh Sharma Resident Of Village- Tira, P.S.- Hulasganj, District- Jehanabad
 23. Suchit Sharma Son Of Sri Rampati Sharma Resident Of Village- Tira, P.S.- Hulasganj, District- Jehanabad
 24. Lalu Yadav Son Of Late Punit Yadav Resident Of Village- Kanhaiya Bigha, P.S.- Makhdumpur, District- Jehanabad

25. Deogirit Yadav, son of late Lutkun Yadav, resident of Village Kanhaiya Bigha, P.S. Makhdumpur, District Jehanabad
26. Girja Manjhi Son Of Sri Bhukhal Manjhi Resident Of Village- Chhabilapur, P.S.- Hulasganj, District- Jehanabad
27. Basudeo Thakur Son Of Mahabir Thakur Resident Of Village- Kaziyana, P.S.- Islampur, District- Nalanda
28. Sunil Prasad Son Of Late Hari Ram Prasad Resident Of Village- Kaziyana, P.S.- Islampur, District- Nalanda
29. Anil Prasad Son Of Late Hari Ram Prasad Resident Of Village- Kaziyana, P.S.- Islampur, District- Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Water Resources Department, Bihar, Patna
2. Principal Secretary, Water Resources Department, Bihar, Patna
3. Principal Secretary, General Administration Department, Bihar, Patna
4. Joint Secretary, Water Resources Department, Bihar, Patna
5. Chief Engineer, Water Resources Department, Gaya
6. District Magistrate, Jehanabad
7. Executive Engineer, Waterways Division, Uderasthan (Jehanabad)

.... Respondent/s

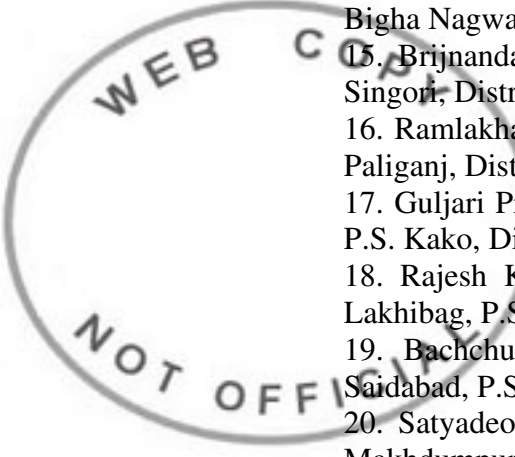
with

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Civil Writ Jurisdiction Case No. 22702 of 2012

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1. Vijay Prasad Son Of Late Kailash Yadav Resident Of Village Barki Babhanpura Lakhawar, P.S. Ghosi, District Jahanabad
2. Rampravesh Singh Son Of Rohan Yadav Resident Of Village Bansraj Bigha, P.S. Tehta, District - Jahanabad
3. Ganauri Prasad Son Of Shri Chandradeo Singh Resident Of Village Dehalpur Milko, P.S. Ghosi, District - Jahanabad
4. Bindeshwar Prasad Son Of Munshi Prasad Resident Of Village Pinjora, P.S. Kako, District - Jahanabad
5. Mithilesh Kumar Son Of Ramsharan Mahto Resident Of Village Dharampur, P.S. Kako, District - Jahanabad
6. Nand Kishore Prasad Son Of Late Sukhdev Prasad Resident Of Village Bairag Sarai, P.S. Ghosi, District Jahanabad
7. Gajendra Prasad Son Of Nakul Prasad Resident Of Village Bhimalpur Jaitipur Kurua, P.S. Ghosi, District - Jahanabad
8. Suresh Singh Son Of Shri Govind Singh Resident Of Village Horilganj, P.S. , District Jahanabad
9. Ganga Bishun Prasad Son Of Shri Kedar Prasad Resident Of Village Aryapath Uttar Tola, P.S. Jehanabad, District - Jahanabad
10. Lalit Kumar Diwakar Son Of Ramdeo Kumar Diwakar Resident Of Village Barhi Bigha, P.S. Chakand, District - Gaya
11. Mundarik Ram Mochi Son Of Late Dilip Mochi Resident Of Village Nagma, P.S. Kako, District - Jahanabad
12. Rajnandan Das Son Of Late Dilip Das Resident Of Village Nagwan, P.S. Kako, District - Jahanabad

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13. Manoj Kumar Son Of Karu Prajapati Resident Of Village Lodipur, P.S. Belaganj, District - Gaya
 14. Ramprit Yadav Son Of Late Devnandan Yadav Resident Of Village Sivraj Bigha Nagwan, P.S. Kako, District Jahanabad
 15. Brijnandan Yadav Son Of Subedar Singh Resident Of Village Karauti, P.S. Singori, District - Patna
 16. Ramlakhan Singh Son Of Fakira Singh Resident Of Village Gauri Bigha, P.S. Paliganj, District - Patna
 17. Guljari Prasad Son Of Late Ishwari Prasad Resident Of Village Panchrukhiya, P.S. Kako, District Jahanabad
 18. Rajesh Kumar Sharma Son Of Shyam Babu Thakur Resident Of Mohalla Lakhbag, P.S. Masaurhi, District - Patna
 19. Bachchu Das Son Of Late Charitra Das Resident Of Village Damuhan Saidabad, P.S. Kako, District - Jahanabad
 20. Satyadeo Das Son Of Late Meghan Das Resident Of Village Dharaut, P.S. Makhdumpur, District - Jahanabad
 21. Govardhan Dhari Son Of Late Raju Kumar Resident Of Village Horilganj, P.S. Jehanabad, District Jahanabad
 22. Sanjay Kumar Gupta Son Of Late Mahesh Prasad Gupta Resident Of Mohalla Pathak Toli, P.S. Jehanabad, District - Jahanabad

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Govt. Of Bihar, Patna
2. The Principal Secretary, General Administration Department, Govt. Of Bihar, Patna
3. The Principal Secretary, Water Resources Department, Govt. Of Bihar, Sinchai Bhawan, Patna
4. The Chief Engineer, Water Resources Department, Katari Hill Road, Gaya, District Gaya
5. The Divisional Commissioner, Magadh Division, Gaya
6. The District Magistrate, Jehanabad
7. The District Establishment Cum Selection Committee Through Its Chairman, Namely, District Magistrate, Jehanabad
8. The Executive Engineer, Water Ways Division, Uder Asthan, Jehanabad, District Jehanabad

.... Respondent/s

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Appearance :

(In CWJC No. 4239 of 2013)

For the Petitioner/s : Mr. SanjayKumar, Advocate.

For the State : Mr. Mahtab Alam, AC to SC 20

(In CWJC No. 22702 of 2012)

For the Petitioner/s : Mr. Dinu Kumar Singh,
Mr. Santosh Kumar,
Mrs. Ritika Rani,
Mr. Ritu Raj, Advocates.

For the State : Mr. Sanjay Kumar,

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 3.10.2016

Both the cases are inter-connected to each other and as such both cases with consent of parties have been heard together and are being disposed of by this common judgment.

2. Writ petitioners of C.W.J.C. No. 4239 of 2013 (Govind Tiwari & others v. State of Bihar and others) are opposing the prayer of writ petitioners of C.W.J.C. No.22702 of 2012 (Vijay Prasad and others v. The State of Bihar & other) on the ground that petitioners Vijay Prasad and others have wrongly been selected/appointed on Class IV posts by the Collector, Jehanabad which are meant for their regularisation. They are daily wages employees in the Irrigation Department working at Waterways Division, Udersthan, Jehanabad, in view of the judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others V. Uma Devi (3) and others, reported (2006) 4 SCC 1 they should be regularised in their services and the efforts of Vijay Prasad and other for purported encroachment have been objected by Govind Tiwari and others.

3. For the disposal of this case whenever this Court would feel necessary, would mention the facts of either of



writ petition at the appropriate facts. To understand the dispute involved in the present case necessary facts are, Govind Tiwari and others are working against Class IV posts in the Waterways Division, Uderstahan, Jehanabad since 1987. They were waiting for their regularisation on the strength of regularly discharging the duty for more than ten years in view of the judgment of Hon'ble Supreme Court in Uma Devi (supra) case. In the meantime, the Collector, Jehanabad issued an Advertisement vide Advertisement No.1 of 2010 dated 20.5.2010 notified vacancy for selection of 83 Class IV posts wherein it has been mentioned that the panel will remain valid for one year and whoever were enrolled in the employment exchange would be eligible to apply for the said post. The qualification has been mentioned as 8th class and have knowledge of cycling. The different eligibility age has been provided for different categories of candidate such as, 18-35 years for general category of candidate, 18-37 for backward category of candidate, 18-38 extremely backward category candidate, 18-40 for SC/ST category of candidate and 18-38 for general female category of candidate.

4. In pursuance thereof writ petitioners of C.W.J.C.



No. 22702 of 2012 (Vijay Prasad and others) other similarly situated persons have applied for the said post. It also appears from the letter of the Executive Engineer Uderasthan vide letter no. 720 dated 11.10.2011 (Annexure-16 of CWJC No.22702 of 2012) sought roster clearance from the Chief Engineer giving the break up of vacancy available for appointment. After shortlisting, the Selection Committee has convened its meeting on 2.12.2011 (Annexure-11 of C.W.J.C. No.22702 of 2012) for the purposes of preparation of panel in which the Executive Engineer, Uderasthan was also invited and participated in the proceeding. Letter of the Executive Engineer dated 23.6.2011 (Annexure B to the counter affidavit of C.W.J.C. No.22702 of 2012) addressed to the Senior Incharge Officer, District Establishment, Jehanabad apprised the lists of persons with the names are working at Uderasthan. Altogether 170 applications were received but only 135 applications were shortlisted apparent from Annexure-2 and Annexure-3 of the writ petition vide C.W.J.C. No.22702 of 2012 where names of the petitioners and others are standing. The merit list prepared after the conclusion of proceeding of establishment committee, bears the signature



of the Executive Engineer, Uderasthan indicates his participation in the selection process. The name of the petitioners are at sl.nos.10, 11, 38, 40 to 45, 48, 50, 57, 62, 63, 69, 71, 104, 115, 127, 129, 131 and 133. The aforesaid documents indicate that finally the District Establishment Committee convened its meeting on 2nd December, 2011 in which Executive Engineer also participated which is apparently clear from the last page of the document where it has been mentioned that from the panel of 170 candidates, names of 135 candidates were recommended and 34 candidates remained in the waiting list and validity of the panel was for one year, any post remained vacant will be filled up from the waiting list. After receiving the objections final merit list was prepared and Vijay Kumar and others were selected and allotted as Class IV employees for Uderasthan.

5. Learned counsel for the petitioners has submitted selection of petitioners have been made in pursuance of Rule framed under Section 309 of Constitution of India (Annexure-B of the counter affidavit of C.W.J.C. No.4239 of 2013) for appointment of Class IV post (Group-D) which postulates, all selection/appointment relating to the District



level will be made under the leadership of District Magistrate. He has further drawn the attention of this Court towards definition of Appointing Authority, drawn the attention to the provision of Rule 6 which stipulates constitution of Selection Committee at two levels, departmental level and the district level. Sub Rule (2) of Rule 6 stipulates that the Selection Committee at the level of the department will prepare the panel with respect to the recruitment in the department, district level committee will prepare the panel with respect to the recruitment in the District Level and Divisional Level Committee will prepare the panel for the divisional level. The District Magistrate has been shown to be the chairperson of the recruitment committee of Divisional Level. Rule 8 talks of Appointing Authority mentions about Appointing Authority. It has also been submitted that selection would be made after following the roster and reservation policy of the State of Bihar. Rule 11 provides the Post/Grade of peon. Rule 13 deals with Departmental Promotion Committee. Rule 16 deals with repeal clause, stipulates that all earlier circular, instruction with respect to appointment/promotion in Class IV (Group D), so far they relate to appointment/promotion of

Peon/orderly peon/chapراسى, shall be deemed to have been repealed with the coming into the force of these Rules, in consequences all notification and circular is treated to have been repealed after enforcement of 2010 Rules.

6. Learned counsel for the petitioners has submitted that in view of 2010 Rules whatever be the earlier Rule, Order and Instruction have been deemed to have been repealed, all the selection/appointment were to be made in terms of this Rule. He has also drawn the attention of this Court towards letter of the Chief Secretary, Bihar dated 28.12.2011 (Annexure-12 of C.W.J.C. No.22702 of 2012) where it has been mentioned that all selection would be made in terms of 2010 Rules by the Selection Committee and further directed other authorities to close the selection process forthwith if already initiated. Any deviation may lead to departmental proceeding and such appointment would be annulled. It has further been mentioned that District Magistrate will be the Chairman of the Selection Committee, such panel of that committee will be valid for the appointment of all department at District Level. He has also drawn the attention of this Court to the letter dated 7.8.2014 (Annexure-13 of C.W.J.C. No. 22702 of 2012)



addressed by the Principal Secretary, General Administrative Department to the Principal Secretary, Water Resources Department, Bihar Patna whereby he has drawn the attention, shown anxiety in the manner, the Water Resources Department has been objecting in assimilation of 24 selected candidates when 77 vacant posts are available within the jurisdiction of Chief Engineer Jehanabad. It has further been mentioned selection has been made after following the reservation policy which has got approval of Hon'ble Chief Minister. He has also drawn the attention of this Court towards different orders passed by this Court and submitted that the selection has made by a proper selection committee following the provision of 2010 Rules. The action of the Water Resources Department in refusing to accept their joining is per se illegal, against the provisions of 2010 Rules and sought a relief that the Water Resources Department be directed to accept their joining and they should be allowed to function on Class IV posts.

7. Learned counsel for the petitioners has drawn the attention of this Court that those persons who are juniors to the petitioners have been allotted to different department have joined their respective posts and they are discharging



their respective duties as it would be apparent from Annexure-11 of C.W.J.C. No. 22702 of 2012, 9 persons have been allotted to Collectorate Jehanabad, four persons have been allotted to the Consumer Office, 83 persons have been allotted to Sadar Hospital, 9 persons have been allotted to the Education Department, 4 persons have been allotted to Fisheries Department, 4 persons have been allotted to the Rural Works Department, 4 persons have been allotted to District Animal Husbandry and 24 persons who are petitioners have been allotted to Divisional Waterways, Uderasthan except these petitioners rest all have joined their respective place of allotment, though they have different appointing authorities. He further submits that under 2010 Rule appointing authority will be different but selection has to be made by the Selection Committee headed by the District Magistrate as Chairman of the said Selection Committee.

8. Counsel for the petitioners put stress to the letter dated 7.8.2014 of Principal Secretary drawing attention that in view of availability of 77 posts there would not be any problem in adjustment of 24 candidates in as much Govind Tiwari and others would also be accommodated. It has

further been argued that those junior in merit list have been discharging their respective duties and are getting salary but petitioners are moving from pillar to post.

9. In contra, learned counsel for the State as well as private respondents who are petitioners of C.W.J.C. No.4239 of 2013 have pointed out that in the advertisement dated 20.5.2010, 83 posts have been mentioned, and as such only 82 posts were to be filled up. After publication of advertisement, on the pressure from the office of the District Magistrate, apparent from letter dated 23.6.2011 (Annexure-A to the counter affidavit of C.W.J.C. No. 22702 of 2012) the Executive Engineer Udersthan Waterways Division vide letter no.720 dated 11.10.2011 furnished vacancy position of 24 sought roster clearance from the Chief Engineer Water Resources Department. He has further submitted that 2010 Rules is applicable with respect to the direct recruitment, does not apply in respect of regularisation. The State and private respondent have submitted that the Chief Engineer is the Appointing Authority. The Water Resources Department, in view of different orders passed by this Court, Irrigation Department contemplating for regularisation of service of Govind Tiwari and others



(C.W.J.C. No. 4239 of 2013) in terms of Uma Devi (supra) and counsel for the State as well as private respondent have drawn attention towards letter dated 18.11.2013 from the Under Secretary, Government of Bihar to Under Secretary to the Chief Administrator, Government of Bihar (Annexure H to the counter affidavit of C.W.J.C. No.4239 of 2013 where it has been mentioned in the last part of the letter which mentions the different order of this Court accordingly 24 vacancies are not to be filled up through direct recruitment but has to be filled up through regularisation in view of Uma Devi (3) case (supra) as Govind Tiwari and others have been working since long requires attention for their regularisation.

10. Learned counsel for the respondent has also drawn the attention of this Court towards letter no.735 dated 7.6.2012 (Annexure-D to the counter affidavit of respondent no.2 of C.W.J.C. No.4239 of 2012) written by the Joint Secretary of the Irrigation Department to the Chief Engineer, pointed the defects in the recommendation of the Collector with respect to sl. nos. 20-24 candidates (Vijay Prasad and others in C.W.J.C. No.22702 of 2012) in view of the fact they have worked



less than 240 days and as such the list furnished by the District Magistrate is defective is not acceptable to Water Resources Department (Annexure-9 to C.W.J.C. No.42329 of 2013)). He has also relied on resolution no.639 dated 16.3.2006 deals with regularisation of candidate will be effected by respective department in which person working in department as daily wages in Class IV posts, stipulates, persons have worked for 240 days for preceding five years will be regularised according to the seniority.

11. Learned counsel for the petitioner further submits that the vacancy was notified for 83 candidates but selection has been made on 135 posts, 50 selected candidates are over and above against the vacancies notified candidates who have been recommended for appointment, and have wrongly been appointed. He further submits that the Collector or selection committee cannot recommend the name of persons more than the vacancy advertised in the notification and as such the recommendation of 50 candidates is against the provision of law. He has further submitted that the Collector has notified the vacancy does not include the vacancies of Waterways Division, Uderasthan which is apparently clear from subsequent correspondence of Irrigation Department



with Collectorate, Jehanabad and Secretary Administrative Department after preparation of panel of 135 candidates, Collector and his office started putting pressure to the Irrigation Department to furnish details of vacancies and later on accept the joining of Vijay Peasad and others. When vacancies position of Water Ways Division Uderasthan was not available nor the Irrigation Department sent requisition, in such circumstances the plea of Vijay Prasad and other is binding upon Irrigation Department has no substances is fit to be rejected.

12. Before deciding the main issue, incidental issue has been raised which requires to be adjudicated upon first as Govind Tiwari and others including Principal Secretary have raised that Collectorate, Jehanabad issued Notification, inviting applications for 83 vacant posts for Class-IV employees, whereas the recommendation has been made for the appointment of 135 candidates. The question has been posed whether the excess selection of 50 candidates by the Selection Committee is justified to recommend the names of 135 candidates when only 83 vacancies were notified and the applications were invited for those posts alone.

13. In this connection, learned counsel for the



petitioner of C.W.J.C. No.22702 of 2012 (Vijay Prasad & Ors. vs. The State of Bihar & Ors.) has relied upon the Notification No.1 of 2009 (Annexure-1), which mentions the orders passed in different Writ Applications and Contempt Applications, letter No. 3577 dated 25.04.2007, Resolution No.16441 dated 03.12.1980 and Resolution No.13984 dated 17.08.1971, inviting applications from the eligible candidates for 83 vacant posts of class-IV employees stipulates break up for different categories. Annexure-3 of the said writ application is the panel of 170 candidates and out of that 135 candidates have been selected for appointment mentioned in Annexure-2 of the said writ application. It is well settled principle of law that appointment excess to Notification is not permissible in law as extra persons are not before this Court, it will not be proper for this Court to pass any order against those persons who have not been impleaded as party, but the question is that whether the recommendation could have been made to 135 candidates or the Selection Committee should have confined its selection only with regard to 83 vacancies.

14. This issue is no longer *res integra* as in the case of ***Surinder Singh & Ors. vs. State of Punjab & Anr.***, reported

in (1997) 8 SCC, 488, where the Hon'ble Supreme Court has held that the Government should select persons limiting the number of vacancies notified in the advertisement, only in compelling/emergent situation this rule can be deviated in exceptional circumstances.

15. It will be relevant to quote paragraph No.16 of the said judgment, which reads as follows:-

“16. It is in no uncertain words that this Court has held that it would be an improper exercise of power to make appointments over and above those advertised. It is only in rare and exceptional circumstances and in emergent situation that this rule can be deviated from. It should be clearly spelled out as to under what policy such a decision has been taken. Exercise of such power has to be tested on the touch stone of reasonableness. Before any advertisement is issued, it would, therefore, be incumbent upon the authorities to take into account the existing vacancies and anticipated vacancies. It is not as a matter of course that the authority can fill up more posts than advertised.”

16. This principle again reiterated in the case of ***Kulwinder Pal Singh and another vs. State of Punjab and others***, reported in (2016) 6 S.C.C. , 532. In paragraph No.13 of the aforesaid judgment, the same question has been



addressed and the Hon'ble Supreme Court held that the vacancies cannot be filled up over and above the number of vacancies advertised; recruitment of the candidates in excess of the notified vacancies would amount to denial of equal opportunity to eligible candidates.

17. It will be relevant to quote paragraph No.13 of the said judgment, which reads as follows:-

13. As noticed earlier, as against twenty-seven post of general category advertised for the year 2007-2008, thirty one general category candidates have joined and are working. In Rakhi Ray vs. High Court of Delhi, observing that the vacancies cannot be filled up over and above the number of vacancies advertised, recruitment of the candidates in excess of the notified vacancies would amount to denial of equal opportunity to eligible candidates, this Court held as under:-

“12. In view of above, the law can be summarized to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, the process of selection comes to an end. Waiting list, etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after

the issuance of notification/advertisement. The unexhausted select list/ waiting list becomes meaningless and cannot be pressed in service any more.

13. In the instant case, as 13 vacancies of the general category had been advertised and filled up, the selection process so far as the general category candidates is concerned, stood exhausted and the unexhausted select list is meant only to be consigned to record room.”

18. Considering the consistent view of the Hon’ble Supreme Court that the Selection Committee should have confined its recommendation only with respect to the number of vacancies notified in the advertisement can not travel beyond that limit. In the present case, recommendation of 50 persons excess to the notified vacancy has been made, as they are not parties to these writ applications, this court is not passing any order against them. The matter is referred to the Principal Secretary, General Administration Department, Government of Bihar, Patna for taking curative action, but that cannot be taken without following the principle of natural justice.

19. The second and main question is to be answered



as to whether the Chief Engineer and the Executive Engineer of Irrigation Department are justified in not accepting the appointment of the writ petitioners of C.W.J.C. No. 22702 of 2012 (Vijay Prasad and others) or the Irrigation Department is correct in insisting regularisation writ petitioners of C.W.J.C. No. 4239 of 2013 (Govind Tiwari and others). Consistently, plea has been taken by the Irrigation Department that the recommendation made by the Selection Committee of Collectorate, Jehanabad suffering from defect cannot be enforced on Water Ways Division Uder Asthan, Jehanabad as those vacancies of the Uder Asthan was not subject matter of advertisement for the purposes of appointment on class-IV post.

20. For arriving to correct finding, it will be relevant to consider the composite facts involved in both the writ applications as in these cases, this Court has to decide the competing right of both the group of the persons. It will be relevant to consider the facts of C.W.J.C. No. 22702 of 2012. If the petitioners of this case would succeed, certainly it will be proved to be fatal to the writ petitioner of C.W.J.C. No.4239 of 2013 (Govind Tiwari and others).

21. In C.W.J.C. No.22702 of 2012, the petitioners have taken the plea that the Notification was issued in pursuance of Bihar Group D Employees (Recruitment & Service Conditions) Rules, 2009. Clause-2 (b) speaks about the Selection Committee constituted under Rule 6. Rule 6 (1) provides that the Selection Committee will be at two levels; Departmental level and District level. Rule-6 (2) provides that the Selection Committee will be constituted at three levels; Departmental level, District level and Divisional level. The Divisional level Committee would be under the chairmanship of the District Magistrate and the appointment to be made on the basis of panel prepared by the Selection Committee in the concerned financial year till 31st March. The validity of the panel shall be for one year with effect from the date of receipt of the recommendation in the Department. Rule-2(c) also defines that Appointing Authority means authority authorized under Rule-8. Rule-8 provides the head of the department or the concerned competent authority shall be the appointing authority and Rule-16 provides all the circulars, instructions issued earlier with respect to appointment/promotion in class IV (Group D), so far as they relate to appointment/promotion etc. of the peon/Orderly peon/ Chaprasi, shall be deemed to

have been repealed with the coming into force of these Rules.

22. So far in the present case, from the record it shows that the appointing authority for class-IV employees in the Irrigation Department is the Chief Engineer, which is apparently clear from the letter No. 1330 dated 20.11.2013 (Annexure-H to the counter affidavit filed by respondent no.2 in C.W.J.C. No.4239 of 2013) where the Under Secretary, Water Resources Department, Government of Bihar, Patna has mentioned that the Chief Engineer is the competent authority for appointment of Class-IV employees in the Irrigation Department. So in the present case, admittedly, the appointing authority is the Chief Engineer. It further appears from Annexure-1 of C.W.J.C. No. 22702 of 2012 that the date of Notification is 20.5.2010 and the last date of receipt of the application is 20.6.2010, the question has been raised by the respondents that that vacancy was not included in the advertisement. In support of the submission, they placed reliance on the letter No.792 dated 23rd June, 2011 (Annexure-2 of C.W.J.C. No.4239 of 2013), it has been addressed to different Executive Engineers of different departments including the Executive Engineer of Waterways Division, Uder Asthan, whereby it has been asked to furnish the number





of vacancies with break up, available in the respective department, whereupon the Executive Engineer vide letter no.426 dated 23.6.2011 furnished the details of the vacancies available and those are working on casual basis in the Waterways Division, Jehanabad.

23. Plea has been taken by the petitioners of C.W.J.C. No. 4239 of 2013 that earlier the vacancy was published only for 83 posts, but while the selection was in process the Collectorate, Jehanabad has sought the vacancy position from the Executive Engineer, Uder Asthan, which itself shows that the vacancies which were notified by the Collectorate, Jehanabad was not included with respect to the vacancy of the Uder Asthan. Further, they submitted that the letter No.1654 dated 13th December, 2011, (Annexure-B to the counter affidavit filed by the respondent no.2 in C.W.J.C. No.4239 of 2013) itself shows that the Collector has asked the Executive Engineer waterways Division, Uder Asthan, Jehanabad to give appointment to 24 candidates recommended by the Selection Committee.

24. Learned counsel for the petitioners of C.W.J.C. No.22702 of 2012 has placed reliance on three documents for the proposition that advertisement includes vacancy of



Udersthan on the basis that the Executive Engineer was very well aware that selection was being made for the vacancies of Class-IV employees relating to the Uder Asthan, Jehanabad, to substantiate his plea he has placed reliance on proceeding dated 02.12.2011 where the Executive Engineer, Uder Asthan, Jehanabad had participated itself makes it very clear in pursuant of advertisement, 170 candidates applied, out of that 135 candidates have been recommended and rest candidates will be adjusted if vacancies would fall vacant within one year.

25. Learned counsel for the petitioners of C.W.J.C. No.22702 of 2012 has also pointed out that the panels (annexure-2 and 3) itself show that the Executive Engineer of Uder Asthan had actively participated in the proceeding, so the plea of the Irrigation Department that those vacancies were not subject matter of selection is falsified, but one thing is very much clear that the letter which has been addressed by the Collectorate, Jehanabad, seeking the vacancy position of Uder Asthan is after issuance of Notification and no correspondence has been brought to show that the Collectorate, Jehanabad has sought the vacancy position of Uder Asthan, Jehanabad prior to publication of advertisement



so much so that all the letters have been addressed to the Executive Engineer whereas it should have been addressed to the Appointing Authority of Class-IV employee in Irrigation Department, the Chief Engineer. So, the propriety demands that the Collector should have asked the vacancy position from the Chief Engineer who is the Appointing Authority and the Chief Engineer should have taken into confidence with regard to the selection with respect to the vacancy meant for Waterways Division Uder Asthan.

26. The latter dated 07.8.2012 (Annexure 10 of C.W.J.C. No.22702 of 2012) addressed by the District Magistrate, itself shows that the Executive Engineer, Building Division, Jehanabad including others have been asked to provide the vacancy position as the panel has to be prepared through the letter dated 7.8.2012, which is the part of Annexure-10 of C.W.J.C. No. 22702 of 2012, which itself shows that up to 7.8.2012 the vacancy of Uder Asthan, Jehanabad was not the subject matter of selection of Class-IV post, mere participation of the Executive Engineer would not *ipso facto* lead to a conclusion that the selection was made of the vacancies of Water Ways Division, Uder Asthan for Class-IV employees as there was a correspondence from the



General Administration Department as well as from the Irrigation Department with regard to adjustment of 24 persons ultimately, it emerged that two letters i.e. letter dated 23.2.2012 (Annexure-H to the counter affidavit filed in C.W.J.C. No.22702 of 2012) written by the Principal Secretary, Water Resources Department, Government of Bihar, to the Chief Secretary, Bihar, Patna, where it has been mentioned that the employees who have been retrenched as well as the daily wages employees of the Irrigation Department having discharging the duty would be regularized in terms of the decision in the case of Uma Devi (supra), in that connection the District Magistrate would make the selection after receiving the requisition from the Chief Engineer as well as the letter dated of the Under Secretary, Water Resources Department 20.11.2013 (Annexure H to the counter affidavit of respondent no.2 in C.W.J.C. No. 4239 of 2013) addressed to the Under Secretary, General Administration Department, in which recommendation has been made that the Chief Engineer is the appointing authority, many litigations are pending before the High Court, in view of the decision of Uma Devi's case the vacancies of Class-IV posts are not to be filled up through direct recruit, it has to be

filled up through regularization. Rule-2010 is for direct recruits, but the advertisement annexed as annexure-1 of C.W.J.C. No.22702 of 2012 does not disclose that the selection would be made in terms of 2010 Rules.

27. Learned counsel for the petitioners of C.W.J.C. No. 22702 of 2012 has placed reliance on the letter of the Chief Secretary letter dated 28.12.2011 (Annexure-12) addressed to the head of all the departments, where it has been mentioned that the selection of class-IV employees would be made in terms of Rule-2010, the Selection Committee will be under the chairmanship of the Collector, any deviation will not be acceptable and such selection will not give any right to such candidates as also the letter dated 07.8.2014 (Annexure-13 of C.W.J.C. No. 22702 of 2012) where the Principal Secretary, General Administration Department has written letter to the Principal Secretary of Water Resources Department has mentioned questions were raised by the Hon'ble Member of Vidhan Sabha with respect to accommodation of 24 candidates where it has been mentioned that 77 posts are available in the Division of Chief Engineer, Jehanabad whereas 24 candidates have been selected following the reservation policy is legal recommendation,



which has been approved by the Hon'ble the Chief Minister and requested for their accommodation, but this Court has asked the Principal Secretary of the Irrigation Department to file a counter affidavit in the present case. He has brought the entire facts for consideration of this Court, in a nutshell it has been stated that the vacancies of the Uder Asthan, Jehanabad was not the subject matter of selection and so much so that in view of the decision of Uma Devi's case Class-IV post of the Irrigation Department is to be filled up through the regularization. The last nail to the coffin is the letter of the Joint Secretary, Irrigation Department to the Chief Engineer dated 7.6.2012 (annexure-D to the counter affidavit filed in C.W.J.C. No. 4239 of 2013) shows that the recommendation of certain persons are those who have not even completed 240 days has been recommended, has been shown to be illegal recommendation and the vacancies has to be filled up through regularization so much so that the letter dated 21.07.2012 of the Chief Engineer to the District Magistrate, informing that it will not be possible to accommodate the 24 persons recommend by the Selection Committee.

28. On considering the aforesaid facts and circumstances of the case, the fact emerges that never the



Irrigation Department sent requisition or was agreeable for filling up all the post from the panel prepared by Collectorate, Jehanabad but has been kept aside for the purposes of regularization in view of the decision of Uma Devi's case (supra). The document itself gives an inference that the advertisement does not include the vacancy of Uder Asthan, when the vacancy itself was not the subject matter of selection the question of recommendation or acceptance of recommendation does not arise.

29. In such view of the matter, C.W.J.C. No.4239 of 2013 filed by Govind Tiwari and others is allowed and C.W.J.C. No.22702 of 2012 filed by Vijay Prasad and others is dismissed. But before parting with the judgment learned counsel for the petitioners of C.W.J.C. N0. 22702 of 2012 have shown that the persons who were juniors to the petitioners in the panel are still working, whereas these petitioners who are senior are wandering on the road and moving here and there for their accommodation. Let this matter be placed before the Principal Secretary, General Administration Department, Government of Bihar, Patna to resolve the dispute as the persons who are senior in the merit list has to be given the weightage and must be accommodated.

30. In such view of the matter, if any action of respondents affects the persons who have been appointed and have been working must be heard and action should be made in accordance with law.

Vinay/-

(Shivaji Pandey, J)

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Transmission Date	