

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3939 of 2015

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1. Bimal Hembram Son of Late Lakhan Hembram, Resident of Village - Bharaili, P.S. - Bounshi, District - Araria.
 2. Dilip Kumar Tuddu, Son of Chhote Lal Tuddu, Resident of Village - Bhobaniya, P.S. - Bounshi, District - Araria.
 3. Vijay Kumar Soren, Son of Pitter Surendra Soren, Resident of Village - Kabaiya Katti Bari, P.S. - Bounshi, District - Araria.
 4. Amaresh Kumar Soren, Son of Manik Lal Soren, Resident of Village - Kabaiya Katti, Bari, P.S. - Bounshi, District - Araria.
 5. Ajay Kumar Soren, Son of Late Surendra Soren, Resident of Village - Kabaiya Katti, Bari, P.S. - Bounshi, District - Araria.
 6. Bahadur Hembram, Son of Babulal Hembram, Resident of Village - Madhura Gola Bari P.S. - Korbesganj, District - Araria.
 7. Balram Murmu, Son of Late Upendra Murmu, Resident of Village - Bhobariya, P.s. - Bounshi, District - Araria.
 8. Suraj Tuddu, Son of Balhu Tuddu, Resident of Village - Kabiya Katti, Bari, P.S. - Bounshi, District - Araria.
 9. Dhaneshwar Murmu, Son of Late Chunnu Murmu, Resident of Village - Dhobaniya P.S. - Bounshi, District - Araria.
 10. Bhagwan Soren, Son of Sul Khan Soren, Resident of Village - Kabaiya Katti, Bari, P.S. - Bounshi, District - Araria.
 11. Ramesh Kumar Murmu, Son of Late Sukhdeo Murmu, Resident of Village - Jamuniya Santhali, P.S. - Raniganj, District - Araria.
 12. Baburam Hembram, Son of Lal Hembram, Resident of Village - Singiagon, P.S. - Murliganj, District - Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary of the General Administration Department, Government of Bihar, Patna.
2. The Divisional Commissioner of the Purnea Division, Purnea.
3. The District Appointment Committee of Araria District through its Chairman, the District Magistrate, Araria.
4. The District Magistrate, Araria.
5. The Deputy Collector (Establishment) District Establishment Unit, Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S K Lal

Mr. Alok Kumar Singh

For the Respondent/s : Mrs. Sunita Kumari, AC to GP27

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT

Date: 23-02-2016

There are twelve petitioners who have jointly approached the High

Court, seeking a mandamus upon the respondent authorities to include the names of these petitioners in the merit panel for appointment on a Class IV post since they belong to Scheduled Tribes category.

2. According to the learned counsel representing the petitioners, there are vacancies in existence for Scheduled Castes and Scheduled Tribes. Some of these vacancies are carried over but appointments are not being made, thereby right is being denied of these petitioners for such appointment. So the writ application.

3. It is not a case of non-consideration. In terms of advertisement, contained in Annexure-1, petitioners did apply. Their claim for such consideration was examined but they have not been appointed. The reason evident from the pleadings is that they lack experience. Therefore, it is a case of consideration and rejection and not a case of non-consideration. This aspect is significant because petitioners do not have right for appointment as such.

4. Submission at the bar on behalf of the petitioners is that the advertisement does not indicate that experience was mandatory and that is the reason why these petitioners never provided any evidence of experience. If the advertisement did not mandate or preconceive a candidate to have work experience who could only apply, then rejection is irrational, arbitrary.

5. The Court has been taken through the advertisement through and through. The Court thereafter disagrees with the stand of the petitioners or the counsel that it is a case of deliberate discrimination and the requirement of experience cannot come in the way for such appointment or consideration. The reason thereof is that the advertisement especially in Clause 9 does talk of experience and it talks of weightage being given to the experienced hands. When advertisement talks of in terms of weightage, it means all things being equal, candidates who have experience will be given preference.

6. In the present case, there is not even an effort to plead or show that in the selection process and decision-making those who have been selected were at par with the present petitioners even if they do not have any requisite experience to show.

7. Another dimension which cannot be over-looked is that though the advertisement, contained in Annexure-1, did not confine itself to claims of daily wagers and their right for such appointment against the vacant posts advertised but it is evident from different orders in previous litigations brought before this Court that there was a judicial mandate to consider even their cases. If in these circumstances, appointments have been made and candidates who have been working on daily wage and whose names have figured in the previous panels as far back as in 1991 and 1999, have also been included in the present panel then, obviously, they have the added advantage as well as right for consideration against the advertisement for more than one reason.

8. Mere non-appointment by itself cannot become a case for interference by this Court. Better hands and more experienced ones have been picked up for appointment against the vacancies and if the employer does not feel that the candidates so available are worthy of such appointment, then there is no obligation upon them to fill up the post for the sake of providing employment to otherwise unemployable candidates.

9. The Court therefore, in the entirety of the situation and also taking into consideration the parameters which the committee adopted in making appointment and recommendations, which has been brought on record by petitioners themselves as annexure-3, comes to a considered opinion that it is not a case of no yardstick being fixed nor it is a case of pick and choose as such.

10. The stand of the respondents in the counter affidavit is on similar

terms. They have given the reasons and justification as to why the petitioner cannot be appointed.

11. No case for issuance of mandamus is made out for appointing the petitioners against the advertisement, contained in Annexure-1. However, the Court will not come in the way if the petitioners want to approach the authority for reconsideration, which is another issue altogether.

12. Writ application is otherwise dismissed.

(Ajay Kumar Tripathi, J)

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