

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19774 of 2015

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1. Deepak Kumar son of Bilayati Singh, R/o Village- Khajaghadhi, P.S.- Barbigha.
 2. Ganpati Thakur, son of Gopal Thakur, R/o Village- Ambari, P.S.- Shekhopur Sarai.
 3. Subhash Kumar son of Shyam Sunder Singh, resident of Village- Onama, P.S.- Shekhopur Sarai
 4. Niraj Kumar son of Shankar Singh, Resident of Village- Ambari, P.S.- Shekhopur Sarai
 5. Dhiraj Kumar son of Shankar Singh, Resident of Village- Ambari, P.S.- Shekhopur Sarai.
- All Sl. No. 1 to 5 District- Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary Home, Govt. of Bihar, Patna.
2. The Secretary Personal Administration Affairs, Department Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Home Guard, Bihar, Patna.
5. D.I.R. Police Munger Reason, P.S. and District- Munger.
6. The Superintendent of Police, Sheikhpura, P.S. and District- Sheikhpura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi
Dr. Anjani Pd. Singh
For the Respondent/s : Mr. AAG9-S. RAZA AHMAD

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 26-04-2016

Petitioners have filed the writ application on an apprehension that if the enlistment of otherwise eligible candidates as Home-guards is not made at the district level, an anomalous situation would arise if such enrolment is done at the block level because there would be an occasion when candidate with lesser marks can walk away with the benefit of enlistment in a particular block looking at the

number of successful candidates in that block and their performance otherwise and people with better marks and performance may not get opportunity of enlistment as Home-guards despite having better marks.

At the outset the Court would like to record that merely because there is a committee created at the district level for carrying out the exercise for enlistment or enrolment, there is no obligation either under the rules or under any circular to create a district-wise list of enrolled candidates. For clarity, these enlistments are not appointments under the State but are only a list of able-bodied people who can be called upon to perform certain duties if the occasions so arise.

By virtue of such nature of duty which may be conferred and assigned, naturally the smallest unit can be a village or a block. If the respondent authorities have decided to carry out the enlistment block-wise, it is a prudent approach to have instead of creating a list at the level of the district.

In absence of such a provision being there in the rules, this Court will not read something into the rule which is non-existent.

Learned counsel for the petitioners tries to draw some kind of parity with the decision rendered in the case of **Rajesh Kumar Gupta and others Vs. State of U.P. and others, AIR 2005 SC 2540.**

The distinction between the present facts and the facts of the case decided by the Hon`ble Apex Court is that those persons who were petitioners before the Apex Court related to Assistant Teachers, who were holding a substantive post under the State whereas in the present case they are not a government servant having any fixed tenure of engagement or assignment. Therefore, necessity to have a district level or State level cadre as such may not be necessitated.

In view of the above, this Court will not issue any mandamus upon the respondents to have a district level panel or cadre for such enlistment as Home-guards.

Writ application is dismissed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

AFR/NAFR	AFR
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