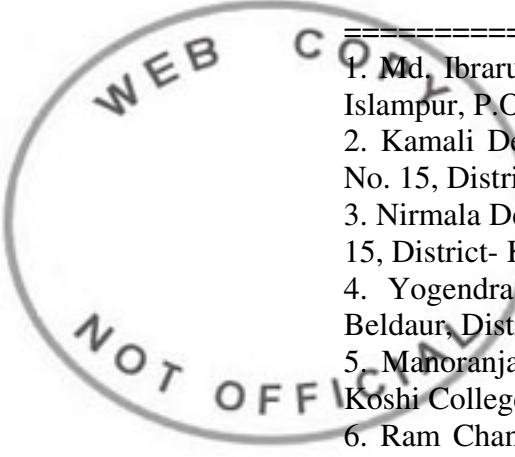


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14840 of 2013

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1. Md. Ibrarul Haq S/O Late Abdul Shakur Resident Of Village- Kutulpur, Tola-Islampur, P.O- Muthurapur, P.S- Mufassil, District- Khagaria.
 2. Kamali Devi W/O Hunkar Paswan Resident Of Village- North Hajipur, Ward No. 15, District- Khagaria.
 3. Nirmala Devi W/O Ramji Paswan Resident Of Village- North Hajipur, Ward No. 15, District- Khagaria.
 4. Yogendra Harijan S/O Zalim Harijan Resident Of Village- Beldaur, P.S- Beldaur, District- Khagaria.
 5. Manoranjan Prasad S/O Late Yogendra Prasad Village- Chandra Nagar, P.O- Koshi College, Khagaria, District- Khagaria.
 6. Ram Chandra Paswan S/O Ram Bhajju Paswan Resident Of Village- Chaidha Banni, P.O- Babu Bagicha, P.S- Mahesh Khunt, District- Khagaria.
 7. Jai Chandra Singh S/O Late Mahavir Singh Resident Of Village- Chaidha Banni, P.O- Babu Bagicha, P.S- Mahesh Khunt, District- Khagaria.
 8. Saheb Paswan S/O Parmeshwar Paswan Resident Of Village- Mansi, Gharari, P.O+ P.S At Manasi, District- Khagaria.
 9. Shankar Yadav S/O Bhola Yadav Resident Of Village- Ovas, P.O- Tikar, P.S- Chatra, District- Chatra.
 10. Amin Thakur S/O Sita Ram Thakur P.O- Kulharia, P.S- Parpatta, District- Khagaria.
 11. Gobardhan Paswan S/O Bindeshwari Paswan Village And P.O- Susmuri Vishnupur, District- Khagaria.
 12. Ranjit Sah S/O Late Hriday Sah Resident Of Village- Sanhauli, P.O- Sanhauli, P.S- Chitragupta Nagar, Khagaria, District- Khagaria.
 13. Suresh Ram S/O Late Shivdhari Ram Resident Of Village- Manaji Khuta, District- Khagaria.
 14. Raj Kumar S/O Ramashish Prasad Singh Resident Of Village- Pahsara Bhabhangama, P.O- Pahsara, Bhabhangama, District- Begusarai.
 15. Jhingur Paswan S/O Late Kartik Paswan Resident Of Village- Parmanandpur, P.O- Koshi College, Khagaria.
 16. Ram Sogarath Paswan S/O Dhanik Paswan Resident Of Village- Manasi Araiya, P.O- Manasi, District- Khagaria.
 17. Brahmadeo Thakur S/O Late Kuldeep Thakur Resident Of Village- Madarpur, P.O- Madarpur, P.S- Mahesh Khunt, District- Khagaria.
 18. Kishori Paswan S/O Lakhan Paswan Resident Of Village- Parmanandpur, P.O- Koshi College, District- Khagaria.
 19. Vijay Kumar Paswan S/ Shankar Paswan Resident Of Village- Mathurapur, P.O- Mathurapur, P.S- Khagaria, District- Khagaria.
 20. Hare Ram Sah S/O Late Arjun Sah Resident Of Village- Sanhauli, P.O- Sanhauli, P.S- Khagaria, District- Khagaria.
 21. Ajay Kumar S/O Late Nawal Kishore Mehta Resident Of Village- Uttari Hajipur, Durga Sadan, Ward No. 13, P.S- Khagaria, District- Khagaria.
 22. Prakash Kumar Sah S/O Kusheshwar Kumar Sah Resident Of Village- Babu Nagar, Baluwahi, Ward No. 17, P.S- Khagaria, District- Khagaria.
 23. Munilal Bhagat S/O Banarasi Bhagat Resident Of Village- Mathurapur, P.S+ P.O- Gogari, District- Khagaria.
 24. Saryug Nonia S/O Late Parmeshwar Nonia Resident Of Village- Chak Hussain, District- Khagaria.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The District Magistrate-Cum- Collector, Khagaria.
3. The Deputy Collector (Establishment), Khagaria.
4. The Deputy Collector, Najarat, Khagaria.
5. The Commissioner, Munger Division, Munger.
6. The Principal Secretary, Personal And Administrative Reforms Department, State Of Bihar.
7. The Joint Secretary, Personal And Administrative Reforms, Department, State Of Bihar.
8. The Under Secretary, Personal And Administrative Reforms Department, State Of Bihar.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. MD. SHAHNAWAZ ALI

For the Respondent/s : Mr. SANJAY KR NO.2

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-05-2016

Heard the parties.

2. In the present writ petition, petitioners have sought a relief for issuance of mandamus commanding the respondents to consider their cases for appointment of Class IV posts against the advertisement dated 27.8.2006, claim has been made by the petitioners that they should be appointed on Class IV posts in terms of the panel prepared by the District Magistrate, Khagaria.

3. The Collectorate Khagaria has issued an advertisement which was published in daily Hindi newspaper Hindustan on 27.8.2006 for the purposes of preparation of panel for 4th grade



employees for the year 2006-2007, attaching the form of application for empanelment in Class IVth posts. The petitioners and others applied against the advertisement for their empanelment in Class IVth posts within time. After the preparation of panel the District Magistrate, Khagaria vide letter no.544 dated 27.8.2008 directed the Sub Divisional Officer, Khagaria to notify the final panel on the notice board.

4. It appears from the record that the Commissioner, Munger Division after roster clearance vide letter no.3603 dated 27.12.2008 returned the panel for necessary action. But it appears from the record that even after return of the panel the District Magistrate did not finalize the panel, vide letter no.123 dated 2.3.2010 sought clarification and guideline from the Principal Secretary, Personal Department in what manner the panel would be prepared of Class IVth employees (Annexure-3).

5. The Deputy Secretary, Government of Bihar and Personal Administrative Department after consideration of the queries made by the District Magistrate sent a clarification vide letter dated 29.3.2010 in what manner he has to proceed in preparation of panel of Class IV employees and it has specifically been mentioned that empanelment would be made in terms of Bihar Group-D(Recruitment and Service Conditions) Rules, 2010. The

District Magistrate issued office order vide Memo No.400 dated 17.6.2010 constituted a committee to give a guideline in what manner there would be empanelment in Class IV posts.

6. It appears that when an advertisement was published minimum qualification was 8th pass but subsequently amendment has taken place in the Bihar Group D (Recruitment and Service Condition)(amendment) Rules, 2012 whereby the qualification for IV Grade was enhanced 10th (Matric) pass or equivalent.

7. After enforcement of the said Rule the District Magistrate vide letter no.18 dated 10.1.2013 sought clarification from the Government seeking guideline after the amendment of the Rule in what manner the appointment would be made. Before the appointment could be made the District Magistrate issued fresh advertisement from the eligible candidates for their empanelment for the purposes of appointment in group D. In that notification the qualification has been mentioned 10th class pass.

8. Learned counsel for the petitioners has submitted that after roster clearance of panel of daftari by the Commissioner, Munger Division directed for necessary action but even thereafter petitioners could not be appointed and as such made a prayer for appointment in group D. Further submitted that similar advertisement was notified in another district, Samastipur and in



pursuance thereof recruitment has been made, but similar action should have been taken, have been deprived of selection sought a relief that the Collector should be directed for their appointment. He has further submitted, the subsequent advertisement should not come as a hurdle, in the recruitment, so much so enhancement of qualification cannot be taken into consideration in the matter of recruitment.

9. In contra, learned counsel for the State has submitted that panel is only meant for one year, thereafter the panel has lost its life and as such they cannot be appointed. So much so fresh advertisement has been published in the tune of amendment in the recruitment Rule. Earlier minimum qualification was 8th pass has been enhanced 10th pass so the recruitment has to be done in terms of amended rule. In the counter affidavit in paragraph 18 it has specifically mentioned that old panel has become inoperative, fresh advertisement no.1/13-2014 has been notified inviting fresh advertisement, inviting application mentioned in the counter that priority would be given to old cases. In nutshell not a single person has been appointed from 2006 panel. The State does not deny that petitioners had applied for the posts against the advertisement of 2006 and at relevant time minimum qualification was 8th pass.



10. Of course there is well known principle of law mere appearance of name of the persons in the panel does not create in indefeasible right of appointment, but does not mean that Government has licence of acting arbitrary manner. The decision not to fill up the vacancy must be taken bonafide for appropriate reason. The letter between the Collector and Principal Secretary shows the panel was never finalized, so much so new advertisement has been published.

11. As per judgment of the Hon'ble Supreme Court in the case of Mahendran & others V. State of Karnataka and others, reported in AIR 1990 SC 405 where the Court has held that if process of selection has been initiated the mode, manner and method as provided during the relevant period it cannot be modified mid way. But in the present case advertisement has been terminated and fresh advertisement has been published, prescribing new qualification. There is no fault from the side of these petitioners, their names are standing in the panel and not a single candidate has been appointed in the meantime minimum educational qualification has been changed. Respondents have not come forward with valid and proper explanation for not having appointed any person from that panel.

12. In such view of the matter, this Court feels that whoever

have applied for the posts against the advertisement in 2006 and their names are standing in the panel, their cases would also be considered while making recruitment as they have waited for a long time, for them 8th class will be minimum qualification and the persons whose name stands in the panel they should be given priority in the matter of appointment. This Court directs the Collector, Khagaria to expedite the matter and finalized the panel and make appointment in accordance with law.

13. While considering the case of the present petitioners the minimum qualification will be treated to be 8th class and not 10th class. The Collector must ensure appointment to all eligible candidates within a period of six months from the date of receipt/production of a copy of this order.

14. With the aforesaid observation and direction this writ petition is disposed of.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	30.5.2016
Transmission Date	