

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1605 of 2014

IN

Civil Writ Jurisdiction Case No. 4205 of 2014

- =====
1. Madhusudhan Sharma Son of Sri Saryug Sharma Resident of Village - Tetrawan, P.O.- Tetrawan, P.S.- Manpur, District - Nalanda
 2. Sunil Kumar Son of Late Laxmi Narayan Singh Resident of Village - Nirmal Bigha, P.O.- Nalanda, P.S.- Nalanda, District -Nalanda
 3. Shankar Singh Son of Nagashwan Singh Resident of Village - Dhurgeo, P.O.- Dhurgeo, P.S.- Ekangarsarai, District - Nalanda
 4. Rakesh Ranjan Kumar Son of Rajdeo Ram Resident of Village - Babhani, P.O.- Bahuara (Koath), P.S.- Davath, District - Rohtas
 5. Gautam Kumar Son of Sri Dinesh Paswan Resident of Village - Dev Bigha, P.O.- Dosut, P.S.- Wena, District - Nalanda
 6. Dharmendra Kumar Son of Ram Swarup Sah Resident of Village - Lahsuna, P.O.- Lahsuna, P.S.-Masaurhi, District -Patna
 7. Ajay Kumar Son of Ramashish Yadav Resident of Village - Dohara, P.O.- Dohara, District - Pardiganj, District -Nawada
 8. Manoj Kumar Son of Sri Basudeo Mistri Resident of Village - Mahendarpur, P.O.- Hathi Dah, P.S.- Hathi Dah, District - Patna
 9. Sri Kant Paswan Son of Dashrath Paswan Resident of Village - Nagama, P.O.- Meghi, P.S.- Deep Nagar, District - Nalanda
 10. Sanoj Kumar Son of SRi Basudev Mistri Resident of Village - Mahendarpur, P.O.- Hathi Dah, P.S.- Hathi Dah, District - Patna
 11. Arun Kumar Son of SriShivjee Prasad Resident of Village - Puna, P.O.- Puna, P.S.- Hilsa, District - Nalanda
 12. Vinay Kumar Son of Ramashray Yadav Resident of Village - Surajpur, P.O.- Nalanda, P.S.- Nalandan, District - Nalanda
 13. Chhote Lal Ram Son of Sri Sahdeo Singh Resident of Village - Sangowar Pathara, P.O.- Mesauradha, P.S.- Nardiganj, District -Nawada.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna
2. The Engineer-in-chief-cum-Special Secretary, Public Engineering Department, Govt. of Bihar.
3. The Chief Engineer (Mechanical), Public Health Engineering Department, Govt. of Bihar, Patna
4. The Executive Engineer, (Mechanical), Public Health Engineering Department, Govt. of Bihar, Patna
5. The Executive Engineer, (Mechanical), Public Health Engineering Division, Patna
6. The Assistant Engineer (Sub-Divisional Officer), Public Health Engineering Sub-Division, Biharsharif
7. Mithilesh Kumar Son of Sri Parmeshwar Gope Resident of Village + P.O.+P.S.- Rajgir, District -Nalanda

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramendra Nath Mukhopadhaya
Advocate
For the Respondent/s : Mr. Archana Meenakchee
Advocate
Mr. Prabhat Ranjan,
AC to GP-6

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 11-05-2017

Heard learned counsels for the parties.

The whole thrust of the argument either in the writ application or the LPA was to get an opening and consideration for appointment as a Pump-Operator under the respondents PHED Department. When the writ application was taken up, it seems the Learned Single Judge was informed that there is no modality as such in place and there is a vacuum. Therefore, a direction was issued upon the Principal Secretary to formulate a Rule, notify the same and then consider the claims or carry out appointments in terms of the Rules. Writ application was disposed off on 11.09.2014, observing as under:

“This Court expects that all steps shall be taken in promptitude for publication of the aforesaid Rules in the official gazette, so that it comes into operation and fresh appointment on the post of Pump Operators and Electricians are made as per the aforesaid Rules. It goes without saying that the petitioners, who are daily wage workers, if found otherwise eligible for appointment on such posts,



then their cases shall also be considered in accordance with law. “

Once the writ application was disposed off, it seems the appellants got wiser because they realized that they may not get an opening within the framework of the Rules now, looking at their status as a unskilled Khalasi. Therefore, now, in the appeal against the order of the Learned Single Judge, the thrust of the argument of the learned counsel for the appellants is that in fact their case should be considered for regularization on the basis of what is known as Bihar Group D (Recruitment and Service Conditions) Rules, 2010, amended, as of now.

This is an alternative plea, which is now being taken and argued with vehemence. This aspect of the matter, obviously, was not considered by the Learned Single Judge, because the thrust of arguments was confined more towards appointment on the post of Pump-Operators from the lot, who were being used as daily-wagers on a regular basis. This could be one of the reasons why the Learned Single Judge has expressed no opinion on the second relief, which was there, even in the writ application as well as in appeal.

In view of the same, either the appellants have liberty to seek a review or file a fresh writ application, seeking relief no. 2, independent of the first relief now, but will have to confine themselves to relief no. 2 or in the alternative may challenge the



Rules, which have been put in place, if the same in any manner violates the provisions of the Constitution of India. Nothing more is required to be said or adjudicated in the appeal over and above, what has been said in the earlier part of the order.

Appeal stands disposed off.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

SKM/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	12.05.2017
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