

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17001 of 2011

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1. Obharsiyar Singh Son Of Late Baldeo Singh Resident Of Village- Kalingha, Post Office- Tiyan Police Station- Siwan Muffasil, District- Siwan
 2. Motilal Prasad Son Of Late Banarsi Prasad Resident Of Village + Post Office- Jiyar, Police Station- Siwan Muffasil, District- Siwan
 3. Sri Babban Ram Son Of Late Manni Ram Resident Of Village + Post Office- Parwar, Police Station- Barharia, District- Siwan
 4. Ram Sringer Ram Son Of Late Hiralal Ram Resident Of Village + Post Office- Saraway, Police Station- Muffasil, Siwan, District- Siwan

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, Siwan
3. The Chief Secretary, Bihar, Patna
4. The Commissioner, Saran Division, Chapra

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate

For the Respondent/s : Mr. Girija Shankar Prasad GP1

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 08-04-2017

Heard learned Senior Counsel for the petitioner and
learned counsel for the respondents.

The present writ application has been filed for a
direction to the respondent authority to treat the petitioners as senior
to those juniors who were appointed in the year 1996, on the basis of
panel which was prepared in the year 1985. The seniority has been
claimed over the juniors on the basis of the interim order passed by
this Court vide order dated 28.02.1998 passed in CWJC No. 1741 of
1988. Further prayer has been made to make payment of difference of



salary to the petitioners from 1996 till date along with the interest.

The factual matrix of the case is that all the four petitioners were appointed as Class-IV employee on daily wages in Zila Najarat, Siwan, subsequently the State Government decided to regularize those daily wage employees who were working on daily wages and on the direction of the Government officials a panel was prepared for appointment of Class-IV employees and in the said panel the name of the petitioners were included. Subsequently, regular appointment was made from the said panel but the claim of the petitioners was ignored. In the year 1984-85, fresh panel was prepared for appointment of Class-IV employee on regular post and the names of the petitioners appeared at serial nos.5, 67, 52 and 33 respectively. On the basis of the same, appointment was made but altogether 32 persons including the petitioners were not appointed and they were terminated. Consequently, 32 candidates including the petitioners filed CWJC No. 1741 of 1988 and 9 other similarly situated candidates filed CWJC No. 1056 of 1989. The writ applications were heard by this Court and vide order dated 16.04.1990 interim order was passed to the effect as follows:-

“Till further orders, no fresh appointment will be made in Class-IV nor any person will be regularized in this category.”



Subsequently, vide order dated 16.07.1990, the interim order dated 16.04.1990 was directed to continue till disposal of the writ application which reads as follows:-

“Having heard learned counsel for the petitioner and after perusing the counter affidavit we think that the interim order passed on 16.04.1990 should continue till the disposal of this writ application. We order accordingly.”

Subsequently, intervenor filed an application for vacating/modification of the order of stay dated 16.04.1990 and 16.7.1990. The interim order was modified vide order dated 28.09.1992 by the Division Bench of this Court in following terms:-

“The petitioners, as we have said earlier, are 32 in this case and 9 in the connected case. If the writ applications succeed, only 41 persons will have to be accommodated. We, therefore after considering the whole matter direct that the authorities may made appointment/regularization keeping 41 posts vacant. we also made it clear that eve if any one is appointed on Class-IV post as a result of this order then he will not claim seniority over the petitioners in case the writ application is allowed.”

Finally both the writ applications were allowed on the ground of violation of principle of natural justice and termination order was quashed. The respondent authorities were directed to consider the cases of the petitioners for their appointments in Class-IV on the basis of their respective posts in the panel and on consideration



of their past services in accordance with law. The operative portions of the order reads as follows:-

“Thus, in my opinion, on the ground of violation of principle of natural justice the impugned orders cannot be sustained and accordingly Annexure-3 in CWJC no. 1056 of 1989 and Annexures 5, 5/1 and 5/2 in CWJC No. 1741 of 1988 are quashed. As it appears from the order dated 28.05.1981 in CWJC No. 1741 of 88 that the authorities were directed to put 41 posts vacant. I direct the respondent to consider the cases of the petitioners of the two writ applications for their appointments in Class-IV on the basis of their respective posts in the panel and on consideration of their past services in accordance with law.”

Subsequently 94 persons including the petitioners were appointed in the year 1999. The appointment letters of petitioner nos. 2, 3 and 4 have been brought on record as Annexure-5(series), but the appointment letter of petitioner no.1 is not on record.

Learned Senior Counsel for the petitioners submits that the petitioners were entitled to seniority with effect from 1996, in view of the order dated 28.09.1992 whereby the interim stay on fresh appointment was vacated on the condition that no one, if appointed on Class-IV post as a result of the order of the Court, will claim seniority over the petitioners in case the writ application is allowed.

In view of this Court, the interim order merged with the final order passed on 04.09.1995 whereby the termination order of the



petitioners was quashed only on the ground of violation of principle of nature justice and the respondents were directed to consider the case of the petitioners and others for their appointment on Class-IV post on the basis of their respective posts in the panel and consideration of their past services in accordance with law and consequently the petitioners were appointed.

In view of this Court, the interim order merged with the final order, but the final order does not stipulate any condition of giving seniority to the petitioners. Admittedly, the other persons, who have not been made party in the present proceeding, were appointed in the year 1996 and took birth in the cadre prior to the petitioners. Since the petitioners were appointed in the year 1999, they cannot be given seniority from retrospective date since they were not born in the cadre in the year 1996. Moreover, in spite of liberty given to the counsel for the petitioners to implead the others above whom the petitioners are claiming seniority, they were not made party in the proceeding. On this ground also, the issue of seniority of the petitioners vis-à-vis others, cannot be interfered without giving the affected persons any opportunity of being heard. This is not in dispute that the earlier writ application was disposed of on 04.09.1995, the petitioners were appointed in the year 1999 but they have filed the present writ application in the year 2011, hence on the ground of delay also, this



Court is not inclined to interfere.

Accordingly, the writ application is dismissed.

(Dinesh Kumar Singh, J)

Amrendra/-

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CAV DATE	
Uploading Date	
Transmission Date	

