

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1552 of 2016
IN
Civil Writ Jurisdiction Case No. 1615 of 2016**

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1. Reshami Rays S/o Sidheshwar Prasad Singh R/o Village-Dharampur, P.O.-Utterthu, P.S.-Bind, District-Nalanda, Bihar 803107
 2. Akhileshwar Kumar S/o Bishwanath Prasad, AT/Pyarepur (Pal Tola), P.O.-Barauli, District-Gopalganj, Bihar-841405
 3. Arbind Kumar S/o Ashok Rajak AT/Dhelwan, P.O.-Dhelwan, Patna, Bihar-800020%
 4. Ranvijay Kumar S/o Virendra Prasad Kazi Bazar, Bihari Road, Hilsa, Distt.-Nalanda, Bihar-801302
 5. Amritanshu Ranjan S/o Baidyanath Mahto Vill.-Sakra, Faridpur, P.O.-Dholi, P.S.-Sakra, Dist.-Muzaffarpur, Bihar,-843105
 6. Avinash Kumar S/o Shiv Ram Singh, H.No.-21, Road No.-10, East Patel Nagar, Patna-23
 7. Achhe Lal Prasad S/o Ram Swarup Prasad Vill.-Gularbaga, P.O.-Songarwa, P.S.-Phulwaria, Distt.-Gopalganj, State Bihar,-841425
 8. Lalan Kumar S/o Dasnarayan Singh VPO Noawan, P.S.-Asthawan, Distt.-Nalanda, Bihar-803107
 9. Diwakar Kumar Choudhary S/o Kaushal Kishor Chaudhary At+P.O.-Paraul, Via-Kaluahi, P.S.-Arer, Madhubani, Bihar-847229
 10. Md. Ershad Ahmad S/o Md. Izhar Haque, AT/Izharchak, P.O.+P.S.-Narhat, Dist.-Nawada, Bihar, PIN-805122
 11. Gautam Kumar Das S/o Ramawatar Das Bahadur Nagar Kachahri Tola, P.O.-Kutlupur, Ditt.-Munger, Bihar.
 12. Hari Mohan Singh S/o Sri Madhu Sudan Singh C-179/259-S, Shail Bhawan, New Shivpuri Colony, Betiahata South, Gorakhpur (Uttar Pradesh)-273016
 13. Md. Hasnain Yunus S/o Md. Yunus, AT-Baro Naya Tola, P.O.-Baro, District-Begusarai, Bihar, PIN-851118
 14. Shyam Kumar Choudhary S/o Bindeshwar Choudhary AT-Kathal Dhaura, P.O.-Katrasgarh, Distt.-Dhanbad (Jharkhand) PIN-828113.
 15. Jyoti Kumari S/o Kanhaiya Rajak Chanakyapuri Colony Garikhana Khagaul, Patna-801105
 16. Kanchan Jha D/o Raj Kumar Jha AT+P.O.-Paraul, Via-Kaluhui Paraul, Madhubani Arer, Bihar-847229
 17. Prakash Kumar S/o Ram Subhag Singh Surya Colony, Kaju Baghan, West End Park, Ratu Road, Ranchi-834005
 18. Rajeev Kumar Raju S/o Indra Narayan Mandal Laxmipur Mohalla, Ward No.-16, P.O.-Madhepura, District-Madhepura, Bihar, PIN-852113
 19. Reena Kumari D/o Ram Dayal Singh Vaishnav Vihar, House No.-02, Ashiana Nagar, Patna-800025
 20. Dhiraj Kumar S/o Ishwar Lall, 403, Artek Apartment Ashiyana Road, P.O.-B.V. College, Patna-14
 21. Rakesh Ranjan Mehar S/o Prakash Ranjan Mehar, Dant Bigha, Near N.M.C.H., P.O.-B.H. Colony, Patna-26
 22. Arun Kumar Akela S/o Shobha Kant Roy AT-Mangrouna, P.O.-Gonouli, Via-Andhara Thadhi, Distt.-Madhubani, Bihar-847401
 23. Shrikant S/o Birju Rajak Vill.+P.O.-Naubatpur, Venue, Pachim Bhar, Distt.-Patna, Bihar-801109



24. Ankuar Nishant S/o Ram Suresh Rajak, Mustafabad Near Devi Mandir, Gaya, Bihar-823001
25. Dhananjay Kumar S/o Wakil Manjhi Vill.-Parshurampur, P.O.-Mastichak, P.S.-Dariyapur, Distt.-Saran, Bihar-841219
26. Manish Kumar S/o Bhuneshwar Prasad Sinha M.I.G. 231, Hanuman Nagar, Kankarbagh, Patna-20%
27. Kumar Mukesh Nandan S/o Shri Bachchan Kumar Sinha, New Area, Dehri-On-Sone, Dalmianagar, Rohtas, Bihar-821305
28. Vinay Prakash S/o Shri Sheo Pujan Prasad Akharaghat Nazirpur, East of Gyatri Mandir, Bank Colony, Muzaffarpur-8420%02
29. Satya Prakash S/o Chandrika Mistri, Kusumpuram, Bailey Road, Near Shiv Mandir, Nahar Par, Danapur Cantt. Patna-801503

.... Appellant/s

Versus

1. Bihar State Power (Holding) Company Limited, Registered Officer-Vidyut Bhawan, Bailey Road, Patna through its Managing Director.
2. The Managing Director, Bihar State Power (Holding) Company Limited, Registered Officer-Vidyut Bhawan, Bailey Road, Patna.
3. The Officer on Special Duty (HR & Adm.) Bihar State Power (Holding) Company Limited, Registered Officer-Vidyut Bhawan, Bailey Road, Patna.
4. Raj Kumar Mandal S/o Ramdeo Mandal AT-Fatehpur, P.O.-Gangania, P.S.-Sultanganj, Via-Bariyarpur, Distt.-Bhagalpur, Bihar-811211
5. Braj Bhushan S/o Bhagwan Prasad Vill.-P.O.-Barhan Gopal, Distt.-Siwan, Bihar-841226
6. Sunil Kumar S/o Brijnandan Prasad Vill.+P.O.-Pakari, P.S.-Beur Near By Pass Godown, Distt.-Patna, Bihar-800002

.... Respondent/s

with

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Letters Patent Appeal No. 1592 of 20%16

IN

Civil Writ Jurisdiction Case No. 1615 of 20%16

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1. Raj Kumar Mandal Son of Ramdeo Mandal, At- Fatehpur, P.O.- Gangania P.S.- Sultanganj, Via- Bariyarpur, District - Bhagalpur, Bihar, Pin 811211
2. Sunil Kumar Son of Brajnandan Prasad, Vill + P.O.- Pakari, P.S.- Beur Neary By Pass Godwan, District- Patna, Bihar, Pin- 800002
3. Braj Bhushan S/o Bhagawan Prasad resident of Village- + Post Barhan Gopal, District-Siwan, Bihar PIN 841226

.... Appellant/s

Versus

1. Bihar State Power (Holding) Company Limited , Registered Office- Vidyut Bhawan, Bailey Road, Patna through its Managing Committee
2. The Managing Director, Bihar State Power (Holding) Company Limited, Registered Office- vidyut Bhawan, Bailey Road, Patna through its Managing



- Committee
3. The Officer on Special Duty (HR & Adm) Bihar State Power (Holding) Company Limited , Registered Office- Vidyut Bhawan, Bailey Road, Patna through its Managing Committee

.... Respondent/s
with

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Letters Patent Appeal No. 1711 of 20%16
IN
Civil Writ Jurisdiction Case No. 3836 of 20%16

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1. Yogesh Ranjan S/o Sri Ram Sahay Roy
2. Lokesh Ranjan S/o Sri Ram Sahay Roy both are residents of Sourangpur Yadav Nagar Lalu path, New Bypass, Ram Krishan Nagar, Khemnichak, P.O. - G.P.O., P.S.- Kankarbagh, District - Patna.

.... Appellant/s
Versus

1. The Bihar State Power (Holding) Company Ltd. through its Chairman-cum-Managing Director, Vidyut Bhawan, Patna.
2. The Chairman-cum-Managing Director, Vidyut Bhawan, Patna.
3. The Director (Administration), Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Patna.
4. The General Manager Human Resources Department, Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Patna.
5. The Managing Director, Bihar Power Distribution Company Ltd., Vidyut Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Pranav Kumar, Advocate
For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Anand Kr. Ojha, Advocate
Mr. Akhileshwar Singh, Advocate
Mr. Ashok Kr. Karn, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 24-07-2017

As common questions of law and fact are involved in



all these three appeals and as all these have been decided by a common order passed on 12.7.2016, and the order dated 26.5.2016 passed C.W.J.C. No.3836 of 2016, all the appeals are being disposed of by this common order.

Challenging an order passed by the respondent Bihar State Power Holding Company cancelling the entire process of appointment initiated, for appointment of Chief Data Base Administrators, Data Base Administrators and I.T. Managers, these appeals have been filed by the petitioners.

In pursuance to an advertisement issued by the respondents vide Employment Notice No.2 of 2015, the petitioners herein sought appointment on the post of I.T. Managers. It was their case that after the process of appointment was initiated, a select list was notified and the name of successful candidate was notified in the Website and they were directed to join on 13.8.2015, but on 8.8.2015 another notice on the Website directing for verification of experience certificate and other documents and the candidates were directed to appear for verification of their experience certificate along with salary slip for the concerned period, Bank statement and proof regarding payment received by him for the experience gained. The date fixed for the enquiry was 8.9.2015 and thereafter all of a sudden, it is stated that another notice was published in the notice



board indicating cancellation of the entire selection and undertaking a fresh selection process vide Employment Notice No.3 of 2016. Challenging their process of selection and Employment Notice No.3 of 2016, primarily on the ground that once the petitioners were notified for appointment after due selection, their selection could not be cancelled in the manner done.

Placing reliance on the following judgments in the case of State of Bihar & Ors. Vs. Mithilesh Kumar, (2010) 13 SCC 467, Director, SCTI For Medical Science & Technology And Another vs. M. Pushkaran, (2008) 1 SCC 448 and The Union of India & Another vs. S.P. Tripathi & Ors., 2014 (1) P.L.J.R.731, Shri Giri, learned Senior Counsel for the petitioners argued that the petitioners having already been found eligible for appointment and when it was not the case of the respondents that the certificates of the petitioners were forged or fabricated or they did not have the experience and that the cases of the genuine and fake candidates could be segregated, cancellation is unsustainable.

On the contrary, learned counsel for the respondents invited our attention to the detailed order dated 26.5.2016 passed in the original writ petition C.W.J.C. No.3836 of 2016, the findings recorded by the learned Single Bench from para 8 onwards and argues that initially this was a case where the entire selection stood



vitiated as 20% marks were to be granted for the experience gained and there were innumerable complaints to say that forged and fabricated certificates even from non-existent institutes were submitted, the Board took a conscious decision to cancel the entire selection process and it is argued by the learned Counsel that the entire selection process on the basis of fresh notice issued has been completed and the select lists have been prepared and, therefore, now no benefit can be granted to the petitioners. Reference for the purpose is made to the judgment in the cases of Shankarsan Dash Vs. Union of India, (1991) 3 SCC 47, and S.S. Balu & Anr. vs. State of Kerala & Ors., 2009 AIR SCW 1644 to say that when there is large scale illegality in the selection, the entire selection stands vitiated and if such a selection is cancelled it does not warrant consideration. He further argues that the petitioners were not appointed. What was notified in the notice displayed on the Website was only the final select list where the candidates were directed to appear along with their original documents for verification and consideration of their case for grant of appointment. He invites our attention to the notice available at page 34 of the paper book to say that it was only a provisional select list for appointment on the post based on the marks in the written examination and weightage for experience gained. Accordingly, learned Counsel argues that what was noticed was only



a provisional select list, the appointment letters and the contract of appointment was to be issued separately after verification of the documents and in between on account of complaints received if the entire selection has been cancelled, the petitioners cannot have any grievance in the matter.

We have heard learned Counsel for the parties and have perused the record. As far as the factual aspect of the matter is concerned, it is seen that after the employment Notice No.2 of 2015 was issued, candidates were subjected to a written examination consisting of 80 marks and weightage of 20% marks for experience was also granted. Based on the total marks obtained under both the aforesaid categories, a provisional select list of candidates was published on the Website of the Board, as is evident from page 34 of the paper book, and in this notice, which is claimed to be the appointment of the petitioners, it was indicated that the candidates whose names are given therein have been provisionally selected for appointment to the post on the basis of marks gained by them in the written examination and the experience. The selected candidates were directed to join on 13.8.2015. They were required to appear along with documents and certificates and it was clearly indicated that a separate formal appointment letter will be issued to them after verification. In the meanwhile, on 8th of August, 2015, much before



the said date, another notice was published wherein all the candidates were directed to appear for verification of their experience certificate along with the experience certificate, Bank statement, salary slip and other documents in support of the experience and from the documents filed by the respondents it is seen that when this verification process was going on, it was found that many of the candidates did not appear and in the selection the certificates issued could not be verified as on information gathered it was found that many of the documents issued were from establishments which were not at all in existence. In para 6, 7 and 8 of the counter affidavit filed, it is indicated by the respondents that before issuing the notice for cancellation of the selection which became unavoidable, the authorities were made to scrutinize the complaints received by trying to segregate the genuine cases from the fake ones, but on account of large scale complaints received and even the inability of many of the employees to be located who had issued the certificate, it is stated that while dealing with the matter in C.W.J.C. No.3836 of 2016, decided on 26.5.2016 which is the main order passed by the learned Writ Court, in para Nos.8, 9 and 10 the learned Writ Court has expressed its reasoning and ground in the following manner:

“8. They do not deny that an exercise was carried out on the basis of parameters laid down in Advertisement No.02/2015 but after the initial process of written examination was completed and they started scrutinizing and verifying the various documents supplied by the candidates,



many infirmities started emerging. Since weightage was required to be given even for work experience to the extent of 20%, complaints were received by the Bihar State Power (Holding) Company Ltd. about the authenticity or the validity of the experience certificates which have been used by the candidates showing fulfillment of the eligibility. The selection committee, therefore, decided to call the candidates for verification of certificates and documents for awarding of marks for experience and authenticity of the supporting documents. Out of the 407 candidates who were called for verification, 14 did not turn up. 80 of the candidates were disqualified because it was found that they had less experience than required as well as many of them failed to produce the work experience in the relevant field. 8 candidates had wrongly mentioned their category with regard to caste etc.

9. The selection committee in this background decided to check and cross check the experience certificates of the candidates and they started experiencing all kinds of resistance for non-cooperation on behalf of the candidates with regard to their certifications and experience. Many of the so called institutions or establishments from where experience certificate had been obtained were found to be either dubious or not worthy of any consideration. Obviously without proper co-operation from the candidates as well as the establishments from where experience certificate had been obtained, it became impossible for the Bihar State Power (Holding) Company Ltd. to give weightage on work experience in a fair and dispassionate manner. It was in this background that the Bihar State Power (Holding) Company Ltd. decided not to go ahead with the recruitment of I.T. Managers and it was also decided that some change in the parameters is also required as the earlier experience with regard to weightage on work experience proved to be a nightmare if not meaningless as all kinds of documents were used to show experience.

10. The Court after hearing the parties and examining the materials on record comes to a considered opinion that in normal course of things if a process of selection has been undertaken and candidates have undergone the process and have been shown to have been selected, a kind of legitimate expectation does arise in favour of such candidates. Though law is also well settled that merely because a candidate has found his name in the select list, it does not give a right for appointment as a matter of course. However, certain leeway has to be given to an employer to take a call and Courts are loath to interfere, as a routine. However, since such appointments are also within the public domain, no authority performing such duty can be permitted to take a decision based on extraneous materials or consideration which per se looks arbitrary or irrational.”



On going through the same, we find that it is a case where there were many serious infirmities in the allocation of marks for experience, large scale manipulation had taken place in the matter of submitting experience certificates and it had become humanly impossible to verify all the certificates and, therefore, a conscious decision was taken by the Board to cancel the entire selection. This is a peculiar case which is different from the case relied upon by Shri Giri to canvass the contention that the Board should have segregated the genuine cases from the fake ones and carried out the appointments.

In our considered view, what was displayed on the notice board was a provisional appointment or select list and a formal appointment letter was to be issued later and in between when large scale irregularities have been found in the matter of seeking experience marks by producing false and fabricated certificates and when verification of these certificates became humanly impossible, the Board took a decision to conduct a fresh selection process. In doing so, in our considered view, the Board has not committed any error to make indulgence in the matter. That apart, we are now informed that in pursuance of the subsequent notice issued, the entire selection process has been completed and, therefore, now this is an added reason as to why interference should not be made.



It is not the case of the petitioners that their certificates of experience and documents submitted by them were verified and it was found to be genuine and in spite thereof they have been deprived of the appointment. They only say that no proper enquiry was conducted and their appointment has been cancelled. However, from the assertion made by the respondents which has been examined by the learned Writ Court, we find that there was large scale illegality committed in submitting the experience certificate and claiming 20% marks for the experience and looking to the large scale manipulation in this regard if the Board has taken a conscious decision to cancel the entire selection, we see no reason to interfere.

Accordingly, finding no merit in the matter, the appeals are dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	1.8.2017
Transmission Date	N/A

