

# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Civil Writ Jurisdiction Case No.1822 of 2016

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1. Shambhu Prasad Baitha Son of Shiv Shankar Baitha Residence of village - Chhapi, Ward No. 12, P.S. Gopalganj, District - Gopalganj
  2. Sanjay Kumar Gupta S/o Arun Kumar Gupta Resident of village - Hansraipur, P.S. Emma, District - Saran
  3. Satyanand Rajak Son of Siyanand Baitha Residence of village - Manikpur, P.S. + Distt. - Gopalganj
  4. Najare Imam Son of Safdar Ali Residence of village - Jangaliya Ward No. 9, P.S. Gopalganj, District - Gopalganj

.... .... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Patna
2. The Commissioner, Saran Division, Saran
3. The District Magistrate Cum - Collector, Gopalganj
4. The Additional Collector, Gopalganj
5. The Deputy Collector, Establishment, Gopalganj
6. The District Employment officer, District Employment Exchange, Gopalganj
7. The Civil Surgeon, Gopalganj

.... .... Respondents

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### Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Adv.  
Mr. Harendra Prasad, Adv.  
For the Respondent/s : Mr. Anil Kumar Singh, GP-26

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 13-12-2017**

Heard Mr. Rajendra Narayan, learned Senior Counsel appearing for the petitioners assisted by Mr. Harendra Prasad, Advocate on record and Mr. Anil Kumar Singh, learned GP-26, for the State

This is a second round litigation for the petitioners to seek appointment under an advertisement which was published more than 16 years back on 14.6.2001. The advertisement is at Annexure 1 to the writ petition and invites application for appointment against 158 Class IV post from those possessed with educational qualification of Class



VIII and having knowledge of cycling. The advertisement also gives preference to those who have served the State Government. The four petitioners herein were applicants to the post. A panel was prepared which is at Annexure 3 and in which the name of these four petitioners does appear at serial nos. 186, 72, 178 and 66 respectively. When despite preparation of panel steps were not taken by the respondent authorities in the district of Gopalganj in giving effect thereto, this led to filing of several writ petitions which were heard analogous alongwith C.W.J.C.No. 10444/2005 (**Shankar Singh & ors. vs. the State of Bihar & ors.**). The petitioners also joined the contest being a party to C.W.J.C.No. 13122/2005 wherein their names appear as petitioners no. 29, 22, 26 and 21 respectively. The panel at Annexure 3 herein was enclosed as Annexure 5 to the said writ petition and a Co-ordinate Bench of this Court after taking notice of the contentions advanced, disposed of the writ petition in the following terms:

“6. I regret not to accept such submission. After orders having been passed in the contempt application, the Collector of the district noticed mistake in the panel on the basis of which appointment orders, Annexures-6 and 7 have been issued, this Court should not allow the mistake to be perpetuated, accordingly, while setting aside the panel, Annexure-5 and the appointment orders, Annexures-6 and 7 as also the subsequent panel, Annexure-C, direct the Collector, Gopalganj to prepare fresh panel in the light of the advertisement, Annexure-3 from amongst those who were the applicants pursuant to Annexure-3 taking into account the length of engagement rendered by the applicants in the Collectorate, its attached offices, government offices,



including, government schools and hospitals situate within the district of Gopalganj. While preparing the fresh panel, the Collector, Gopalganj shall allow all those who are included in the panel, Annexure-5, Annexure-C as also the intervenors to put forth their case, if they are willing to satisfy the Collector, Gopalganj about the length of engagement rendered by them as candidate peon/ daily wager in the Collectorate, attached offices, Government offices, including Government School/ Hospital situate within the district of Gopalganj. Having prepared the panel, the Collector, Gopalganj will make appointment in the Collectorate and attached offices on the basis of the roster finalized by him and recommend for appointment in the other government offices, including Government School and Hospital from the panel as per the requisition furnished by the respective appointing authority, which shall be prepared considering the length of engagement in the light of this order. While preparing the panel, the Collector, Gopalganj shall grant the benefit of age relaxation for the period between the date of advertisement till the date of publication of the panel in the light of this order. While making appointment against the 158 vacancies notified in the advertisement, there is hardly any occasion for making appointment by applying sub-section (6) of Section 4 of the Act as the appointment of those posts were never deferred on account of non-availability of suitable candidates. It was for administrative reasons that the appointments were deferred and delayed. In case of delay in appointment on account of administrative reasons, sub-section (6) of Section 4 of the Act has no application, which applies only in case of non-availability of suitable candidates.

7. As the advertisement is about eight years old, it is directed that the panel in terms of this order be prepared as early as possible, in any case within three months from the date of receipt/ production of a copy of this order and in the light of the panel, appointment/ recommendation letters be issued within the same time and be acted upon forthwith. These writ applications are, accordingly, disposed of.”

The State filed a Letters Patent Appeal bearing L.P.A.No.



1274/2009 but without success and thus, process started in tune with the directions of the Writ Court. It is under the orders passed on the writ petition at Annexure 6 as well as on the contempt applications which followed them that the District Selection Committee at Gopalganj initiated the process and paragraph 6 of the minutes of the meeting held on 20.4.2015, a copy of which is at Annexure 1 to the writ petition, would confirm that in between the period, the vacancies had increased from 158 to 284. Despite this position where vacancies had increased and even though the advertisement at Annexure 1 notified 158 vacancies but for the reasons best known to the respondents, a panel was prepared only of 110 applicants, a copy of which is at Annexure 4 and which did not include the petitioners, rather included only those who had served the Government at some time or the other.

It is this stage that the petitioners come before this Court, through the present writ petition alleging denial of their claim for consideration despite the order of this Court. After several round of adjournments that finally a counter affidavit is filed under the signature of the District Magistrate, Gopalganj and for the contest herein, I think paragraph 19 would be sufficient for disposal. For the sake of convenience I deem it necessary to reproduce the said stand of the District Magistrate, Gopalganj because as per stand taken therein, these petitioners have not been included in the panel because they



have not furnished any experience certificate even though they are well within the zone of consideration in terms of 158 vacancies advertised.

“19. That it is lastly humbly submitted that the panel of 110 candidates were approved by Hon’ble High Court in M.J.C.No. 3712/2009 and analogous cases out of that panel 65 candidates were appointed earlier and rest 45 candidates were appointed subsequently under the direction High Court passed in M.J.C.No. 1755/2015.

In respect of the averment made in para 08 of the writ petition is concerned it is humbly submitted that in pursuance of the order of Hon’ble High Court passed in C.W.J.C.No. 10444/05 dated 29.7.2009 and L.P.A.No. 1274/2009 dated 18.2.2010 a process for preparation of panel was initiated and an enquiry committee for scrutiny and verification of the certificate was consulted by the District Selection Committee. The enquiry committee after verifying the matter firstly presents a list of 144 candidates out of total 22249 candidates in meeting of District Selection Committee held of 19.5.2011. The District Selection Committee after considering the list presented by the enquiry committee, preliminary lists of 73 candidates were published on notice board and daily newspaper and objections were invited.

It is relevant to mention here that these four petitioners were not placed in the list of 73 applicants as they had not furnished any experience certificate with their applications. Thereafter 208 persons including the writ petitioners had submitted their objections and made claim for inclusion in the panel which is being prepared for appointment on Class IV post.

Thereafter the entire 208 objections were scrutinized and verified with the applications by a committee constituted by the then Collector and it was found that these four petitioners have not working experience up to 1.7.2001 the date of publication of advertisement. Therefore the candidature of the petitioners were rejected. On 14.6.2011 the verification list was published in which petitioner no.1 was placed at serial no. 144, petitioner no. 2 was placed at serial no. 124, petitioner no. 3 was placed at serial no. 145 and petitioner no.4 was placed at serial no.90. Since these



petitioners had not have working experience of a single day hence their candidature were rejected at initial stage itself.

Since Ramesh Prasad Yadav had have 1 day working experience and Vinod Prasad had have 4 days working experience but these petitioners had have no working experience of a single day, hence the case of the petitioners is not similar to the case of Ramesh Prasad Yadav and Vinod Prasad.”

(Emphasis is mine)

In my opinion, the Collector, Gopalganj somewhere has swayed by the thought that the vacancies were advertised for the purpose of regularization of daily wagers in employment of the district when the fact is otherwise for the advertisement at Annexure 1 is an open advertisement inviting applications from general public. Now even though the State decided to give preference to those who had served the State in whatever capacity, even for a day, it yet did not preclude the fresh applicant from consideration provided they held the eligibility condition. The advertisement at Annexure 1 which is the foundation for the selection process is neither in the nature of closed selection process thrown open for the daily wagers serving the State nor debars the fresh applicant.

In that view of the matter, the conclusion drawn by the District Magistrate, Gopalganj at paragraph 19 to deny these petitioners appointment simply because they have no working experience is not correct, rather is contrary to the advertisement which nowhere debars a fresh applicant. That the District Magistrate in the



same paragraph has admitted that while the petitioner no.1 is at serial no. 144, petitioner no.2 is at serial no. 124, petitioner no.3 at serial no. 145 and petitioner no.4 at serial no.90 of the panel, it is confirmed that all these four petitioners are well within 158 vacancies so advertised at Annexure 1 and their candidature could not have been rejected on the issue of work experience because that is not a mandatory eligible condition in the advertisement even if giving an edge.

For the reasons so discussed, the District Magistrate, Gopalganj has defaulted. The matter is remitted to the District Magistrate, Gopalganj for consideration of the case of these petitioners for appointment against the vacancies advertised vide Annexure 1 in the light of the observations hereinabove and which decision be taken within a period of eight weeks from the date of receipt/ production of a copy of this order.

The writ petition is allowed.

**(Jyoti Saran, J)**

Surendra/-

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