

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.724 of 2017

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1. Md. Jawed Hossain, Son of Late Md. Hossain, resident of village - Daliya, P.O. & P.S. Bonsi, District Banka
 2. Bikash Kumar Jha, Son of Late Adhik Lal Jha, resident of village - Fatehpur, P.O. Vishambharchak, P.S. Amarpur, District - Banka
 3. Zafir Ahmad, Son of Zafar Ahmad, resident of Darzeetola, Chandwara, District - Muzaffarpur

.... Petitioners

Versus

1. The State of Bihar through Principal Secretary, Home Department, Govt. of Bihar, Patna
2. Principal Secretary, Home Department, Govt. of Bihar, Patna
3. Secretary Home (Prison), Govt. of Bihar, Patna
4. The Inspector General of Prison and Correctional Services, Govt. of Bihar, Patna
5. The Superintendent, Special Central Jail, Bhagalpur
6. The Superintendent, Shaheef Jubba Sahni Central Jail, Bhagalpur
7. The Superintendent, Shaheed Khudi Ram Bose Central Jail, Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Siddhartha Prasad, Adv.
Mr. Kaustubh, Adv.

For the Respondent/s : Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-09-2017

Heard Mr. Siddhartha Prasad, learned counsel for the petitioners and Mr. Shailesh Kumar, AC to GP-5, for the State.

The petitioners are Contingent Menials discharging the duties of Computer Operator in different Jails. While petitioner no.1 is discharging the duty of a Computer Operator since 6.8.1999 in Special Central Jail, Bhagalpur, petitioner no.2 is working in the same capacity in Shaheed Jubba Sahni Central Jail, Bhagalpur since 1.5.1999 and petitioner no.3 is discharging the duty of Computer Operator in Shaheed Khudi Ram Bose Central Jail, Muzaffarpur since



16.1.1999.

The grievance of the petitioners raised in this writ petition is that although they have been duly recommended by the Committee for appointment against the sanctioned post of Nai/ Safai Mazdoor in pursuance of the selection process initiated through advertisement present at Annexure 3 but when the results were published at Annexure 9, their names were missing. Though normally the petitioners ought to have moved the department for raising their grievance but they came before this Court through the present writ petition seeking direction to the respondents to consider their cases for appointment in terms of the advertisement dated 17.8.2015 at Annexure 3.

A counter affidavit is filed in the writ petition on behalf of the respondents collectively and while admitting to the facts pleaded and accepting the recommendation in favour of the petitioners, yet an objection to the appointment is mentioned in paragraph 9 of the counter affidavit in which it is stated that since these petitioners were discharging the duties of Computer Operator, their cases are not similar to other Contingent Menials because the post of Computer Operator is a Class III post having a pay scale of 5200-20,200/-. It is further stated in paragraph 10 that while a Computer Operator is required to have a Diploma in Computer, the Nai, Safai Majdoor and



other Menials are Group-D post and thus, the Committee has rejected the recommendation of the petitioners. On the basis of the stand so taken by the respondents in the counter affidavit as well as their poor appreciation of nature of engagement of a Contingent Menials that this Court recorded its opinion in the order dated 18.7.2017 giving one more opportunity to the respondents to correct their opinion but which is not forthcoming, rather the supplementary counter affidavit again proceeds to inform that while appointments are being made on Group-D post, the post of a Computer Operator is a Class-C post.

Mr. Siddhartha Prasad has simply referred to the list of Contingent Menials, a copy of which has been placed on record at Annexure 10 to the rejoinder to the counter affidavit to submit that while the respondents themselves do categorize these petitioners discharging duty as Computer Operator, as Contingent Menials which is again confirmed from the letter present at Annexure 12 to the rejoinder to the supplementary counter affidavit but simply to deny the benefit of appointment to the petitioners albeit on Class IV post that unwarranted issues are being raised which has no nexus with the issue in contest.

It is the argument of Mr. Prasad that even though these petitioners were discharging the duty of Computer Operator, they were being paid their remuneration on daily wage basis as being paid



to other Contingent Menials discharging the duty of Nai and Safai Mazdoor. Learned Counsel has referred to the amendment to the Bihar Jail Nai and Safai Mazdoor Cadre Rules, 2011, a copy of which is present at Annexure 2, to submit that the amendment at paragraph 2 of the amendment Rules mandates that all such Contingent Menials, who were **working in any capacity discharging duties of any post in any jail in the State** on 11.12.2006 or prior thereto, would be entitled for regularization against the sanctioned post of Nai and Safai Mazdoor as a one time exercise, subject to the condition that these Contingent Menials would be required to give an affidavit that they would not be claiming appointment against the post of Driver, Electrician etc.

It is the submission of Mr. Prasad that following the amendment that an advertisement was issued by the Inspectorate of Prison and Reforms Services, Home Department on 17.8.2015, a copy of which is annexed at Annexure 3, containing stipulations parimateria to the amendment at Annexure 2 and while extending the benefit of regularization to all Contingent Menials, the only stipulation present at paragraph 5 is that they would not claim their right to any post on which they have been discharging their duties viz. a Driver, Electrician etc. He submits that the petitioners in compliance have given their undertaking and which has also been taken note of by



the Committee to result in their recommendation at Annexures 7 series but on a complete misconception of position that a decision has been taken by the respondents to exclude them from the process simply because they are discharging the duties of Computer Operator which is a Group- C post. The submission of Mr. Prasad is that the decision to exclude these petitioners is contrary to the amended Rules as well as the advertisement which does not oust the Contingent Menials who are working as Computer Operator. According to Mr. Prasad, even otherwise, the reasonings assigned by the respondents to exclude the petitioners, is unsustainable and arbitrary, for the Contingent Menials are a class by itself and there cannot be a subclass within a class of contingent menials.

The argument of Mr. Prasad has been contested by Mr. Shailesh Kumar, AC to GP-5, and who could do no better than to rely upon the stand taken by the respondents in the counter affidavit and the supplementary counter affidavit which simply refers to the nature of duty discharged by the petitioners, to exclude them from the benefit, even when they are fully aware that even if the petitioners were discharging duties of a Group C post, they yet continued to be Contingent Menials to draw daily wages just as the Nai and Safai Mazdoors.

I have heard learned counsel for the parties and have



perused the records.

There cannot be a better case of absurdity attached to a decision making process. The relevant extract of the amendment at Annexure 2 is reproduced hereinbelow and leaves no room for confusion that any Contingent Menial discharging the duty of any post and working in any capacity, was entitled for appointment against the sanctioned post of Nai and Safai Karamchari and the only obligation that was cast on them was to give an undertaking that on appointment, they would not claim a higher post. In fact the Rules so framed under Article 309 of the Constitution contains a stipulation that even though these Contingent Menials may be working on a higher post of Electrician and Driver etc which are not exactly Group-D post but they would not be entitled to claim the said post, rather they would have to give an undertaking forgoing any such right. The advertisement at Annexure 3 at paragraphs 1 and 5 contains identical stipulation while inviting applications from the Contingent Menials.

“2 बिहार कारा नाई एवं सफाई मजदूर संवर्ग नियमावली, 2011 के नियम 5 (2) को निम्नलिखित द्वारा प्रतिस्थापित किया जायेगा:—

(2) वैसे आकस्मिक भृत्य, जो नियत पारिश्रमिक किसी रूप में प्राप्त कर रहे हैं अथवा नियत वेतनमान के मुल प्रक्रम का न्यूनतम स्थिर वेतन प्राप्त कर रहे हैं और दिनांक 11,12,2006 या उससे पूर्व कार्य पर जिस किसी भी पदनाम से कार्य पर रखे गये हों, उन्हें नाई और सफाई मजदूर के स्वीकृत पदों के विरुद्ध विचारित करते हुए उनके नियमितीकरण के लिए नियुक्ति का एक अवसर प्रदान किये जाने के पश्चात शेष बचे



पद एवं इस प्रकार नियुक्त नाई/सफाई मजदूर/ आकस्मिक भृत्य द्वारा रिक्त किये गये पदों पर बाह्य स्रोत से सरकार द्वारा समय-समय पर विहित प्रक्रिया एवं नियत विहित वेतन/पारिश्रमिक पर सेवा ली जायेगी। साथ ही वैसे आकस्मिक भृत्यों को इस आशय का शपथ-पत्र भी देना होगा कि उन्हें सफाई मजदूर के रूप में सेवा नियमितीकरण किए जाने में कोई आपत्ति नहीं है तथा भविष्य में वे अन्य सदृश्य कार्य अथवा पद, यथा-चालक बिजली मिस्त्री आदि पर कोई दावा प्रस्तुत नहीं करेंगे।’

(Emphasis is mine)

It is a matter of record that these petitioners though were discharging the duties of Computer Operator but were agreeable to their appointment on Class IV post and thus in tune with the amended rule and the stipulations in the advertisement, they gave their undertaking of not claiming a right to a higher post. The Committee after conscious deliberation on their eligibility has recommended their case for appointment as confirmed from Annexure 7 series and not disputed. It is unfortunate that despite such position, their names have not figured in the final result at Annexure 9 forcing them to come before this Court.

In my opinion the stand taken by the respondents to deny relief to the petitioners which is present at paragraphs 9 and 10 of the counter affidavit and reiterated in the supplementary counter affidavit, is preposterous and reflects very poor appreciation of the status of a contingent menial. The respondents do not dispute the status of the



petitioners as contingent menials. The respondents also do not dispute that the petitioners are drawing remuneration on daily wage basis just as other contingent menials. The respondents while commenting on the grievance raised by the petitioners have failed to appreciate that the Contingent Menials employed in whatsoever capacity, constitute a class within themselves and there cannot be a sub-classification within the class of Contingent Menials on the basis of duty discharged by them as apparently misunderstood by the respondents. The nature of trade which a Contingent Menial discharges, is irrelevant and does not even bestow any advantage on his daily wage rather, whether a Contingent Menial discharges the duty of a Class III post or is engaged on a Class IV duty, all of them draw remuneration at the same rate which is not in dispute.

The amended rules at Annexure 2 and the Advertisement published pursuant thereto at Annexure 3, do conceive of such a situation where a contingent menials may be performing duties of a superior nature viz Electrician, Driver etc. and that is why, while taking note of any such eventuality and while giving these contingent menials a chance of regular appointment albeit on Class IV post, they have put a rider that the applicants shall give undertaking of not claiming a higher post. In my opinion, the respondents while objecting to the relief claimed herein have unknowingly tried to



overreach the rules as well as the pari materia stipulations present in the advertisement, to deny appointment to these petitioners.

Clearly the action of the respondents is arbitrary, even if by ignorance. A Contingent Menial by its nomenclature is a person employed as per contingency and the nature of the duty discharged by them does not put any of them in a superior position whether he is discharging the duty of Electrician or Nai or Safai Mazdoor or a Computer Operator because they all enjoy their status at parity.

In my opinion, though the amendment at Annexure 2 and the advertisement Annexure 3, in so far it protects the right of these petitioners for appointment, is crystal clear, not leaving any room for confusion, yet by raising objection which neither confirms logic, nor is passed on sound reasons that an unwarranted litigation has again been generated by the State.

For the reasons and discussions above and considering that the name of these petitioners have undisputedly been recommended by the Committee for appointment against the sanctioned post of Nai and Safai Mazdoor vide Annexures 7 series with the name of petitioner no.1 appearing at serial no.1 at page-29, that of petitioner no.2 appearing at serial no.1 at page-33 and the name of petitioner no.3 appearing at serial no.2 at page-40, the appointing authority, the Inspector General of Police is directed to take the recommendations to



its logical conclusion within a period of six weeks from the date of receipt/ production of a copy of this order.

The writ petition is allowed but without order as to costs.

Let a writ of mandamus issue accordingly.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.09.2017
Transmission Date	NA

