

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17205 of 2010

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1. Hari Narain Tiwari Son of Sri Daroga Tiwari, Resident of Village- Barwat Prasarain, P.S.- Mufassil Bettiah, Distt.- West Champaran
2. Kameshwar Pandey Son of Late Madan Pandey, Resident of Village - Barwat Prasarain, Post- Barwat Prasarain, P.S.- Mufassil Betia, Distt.- West Champaran
3. Shukhlal Thakur Son of Sri Kanchan Thakur Resident of Village and Post- Dhumnagar Kachahari Tola, P.S.- Nautan, Distt.- West Champaran
4. Munna Sah Son of Sri Bhola Sah, Resident of Village - Belbag Banwa Tola, Belbag Bettiah, Post- Belbag, P.S.- Muffasil, Distt.- West Champaran

.... Petitioners

Versus

1. The State of Bihar
2. The District Magistrate, District - West Champaran
3. The District Establishment ,Deputy Collector, West Champaran, Bettiah
4. The Sub-Divisional Officer, Sadar, Bettiah, P.S. - Bettiah, District - West Champaran
5. The Deputy Collector, Nazarat, West Champaran, Bettiah.

.... Respondents

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Appearance :

For the Petitioners

: Mr. Manoj Kumar
Mr. Avinash Kumar
Ms. Namrata Singh,
Mr. Chandan Kumar
Mr. J.P.Verma, Advocates

For the Respondents

: Mr. Chandra Shekhar Singh, AC to GA 10

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 30-08-2017

Learned counsel for the petitioners seeks leave to implead the Deputy Collector, Nazarat, West Champaran, Bettiah as respondent no. 5, which is permitted to be done in course of the day.

2. The present writ petition has been filed for a direction to the respondents to absorb the services of the petitioners in Class IV post under the State Government in the Collectorate/Sub-Divisional Office, Bettiah; and for payment of arrears of due salary/wages from the date on which similarly situated employees have been absorbed under the Collectorate/Sub-Divisional Office, Bettiah.



3. Interlocutory Application No. 3084 of 2014 has been filed for amendment of the prayer portion of the writ petition by adding the following prayers-

“ Further a writ in the nature of mandamus may be issued commanding and directing to the respondent authorities to grant the age relaxation to the petitioners no. 1 to 3 as per provision of Rule 54 of the Bihar Service Code with regard to appointment of the petitioners in subsequent vacancy in the Collectorate, Bettiah, District West Champaran and consider absorption of their services in the light of the circular of the Personnel and Administrative Department as contained in memo no. 639 dated 16.03.2006 as one time opportunity.”

4. Having regard to the nature of the prayer, the same is allowed and the I.A. is treated as forming part of the writ petition.

5. Learned counsel for the petitioners at the outset states that the writ petition is confined only to the petitioner nos. 1 and 2 as the petitioner no. 3 is no longer prosecuting the matter and the petitioner no. 4 has already been absorbed in service. It is further stated that payment of arrears of salary/wages has been received and hence the prayer in this regard is not being pressed.

6. Learned counsel for the petitioners submits that the case of the petitioner no. 1 is squarely covered by a decision of this Court in CWJC No. 23479 of 202 (*Ramdhyan Kushwaha and others vs. the State of Bihar and others*) disposed of on 03.08.2017 by which the claim of similarly situated persons has been allowed, having regard to the fact that they had worked for 240 days prior to 11.12.1990,



being the cutoff date, and hence fell in the first category as explained in the judgment of the Division Bench of this Court in *Ashok Kumar Sharma and others vs. The State of Bihar through the Chief Secretary and others, 2016 (1) PLJR 232*.

7. As regards petitioner no. 2 it is submitted that he is entitled to be absorbed in service on the strength of the letter No. 12678 dated 11.09.2014 issued by the Under Secretary to the Government of Bihar, General Administration Department, Patna (Annexure-32).

8. Learned counsel for the petitioners also states that the petitioner no. 4 has already been absorbed in service and appointed vide memo no. 351 dated 23.03.2012 along with 124 other persons.

9, Learned counsel for the respondents appears and has been heard. He is unable to controvert the stand of the petitioner no. 1 that he fell in the first category aforesaid as evident from letter no. 616 dated 10.10.2011 (Annexure-C to the counter affidavit of the respondent nos. 2 and 3).

10. Having regard to the above, it must be held that the petitioner no. 1 having been initially engaged on 15.03.1987 and completed over 240 days of service as on 11.12.1990 fell in the first category as explained in Ashok Kumar Sharma's case (supra). The District Magistrate, West Champaran, Bettiah is thus directed to consider the case of the petitioner no. 1 in the light of the Division Bench judgment in Ashok Kumar Sharma's case (supra). He shall



also have regard to the provisions of Rule 54 of the Bihar Service Code in the matter of grant of age relaxation to the petitioner no. 1 and pass appropriate orders in accordance with law expeditiously and in any event within a period of four months from the date of receipt/production of a copy of this judgment.

11. As regards the petitioner no. 2, it has been stated that he has already filed a representation before Deputy Collector, Nazarat, West Champaran, Bettiah (Annexure-31) for appropriate relief in the light of the letter dated 11.09.2014 (Annexure-32). The petitioner no. 2 may therefore pursue his said representation which may be disposed of on its own merits, if still pending, in accordance with law.

12. The writ petition stands disposed of.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06.09.2017
Transmission Date	N.A.

