

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10281 of 2016

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1. Dharmendra Kumar, s/o Vijay Kumar Prasad, residing at Railway Colony, Room No. E/6A, Near Indu Villa, Chandmari Railway Gumti, Belisarai, P.O.-Motihari, P.S.-Nagar Thana, District-East Champaran, Motihari.
 2. Md. Nezam, S/o Shri Saukat Ali, R/o Village- Chargaha, P.O. & P.S.Turkauliya, District-East Champaran, Motihari.
 3. Santosh Kumar Suman, S/o Baldeo Prasad, R/o Near Harijan Hostel, Chandmari, P.O.-Motihari, P.S.-Nagar Thana, District-East Champaran.
 4. Seraj Ahmad, S/o Md. Shamsuddin, R/o Village- Bajariya, Near Mosque, P.O.-Motihari, P.S.-Bajariya, Near Mosque, P.O.-Motihari, P.S.-Bajariya, District-East Champaran, Motihari.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
2. The Mission Director, Bihar Administrative Reform Mission Society General Administration Department, Government of Bihar, Patna.
3. The Additional Mission Director, Bihar Administrative Reforms Mission Society, General Administration Department, Government of Bihar, Patna.
4. The District Magistrate, East Champaran, Motihari.
5. The Deputy Collector (Establishment), East Champaran, Motihari.
6. The District Development Commissioner, East Champaran, Motihari.
7. The Officer-in-Charge, RTPS Cell, East Champaran, Motihari.
8. The Executive Engineer, Electric Supply Division, Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nikhil Kumar Agrawal, Adv.
Ms. Aditi Hansaria, Adv.

For the Respondent/s : Mr. Sunil Kumar, AC to GP-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-07-2017

Heard Mr. Nikhil Kumar Agrawal, learned counsel
appearing for the petitioners and Mr. Sunil Kumar, learned
Assisting Counsel to Government Pleader No.11 for the State.

The petitioners have questioned clause (4) of the
empanelment order bearing Memo No.806 dated 4.9.2015 of the
District Magistrate, East Champaran at Motihari in so far as it
wrests a right of consideration of an empanelled candidate in case



the office in which he has been posted as an Executive Assistant reports no vacancy.

The short submission made by Mr. Agrawal, learned counsel appearing for the petitioners is that once a candidate is empanelled for appointment as an Executive Assistant, it is not within his jurisdiction to ascertain whether or not there is any requirement in any office and it is for the District Magistrate to satisfy himself as to the existing vacancy before any posting order is issued for even where a candidate is selected for appointment, his right is taken away merely because the office to which he has been posted does not accept his joining on the excuse of absence of vacancy. According to learned counsel, the four petitioners herein having succeeded in the written examination held in 2012 for appointment as Executive Assistants, their names finds mentioned in the merit list at Annexure 4 with the name of petitioner no.1 at serial no.237, the petitioner no.2 at serial no.180, the petitioner no.3 at serial no.184 and petitioner no.4 at serial no.259.

It is the submission of Mr. Agrawal, learned counsel appearing for the petitioners that having been found suitable for appointment that these petitioners were posted as against the requisition given by the Director, Project, North Bihar Power Distribution Company Limited at the Electric Supply Division, Motihari vide Annexure-5 but when these petitioners went to give their joining along with one Kamal Kumar Rajak, although the



joining of the said Kamal Kumar Rajak was accepted by the Executive Engineer, Electric Supply Division, Motihari, but the joining of these petitioners was rejected on grounds of absence of vacancy. The petitioners represented before the District Magistrate, East Champaran at Motihari vide Annexure-6 and which was acted upon when the District Establishment Deputy Collector made query from the Executive Engineer, Electric Supply Division, Motihari vide letter dated 28.11.2015 present at Annexure-7 as to the reasons for not accepting the joining of these petitioners but was informed by the Electrical Executive Engineer vide his letter dated 1.12.2015 present at Annexure-8 in reference to his earlier letter dated 23.9.2015 that since the requirement was already fulfilled as per the requisition dated 23.9.2015 by posting of 7 Executive Assistants vide order dated 19.6.2015 at Annexure-9 hence there was no further requirement.

Faced with the situation the petitioner again moved the District Magistrate vide Annexure-11 drawing his attention because the claim of the petitioners could not have been jettisoned due to lack of information as to the vacancy. He submits that had these petitioners been posted to any other office perhaps they would have been in employment and it is entirely due to the lapse of the respondents that they are made to suffer. The attention was also drawn to the fact that fresh appointments were being made on the post and thus the petitioners may be considered as against the fresh



engagement of Executive Assistants.

Mr. Agrawal has drawn the attention of this Court to the policy decision taken by the General Administration Department dated 20.5.2011 in respect of appointment of Executive Assistant and with reference to Clause 4 he submits that the guidelines are very clear and it is only after the candidates empanelled in the previous merit list are appointed, that any appointments could be made afresh. According to Mr. Agrawal, the respondents themselves have flouted the guidelines of the General Administration Department in issuing appointment letter at Annexure-11 which is in respect of 23 persons and issued as back as on 19.5.2016 ignoring the rightful claim of these petitioners.

The arguments advanced by Mr. Agrawal is contested by the learned State Counsel who in reference to the opinion expressed by a coordinate Bench in a similar matter arising from **CWJC No.10802 of 2015 (Abhay Kumar Singh & Ors. Vs. The State of Bihar)**, a copy of which is placed at Annexure-A to the counter affidavit of respondent no.4, submits that no right vests in the petitioners to seek appointment if the vacancies are missing.

I have heard learned counsel for the parties and I have perused the records.

There is no dispute on facts. There is also no dispute that a panelist has no enforceable right for appointment. The principles so well settled stands recognized in the order passed by



the coordinate Bench of this Court relied upon by the learned State Counsel. Even when the principle as regarding the right of an empanelist is well settled, in so far as the present case is concerned there is a distinguishing feature and that is the guidelines of the General Administration Department dated 20.5.2011 which itself upholds the right of a panelist. Paragraphs 3 and 4 of the guidelines issued by the General Administration Department dated 20.5.2011 supports the contention of Mr. Agrawal that a panel of Executive Assistant is continuous process and preparation of new panel does not take away the right of the empanelled candidates in the previous panel. In fact the guidelines at paragraph 4 very clearly mentions that it is only when the earlier panel is exhausted that an appointment can be made from the new panel.

As I have said that there is no dispute on facts. It is not in dispute that these petitioners were on the merit list and also given an appointment as Executive Assistant and it is only for the lack of information with the District Magistrate, East Champaran that they were posted in an office which did not have the required vacancies. It is not that these petitioners were lacking in eligibility rather it is the posting order which was suffering error for it posted these petitioners to an office which did not have any vacancy. Perhaps it is appreciating this issue on being raised by the petitioners, that the District Magistrate entered into a correspondence with the requisitionist department i.e. North Bihar Power Distribution



Company Limited, Electric Supply Division, Motihari who immediately vide Annexure 8 replied that they only needed one Executive Assistant.

Having heard learned counsel for the parties on the contest, I am of the opinion that in view of the guidelines of the General Administration Department dated 20.5.2011, the District Magistrate, East Champaran should have applied himself to the issues in the back drop of the guidelines issued by the General Administration Department as well as the vacancies which occurred as present at Annexure-12. I thus, deem it proper to dispose of the writ petition with a direction to the District Magistrate, East Champaran at Motihari to consider the claim of the petitioners afresh in the background of the policy decision dated 20.5.2011 and dispose of the same within a period of four weeks from the date of receipt/production of a copy of this judgment.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19-08-2017
Transmission Date	NA

