

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14409 of 2011

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1. Dhananjay Kumar Mishra, Son of Late Dhukh Mochan Mishra, Resident of Vill.- Rahatmina, P.O.- Hardhara Haat, P.S.- Kursakanta, Distt.- Araria
 2. Dhananjay Kumar, Son of Ganjanand Pandey, Resident of Vill.- Tirashkund, P.S.- Forbesganj, Distt.- Araria
 3. Sukant Adarsh, Son of Jageshwar Prasad Thakur, Resident, Vill.- Balua Dyorhi, P.S.- Parashi, Distt.- Araria
 4. Anuranjan Kumar Thakur, Son of Anil Prasad Thakur, Resident, Vill.- Balua Dyorhi, P.S.- Palashi, Distt.- Araria

.... Petitioner/s

Versus

1. The State of Bihar through Agriculture Production Commissioner, Govt. of Bihar, Patna
2. The Collector, Araria
3. The District Agriculture Officer, Araria
4. The District Horticulture Officer, Araria
5. Dr. K.P.Sinha, Retd. District Agriculture Officer, Nominated Member of Selection Committee R/O Station Road, Araria
6. Sri Acting Paswan, Nominated Member of The Selection Committee, C/O District Agriculture Officer, Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Awadh Bihari Ojha, Sr. Adv.
For the Respondent/s : Mr. Jai Prabhat Kishore, AC to SC-13

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 19-05-2017

Heard Mr. Awadh Bihari Ojha, learned senior counsel for the petitioners and Mr. Jai Prabhat Kishore, learned A.C. to SC-13.

The present writ application has been filed by the petitioners for issuance of writ of mandamus for directing the respondents to appoint the petitioners as Farmer Advisor (Kisan



Salahkar) in general category in Araria District.

The prayer portion of the writ application reads as follows:

“That this is an application for issuance of a writ of mandamus commanding the respondents to appoint the petitioners (General Category candidates) as Farmer Advisor in the district of Araria and also grant any other relief to which the petitioners are found entitled to and cost of this proceedings.”

The factual matrix would unveil that the Agriculture Department of the State of Bihar came out with a road map for implementation/execution of various agricultural schemes of the Central Government, as well as of the State Government. In this regard, the State Government came out with the scheme of Kisan Salahkar, for the first time in the year 2009-10. The purpose and intent of the scheme of Kisan Salahkar was engagement of progressive farmers, for providing advisory assistance to the farmers. The Agriculture Department, Government of Bihar, forwarded a letter to the Accountant General, Bihar, vide Letter No. 1304 dated 8.3.2010 for seeking approval for the expenditure to be incurred on the Farmer Advisors schemes. In the said letter, the



stipulations made with regard to the Farmer Advisors, clarified that the Progressive Farmers would be selected as Farmer Advisors, wherein preference would be given to Graduates in Agriculture, or in case of non-availability of Agriculture Graduates, preference would be given to I.Sc. (Agriculture). After these two categories, preference would be given to Trained Kisan Salahkars/Kisan Mitras, who have undergone training in different institutions/Agriculture Science Centres under Rajendra Agriculture University, so that their assistance may be immediately put to use in Agricultural Programmes.

This letter further stipulates that, if the vacancies still existed, upon engagement of Agriculture Graduates, I.Sc. (Agriculture) and Trained Farmer Advisors/Kisan Mitras, then merit list of the applicants would be prepared on the basis of marks obtained in I.Sc.

It further provided that if the number of candidates/applicants would exceed the number of vacancies, then in that case the merit list would be prepared on the basis of percentage of marks, secured by the applicants in their respective exams i.e., B.Sc. (Agriculture), I.Sc., Agriculture, I.Sc. (Kisan Salahkar/Kisan Mitra).



The scheme was to be implemented in each District within the State and there would be an advisor each for every Panchayat i.e., 8463 Farmer Advisors for 8463 Panchayats. Preference was to be given to the candidate who is the resident of the District concerned and, in case, if any vacancy remained after appointment of resident candidate, then candidates of other Districts could be considered for engagement.

Clause-12 of this letter further prescribed that the Farmer Advisor would provide his service from a Centre, marked/fixed for such purpose. The time period for rendering service would also be fixed, which would be a minimum of four hours on the working days. The main source of income of such advisors would be their advisory service, besides income from their own agricultural work. The Farmer Advisors would be paid an honorarium of Rs.2500/- per month.

It was also further specified in Clause -17 of this letter that the Farmer Advisors would not be Government servants but the reservation roster would be followed and reservation Rules would be adhered to in selection of Farmer Advisors. It was also provided that the engagement was to be made for the year 2009-10 and 2010-11 and that the same would be extended, in case of



satisfactory performance of the selected candidates.

Accordingly, the advertisement for selection of Farmer Advisors was published on 18.04.2010 in a daily newspaper, as contained in Annexure-1 to the writ application. This advertisement stipulated, besides other things detailed above, that Government employees would not be selected as Farmer Advisors.

The learned counsel for the petitioners submits that, in pursuance to the advertisement, the petitioners also submitted their applications for being selected as Kisan Salahkar in Araria District and after scrutiny their names appeared at Serial Nos.161, 127,122 and 148, respectively, in the merit list, which is Annexure-2 to the writ application. The four petitioners are candidates of general category. The total vacancy in Araria District was 218, out of which 109 posts were for candidates of general category, while the remaining 109 posts were reserved for the candidates of reserved category. It is contended by the learned counsel for the petitioners that against 218 posts only 191 applications were received and out of these 191 applicants, only 33 belonged to general category and, out of these 33, only 20 candidates were selected as general category candidates. The selected general category candidates ranked within Serial No.120 of



the merit list.

It is further contended that, the requirement for such selection was based on minimum academic qualification and that the advertisement did not prescribe for exclusion of candidates on the basis of cut off marks. Contention is also that the seats of general category were filled up by candidates belonging to reserved categories, which was a violation of the roster points and in this regard it is further claimed that though there were only 33 general category applicants for the 109 posts available for general category, yet all 109 posts of general category got filled up, while on the other hand though there were 158 applicants from reserved category, yet 49 posts still remained vacant out of the total 109 posts meant for the reserved category candidates.

It is also submitted on behalf of the petitioners that candidates who ranked at serial number 26, 57, 99 and 105, were aged below 18 years which is the minimum age prescribed in the advertisement. Inadequacies, in applications of few selected candidates have also been claimed by the petitioners, though the specific details have not been given.

Learned counsel appearing on behalf of respondent nos. 2 and 3, i.e., the Collector Araria and the District



Agricultural Officer, Araria, respectively, submits that candidates of reserved category having higher marks have been placed in general category in the merit list and as such there has been no violation of roster points. It is admitted by learned counsel for Respondent nos. 2 and 3 that there were only 33 applicants from the general category and on the basis of cut off marks of 54% fixed for general category candidates, only 21 candidates qualified to be selected, hence, the remaining vacant posts from the general category were filled up with candidates of reserved category, who had higher marks. The minimum qualifying marks for reserved category candidates was fixed at 45.77 %. The reserved category candidates, whose percentage of marks was above the minimum qualifying marks, i.e, 54% fixed for general category candidates, were treated as general category candidates, as per section 4(3) of Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 (hereinafter referred to as the 'Act'). Sub-section (3) of Section 4 of the Act reads as follows:

“(3) A reserved category candidate who is selected on the basis of his merit shall be conducted against 50% vacancies of open merit category and not against the reserved category vacancies.”



Learned counsel also contends that the maximum age for selection was prescribed as 65 years, whereas, the minimum age was not prescribed in the advertisement.

It is next contended that the post of Farmer Advisor is neither a permanent appointment nor it is a Government post and the basic purpose for appointment of Farmer Advisors was to render advisory assistance to the farmers of the State and hence, progressive farmers were to be appointed as Farmer Advisors, the nature of work being advisory, for which an honorarium of Rs.2500/- per month, would be paid to each such advisor. The engagement was purely for rendering agricultural advice and they were not to be engaged in any other Government work, like permanent Government servant. It is contended that the post of Kisan Salahkar is not a civil post.

Learned Senior Counsel for the petitioners placing reliance, on Md. Shami Uddin Vs. State of Bihar and others reported in 2011(4) PLJR 230, submits that the provisions stipulated under Section 4(3) of the Act, applies only to a selection made on the basis of merit. Such contention made by the learned Senior Counsel for the petitioners is fit to be rejected, since the ratio and the



facts of the case cannot be made applicable to the case in hand, as, the above judgment dealt with a different issue than the one in present case. Moreover, section 4(3) of the Act is clear in its intent and is unambiguously specific that a reserved category candidate, who gets selected on the basis of his/her merit, shall be placed/ counted against the 50% vacancies of open merit category and not against the reserved category. It is not a case where, a reserved category candidate, who does not qualify in the open merit category, has been placed in the open merit category.

So far as fixing of minimum qualifying marks is concerned, it is well settled law that whenever applications are invited for recruitment to different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. In the present case, minimum qualification fixed was Intermediate in Science but in any eventuality the Selection Board has to decide as to what procedure is to be followed for selecting the best candidates from the pool of applicants. Where the selection is to be made only on the basis of interview, the Selection Board or the Commission can adopt any rational procedure to fix the number of candidates who should be



called for interview and it has been reiterated by the courts from time to time that where selections are to be made only on the basis of interview, then such interview must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate.

This Court finds no irrational or unscientific method being applied while fixing the minimum marks at the Intermediate level by the selection board in order to shortlist the candidates suitable for the required purpose. The sole purpose of holding an interview is to search and select the best among the applicants. It is obvious that it would be impossible to carry out a satisfactory viva-voce test if large number of candidates are interviewed in a very short span of time.

The Apex Court in the case of State of Haryana Vs. Subash Chander Marwaha and Ors., (1974) 3 Supreme Court Cases 220, considered as to whether the appointment could have been offered to those who had scored not less than 55% marks when the concerned Rule 8 which was under consideration in that case, mandates 45% marks upon the eligibility for appointment. The Court held that Rule 8 was a step in the preparation of a list of eligible candidates with minimum qualifications who may be



considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank and there is nothing arbitrary in fixing the score of 55% for the purpose of selection although the candidates who obtained 45% marks were eligible to be appointed, as stipulated in the concerned Rule.

It is further contended by learned Senior Counsel for the petitioners that there were 109 posts under reserved category but 49 posts of reserved category were left vacant. It is settled law that merely because the petitioners were empanelled, it did not give them indefeasible right of appointment to the post. The empanelment, at best, is a condition of eligibility for the purpose of appointment and the same by itself does not amount to selection or creates a vested right to be appointed, as has been held by the Apex Court in the case of State of Orissa & Anr. Vs. Rajkishore Nanda and Ors. (2010) 6 SCC 777. Paragraph nos. 14 and 15 read as follows:

“14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The



vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

15.A Constitution Bench of this Court in Shankarsan Dash Vs. Union of India, AIR 1991 SC 1612, held that appearance of the name of a candidate in the select list does not give him a right of appointment. Mere inclusion of candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The candidate concerned cannot claim that he has been given a hostile discrimination. (see also Asha Kaul & Anr. Vs. State of J & K & Ors., (1993) 2 SCC 573; Union of India Vs. S.S.Uppal, AIR 1996 SC 2340; Bihar Public Service Commission Vs. State of Bihar AIR 1997 SC 2280; Simanchal Panda Vs. State of Orissa & Ors., (2002) 2 SCC 669; Punjab State Electricity Board & Ors. Vs. Malkiat Singh (2005) 9 SCC 22; Union of India & Ors. Vs. Kali Dass Batish & Anr. AIR 2006 SC 789; Divisional Forests Officers & Ors. Vs. M. Ramalinga Reddy AIR 2007 SC 2226; Subha B. Nair & Ors. Vs. State of Kerala & Ors., (2008) 7 SCC 210; Mukul Saikia & Ors. Vs. State of Assam & Ors., (2009) 1 SCC 386; and S.S. Balu & Anr. Vs. State of Kerala & Ors., (2009) 2 SCC 479).”

Similar view has been taken by the Apex Court in the case of Kulwinder Pal Singh and Anr. Vs. State of Punjab and Ors. AIR 2016 Supreme Court 2281. Paragraph nos. 11 and 12 read as follows:



"11. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide Food Corporation of India and Ors. v. Bhanu Lodh and Ors., (2005) 3 SCC 618; All India SC & ST Employees' Association & Anr. v. A . Arthur Jeen & Ors. (2001) 6 SCC 380 and Union of Public Service Commission v. Gaurav Dwivedi and Ors. (1999) 5 SCC 180."

Whereas in the instant case, the petitioners' names did not even figure in the merit list.

This aspect has to be taken into consideration that such selection of Farmer Advisors were not being made for providing a source of employment to the farmers, nor was such appointment being made under the principle of Right to Work or right to livelihood. Such service was only advisory in nature and was intended and aimed towards providing advisory assistance to farmers, in the area of agriculture. The intention of the State, behind such selection, was that farmers, who were progressive, could share their knowledge and expertise with the other farmers, and thereby, enhance the agricultural yield and the agricultural economy of the State. Neither such selection was a full time selection, nor the same was a selection on permanent basis, nor is the post of Farmer Advisor a civil post. The appointment was also not within the ambit



of contractual appointment. It was for the Selection Committee to decide and select, such farmers, who were progressive, meaning thereby that they had a better know-how of agriculture farming.

The petitioners have nowhere pleaded that they were progressive farmers in actual sense and hence, they should have been selected. Even the emoluments, which has been fixed to be paid as honorarium, indicates that such engagement was not to provide a source of livelihood, rather the intention behind such engagement was for the purpose of sharing of expertise and better know-how, which such progressive farmers possessed.

The other leg of argument advanced on behalf of the petitioners is that candidates below 18 years of age and such other candidates, whose applications contained several shortcomings have also been selected. Such contention, cannot be looked into by this Court, unless the candidates against whom such claim is being made were added as party respondents to the present writ application. Moreover, the names and details of such candidates have nowhere been detailed nor was it suggested at the time of hearing. Hence, on the basis of such vague submissions, the petitioners cannot be granted any relief.

Though, this court will not hesitate to observe



that if persons below 18 years of age, have been engaged, then it is a serious matter and it should be looked into by the respondent authorities, as to how such minors have been engaged by the respondents, considering them as progressive farmer. This aspect of the matter should be positively looked into, and if it is substantially found to be true, then necessary and stern action is required to be taken by the Secretary Agriculture Department, Government of Bihar to weed out such mockery from the selection process.

Any such engagement contrary to the intent and purpose of engagement for advisory purpose, is against the mandate of law and is a mockery of such process of engagement, its intent and its purpose.

Another aspect of the matter which has drawn the attention of this Court is whether such advisory nature of service can be allowed to be continued uninterruptedly? In view of this Court, the answer would be 'NO'. It has been contended in this regard, that such farmer advisors are continuing till date. If that is so, then the same would amount to engagement of a permanent nature. On the one hand, as per the policy decision, the engagement was not an engagement on Government post nor it was permanent employment, nor the post is a civil post, nor it was a contractual employment then



under such stipulation, the selected farmers cannot be allowed to continue uninterruptedly for years together. Under such circumstances, the engagement should have been for a specific term, particularly when the engagement was not intended to provide employment. Such indefinite period of engagement cannot be allowed to continue and the State cannot shut its eyes on this aspect of the matter, since the same would be inconsistent with the ratio laid down in the case of Secretary, State of Karnataka and Ors. Vs. Uma Devi & Ors, reported in (2006)4 SCC 1 and in the case of Ram Sevak Yadav & Anr. Vs. The State of Bihar & Ors. reported in 2013(1) PLJR 964. The State Government should look into this aspect of the matter and work out a time period, while making engagement purely for advisory purposes and a time frame be carved out in making, such engagement and their continuation thereafter. Or, if the Government intends to make regular appointments, it should be made after making a policy decision in this regard, within a period of six months from the date of receipt/production of a copy of this order.

Significantly, though Clause 7 of the advertisement suggests that draft merit list will be prepared by the District Agriculture Officer, the same will be published on the notice



board of the office and in case of any objection in the draft merit list, the objection may be given in writing to the office of the District Agriculture Officer within stipulated time, which was to be heard and disposed of by a Committee constituted under the Chairmanship of the District Magistrate, but there is nothing on record to show that any such objection was ever made by the petitioners before the Committee. Hence, this court, after lapse of several years of process of the selection having been completed, is not inclined to interfere in the matter.

In view of the discussions made above, so far as the petitioners' claim for their being appointed/engaged as Kisan Salahkar is concerned, this Court is of the view that no direction can be issued for appointment of the petitioners on an advisory post. To that extent, the writ application is dismissed.

However, from perusal of the record, it appears that the respondent authorities have not categorically stated whether they have not engaged/appointed any Kisan Salahkar who were below 18 years of age or the persons under reserved category who secured less than 45% marks or the candidates of general category who have secured less than 54% marks. To that extent the petitioners are given liberty to file a detailed representation before



the Secretary of the Department of Agriculture, Government of Bihar within six weeks from the date of receipt/production of a copy of this order and the Secretary of the said Department is expected to dispose of the representation of the petitioners by a reasoned order within a period of three months thereafter.

With the aforesaid observation/direction the writ application stands dismissed.

(Dinesh Kumar Singh, J)

Ashwini/- Anil/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

