

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3449 of 2016

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1. Kumari Nilam, D/o Sukhari Singh, R/o Village- Barkagaw (Tola Pakarihar), P.S.- Mirganj, District- Gopalganj.
 2. Naresh Manjhi, S/o Balsundra Manjhi, R/o Village- Keshwpur, P.S.- Thave, District- Gopalganj.
 3. Bacha Manjhi, S/o Bhabisan Manjhi, R/o Village Belwa, P.S.- Kuchaikote, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, 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, Dist.- Employment Exchange, Gopalganj.
7. The Civil Surgeon, Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harendra Prasad, Adv.

For the Respondent/s : Mr. Rakesh Kr. Shrivastava, AC to GP-15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-02-2018

Heard Mr. Harendra Prasad, learned counsel appearing for the petitioner and Mr. Rakesh Kumar Shrivastava, learned Assisting Counsel to Government Pleader No.15 for the State.

While the petitioners question the exercise carried out by the District Magistrate, Gopalganj in the matter of appointment against Class IV post in the district in pursuance of the Advertisement No.OC-9/2001-150-51 dated 14.6.2001, the claim has been contested by the respondents who have filed a counter affidavit and a supplementary counter affidavit through the Establishment Deputy Collector, Gopalganj and wherein primarily on grounds of lack of work experience that the claim is



opposed. It is the stand of the respondents that the non-inclusion of these petitioners in the panel for appointment is because they had no work experience. No other ground has been taken by the respondents to deny the appointment to these petitioners.

An identical issue came up for consideration before this Court in CWJC No.1822 of 2016 (**Shambhu Prasad Baitha & Ors. Vs. The State of Bihar**) when the petitioners of the said case who were fresh applicants against the advertisement were denied appointment on similar grounds that they did not have the work experience. This Court taking note of various stages through which the contest had travelled as also taking note of the expression in the advertisement which did not exclude or debar a fresh applicant from appointment, allowed the writ petition with a direction to the District Magistrate, Gopalganj to consider the case of those petitioners against the vacancies advertised and for its disposal in accordance with law.

The stand as taken by the respondents in the counter affidavit filed in the present proceeding is the same to the stand taken by them in the earlier writ proceeding and for the sake of convenience I deem it proper to reproduce the relevant extract of the judgment rendered in the case of **Shambhu Prasad Baitha** (supra):

“ 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.”

Despite the position settled by this Court yet the respondents have shown other ignorance while filing their counter affidavit(s) in the present proceedings which makes no reference to the judgment in the case of **Shambhu Prasad Baitha** (supra).

For the reasons so discussed in the judgment passed in the case of **Shambhu Prasad Baitha** (supra) the present writ petition is allowed. The District Magistrate –cum- Collector, Gopalganj is directed to consider the case of the petitioners for appointment in the light of the issues settled by this Court in the case of **Shambhu Prasad Baitha** (supra) and dispose of the same in accordance with law within a period of three months of receipt/production of a copy of this judgment.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
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