

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.150 of 2017 In Letters Patent Appeal No. 1246 of 2011

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Binay Kumar Singh, son of Late Yamuna Singh, resident of Village- Bibeeprur,
P.S.- Rafiganj, Dist- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District and Sessions Judge, Aurangabad.
3. The Additional District & Sessions Judge-1, Aurangabad.
4. The Additional District and Sessions Judge III, Aurangabad.
5. Pappu Kumar, S/o Deena Nath Pathak, R/o Road No.10, Behind of Veterinary College Compound, P.S.- Shekhpura, at and District- Patna.
6. Amar Kumar, S/o Rajnandan Prasad, R/o Khaprail Poss No.8, P.S.- Kotwali, at and District- Patna.
7. Neeraj Kumar, son of Sri Balgovind Prasad, at present Civil Court Compound at PS and District- Aurangabad.
8. Dhanjee Kumar, S/o Rama Shankar Paswan, Nagabigha, Patel Nagar, At and P.S.- Aurangabad.
9. Surendra Pratap Singh, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
10. Anil Kumar Chaudhary, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
11. Babita Kumari, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
12. Nripendra Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
13. Sunil Prasad, son of Kapildeo Ram, Nazir, posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
14. Shashi Kumar Shashi, son of Baleshwar Prasad, posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
15. Sachendra Kumar Roy, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
16. Vijay Singh, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
17. Mukesh Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
18. Rajesh Kumar Pandey, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
19. Sulekha Kumari, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
20. Rajesh Kumar Singh, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
21. Md. Ibid Hussain, S/o Maish Hussain Ansari, Resident of Village- Kharaul, District- Nawadah.
22. Ajay Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.



23. Navin Kumar, S/o Late Chandeshwar Prasad, resident of Ram Krishna Lane behind of Sarala Sadan, Naya Tola, P.S. and District- Muzaffarpur.
24. Sunil Chandra Pathak, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
25. Sushil Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
26. Rajeev Ranjan Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
27. Kaushal Kumar, son of Vinod Kumar Ram, resident of Village- Rampur, P.S.- Rajpur, at present Umarpur Pethwari, PO- Manhari, P.S.- Bhabhua, District- Kaimur.
28. Krishna Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.

.... Respondent/s

with

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Civil Review No. 151 of 2017
In
Letters Patent Appeal No. 1246 of 2011

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1. Satendra Ram, son of Sri Rameshwar Ram, resident of Mohalla- Ambedkar Nagar, Shahpur at P.S. and Dist- Aurangabad (Bihar).
2. Arjun Rajak, son of Sri Tetar Rajak, resident of Naga Bigha at P.S. and Distt- Aurangaabad (Bihar).
3. Pramod Kumar Singh, son of Late Yamuna Singh, resident of village- Arthua, P.S.- Kashma, Distt- Aurangabad (Bihar).
4. Purshottam Kumar Singh @ Purshottam Singh, son of Sri Brij Bihari Singh, resident of Village- Reriya, P.S.- Chenari, Dist- Rohtas (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District and Sessions Judge, Aurangabad.
3. The Additional District & Sessions Judge-1, Aurangabad.
4. The Additional District and Sessions Judge III, Aurangabad.
5. Pappu Kumar, S/o Deena Nath Pathak, R/o Road No.10, Behind of Veterinary College Compound, P.S.- Shekhpura, at and District- Patna.
6. Amar Kumar, S/o Rajnandan Prasad, R/o Khaprail Pose No.8, P.S.- Kotwali, at and District- Patna.
7. Neeraj Kumar, son of Sri Balgovind Prasad, at present Civil Court Compound at PS and District- Aurangabad.
8. Dhanjee Kumar, S/o Rama Shankar Paswan, Nagabigha, Patel Nagar, At and P.S.- Aurangabad.
9. Surendra Pratap Singh, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
10. Anil Kumar Chaudhary, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
11. Babita Kumari, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.



12. Nripendra Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
13. Sunil Prasad, son of Kapildeo Ram, Nazir, posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
14. Shashi Kumar Shashi, son of Baleshwar Prasad, posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
15. Sachendra Kumar Roy, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
16. Vijay Singh, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
17. Mukesh Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
18. Rajesh Kumar Pandey, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
19. Sulekha Kumari, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
20. Rajesh Kumar Singh, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
21. Md. Ibid Hussain, S/o Maish Hussain Ansari, Resident of Village- Kharaul, District- Nawadah.
22. Ajay Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
23. Navin Kumar, S/o Late Chandeshwar Prasad, resident of Ram Krishna Lane behind of Sarala Sadan, Naya Tola, P.S. and District- Muzaffarpur.
24. Sunil Chandra Pathak, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
25. Sushil Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
26. Rajeev Ranjan Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.
27. Kaushal Kumar, son of Vinod Kumar Ram, resident of Village- Rampur, P.S.- Rajpur, at present Umarpur Pethwari, PO- Manhari, P.S.- Bhabhua, District- Kaimur.
28. Krishna Kumar, father's name not known to the appellants, at present posted in the office of the Respondent no.2 at P.S. and District- Aurangabad.

.... Respondent/s

with

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Civil Review No. 159 of 2017
IN
Letters Patent Appeal No. 1246 of 2011

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1. Ajay Kumar, Sonof Late Sachidanand Sinha, Resident of Mohalla- Dr. Dharndhar Road, Baratpur, at P.S. and District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District and Sessions Judge, Aurangabad.
3. The Additional District and Sessions Judge-I, Aurangabad.



4. The Additional District and Sessions Judge-III, Aurangabad.
5. Pappu Kumar, Son of Deena Nath Pathak, resident of Road No. 10, behind Veterinary College Compound, P.S. Shekhpura, at and District- Patna.
6. Amar Kumar, Son of Rajnandan Prasad, resident of Khaprail pose No.- 8, P.S. Kotwali at and District- Patna.
7. Neeraj Kumar, Son of Sri Balgovind Tripathi, resident of Civil Court Compound, at P.S. and District- Aurangabad.
8. Dhanjee Kumar, Son of Rama Shankar Paswan, resident of Village Nagabigha-Patel Nagar, at and P.S. Aurangabad.
9. Surendra Paratp Singh, father's name not known to the appellants, posted in the office of the respondent no. 2 at P.S. and District- Aurangabad.
10. Anil Kumar Choudhary, father's name not known to the appellants, posted in the office of the respondent no. 2, at P.S. and District- Aurangabad.
11. Babita Kumari, father's name not known to the appellants, posted in the office of the respondent no. 2, at P.S. and District- Aurangabad.
12. Nripendra Kumar, father's name not known to the appellants, posted in the office of the respondent no. 2, at P.S. and District- Aurangabad.
13. Sunil Prasad, Son of Kapildeo Ram Nazir, posted in the office of the respondent no. 2, at P.S. and District- Aurangabad.
14. Shashi Kumar Shashi, Son of Baleshwar Prasad, posted in the office of the respondent no. 2 at P.S. and District- Aurangabad.
15. Sachendra Kumar Roy, father's name not known to the appellants, posted in the office of the respondent no. 2, at P.S. and District- Aurangabad.
16. Vijay Singh, father's Name not known to the appellants, posted in the office of the respondent no. 2 at P.S. and District- Aurangabad.
17. Mukesh Kumar, father's name not known to the appellants, posted in the office of the respondent no. 2, at P.S. and District- Aurangabad.
18. Rajesh Kumar Pandey, father's name not known to the appellants, posted in the office of the respondent No. 2, at P.S. and District- Aurangabad.
19. Sulekha Kumari, father's name not known to the appellants, Posted in the office of respondent no. 2, at P.S. and District- Aurangabad.
20. Rajesh Kumar Singh, father's name not known to the appellants, posted in the office of the respondent no. 2 at P.S. and District- Aurangabad.
21. Md. Ibid Hussain, son of Maish Hussain, resident of Village- Kharaul, District- Nawada.
22. Ajay Kumar, father's name not known to the appellants, posted in the office of the respondent no. 2, at P.S. and District- Aurangabad.
23. Naveen Kumar, Son of Late Chandeshwar Prasad, resident of Ram Krishna Lane behind Sarla Sadan, Naya Tola, P.S. and District- Muzaffarpur.
24. Sunil Chandra Pathak, father's name not known to the appellants, posted in the office of the respondent no. 2, at P.S. and District- Aurangabad.
25. Sushil Kumar, father's name not known to the appellants, posted in the office of the respondent no. 2, at P.S. and District- Aurangabad.
26. Rajeev Ranjan Kumar, father's name not known to the appellants, posted in the office of the respondent no. 2 at P.S. and District- Aurangabad.
27. Kaushal Kumar, Son of Vinod Kumar Ram, resident of Village- Rampur, P.S.- Rajpur, at present Umarpur Pethwari, P.O. Manhari, P.S. Bhabhua, District- Kaimur.
28. Krishna Kumar, father's name not known to the appellants, posted in the office of the respondent no. 2 at P.S. and District- Aurangabad.
29. Satendra Ram, Son of Sri Rameshwar Ram, resident of Mohalla- Ambedkar Nagar, Shahpur at P.S. and District- Aurangabad.



30. Arjun Rajak, Son of Sri Tetar Rajak, resident of Naga Bigha at, P.S. and District- Aurangabad.
31. Purshotam Kumar Singh alias Purshotam Singh, Son of Sri Brij Bihari Singh, resident of Village- Reriya, P.S. Chenari, District- Rohtas.
32. Pramod Kumar Singh, son of Late Yumuna Singh, resident of Village- Arthua, P.S. Kasma, District- Aurangabad.
33. Binay Kumar Singh, Son of Late Jamuna Singh, resident of village- Bibeepur, P.S. Rafiganj, District- Aurangabad.

.... Respondent/s

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Appearance :

(In C. REV. No.150 of 2017)

For the Petitioner/s : Mr. Vishwendra Verma

For the Respondent/s : Mr. P K Verma, AAG 3

(In C. REV. No.151 of 2017)

For the Petitioner/s : Mr.

For the Respondent/s : Mr. S K Sharma, AAG 3

(In C. REV. No.159 of 2017)

For the Petitioner/s : Mr. Najmul Hoda

For the Respondent/s : Mr. K K Jha, AAG 8

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 04-01-2018

As common questions are involved in all these Review Applications, these are being decided by this common order.

Civil Review No. 150 of 2017 has been filed seeking recall or an order passed by a Division Bench of this Court on 19.09.2011 in LPA No. 1246 of 2011. Similarly, Civil Review No 151 of 2017 has been filed seeking review of the same order passed in LPA No. 1246 of 2011 and Civil Review No. 159 of 2017 has also been filed seeking review of the order passed in LPA No. 1246 of 2011.

In all these three cases the challenge was made to an order passed by the Writ Court whereby challenge to appointment in Class



IV post in the Judgeship of Aurangabad was dismissed by the Writ Court. The LPA filed having also been dismissed these review applications have been filed.

Arguments were advanced by learned counsel representing the applicants in Civil Review No 150 of 2017 and the other counsels adopted the same argument. It was pointed out by learned counsel that in the review application various averments have been made which goes to show that in the matter of a selection undertaken various illegalities have been committed and in paragraph-12 the details of certain candidates selected have been indicated and it is pointed out that they were relatives of the members of the Selection Committee. Even though from paragraph-12 onwards particulars of certain persons are given but on going through the detailed orders passed by the learned Writ Court we find that the learned Writ Court has gone into the aspects of the matter and after taking note of averments in this regard made the issue has been decided in the following manner:-

“Petitioners are claiming that since 1992 they were working as Peons and remained working till under the orders of High Court they were terminated from the post. Posts of Peons in Class IV were advertised vide Advertisement No. 02/02. The advertisement was modified and a fresh advertisement No. 01/04 was published for appointment of 23 Peons in the Judgeship



of Aurangabad. Petitioners applied for the posts. They were interviewed but not selected for appointment. Mala fide has been alleged by the petitioners against the District Judge, Aurangabad (respondent no. 2) and two members of the Selection Committee, respondent Nos. 3 and 4, Senior Additional District and Sessions Judge, Aurangabad. While alleging mala fide, it has been stated that the relatives and co-villagers of respondent nos. 2 and 3 were also applicants for the post advertised. Despite this fact, they continued as members of the Selection Committee. Respondent nos. 2 and 3 were allowed to be the member of the Appointment Committee under the directions of High Court and candidates who are relations/co-villagers of respondent nos. 2 and 3 were selected for appointment. Name of Sachendra Kumar Roy placed at Sl. No. 13 in the selection list and Avish Kumar at Sl. No. 38 in the waiting list, has specifically been mentioned in the writ application.

On perusal of the counter affidavit filed on behalf of respondent nos. 2, 3 and 4 it transpires that the appointment committee for making appointment of Class IV employees, consisting of the then District & Sessions Judge and the two Senior Additional District and Sessions Judge 1 & 3 was constituted as per Rule 5 of Bihar Civil Court Staff (Class III & IV) Rules, 1992. During interview respondents 2 and 3 came to know that one of the relatives of respondent no.2 and two co-villagers of respondent no. 3 are also among the applicants. The District and Sessions Judge vide letter No. 1010 dated



04.11.2004 intimated the Registrar, Administration of High Court of Judicature at Patna for informing, that respondent nos. 2 and 3 may be allowed to abstain from the selection process. In response to this letter the Registrar, Administration, Patna High Court, vide letter No. 7541, 27th Nov. 2004 intimated the respondent no. 2 that the Hon'ble Inspecting Judge of the Judgeship has been pleased to direct that there is no need to change the appointment Committee of the Judgeship. In pursuance to the letter dated 27.11.2004 the same committee continued with the selection process and interview proceeded. However, the District Judge vide Annexure B to the counter affidavit and B-B/1 to the counter affidavit informed the Registrar that relative of respondent no. 2 and co-villager of respondent no. 3 namely Dilip Kumar have withdrawn their applications. Only Sachendra Kumar Roy continued with his application and he was selection for appointment.

I do not find any reason, to consider it a case of mala fide, has alleged by the petitioner, against respondent no. 2 & 3. Such allegation is unfounded as nothing had been surpassed or concealed by respondent nos. 2 & 3. They, rather themselves wanted to abstain from the selection process but continued under the orders of the High Court. So far the relative of respondent no. 2 and one of the co-villagers of respondent no. 3 are concerned, they themselves withdraw their application. Simply because one of the co-villagers of respondent no. 3 was selected, there is no reason for cancelling entire



selection list. Two intervention applications have also been filed by Binay Kumar and Ajay Kumar Singh for impleading them as party in civil intervention application.

I.A.Nos. 9297/2010 & 9298/2010 are allowed, they are impleaded as respondents, however, on consideration of entire material, I do not find any reason to quash Annexure-5 i.e. the selection list.”

While dealing with the issue the learned Division Bench has also rejected the contention. Now it is canvassed before us by referring to the pleadings made in the review applications that the issues have not been properly addressed. Once the particulars and allegation referred to in the writ petition with reference to the specific act of nepotism and malafide have been addressed by the learned Writ Court as detailed hereinabove, we see no reason to make any further indulgence into the matter. The details of malafide now narrated from paragraph-12 onwards of the review applications are raised for the first time in the review proceedings. They were neither the part of the pleadings in the writ petition. The averments made with regard to malafide and nepotism in the writ petition has been specifically addressed by the learned courts below, which on due consideration has been approved by the Division Bench and therefore we find no error apparent on the face of record warranting review or recall. Hon’ble Supreme Court in the case of *SASI (Dead)*



through Legal Representatives vs. Aravindakshan Nair & Ors. [(2017) 4 SCC 692], has laid down the principle on which review of an order or judgment is permissible and we find that in this case if the said principles are applied the review application warrants rejection.

We find no ground to review or recall the orders passed by the learned Writ Court. These applications are, therefore, dismissed.

(Rajendra Menon, CJ)

mr.l./-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08/01/2018
Transmission Date	

