

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.698 of 2016

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1. Shailesh Kumar Son of Ramakant Singh, Resident of Mohalla - F-97, Ground Floor, Peoples Co-operative Colony, Kankarbagh, P.S. - Kankarbagh, District - Patna.
 2. Dhruv Kumar Gupta, S/o Rajeshwar Prasad, Resident of Mohalla - Oil and Spice Mills, Mill Road, District - Khagaria.
 3. Md. Quamar Sufian, S/o Md. Atique Uddin, Resident of Mohalla - Bhainsasur, P.O. - Biharsharif, District - Nalanda.
 4. Chandan Kumar, S/o Naresh Kumar Gupta, Resident of Mohalla - Golpathar Tekari Road, Nagina Gali, P.O. - Head Post Office, Gaya, District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Bihar, Patna.
2. The Registrar General Patna High Court, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Ghosarvey, Adv.
Mr. Manoj Kumar Pandey, Adv.
For the State : Mr. Anujit Sinha, AC to PAAG2
For the High Court : Mr. Vindhyachal Singh, Adv.
Mr. Smriti Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-01-2018

Heard learned counsel for the petitioners and counsel for the State.

In this case, the petitioners are claiming appointment to the post of Assistant.

An employment notice was issued by the High Court vide No. 1 of 2010 for 49 posts of Assistant, the advertisement has made stipulation the vacancy available and anticipated vacancies occurring in the near future. Two sets of lists were prepared, one for 114 successful



candidates and another for 40 candidates in the waiting list. The original figure was 49 posts but, in course of time, it became 114. Since the entire exercise could not be completed, therefore, Hon'ble the Chief Justice decided to extend the life of panel on 2.8.2012 by one full year. By 3rd of August, 2011 only 94 candidates came to be appointed and 20 more candidates were accommodated within the period of extended life of the panel. The life of the panel was extended on 2.8.2013. In the meanwhile, two vacancies had fallen vacant in between 28.2.2013 and 30.6.2013 but Hon'ble the Chief Justice vide order dated 14.7.2013 decided to scrap the wait-list panel and the endorsement made in the file which has been quoted is as follows:-

“Existing and anticipated vacancies are filled. The wait list will not be operated further. All vacancies now will be in by a fresh recruitment process. The process will be commenced soon.”

In the case of Sudhir Kumar Vs. The High Court of Judicature at Patna, C.W.J.C. No. 2125 of 2014, this Court has considered the effect of Rule 8(c)(ii) of the Patna High Court Officers and Staffs (Conditions of Service and Conduct) Rules, 1997 over the order passed by Hon'ble the Chief Justice scrapping the wait list panel extended the life of panel up to 2.8.2013. Rule 8(c)(ii) of the aforesaid Rule reads as follows:-

“(c) (ii) Posts falling vacant during the currency of the panel, may be filled up from the same panel.”

Looking to the two conflicting situationzs, as per Rule, up to



currency of the panel, the appointment has to be made but, the life of the panel was scuttled by the order of Hon’ble the Chief Justice and, before termination of the life of the panel, two vacancies were created. This Court in that order has directed the appointment of one person from wait list as he was at the top in the list of backward candidates and another post has already been filled up, no further post has fallen vacant up to the life of the panel. The claim of the petitioner, vacancies are available, any vacancy is created and has fallen vacant, after the life of the panel, the same will be treated to be a future vacancy, cannot be anticipated vacancy and the appointment has to be made against those vacancies in the new recruitment process.

Learned counsel for the petitioner submits that this Court should take sympathetic consideration because the petitioners have crossed the upper limit of age for recruitment.

Sympathy cannot work against the law. If there is equity and law, the law has to prevail upon the equity.

With the aforementioned observations, this writ application is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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