

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10685 of 2011

=====

1. Gangadeyal Singh, S/O Late Komal Singh, R/O Village Deokuli PS-Kerpi, Distt-Arwal
2. Vijay Kumar Singh, S/O Late Ramswarth Singh, R/O Village - Tirarkha PS-Magadh University Bodh Gaya Distt.Gaya
3. Maya Devi, W/O Late Late Kunj Bihari Prasad, R/O Village- Dighaura, P.S. -Tekari Distt. Gaya.
4. Sudhir Kumar, S/O Ramavatar Prasad, R/O Village- Bhadeghi PO-Bhadighi P.S. - Gaya Mofassil, Distt. Gaya
5. Ashok Kumar Mishra, S/O Late Shayam Sunder Mishra, R/O Village-Brahman Bigha, P.S. – Gurawa, Distt. Gaya

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Department of Finance, Bihar Patna
2. The Registrar General, Patna High Court, Patna
3. The Registrar Establishment, Patna High Court, Patna
4. The Registrar, Civil Court Gaya, District - Gaya

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. Binod Kumar and
Mr. Sanjay Kumar, Advocates.

For the Respondent/s : Mr. Md. Kamil Akhtar, AC to AAG 5.

For the Respondents no.2 & 3:Mr. Bindhyachal Singh and
Ms. Smriti Singh, Advocates.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

9 07-02-2018 Heard learned counsel for the petitioner and learned

counsel representing the respondents no. 2 & 3 as also learned

counsel for the State.

2. The present Writ Application has been filed for a writ of mandamus directing the respondent authorities to consider the names of the petitioners for promotion from Class IV posts to Class III posts of Civil Court which they claim as a cadre



promotion.

3. The petitioners have placed reliance upon the resolution, as contained in Memo No. 2937 dated 31.03.2011, issued under signature of the Joint Secretary, Finance Department, Govt. of Bihar by which certain recommendation made by the High Level Committee to remove the discrepancies in the resolution no. 630 dated 21.01.2010 have been given effect to. Clause (iv) of the resolution provides for appointment on the post of Clerk from and amongst the Class IV employees who fulfill the eligibility criteria, in terms of their seniority.

4. Learned counsel for the petitioners while referring the said resolution dated 31.03.2011 (Annexure-2) has simultaneously referred a decision of the Hon'ble Supreme Court in the case of All-India Judges Association and Ors. Vs. Union of India & Ors. as contained in Annexure-3 and submits that in view of Annexure-2 and Annexure-3 there is no reason why these petitioners who were serving as Class IV employees in the Civil Court would not be allowed the benefit of appointment to Class III posts as they have got the eligibility and they also come within the seniority so as to get such appointment.

5. On the other hand Mr. Bindhyachal Singh, learned counsel representing respondents 2 & 3 has categorically



submitted that there was a rule framed in the year 1992 which governed appointment, transfer, posting, promotion, etc. of Class III and Class IV staff of the Civil Courts. In the year 1995 a new pattern for conducting examination for appointment / promotion on the basis of merit-cum-seniority was introduced in accordance with the then existing rule of 1992. In fact, these petitioners participated in the examination but they failed. It has also been submitted by pointing out the statements made in the counter affidavit that these petitioners have got time-bound-promotions and ACP benefits.

6. Elaborating the provisions of the rules governing such appointments as are being claimed by these petitioners learned counsel has pointed out from Paragraph 5(iii) of the Counter Affidavit which are being taken note of as under:-

“(iii) Presently appointment, transfer, posting, promotion etc. of the Class III and Class IV staff of the Civil Courts are being made according to the Bihar Civil Court Staff (Class III and Class IV) Rules, 2009. Sub-Rule 1, 2, 3 of the Rule 8 of the Bihar Civil Court Staff (Class III and Class IV) Rules, 2009 (hereinafter referred to as the ‘2009 rules’ for sake of brevity) reads as follows:-

1. The appointments to Class III posts by promotion from Class IV posts shall also be made by the Appointment Committee on merit-cum-seniority basis.
2. Twenty percent of vacant Class III posts shall be reserved for promotion from Class IV employees



who possess the minimum educational qualification and have three years' experience on the post held by them.

3. For promotion in terms of the preceding rule, the Appointment Committee shall hold a separate examination of the eligible candidates and call for interview only such candidates who obtain the qualifying marks in the written examination.”

7. It is further submitted that the resolution issued by the Finance Department would not govern the matter relating to appointment / promotion of these petitioners who are the employees of the Civil Court. It is submitted that the resolution as contained in Annexure-2 would not be *ipso facto* binding on the High Court or Civil Courts since it is not approved by Hon'ble the Chief Justice of the Patna High Court. It is specifically stated in the counter affidavit and has been submitted at the Bar that till date the existing rules which was lastly brought into existence and is known as Bihar Civil Court Staff (Class III and Class IV) Rules, 2009 has not been amended and the aforesaid resolution has not been incorporated in the rule.

8. Having heard learned counsel for the parties and upon perusal of the records I am of the considered opinion that the submissions made on behalf of the respondents no. 2 and 3 have got force and this Court is willing to accept the submissions on the



face of the fact that the rules which govern appointment / promotion of these petitioners till date has not been amended and in terms of the rules in existence, the petitioners would not have been granted appointment / promotion on Class III posts without passing of the examination.

9. The Writ Application has thus no merit. It is accordingly dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

U			
---	--	--	--

A.F.R.

