

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1547 of 2015

IN

Civil Writ Jurisdiction Case No. 3497 of 2015

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1. Ram Bilash Yadav, Son of Late Matuki Yadav, Resident of Village- Chharapatti Srinagar, P.O. Chharapati, District Begusarai.
 2. Gajendra Prasad Srivastava, son of Late Awadhesh Narayan Srivastava, R/o Chitragupta Nagar, P.O.+P.S.- Khagaria, District Khagaria.
 3. Vivekanand Thakur, son of Late Parmanand Thakur, Resident of Vidyarti Tola, Mansi, District- Khagaria
 4. Ram Pukar Sah, Son of Late Tilo Sah, Resident of village + P.O.- Sanhouli, District- Khagaria
 5. Indra Deo Thakur, son of Parmanand Thakur, PO/PS Sanhouli, District- Khagaria
 6. Yogendra Singh, S/o Late Shiv Prassana Singh, Vill Chintamanpur, East Champaran
 7. Ram Briksha Singh, S/o Sri Mithilesh Singh, R/o Village & P.O. Mathurapur, District- Khagaria
 8. Dhaneshwar Sah, S/o Akadhay Lal Sah, R/o Village Rahimpur, District- Khagaria
 9. Tuneeshwr Sharma, S/o Bhaglu Sharma, R/o Village Chukti, Mansi, District Khagaria
 10. Azadi Mahto, S/o Sri Dukkho Mahto, R/o Village Sadandpur, District- Begusarai
 11. Nawal Kshore Prasad, S/o Late Kameshwar Prasad, R/o village/ PO Sahagan Beta Gumti No. 22, District Darbhanga
 12. Prakash Sah, S/o Late Baleshwar Sah, R/o vill. + P.O. Dakshini Madar, District Khagaria

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Engineer in Chief (North), Water Resource Department, Government of Bihar, Patna.
4. The Chief Engineer, Water Resource Department, Government of Bihar, Samastipur Zone, District Samastipur.
5. The Superintending Engineer, Flood Control Circle, Khagaria, Water Resource Department, Government of Bihar, Khagaria.
6. The District Magistrate, Khagaria.
7. The Executive Engineer, Flood Control Division No. 1, Khagaria.
8. The Executive Engineer, Flood Control Division No. 2, Khagaria.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Y.V. Giri, Sr.Adv.
Mr. Pranav Kumar, Adv.
For the Respondent/s : Mrs. Archana Meenakshi, GP-6



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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 19-06-2018

Challenge in the present Letters Patent Appeal is to the judgment dated 30.06.2015 passed by the learned Writ Court in Civil Writ Jurisdiction Case No.3497 of 2015 by which the learned Writ Court has been pleased to dismiss the writ application preferred by the present appellants seeking regularization of their services. The petitioners have challenged the logical order (Tarkik Adesh) No.47 dated 27.08.2014 passed by the Chief Engineer, Water Resources Department, Samastipur (Annexure-12 to the writ application) rejecting the claim of the petitioners for regularization by recording as a matter of fact that in Khagaria Flood Control Division No.1 four posts of Scheduled Castes and three posts of Scheduled Tribes (total seven posts) and in Flood Control Division No.-2 Khagaria three posts of Scheduled Castes and two posts of Scheduled Tribes remained vacant and against those posts the candidates from unreserved category cannot be appointed.

2. On behalf of the petitioners it was contended before the learned Writ Court that the so-called logical order passed by the Chief Engineer is in complete violation of the Rules framed by the Government of Bihar and is in complete disregard to the earlier orders



of this Court. The petitioners asserted that still 32 vacancies are available. In this connection, they relied upon a chart issued by Division No.1 and 2 in February/March, 2014 (Annexure-14 to the writ application). The petitioners further contended that earlier the District Appointment Committee headed by the District Magistrate, Khagaria had considered the eligibility criteria for regularization of the petitioners as also the available vacancy position within the Chief Engineer, Samastipur zone and had recommended the names of the petitioners along with similarly situated employees, for appointment vide letter no.612 dated 08.12.2011. They were recommended by the District Level Committee as per their respective seniority for appointment against Class-IV posts.

3. It is the case of the petitioners that, in pursuance to the recommendations of the Committee, 13 similarly situated daily wage employees were given the benefit of regularization in their respective posts but the petitioners have been subjected to gross discrimination by the respondents vide the impugned order. The case of the petitioners is that earlier the Principal Secretary, Water Resources Department had issued a guideline vide letter dated 03.08.2011 by which it was directed to get the Division-wise vacancies approved from the Finance Department and roster clearance from the competent authority accordingly. It is submitted that by



adding all available vacancies of each Division the necessary actions was required to be taken in integrated manner as per the said guideline and the vacancies were to be computed on Division basis and not on the place of working as has been done by the impugned order.

4. The learned Writ Court however, was not persuaded to interfere with the logical order dated 27.08.2014 (Annexure-12) taking into consideration the factual position which emerged and according to which these petitioners have not worked under the respondents since August, 1987. The policy decision of the General Administration Department, Government of Bihar, notified vide Resolution No.639 dated 16.03.2006, has been noticed by the learned Writ Court which talks in terms of regularization of such people who were working and are in employment of the State. The learned Writ Court, therefore, formed an opinion that the petitioners are looking for a benefit which does not even accrue in terms of the policy resolution dated 16.03.2006.

5. While assailing the impugned judgment Mr. Y.V. Giri, Senior advocate, assisted by Mr. Pranav Kumar, learned advocate on record submits that the learned Writ Court could not appreciate that these writ petitioners are the daily wage employees who were working since 1980-83 on Class-IV post of Chowkidar and Gazereader within Samastipur Zone and that they were working



against sanctioned vacant post of Chowkidar and Gazereader in Class-IV grade under Water Resources Department and were connected to Flood Control Division No.1 and 2 under the supervision of the Chief Engineer, Samastipur Zone.

6. It is submitted that irrespective of their place of posting, the petitioners were required to be appointed against vacant posts in the same Division under the administrative control of the Chief Engineer, Water Resources Department who has been made the appointing authority of his own zone for Class-III and Class-IV posts. The submissions which have been taken note of hereinabove were reiterated before us.

7. It is pointed out that earlier 13 similarly situated daily wage employees were given the benefit of regularization and appointed vide order dated 14.12.2011 and the writ petitioners-appellants were left out on the ground that there was no vacancy in the office where they were working, the petitioners moved this Court in CWJC No.18565 of 2012 which was disposed off giving a direction to the Chief Engineer, Water Resources Department, Samastipur Zone to take into consideration the position of vacancy which emerges from Annexure-12 series, to verify the authenticity of Annexure-12 series, the learned writ Court observed that if the vacancy indicated therein relates to the petitioners, there will be an occasion to pass appropriate



orders for their regularization or else a speaking order would be indicating the position according to them.

8. Pursuant to the said order passed by the learned Writ Court in CWJC No.18565 of 2012 the present impugned order dated 27.08.2014 has been issued. Learned senior counsel submits that the writ petitioners have never been terminated from the service and so far as resolution dated 16.03.2006 is concerned, it is submitted that it talks about both working and terminated daily wage employees.

9. Contesting the submissions of Mr.Giri, learned senior counsel, learned counsel representing the State has submitted that the Divisional Commissioner, Munger had approved the roster clearance and declared the vacancy position on the basis of the roster which is duly reflected in paragraph 10 of the counter affidavit filed on behalf of the respondents in the writ proceeding. Learned counsel submits that in the light of the approved roster and on the basis of reservation policy, a seniority list of the eligible candidates had been prepared and on the basis of said seniority list the services of the daily wages employees had been regularized on Class-IV posts. Learned counsel submits that on the recommendation of the District Magistrate, Khagaria and on the basis of seniority and reservation policy, 10 daily wages employees (General-3, EBC-3 and SC-2) in Flood Control Division No.1, Khagaria and three daily wages



employees (General-1, BC-1 and EBC-1) in Flood Control Division No.2, Khagaria had been regularized. It is categorically submitted that in paragraph 13 of the counter affidavit that there is no vacancy in the general category (unreserved category), hence, the services of the petitioners cannot be regularized on Class-IV posts. Regarding the Resolution no. 639 dated 16.03.2006 issued by the General Administrative Department, learned counsel submits that by the said resolution a direction was issued to all the departments and Divisional offices to regularize the daily wages employees as one time measures and those daily wages employees who were not regularized their services had to be terminated.

10. Having heard learned counsel for the parties and upon perusal of the records as also on going through the logical order dated 27.08.2014 (Annexure-12), we do not find any reason to interfere with the same. The logical order clearly provides the vacancy position approved as per roster points in each of the Flood Control Division No.1 and Flood Control Division No.2, Khagaria. The respondents have categorically contended that the Divisional Commissioner, Samastipur had approved the roster clearance and the vacancy position as provided in paragraph 10 of the counter affidavit which fully tallies with the vacancy position stated in the logical order save and except bald pleadings no substantive material has been



brought on record to controvert the vacancy position as indicated in the impugned order (Annexure-12 to the writ petition). The contention of the learned counsel for the State that the Resolution dated 16.03.2006 issued by the General Administration Department was a one time measure for appointment/absorption of the daily wages employees who may be found eligible is also supported by the relevant resolution placed at Annexure-B to the counter affidavit.

11. For the reasons mentioned above, we do not find any merit in the Letters Patent Appeal. It is dismissed accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
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