

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2746 of 2017

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1. Om Prakash Singh, S/o Rajendra Pd. Singh, Resident of Village- Bhadaya, P.S.- Muffassil, Dist- Bhojpur.
 2. Vinod Pd. Singh, S/o Late Gajendra Singh, Resident of Village- Mazua, P.S.- Ara, Dist- Bhojpur, Ara.
 3. Sri Veer Mangal Tiwari, S/o Sri Parasnath Singh, Resident of Village- Chandwa, P.S.- Ara Nawada, Dist- Bhojpur, Ara.
 4. Pramod Kumar Tiwari, S/o Rajeshwari Tiwari, Resident of Village- Bharkua, Tiwari Tola, P.S.- Barauli, Dist- Gopalganj, Bihar.
 5. Sri Krishna Baitha, S/o Phulana Baitha, Resident of Sipayafarm, P.S.- Kuchaikot, Dist- Gopalganj.
 6. Narendra Nath Tiwari, S/o Sri Dasrath Tiwari, Resident of Village- Janghi, P.S.- Garwar, Dist- Balia (U.P.)
 7. Dharendra Nath Tiwari, S/o Bankadhar Tiwari, Resident of Jhanghahi, P.S.- Garwar, Dist- Balia (U.P.)
 8. Jitendra Narayan Singh, S/o Ramchandra Singh, Resident of Kachmus, P.S.- Nasariganj, Dist- Rohtas.
 9. Sataya Narayan Singh, S/o Dahibaran Singh, Resident of Bhahura, P.S.- Muffassil Ara, Dist- Bhojpur, Ara.
 10. Jaishankar Rai, S/o Kriti Rai, Resident of Khairwari, P.S.- Bhawarkol, Dist- Gazipur (U.P.)
 11. Md. Naimuddin, S/o Awadul Raffik, Resident of Vill- Chandwa, P.S.- Ara Nawada, Dist- Bhojpur, Ara.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Department of Home, Govt. of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Department of Home, Govt. of Bihar, New Secretariat, Patna.
3. The Director, Department of Home (Prison), Government of Bihar, New Secretariat, Patna.
4. The Inspector General (Prison), Govt. of Bihar, New Secretariat, Patna.
5. Central Selection Board (Constable Selection) Sai Complex, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. A.B. Ojha, Sr. Advocate Mr. Awadhesh Kumar Mishra, Advocate
For the State	:	Mr. AC to SC 8
For the C.S.B.C	:	Mr. Sanjay Pandey, Advocate Mr. Binod Kumar Mishra, Advocate Mr. Vivek Anand Amritesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 29-08-2018



Heard learned counsel for the petitioners and the respondents.

2. The writ petition has been filed for quashing the communication dated 04.01.2017 bearing memo no. 11 issued by the Officer on Special Duty in the Central Selection Board (Constable Selection), Bihar Patna (hereinafter referred as 'the Board') rejecting their claim for appointment to the post of warden in jails.

3. The brief background giving rise to the instant petition is that the petitioners had participated in a process of selection for appointment to the post of warden under Advertisement no. 3 of 2015 issued by the respondents Board. Petitioners have been found to be ineligible in the process of selection as they were not possessing the requisite educational qualification.

4. Heard Mr. A.B. Ojha, learned senior counsel for the petitioner, Mr. Sanjay Pandey on behalf of the Board as well as learned counsel for the respondent State.

5. The learned senior counsel has submitted that the educational qualification could not have been imposed upon the petitioner in light of the Rules under which the process of selection was conducted. It is submitted that the earlier requirement of 7th pass should be the yardstick for considering the petitioner's eligibility. They have objected to consideration of the petitioner's case as per



standards under the Bihar Warder Cadre Rules, 2014 (hereinafter referred as 'the Rules of 2014').

6. Learned senior counsel appearing for the petitioner has emphasized that in terms of the order passed on the petitioner's writ petition bearing CWJC No. 2605 of 1992 under order dated 20.04.1993, the educational qualification prescribed under the Rules of 2014 could not have been imposed upon the petitioner. He submits that rejection of the petitioners' candidature on the ground of being disqualified in terms of the educational qualification is therefore, bad in law. Laying emphasis on the said judgment dated 20.04.1993, he submits that the Division Bench of this Court in the said order contemplated relaxation in favour of the petitioner in future process of selection. Learned senior counsel has also relied upon the communication dated 21.09.1995 issued by the Jail Superintendent, Muzaffarpur to the District Magistrate, Muzaffarpur. Other than that the petitioners' counsel has submitted that the petitioners are entitled to parity with the petitioners of CWJC No. 16376 of 2011 and that they are entitled to regularization of their services.

7. The counsel for the respondent Board has submitted that the petitioners' claim has rightly been rejected as they were not possessing the requisite qualifications in terms of the Rules of 2014. It has rightly been pointed out by counsel for the respondent Board



that this Court in order dated 20.04.1993 passed on petitioners' earlier writ petition bearing CWJC No. 2605 of 1992 had given an advantage to the petitioners only to the extent that if the petitioners are over age and any extra hands of warders are required in any other jail then their case may be considered, if necessary by relaxing the age criteria. Referring to the operative portion of the order dated 20.04.1993 the learned counsel for the Board has rightly pointed out that this Court in the said order had clearly specified that their candidature would be subject to their eligibility. Thus, it is clear that other than relaxation on the ground of age no other relaxation was granted to the petitioner under the order of the Division Bench dated 20.04.1993 passed in CWJC No. 2605 of 1992.

8. Submission of the learned senior counsel that the qualifications laid down in the Rules of 2014 will not apply to the petitioners, is therefore, unfounded, unsustainable and cannot be accepted. This Court had only granted relaxation in the matter of age that also was limited to the extent that if additional hands of warders were required in any other Jails then such relaxation was to be given to the petitioners. The said relaxation was granted way back in the year 1993. The admitted case of the petitioners is that after their engagement on the temporary post of Warders on 10.04.1984 they had served as temporarily/casual employees only for eight years up till



27.02.1992. After their disengagement/retrenchment on 27.02.1992, the petitioners have never served in any Jail anywhere in the State of Bihar. Now, more than 26 years later they are claiming relaxation in the matter of appointment, which was not granted to them in the said order dated 20.04.1993 passed in CWJC No. 2605 of 1992.

9. The second submission of the counsel for the petitioners that by virtue of the communication dated 21.09.1995 from the Jail Superintendent, Muzaffarpur to the District Magistrate, Muzaffarpur they can claim any right for any relaxation or any preference in the matter of selection to the post of Warder, *de hors* the Rules appears to be thoroughly misplaced. The communication dated 21.09.1995 does not recognize or create any right in favour of the petitioners in respect of their claim for regularization or appointment, ignoring the requisite educational qualification.

10. The third submission regarding the petitioners' claim for parity with the petitioners of CWJC No. 16376 of 2011 is also without any basis. The petitioners of CWJC No. 16376 of 2011 admittedly are not similarly situated as the petitioners. On going through the order passed in CWJC No. 16376 of 2011, this Court would find that when their case was being considered this Court had taken note of the fact that the petitioners therein had been regularized way back on 16.01.1994. Thereafter, for some reason or the other



their services were sought to be interfered with wherein this Court had issued orders in their favour recognizing their regularization as having attained finality on 16.01.1994 itself. That is not the case with the instant petitioners. The admitted case of the instant petitioners is that after their retrenchment/removal on 27.02.1992 they have never worked in the Department.

11. In view of the consideration hereinabove, this Court does not find any merit in the writ petition filed by the petitioners.

12. The same is dismissed.

(Madhuresh Prasad, J)

Prakash/-

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CAV DATE	
Uploading Date	
Transmission Date	

