

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12095 of 2007

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1. Sarangdhar Mohan Son of late Kailash Singh Resident of Pandey Gangaut, Via- Nawada, P.S.- Rupau, District Nawada .
 2. Parmanand Arya Son of late Ramdeo Singh R/o Gulmatia, P.O. Kachhi, Dargah, P.S. Deedarganj, District- Patna..
 3. Vinay Kumar Singh Son of late Bhubneshwar Prasad Singh Resident of Village- Budhama, P.O. Khara Budhama, P.S. Udakishunganj, District- Madhepura.
 4. Suresh Chandra Singh Son of late Ramdhani Singh Resident of Village- Koni, P.O. Dhanghunta, P.S. Chauri, District- Bhojpur.
 5. Gopal Prasad Son of late Ram Lakhan Prasad Resident of Village Ruhelaganj, P.O. Lalbagh, P.S. Darbhanga Sadar, District- Darbhanga.
 6. Krishna Nand Prasad Yadav Son of Sri Ganga Prasad Yadav Resident of Tendua, P.O. Mushari, P.S. Chapra Sadar, District- Saran. All are at present working as Assistant in Bihar School Examination Board, Patna.

.... **Petitioners**

Versus

1. Bihar School Exam. Board, Patna through its Chairman.
2. The Secretary, Bihar School Examination Board, Patna.
3. Dasrath Yadav
4. Rambriksh Singh
5. Triloki Nath Prasad Srivastava
6. Dukhi Sahu
7. Ishrat Hussain
8. Kashi Nath Pandey
9. Kanchan Prasad
10. Diwakar Jha
11. Shyamanand Jha-1
12. Bipin Kumar Srivastava
13. Lal Bahadur Jha Lal
14. Umashankar
15. Rajendra Kumar Sinha
16. Kanchan Sharma
17. Dasrath Prasad Singh
18. Md. Nazmuddin
19. Shatrudhan Prasad Singh All sons of not known Working as employees of Bihar School Examination Board, P.S. Kotwali, District Patna-800001

.... **Respondents**

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Appearance :

For the Petitioners : Mr. Binod Kumar, Advocate
For the Board : Mr. Girijesh Kumar, Advocate
For the private respondents : Mr. Mahesh Nr. Parbat, Advocate and
Mr. Sanjay Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date: 20-03-2018

Heard learned counsel for the petitioners, the Board as well as learned counsel appearing for the private respondents no. 3 to 19.

2. Writ petitioners have challenged order dated 27.6.2007 (Annexure 7), alleging that those who are junior to the petitioners have been promoted to work as the Section Officer (S.O.) ignoring the petitioners, who are senior to the beneficiaries of impugned order dated 27.6.2007. In support of his prayer, learned counsel for the petitioners relies upon order dated 16.4.1986 (Annexure 4), whereby the first time bound promotion has been made available to the various employees of the respondent Board. Though the petitioners have been appointed as early as in February, 1970, their claim for appointment has been ignored, whereas claim of private respondents who were engaged subsequent thereto, has been considered by the impugned order.

3. Learned counsel for the Board has placed on record decision of the Board dated 14.8.1987 (Annexure B/1), whereby in respect of the private respondents no. 3 to 19, who are the beneficiaries of the impugned order dated 27.6.2007, it has been decided that they were originally working as Seasonal Assistant



since 1.1.1970 and the employees working as Seasonal Assistant on or before 1.1.1970 would be deemed to have been appointed on the post of regular Assistant since 1.1.1970.

4. One basic difference pointed out between the petitioners and the beneficiaries of the impugned order is that the beneficiaries of the impugned order had originally been engaged as Seasonal Assistant and the decision to treat them regular employee since 1.1.1970 was taken, whereas in case of the petitioners, they were originally appointed on *ad hoc* basis in General Assistant Category for six months between 30.1.1970 to 16.7.1970 as *Sulekhak* (Calligraphists).

5. It is submitted that the petitioners were appointed on *ad hoc* basis for six months between 30.1.1970 to 16.7.1970 as *Sulekhak* (Calligraphists). It is also case of the respondents that before 26.3.1972, they were temporarily working as *Sulekhak* Assistant and their period of service was ending on 31.3.1972. He submits that the date of petitioners' appointment on temporary basis is mentioned in the office order dated 16.4.1986 (Annexure 4 of the writ petition). From perusal of the same, it would be evident that none of the petitioners have been temporarily appointed on or before 1.1.1970, which is the deemed date of regular service of the private



respondents by virtue of the decision of the Board as contained in office order dated 14.8.1987 (Annexure B/1).

6. From perusal of the averments made in the counter affidavit of the Board, it is evident that the engagement of the petitioners and the private respondents were made in different manner. In light of the Board's decisions dated 21.7.1987 (Annexure B) and 14.8.1987 (Annexure B/1), it is apparent that while private respondents have been deemed to be in regular service with effect from 1.1.1970, whereas the petitioners deemed to have been appointed in the service of the Board with effect from their temporary appointment. Their appointment for six months period on *ad hoc* basis as "*Sulekhak*" (Calligraphists) was excluded. The said position has crystallized from the office order dated 26.3.1972 (Annexure D/1), whereby and whereunder for the first time petitioners have been taken into the temporary service of the Board against a pay scale along with other benefits. Since then they have also been merged into the general Assistant category, and from this appointment they have been treated as Assistant.

7. Till date, petitioners have not challenged these decisions in any proceeding. Petitioners cannot claim any parity with the private respondents as with respect to them there is conscious



decision of the Board dated 14.8.1987 (Annexure B/1) to treat them in regular service with effect from 1.1.1970. The petitioners’ date of appointment in regular service is being subsequent to the private respondents in 1970, the petitioners have no enforceable claim in this regard.

8. In view of the aforesaid discussions, the writ petition is devoid of merit and is accordingly dismissed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
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