

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14303 of 2016

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1. Pradeep Kumar Dwivedi, son of Sri Raj Kishore Dwivedi, resident of Village+ P.O. - Chakari, P.S. - Daroli, District - Siwan.
 2. Suresh Kumar Sharma, son of Ram Shankar Sharma, resident of Village- Tinbhedia Khurd, P.O. - Barhani Bazar, P.S. Badhariya, District - Siwan.
 3. Bramha Prasad, son of Ganga Bisun Prasad, resident of Village- Sisaikoli Tola, P.S. - Goreyakothi, District - Siwan.
 4. Ram Pravesh Yadav, son of Madan Yadav, resident of Village - Bhisampur, P.O. - Sahuli, P.S.- Husanganj, District - Siwan.
 5. Rajesh Kumar Sharma, son of Sri Ramashankar Sharma, resident of Village- Tinbhedia, P.O. - Barhani Bazar, P.S. Badhraiya, District - Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Divisional Commissioner, Saran Division at Chapra.
2. The District Magistrate, Siwan, District - Siwan.
3. The Establishment Committee, through its Chairman, the Collector-cum-District Magistrate, Siwan.
4. The Sub Divisional Officer, Siwan, District - Siwan.
5. The Establishment Committee through Deputy Collector, Siwan, District- Siwan,
6. The Nazarat through Deputy Collector, Siwan, District - Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Patanjali Rishi, Adv.
Mr. Shailendra Kumar Dwivedi, Adv.
For the Respondent/s : Mr. Anil Kumar, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-08-2018

Heard Mr. Patanjali Rishi, learned counsel appearing for the petitioners and Mr. Anil Kumar, learned Assisting Counsel to Standing Counsel No.8 for the State.

The writ petition is filed seeking a direction in the nature of mandamus to command the respondent authorities in the district of Siwan, more particularly the District Magistrate, Siwan for regularisation/absorption of the petitioners on a vacant Class IV



post.

It is the case of the petitioners that they are engaged albeit on daily wage basis since after 2011 and continuing on their post. It is the case of the petitioners that in response to the Advertisement No.01 of 2013-14 they applied and a panel was prepared in which the names of the petitioners appear but they have not been appointed. It is feeling aggrieved that the writ petition was filed for the direction above and when it was argued on behalf of the petitioners by Mr. Rishi that although a plea has been taken by the respondents in the counter affidavit that there were only 36 vacancies available and which has since been filled up from the merit position of the candidates in panel but the fact is that there are a large number of vacancies yet available. He refers to the statement present at paragraph 4 of the counter affidavit which indicates that as against 36 vacancies, 28 persons were appointed from the merit panel and 8 persons were appointed on compassionate basis. It is contesting the stand of the State on the vacancies position that a rejoinder was filed and it is in reference thereto Mr. Rishi canvassed that no less than 33 vacancies was yet available with the District Magistrate, Siwan on 24.1.2014 but has not been taken into consideration.

It is taking note of the submission of Mr. Rishi that the District Magistrate, Siwan was directed by this Court vide order



dated 6.7.2018 for verifying the vacancy position as on the cut of date mentioned in the Advertisement No.01 of 2013-14 and it is after two indulgences given with caution to the District Magistrate, Siwan regarding imposition of penalty that a 3rd supplementary counter affidavit has been filed through the Senior Deputy Collector enclosing a chart showing the vacancy position. Paragraph 6 of the affidavit would confirm the failure of the District Magistrate, Siwan to verify the actual vacancy position in his Collectorate as on the date the application was called. The chart given does indicate that a large number of vacancies were existing on 24.1.2014 of which only 28 were filled up vide order passed on 9.8.2018 and 17 were filled up on 8.8.2018 i.e. a day earlier.

The 33 vacancies which were placed on record by the petitioner through rejoinder has been admitted but there is no explanation why these vacancies were not taken into consideration and filled up from the candidates on the panel. There are other vacancies admitted, in other offices within the jurisdiction of the Collectorate and against which remarks of non-approval of roster has been made which again cannot be a reason for not filling up of the posts. It is the duty of the Collector to ensure that approval is taken on roster and the post filled up from the panel.

No doubt an appointment process was initiated but a laid back attitude reflected in the authorities of the district in filling up



of the post has resulted in this writ petition.

Since the chart given below paragraph 6 of the 3rd supplementary counter affidavit admits huge number of vacancies in the Collectorate of Siwan and allied offices, I direct the District Magistrate, Siwan to fill up the vacancies, the details of which are present at paragraph 6 by making appointments against those posts where roster clearance has been obtained and fill up the others after getting roster clearance, which exercise be completed within three months from the date of receipt/production of a copy of this judgment.

Be it noted that the appointment should be made exclusively in order of merit from the panel so prepared of the candidates pursuant to Advertisement No.01 of 2013-14.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29-08-2018
Transmission Date	NA

