

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4036 of 2017

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1. Binay Kumar Singh, Son of Ramdeni Singh, Resident of Mohalla- Bal Bihar Road, Right Side Road No. 5, New Area, Chittor Nagar, Police Station- Aurangabad (Town), District- Aurangabad.
 2. Dilip Kumar, Son of Late Santan Prasad Singh, Resident of Mohalla- Shahpur, Thakurbari Road, Near Surj Mandir, Police Station- Town Thana, District- Aurangabad.
 3. Md. Islam Uddin, Son of Late Md. Hanif, Resident of Mohalla- Dunka Kucha, Behind Khajekalan, Police Station- Khajekalan, District- Patna- 800008.
 4. Sudama Prasad Singh, Son of Late Jagdishwar Singh, Resident of Mohalla- Dev Road, Block Colony, Amba, Aurangabad.
 5. Dilip Kumar Singh, Son of Sri Ram Pravesh Singh, Resident of Mohalla- Ramdiha, Ward No. 32, Anugrah Nagar, Near S. Sinha College, Police Station- Town Thana, District- Aurangabad.
 6. Suresh Ram, Son of Late Bigan Mochi, Resident of Village- Kusapi Tola, Usari, Police Station- Tekari, District- Gaya.
 7. Baijnath Singh, Son of Late Ram Chandra Singh, Resident of Village- Bhaw Bigha, Police Station- Daudnagar, District- Aurangabad.
 8. Kamakhaya Narayan Singh, Son of Late Batuk Narayan Singh, Resident of Village- Sarsa, Police Station- Risiup, District- Aurangabad.
 9. Kamal Deo Paswan, Son of Late Jai Ram Paswan, Resident of Mohalla- Shahpur, Near R.L.S.Y. College, Ward No. 26, Police Station- Town Thana, District- Aurangabad.
 10. Shiv Kumar Ram, Son of Shripati Ram, Resident of Village- Bela, Police Station- Aurangabad Mufassil, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar the Chief Secretary, Bihar, Patna
2. The Principal Secretary, Department of Health, Bihar, Patna
3. The Director and Chief, (Administration) Health Services, Aurangabad, Bihar.
4. The Civil Surgeon cum Chief Medical Officer, Aurangabad, Bihar.

... .. Respondents

5. Arvind Kumar Singh, son of Raghubansh Narain Singh, resident of D-14, Police Colony, Anishabad, P.S. Gardanibagh, Dist. Patna.
6. Uday Kumar Srivastava, son of Sri Ramashray Lal, resident of B-41, Police Colony, Anishabad, P.S. Gardanibagh, Dist. Patna.
7. Manoj Kumar Singh, son of Sri Chandra Shekhar Singh, Resident of Shivpuri, P.S. Shashtri Nagar, Dist. Patna.

---- Interveners/Respondents

Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Adv. Ms. Smriti Singh, Adv.
For the State	:	Mr. Nagendra Prasad Yadav, SC-23



For the Intervenors : Mr. Prashant Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 19-07-2018

An interlocutory application, I.A. No. 2812 of 2017 has been filed with a prayer to implead three interveners as party respondents in the present writ application.

Looking to the entire facts and circumstances of the case mentioned in this interlocutory application, the prayer made therein is allowed and all the three interveners are allowed to be impleaded as Intervenors/Respondents in this writ application.

In the present case, the petitioners have sought a relief of quashing the gradation list of the Health Educator.

The State of Bihar vide letter no. 462 dated 9.5.2016 published the final gradation list under the signature of the Director-in-chief, the names of the petitioners having been not included despite objection raised by these petitioners. Further the writ of mandamus has been sought to give direction to include their name in the gradation list and they should be shown above the private respondents. Further prayer has been made for promoting the petitioners to the higher post as per the seniority after inclusion of their names in the gradation list.

The short facts of this case is that as per petitioners, they were appointed as Health Educator by the Civil Surgeon, Aurangabad in the year 1992 and they were recruited cum selected by a duly



constituted selection committee after passing through the rigorous test of selection. In that process, 44 Health Educators were appointed, when the petitioners and other persons were not appointed, the petitioners filed M.J.C. No. 681 of 1991 which was heard on 26.8.1991, notice was issued on non-compliance of the order passed by this Court. Accordingly, some persons were appointed, whereafter, one Syed Md. Shafique Ahmad and another moved this Court in C.W.J.C. No. 3986 of 1990 which was placed before the Division Bench and the Division Bench recorded following:- “since even according to the State there was no irregularity in selection of the petitioners, therefore, in our view, the committee which has been constituted by the Government order dated 11.11.1991 is not required to take up the matter regarding selection of the petitioners, as the said circular will apply only to those cases where either the vacancies have accrued after the date of the aforesaid government order or the same were not in existence at the same circular and there were no irregularities in making any selection.”

So the claim of Shafique Ahmad and another was finally concluded by the Division Bench order as the State did not challenge the order before the Hon’ble Apex Court. When the order was not implemented then M.J.C. No. 688 of 1991 was filed which was heard, on receipt of the notice for non-compliance of the order, the



State appointed few persons but, the petitioners were compelled to approach this Court by filling different writ applications bearing C.W.J.C. No. 3986 of 1990, C.W.J.C. No. 8240 of 1991, C.W.J.C. No. 466 of 1992 which were disposed of on 9.6.1991, 9.9.1992 and 19.8.1992 respectively by different orders passed by this Court and, accordingly, the petitioners were appointed as Health Educator. After the entry of the petitioners, the respondents also entered into the services through the Subordinate Service Selection Board and, in the letter of appointment (Annexure-2), it has been mentioned that their seniority as has been fixed by the Commission but, they will be just below the persons who were already in the cadre.

It has to be pointed out that after the bifurcation of the State of Bihar, 1/3rd Health Educator were transferred to the State of Jharkhand and one person, namely, Vijay Prasad was terminated from the Jharkhand service approached to the High Court of Jharkhand in C.W.J.C. No. 143 of 2000 and that writ application was allowed, was challenged by the State of Jharkhand in L.P.A. No. 63 of 2001 which too was rejected.

In the meantime, the Government has framed Bihar Service Cadre Rule, 2014. Rule 12 whereof provides in what manner the seniority will be decided and Rule 16 stipulates that those who are in service before framing of the cadre rule, will be treated inside the cadre.



It appears that the provisional seniority list was published on 10.9.2014 and the Government invited objection from the affected persons. After receipt of the provisional gradation list, the petitioners did not find their name in the gradation list of Health Educator, raised objection and made a claim that their names should be included and they should be treated to be senior to the respondents but, their objections were ignored and their names have not been included in the final gradation list.

In the present case, the primal question is to be determined whether the Department can ignore the inclusion of the names of the petitioners in the gradation list of Health Educator. As the claim made by the State as well as the private respondents that their entry itself is illegal as only method for appointment of Health Educator, is to be recruited through Subordinate Service Commission and the Rule does not provide that the Health Educator can be appointed by a Committee constituted by the Civil Surgeon. Further the private respondents have pointed out that one Prabhat Kumar, who was originally appointed by the Civil Surgeon, Aurangabad shifted to the Civil Surgeon, Gaya, was identified by the Civil Surgeon, Gaya that his entry was illegal and, thereafter, the enquiry report submitted wherein it has been recorded that the entry of Prabhat Kumar is illegal as he has entered into the service illegally, without following proper procedure recording a finding that the Civil Surgeon had no



jurisdiction to appoint Prabhat Kumar. So, the Three Men Committee found the appointment of Prabhat Kumar and others to be illegal on the ground that the Civil Surgeon has no jurisdiction to make such appointment.

One thing is very much clear as has been pointed out by the State as well as the private respondents that a similar enquiry proceeding has been initiated against the petitioners to find out the manner they have entered into the service but, that proceeding has been stayed by this Court in C.W.J.C. No. 568 of 2018. So on the face of record, it appears that the petitioners are still in service, they are being paid their salary, if their entry is illegal, will be examined in the aforesaid writ petitioner, so long they are in service, their presence cannot be ignored and cannot be said that they are not in service of the State of Bihar as a Health Educator. In view of the fact that already in first round of litigation in Md. Shafique Ahmad case (C.W.J.C. No. 3986 of 1990), the State itself has conceded the appointment of the aforesaid persons who were/are similar to the petitioners of the writ application, has been held to legal and valid, the Government itself says that the circular will not be applicable to such recruitment as they have been appointed before the enforcement of that circular. In such a situation, the submission of the State and private respondent that the State has rightly refused to include their names in the cadre of Health Educator is very difficult to accept as in



the present situation, unless they get a birth in the gradation list, the consideration of seniority and juniority will be misnomer in the sense that unless their names appear in the list.

Learned counsel for the petitioners has placed reliance on the judgment in the case of State of Haryana & Ors. Vs. Vijay Singh & Ors. reported in (2012) 8 SCC 633. The aforesaid judgment would not apply in the present case as in that case the question of seniority and juniority arose for consideration. As has been held by the Hon'ble Apex Court the service period of the petitioners on ad-hoc or illegal and irregular cannot be counted for the purpose of granting benefit of seniority. Here the situation is quite different. Only in this case, they are making an effort for getting birth in the gradation list. So the judgment that has been placed by the learned counsel for the private respondents does not apply to the present case. Learned counsel for the petitioner has also placed reliance in the case of Ch. Narayana Rao Vs. Union of India & Ors. reported in (2010) 10 SCC 247 and in the case of T. Narasimhulu & Ors. Vs. State of Andhra Pradesh & Ors. reported in (2010) 6 SCC 545.

In all the judgments, the question of seniority and juniority came for consideration but, in the present case, as the petitioners' name itself is not in the gradation list, the question of deciding the seniority or juniority will be a futile exercise by this Court.



In that view of the matter, so long as the petitioners are there in service, may be facing enquiry, their existence cannot be ignored by the Department. They must get birth in the gradation list and if the State would succeed in the writ application, it goes without saying that that will affect the future of the petitioners but, so long they have been working, their existence has to be recognized by the State and the respondents cannot claim or deny that the petitioners are not holding the post of Health Educator. So far the entry of the petitioners, legally or illegally, is not required to be gone into in the present proceeding as already the proceeding is pending for adjudication and this Court would not like to comment with regard to entry of the petitioners in this collateral proceeding.

In that view of the matter, this Court direct the State Government to include the names of the petitioners in accordance with law and place them in the gradation list in terms of the rule and regulation applicable to them.

With the aforementioned observations and direction, this writ application stands allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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