

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12242 of 2017

1. Jawahar Lal Ram, S/o Sri Hira Lal Ram, Resident of B/108, Shakuntala Niwas, A.G. Colony, Near J.P. Nagar, District- Patna.
2. Shiv Chandra Manjhi, S/o Sri Rambrksha Manjhi, Resident of Village-Tineri, P.O.- Nadaul, P.S.- Masaurhi, District- Patna- 804454.
3. Chote Lal Das, S/o Sri Chulhai Das, Resident of P.O.- Digha Baghicha, Rajiv Nagar, Road No.21, District- Patna.
4. Kedar Kumbhkar, S/o Sri Rahin Kumbhkar, Resident of Jorsa, Jorsya, District- East Singhbhum, Jharkhand- 832105.
5. Piyush Roy, S/o Sri D.N. Roy, Resident of 2H-91, Bahadurpur, Housing Colony, PS- Agamkuan, PO- Bahadurpur, District- Patna 800016.
6. Md. Shakil Ahmad, S/o Md Jalil Uddin, Resident of Village-Babhangama, Paithan Tola, Via- Bihpur, Dist- Bhagalpur-853201.
7. Md. Ekramul Haque, S/o Abdul Manan, Resident of Village- Mahuawa, At+PO- Mahuawa, Via- Pirpahi Bazar, District- Sheohar.
8. Chitrasen Kumar, S/o Sri Arjun Ram, Resident of C/o C. Kumar, Flat No.306, Pratap Palace, Krishnagar (A.G. Colony), PO- Ashiana Nagar, PS- Shashtri Nagar, District- Patna- 800025.
9. Rohit Kumar Jha, S/o Sri Sidhinath Jha, Resident of Shivpuri Near Abhay Carbon Factory, PO- Shastri Nagar, District-Patna- 800023.
10. Pranay Kumar, S/o Late Ramshihasan Singh, Resident of Village-Haibat Pur, Thana- Ram Pur Chouram, Dist- Arwal.
11. Rambha Kumari, D/o Sri Badri Prasad, Resident of C/o Uma Singh Salimpur Ahra, Daldali Road, Bakerganj, PO- Kadamkuan, District- Patna- 800003.
12. Tanweer Hassan, S/o Late Kamal Hasan, Resident of Village- Bibipur, PS- Kako, Dist- Jehanabad- 804418.
13. Pushpa Kumari, D/o Sri Sanjay Kumar, Resident of C/o Rajeshwar Pd. Sharma, Behind Gita High School, Chitragupt Nagar, Kankarbagh, District- Patna.
14. Saket Ranjan, S/o Late Yogendra Prasad Yadav, Resident of C/o Ram Sakal Ray, Vill- Magardahi, Ward No.29, PO+PS+Dist- Samastipur- 848101.
15. Bashisht Choudhary, S/o Sri Deoraj Choudhary, Resident of Village-Hathounge, PO- Hasua, PS- Nawtan, District- Siwan- 841436.
16. Sudhir Pal, S/o Sri Ramswarth Pal, Resident of Krishna Niketan Girl's School, Ram Krishna Nagar, Jakariha Badi Pahari, District- Patna.
17. Md. Nooruddin, S/o Md Shakir Hussain, Resident of House No.-124, Road No.- 09, Sector-2, Haroon Nagar Colony, Phulwari Sharif, District- Patna- 801505.
18. Kaushal Kumar, S/o Sri Kedar Nath Yadav, Resident of H. No.- Na15/9, New Alkapuri, PS- Gardanibagh, PO- Anisabad, District- Patna- 800002.
19. Md. Ashraf Alam, S/o Late Md. Tauhid Khan, Resident of A/62, Apna Gharana Colony, Sajjad Nagar, PO+PS- Phulwarisharif, District- Patna- 801505.
20. Md. Naushad Anjum, S/o Md. Nisarul Haque, Resident of Village+PO- Dhamsain, Via- Kurso Nadiyami, PS- Alinagar, District- Darbhanga- 847405.



21. Md. Naushad Alam, S/o Md. Ehteshamuddin Ansari, Resident of Gate No.35, Mainpura, PO- GPO, PS- Patliputra, District- Patna- 800001.
22. Jay Kumar, S/o Sri Ram Babu Swarnkar, Resident of Noorani Bagh Colony No.- B, PO- Gulzarbagh, District- Patna- 800007.
23. Prem Kumar, S/o Late Rambalak Singh, Resident of C/o R. P. Singh, Parmeshwar Singh Lane, W. Lohanipur, Kadam Kuan, District- Patna- 800003.
24. Md. Manzar Nomani, S/o Md Abdul Azij, Resident of Village- Dhamsain, Via- K. Nadiyami, PS- Alinagar, Dist- Darbhanga- 847405.
25. Parwez Alam, S/o Md. Qumruddin, Resident of Alam Ganj Main Road, Opp.- Dalal Ji Ki Masjid, District- Patna- 800007.
26. Santosh Kumar, S/o Sri Ram Chandra Roy, Resident of C/o Dinesh Roy, Sai Bhawan Gautam Nagar, Near S.K. Kunj, PO- GPO, PS- Gardanigadh, District- Patna- 800001.
27. Anil Kumar, S/o Sri Ram Bilash Ray, Resident of Village- Birsingh Pur, Mahamdabad, PO- Basudeopur, PS- Kalyanpur, District- Samastipur- 848102.
28. Rajesh Ravidas, S/o Sri Jitan Ravidas, Resident of Village- Juniar, Vaya- Ekangar Sarai, District- Nalanda- 801301.
29. Deepak Kumar, S/o Late Naresh Roy, Resident of Dhirachak, PO- Anisabad, PS- Gardanibagh, Dist- Patna- 800002.
30. Prushottam Kumar, S/o Sri Kapil Dev Prasad, Resident of Purani Gudhri, Uttarwari Pokhra, Bettiah, PO- Bettiah, PS- Town Thana, District- West Champaran- 845438.
31. Dhananjay Kumar, S/o Sri Sureshwar Prasad Sharma, Resident of Village- Tineri, PO- Nadaul, PS- Masaurhi, Dist- Patna- 804454.
32. Md. Mazhar Nomani, S/o Md. Quamrul Hoda, Resident of Aunsi, Naya Tola, PO- Aunsi, Babhangawan, PS- Bisfi, District- Madhubani.
33. Bharath Sharma, S/o Sri Bhushan Sharma, Resident of Birla Colony, Near A-95, Rastriya Ganj Phulwari Sharif, District- Patna.
34. Nasimul Haque, S/o Md. Zainul Haque, Resident of Village- Dhamsain, PS- Alinagar, Via- K Nadiyami, Dist- Darbhanga- 847405.
35. Md. Iqbal, S/o Md. Salahuddin, Resident of Alamganj, Peerwais (Imambada), Gulzarbagh, District- Patna- 800007.
36. Rajeev Kumar Roy, S/o Sri Ramchandra Ray, Resident of Bishunpur Pakri, PS- Beur, 70 feet Road, By Pass, District- Patna- 800002.
37. Deepak Kumar II, S/o Sri Devki Ram, Resident of 4/A, Shakuntala Garden Apartment, PO+PS- Shashtrinagar, Punaichak, Dist- Patna- 800023.
38. Arbind Kumar, S/o Sri Raj Bihari Roy, Resident of Rajendra Nagar, Road No.-10E, Flat No.- JF3/24, Block-4, P.O.- Rajendra Nagar, PS- Kadamkuan, District- Patna- 800016.
39. Shyam Kishor Gosain, S/o Sri Raghunath Gosain, Resident of Village- Singrahiya, Bhutahi, District- Sitamarhi- 843317.
40. Prem Sagar, S/o Late Narmadeshwar Pd. Singh, Resident of Village- Gonawan, PS- Harnaut, Dist- Nalanda.
41. Md. Nasimullah, S/o Md. Shahjahan, Resident of 724, Mohammad House, Petrol Pipe Line, ISA Nagar, PO+PS- Phulwari Sharif, District- Patna- 801505.
42. Shankar Prasad, S/o Sri Sharda Nand Paswan, Resident of Bhadra Ghat, Idgah Road, Gulzar Bagh, District- Patna- 800007.
43. Sayed Firoz Karim, S/o Late Syed Ata Karim, Resident of Road No.-



- A/3, Alinagar Colony, Anisabad, District- Patna- 800002.
44. Shiva Shankar Roy, S/o Sri Ram Narayan Roy, Resident of Village- Birsinghpur (Mahamdabad), PO- Basudeopur, PS- Kalyanpur, District- Samastipur- 848102.
 45. Md. Tauqeer Alam, S/o Md. Muhiuddin, Resident of Village- K. Nadiyamy Dhamsain, PS- Alinagar, District- Darbhanga- 847405.
 46. Md. Shamiullah, S/o Md. Abulaish, Resident of Village- Garahiya, PS+Dist- Sheohar.
 47. Rabindra Kumar, S/o Sri Sureshwar Prasad Sharma, Resident of Village- Tineri, PO- Nadaul, PS- Masaurhi, Dist- Patna- 804454.
 48. Pradeep Kumar Roy, S/o Sri Ramchandra Ray, Resident of Bishunpur Pakri, PS- Beur, 70 feet Road, By Pass, District- Patna- 800002.
 49. Mrityunjay Kumar, S/o Sri Awadhesh Prasad Singh, Resident of Koil Kothi, Lane No.-3, Chandmari Road, PO- Lohiyanagar, PS- Kankarbagh, District- Patna- 800020.
 50. Md. Shoaib Alam, S/o Md. Yunus, Resident of Village+PO- Dhamsain, Via- Kurso Nadiyami, PS- Alinagar, District- Darbhanga- 847405.
 51. Md. Jamshed Alam, Son of Md. Jilani, Resident of Village+Dhamsain, Via- Kurso Nadiyami, PS- Alinagar, District- Darbhanga- 847505.
 52. Vijay Shankar Murari, Son of Jawahar Lal Bekas, Resident of 301 Keshav Savita Apartment, Jhunjhyn Mahal Road, New Yarpur, PS- Gardanibagh, District- Patna.
 53. Ghulam Rasool Ansari, Son of Md. Khursheed Ansari, Resident of Mehsaul Chowk, Khilafat Chowk, Dumra Road, District- Sitamarhi.

1. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. Principal Secretary, Education Department, Government of Bihar, Patna.
3. Deputy Secretary, Education Department, Government of Bihar, Patna.
4. Director, Higher Secondary Education, Education Department, Government of Bihar, Patna.
5. Bihar School Examination Board, Budha Marg, Patna through its Chairman.
6. Chairman, Bihar School Examination Board, Budha Marg, Patna.
7. Secretary, Bihar School Examination Board, Budha Marg, Patna.

.... Respondents

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Appearance :

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| For the Petitioners | : | Mr. Chitranjan Sinha, Senior Advocate and M/S. Siddhartha Prasad, Kanstubbh, Om Prakash Kumar, Sumit Kumar, Surya and Ashish Kumar, Advocates. |
| For B.S.E.B. | : | M/S. Satyabir Bharti and Alok Chandra, Advocates. |
| For the State | : | Mr. Kameshwar Kumar, G.P. 17 and Mr. Arbind Kumar, A.C. to G.P. 17. |
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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH



CAV ORDER

6 18-05-2018 The petitioners have filed this writ application for the following reliefs:-

“1 (a) For issuance of appropriate writ(s)/order(s)/direction(s) for quashing the part of the office order dated 18.08.2017 issued by the Secretary, Bihar School Examination Board (hereinafter referred to as ‘Board’), whereby and whereunder the writ petitioners, who are working on different posts in the Computer Cell of the Board, have been removed from service after giving one month’s additional pay.

(b) For issuance of appropriate writ(s)/order(s)/direction(s) for commanding the respondents specially the respondent Board to absorb/regularize the writ petitioners in the Board and to give them all the benefits of a permanent employee instead of hiring new hands on contract basis.

(c) For issuance of appropriate writ(s)/order(s)/direction(s) for commanding the respondents specially the respondent Board to give all the consequential benefits to the writ petitioners in pursuance of quashing of the impugned office order dated 18.08.2017.

(d) The petitioners also pray for any other relief(s) that the petitioners are entitled to in the facts and circumstances of the case”.



The case of the petitioners lies in a narrow compass that 'Bihar Intermediate Education Council' (hereinafter referred to as Intermediate Council) was established under Bihar Intermediate Education Council Act, 1992. In terms of Section 15 (26) and 15 (27) of the aforesaid Act of 1992, the Intermediate Council having the power to create with prior approval of the State Government, post of Officer and employee of the Council, and to make rules for the service conditions of the Officers and other employees of the Council other than the Chairman and the Secretary of the Intermediate Council. Further as per Section 22 (3) of the aforesaid Act, the Chairman having power, subject to the provision of this Act and rules and regulations made thereunder to make appointments to the post within the sanctioned grades and scales of pay and within the sanction strength of the Ministerial employees and other servants of the Council (not being teacher and officer of the Council) and have control and full disciplinary powers over such staff and servants.

The petitioners were initially engaged by a firm namely, 'N.I.C.T. Computing System Pvt. Ltd.' on different dates in between the year 1999 to 2005 for discharge of work of the Intermediate Council on different posts. The agreement between the N.I.C.T. Computing System Pvt. Ltd. and the Intermediate



Council continued up to 31.03.2005, thereafter renewal of the said agreement could not be made. In the meantime, the Intermediate Council sent a proposal to the Education Department, Government of Bihar, which was approved by the State Government and as many as 63 posts were sanctioned vide letter dated 11.02.2005 in the Computer Cell of Intermediate Council.

Thereafter, by the order of the then Chairman of the Intermediate Council, the Secretary issued office order dated 14.05.2005, in respect of altogether 55 persons including these petitioners, who were earlier working on contract in the Computer Cell of Intermediate Council, allowing them to render their services against the sanctioned vacant posts, on temporary basis. The said office order also mentioned that such stop-gap arrangement would come to an end when regular appointments would be made, following the process as prescribed.

The petitioners who had been working continuously on such posts have also been granted service benefits of pay scale alike the regular employees. Thereafter, the petitioners who were working in the Intermediate Council kept serving the posts in the Bihar School Examination Board with same service condition. In view of Section 3 (2) of the Bihar Intermediate Education Council



(Repeal) Act, 2007, the State Government constituted a Committee of three persons having rank of the Secretary under the State Government as to prepare a scheme of absorption of the employees of the Intermediate Council. The said Three Men Committee finalized the scheme, which came to be published in the Bihar Gazette dated 12.07.2012. Thereafter, a Five-members Committee was also constituted by the Board as to prepare a report in terms of the scheme formulated by the Three Men Committee for the purpose of absorption of the services of employees of the Intermediate Council. It has been also contended on behalf of the petitioners that out of 627 persons working in the Council, only 379 persons were recommended for absorption in the Board by the Five Members Committee in its report dated 27.08.2012 and remaining 248 employees were left in lurch. The further case of the petitioners is that in the report of the Five-Members Committee dated 27.08.2012, there is deliberation on the point of absorption of the petitioners in Para 4.16 but the recommendation could not be made in respect of the writ petitioners for the reason as the office did not provide any information to the Committee with regard to any decision taken by the Council about minimum requisite qualification for the technical post, and there has been mentioned that the petitioners



having only worked for two years and one month from the date of their initial appointment till 19th April, 2007 the date of dissolution of the Intermediate Council.

Although there has been no recommendation for absorption of the services of the petitioners by the Five-Men Committee, but the Board allowed the petitioners to work regularly and also extended the service benefits of the regular employee to them i.e. merger of 50% of Dearness Allowance in Basic Pay with effect from 01.01.2005 which would be apparent from the Resolution No. 2 of minutes of the meeting dated 18.10.2012 of the Board, and subsequently vide office order dated 28.02.2014, the Board granted benefits of 6th Pay Revision to the writ petitioners w.e.f. 01.01.2006. The Board vide office order dated 24.02.2015 took a decision to grant service benefits of 12 days Casual Leave, deduction of Provident Fund, Group Insurance etc. to its ad-hoc employees including the petitioners subject to the final decision with regard to the absorption of their services.

In the month of June, 2016 the Board stopped salary of the petitioners, thereupon they submitted a representation on 28.07.2016 before the Board for their absorption and release of salary, indicating therein also that they have served more than 10



years continuously in the Intermediate Council and the Board, thereafter salary was paid.

It has also been submitted that some of the similarly situated Class IV employees of Intermediate Council approached this Court in C.W.J.C. No. 753 of 2012. During pendency of the said writ petition, the Five Members Committee submitted its report regarding absorption of employees of the Intermediate Council in the services of Board. Out of total 627 persons working in the Intermediate Council at the time of its dissolution, only 379 persons were recommended for absorption in the services of the Board in its report dated 27.08.2012. The writ petitioners of C.W.J.C. No. 753 of 2012 were not recommended for absorption by treating them as ad-hoc employees. After sometimes C.W.J.C. No. 753 of 2012 vide order dated 20.02.2013 came to be allowed. The Board made compliance of the Writ Court order vide its order dated 03.10.2016 subject to the result of L.P.A. preferred by the Board against the order dated 20.02.2013 passed in C.W.J.C. No. 753/2012.

In the meantime, the respondent Board again stopped the salary of the petitioners from March, 2017, thereafter, several communications being made by the Board to the Education



Department, Government of Bihar, regarding the final decision in respect of absorption of services of the petitioners. In pursuance thereof the Deputy Secretary, Education Department, Government of Bihar, wrote a letter dated 18.08.2017 to the Secretary of the Board as to take necessary decision in terms of the Resolution No. 413 dated 12.07.2012, the guideline formulated by the Three-Men Committee, whereupon the Secretary of the Board issued the impugned order (Annexure-16) on the same day i.e. 18.08.2017 removing the writ petitioners from service invoking Clause 2 (vii) and Clause 3 (ii) of the Resolution No.413 dated 12.07.2012.

It has been contended that Clause 2 (vii) and 3 (ii) of the Resolution No. 413 dated 12.07.2012 are not applicable in the case of the petitioners. In the case of the petitioners Clause 2 (II) of the said resolution would be applicable, which speaks that if the ad-hoc employees of the erstwhile Intermediate Council, who have been appointed by the competent authority against vacant sanctioned post and fulfill the eligibility criteria and have worked for more than 10 years, in that case they should be considered for absorption on the vacant post in the Board. The writ petitioners being appointed by the competent authority against the vacant sanctioned post and they also fulfill the eligibility criteria and had worked for more than 12 years, therefore, they being entitled for



absorption on the vacant posts in the Board, thus the order dated 18.08.2017 issued by the Secretary of the Board (Annexure-16), requires interference.

Per contra, the respondent Board while filing counter affidavit in the matter has contended that at the time of engagement of the petitioners neither any advertisement of the post was made nor reservation roster was followed, and their engagements were also not made on the basis of any recommendation made by any Selection Committee. It has been also contended that these petitioners cannot equate their case with Class IV employees of the Board. The case of the present petitioners are similar to that of the writ petitioners in C.W.J.C. No. 20210/2012 (i.e. Anuj Kumar Singh & others –Vs- The State of Bihar & Ors.) which was allowed vide order dated 19.06.2013. The Board challenged the said order passed in C.W.J.C. No. 20210/2012 in L.P.A. No. 1560 of 2013 which came to be allowed vide order dated 13.05.2016. Whereupon the writ petitioners in C.W.J.C. No. 20210/2012 preferred SLP (c) No. 34154/2016 (Mukesh Kumar & others –VS- The State of Bihar & Ors.) which came to be disposed of vide order dated 13.02.2018 by the Apex Court with the directions as under:-

“5.We find it difficult to



appreciate the stand taken by the Board. Once the Committee, as per the Act, has submitted a Report, it was for the State Government to act in terms of the Report. For the implementation of the Report, there was no requirement for a further Committee. We find from the impugned judgment that the High Court has directed the State Government to consider the case of the appellants herein in the light of the Government Resolution.

6. Accordingly, this appeal is disposed of with a direction to the State Government to take an appropriate decision in the light of the Scheme of the Repeal Act, the Report of the 3-Members Committee constituted under the Act and the Resolution taken based on the Report. While taking the decision the Government will also keep in mind that the appellants have as of now worked for around 23 years. The needful, as above, shall be done positively within a period of two months from today”.

The petitioners have also filed rejoinder to the said counter affidavit of respondent Board. It has been submitted by the learned senior counsel appearing on behalf of the petitioners that the case of the petitioners in C.W.J.C. No. 20210 of 2012 was not similar to the present case, as the appointment of the petitioners herein being made in the Intermediate Council vide order dated



14.05.2005 by the order of the Chairman, who was competent authority for making such appointment under Bihar Intermediate Education Council Act 1992, and they being appointed against the sanctioned post also following the reservation roster and worked for more than 12 years continuously .

Considering the facts and respective contentions of the parties as referred above, this writ application is disposed of with a direction to the State Government to take an appropriate decision in accordance with law in the matter of absorption of the services of the petitioners within a period of six months from the date of production/receipt of copy of this order, keeping in mind that the petitioners herein being engaged against the sanctioned posts and by the order of the then competent authority i.e. the Chairman of the Intermediate Council and they have also continued in service more than 12 years.

U.K./-

(Sudhir Singh, J)

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