

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17916 of 2016

1. Nawal Kishore Paswan S/o Late Babulal Paswan R/o village - Mahuli, P.S. and Dist - Nawada.
2. Saryu Sao S/o Basudeo Sao R/o village - Abadpur Pararia, P.S. - Nardiganj, Dist - Nawada.
3. Manoj Kr. Mishra S/o Late Kailash Mishra R/o Village - Budhaul, P.S. and Dist - Nawada.
4. Anuj Kumar S/o Upendra Prasad Chaudhary R/o Village - Mahadeopur, P.S. - Amarpur, Dist - Banka.
5. Shambhu Vishwakarma S/o Ram Ishwari Mistry R/o Village - Ram Nagar, P.S. and Dist - Nawada.
6. Rakesh Kumar Kundan S/o Rameshwar Prasad R/o Mohalla - Navin Nagar Nawada, P.S. and Dist - Nawada.
7. Ramu Singh Yadav S/o Billu Singh Yadav R/o Village - Ambika Bigha, P.S. - Atri, Dist - Gaya.
8. Madhusudan Pd. Rai S/o Bhuvneshwar Pd. Yadav Vill - Mangar Bigha, Dist - Nawada.
9. Mithilesh Kumar S/o Girija Singh R/o Chhatihar, P.S. Hisua, Dist - Nawada.
10. Kaushlendra Kr. Pandey S/o Shurtdeo Pandey R/o Vill P.O.- Konan, P.S. - Sikandara, Dist - Jamui.
11. Vinod Kumar S/o Nageshwar Pd. Singh Vill - Narhat, P.S.- Narhat, Dist - Nawada.
12. Kapildeo Singh S/o Late Shiva Singh R/o Vill - Punaul, P.S. - Narhat, Dist - Nawada.
13. Rajendra Chauhan S/o Ram Lakhan Pd. R/o Vill - Bhagwanpur Tola Shiv Bigha, P.S. and District - Nawada.
14. Shiv Balak Ravidas S/o Mauzi Ravidas R/o Vill - Rampur, P.S. Dist - Nawada.
15. Satish Chandra Bhartee S/o Ram Chandra Paswan R/o Vill - Mahuli, P.O. - Siswan, P.S. Dist - Nawada.
16. Ashutosh Kumar Suman S/o Basudeo Singh R/o Vill - Seva Nagar, Quarter No. 38, P.S. - Kotwali, Dist - Gaya.
17. Manoj Kumar Pankaj S/o Rameshwar Pd. R/o Mohalla - Navi Nagar, P.O. P.S. Dist - Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Deptt. Govt. of Bihar, Patna.
3. The District Magistrate, Nawada, P.S. and Dist - Nawada.
4. The Civil Surgeon Cum Chief Medical Officer Nawada, P.S. and Dist -



Nawada.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 18191 of 2016

1. Surjeet Kumar S/o Uday Pd. Singh R/o Mohalla-New Area in front of Rmw Mahila College, P.S. and Dist.-Nawada
2. Nitya Kumar Sinha S/o late Visheshwar Dayal R/o Village- Pachiyari Tola Narhat, P.S.-Narhat, Dist- Nawada
3. Sanjay Kumar S/o Aditya Pd. Singh R/o Village- Pakri, P.S.-Akbarpur, Dist-Nawada
4. Sangita Kumari W/o Ajit Kumar R/ Village-Kanhiya Nagar, PS and Dist.-Nawada
5. Rubi Devi W/o late Sanjay Kr. Sinha R/Village- Jhaur, P.S.-Warishailiganj, Dist. Nawada
6. Anil Kumar Sharma S/o Tuneshwar Singh Vill-Kuttri, P.S.- Warishaliganj, Dist-Nawada
7. Pramod Kumar S/o Late Paremeshwar Dayal R/o Vill-Kahuara Nardiganj, P.S.-Nardiganj, Dist- Nawada
8. Santan Kumar S/o Late Mosafir Singh R/o Vill-Panchu Bigha, P.S.-Hasua, Dist-Nawada
9. Raju Kumar S/o Late Nagendra Pd. R/o Vill-Hanuman Nagar Maranpur, P.S.- Chandchaura, Civil Line Dist-Gaya
10. Manti Kumari W/o Narayan Pd. R/o Devki Bigha, P.S.-Sadar, Dist-Nawada

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The principal Secretary, General Administration Deptt. Govt. of Bihar, Patna
3. The District Magistrate, Nawada, P.S. and Dist-Nawada
4. The Civil Surgeon Cum Chief Medical Officer Nawada, P.S. and Dist-Nawada

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 20575 of 2016

1. Raghunandan Manjhi S/o Tribhuwan Manjhi, Resident of Village- Jamui Pakaria, P.O.- Baijnathpur, P.S.- Sitamarhi, District- Nawada.
2. Neera Devi, W/o Basant Singh, Resident of Village P.O.- P.S.- Nawada, District Nawada.
3. Vijay Kumar, S/o Baldeo Prasad, Resident of village- Lohani Bigha, P.O.-



Gonawan, P.S. Nawada, District- Nawada.

4. Satish Kumar Paswan, S/o Ram Swarup Paswan, Resident of Village- Pipra, Pokhar, P.O. P.S.- Pakri Baraon, District- Nawada.
5. Rajendra Kumar, S/o Bisundeo Narayan, Resident of Gola Road, Nawada, P.O. P.S.- Nawada, District- Nawada.
6. Dinesh Paswan, S/o Lakhan Paswan, Resident of village P.O. P.S.- Roh, District- Nawada.
7. Shankar Kumar S/o Sahdeo Pandit, Resident of Village P.O. P.S.- Pakri Baraon, District- Nawada.
8. Awadhesh Paswan, S/o Arjun Paswan, Resident of Village- Kharijama, P.O.- Samhalgarh, P.S.- Roh, District- Nawada.
9. Rakesh Kumar, S/o Ramcharitra Singh, Resident of village Balgudar, Police Station Lakhisarai, district- Lakhisarai.
10. Krishna Gopal Das, S/o Bindo Rabidas, Resident of Ambedkar Nagar, Gaya road, Nawada, District- Nawada.
11. Biru Ravidas, S/o Late Govind Rabidas, Resident of Mohalla- Par Nawada, Gaya Road, Nawada, District- Nawada.
12. Jogendra Prasad Singh, S/o Late Radhey Singh, Resident of Garhpar, Near Imambara, Nawada, District- Nawada.
13. Md. Athar Husaain, Son of Md. Aasin, Resident of Village And P.O.- Rajhat, P.S.- Akbarpur, District- Nawadah, at presently posted at Primary Health Centre, Kawakol, District- Nawadah.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Deptt. Govt. of Bihar, Patna.
3. The District Magistrate, Nawada, P.S. and Dist.- Nawada.
4. The Civil Surgeon Cum Chief Medical Officer Nawada, P.S. and Dist.- Nawada.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 17916 of 2016)

For the Petitioner/s : Mr.Dr. Anjani Pd. Singh

For the Respondent/s : Mr.Md.Nashrul Hoda Khan-Sc1

(In Civil Writ Jurisdiction Case No. 18191 of 2016)

For the Petitioner/s : Mr.Dr. Anjani Pd. Singh

For the Respondent/s : Mr. Mankeshwar Tiwari

(In Civil Writ Jurisdiction Case No. 20575 of 2016)

For the Petitioner/s : Mr. Siya Ram Sahi, Adv.

Mr. Dr. Anjani Pd. Singh, Adv.

For the State : Mr. Mankeshwar Tiwari, AC to AAG3

Md. Nadim Seraj, GP5

Ms. Babita Kumari



CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 17-07-2019

Heard learned counsel for the parties.

All the cases, being identical in nature, are disposed of by this common order.

In these cases, the petitioners are praying for quashing the order passed by the Principal Secretary, General Administration Department contained in Memo No. 12477 dated 12.9.2016 having stated that it is not possible to correct the anomalies in the list as the matter is so cumbersome that the Department cannot resolve the same and it is not required to make correction in the 2004 panel as also it is not possible to act on the basis of 2004 panel.

From the records, it appears that the District Magistrate cum Collector, Nawada had issued an advertisement dated 17.1.2004 in the “Hindustan Dainik” for preparation of panel of Class-4 employees. The advertisement was published as per direction of this Court in M.J.C. No. 2090 of 2001. After roster clearance of the Government, the District Magistrate vide letter no. 323 dated 10.12.2004 constituted a high level selection committee comprising 11 persons for recruitment of Class-4 post. A panel of successful candidate on merit was prepared, in turn, the District



Magistrate, Nawada vide letter dated 3rd, March, 2005 recommended for appointment of the candidates mentioned in the panel. The name of the petitioners are there in the panel and, accordingly, on the basis of letter of appointment, the petitioners joined their respective posts at different places and dates in the year 2006. The In-charge Officer, District General Administration Cell, Nawada wrote a letter to the Civil Surgeon cum Chief Medical Officer, Nawada on 3.6.2010 vide Memo No. 750 that On vide Memo No. 332 dated 1.6.2010, a gazette has been published comprising about 86 4th grade employees, out of that 51 were only appointed and their names were sent to the office of the Civil Surgeon and, whereafter, one Manoj Kumar Pankaj, who was below in the panel, rushed this Court in CWJC No. 14797 of 2009 and vide order dated 19.11.2009, this Court has recorded the claim of the petitioner that panel position of some of them was not commensurate with their earlier panel position and, on account of non-payment of salary to those working employees, directed the Chief Secretary, Government of Bihar to meet obligation emanating from Article 23 of the Constitution of India. In the order, it has been mentioned that the District Magistrate on 19.5.2009, nearly three years later, has written a letter to the Chief Secretary of the State that the Vigilance report was not available



despite long passage of time, because of which he was finding it difficult to disburse payment even though the District Administration required the service of such persons and continued to take work from them and the Court has shown seriousness on account of non-payment of salary which violates Article 23 of the Constitution of India which prohibits beggary and, as such, this Court asked the Chief Secretary of the State to ensure compliance of Article 23 of the Constitution forthwith considering the submission on behalf of the petitioner that some employees have died for want of fund. In the meantime, an application was filed by Sunil Kumar Pandey, Nitya Kumar Sinha, Markandey Nath Durge and Md. Naushad in CWJC No. 15961 of 2006 before this Court and this Court vide order dated 12.7.2010 has pointed out discrepancy in the preparation of panel of 2002 or 2004 but, did not pass any direction for payment of salary and the matter was left to the district authority or other functionary to proceed with the matter in accordance with the report of the Vigilance. The Vigilance report shows several deficiencies crept in preparation of the panel as certain persons who were entitled to be added in the panel have been left out and it has been recorded that the panel is of the 372 persons, out of them, 190 are such candidates, did not attach the experience certificate with the application form. At the



same time, no entry is available in the district level of the candidate applied for the said post nor the muster chart was prepared and it is not apparent that what was the reason for not adding certain candidates in the panel. It has further been said that certain persons who have crossed the upper age have also been added in the panel, 96 persons having been appointed and 22 persons were waiting for the appointment letter and out of 96, 21 candidates have been marked who do not possess any experience certificate. It has further been recorded that there is a great variance in 2002 panel and 2004 panel, as certain persons who were required to be in the 2004 panel from the list of 2002 panel were left out. It has further been recorded that the panel has not been prepared as per guideline and suffers from several deficiencies, whereafter, the District Magistrate has further constituted the Committee of five persons vide Memo No. 28 dated 19.1.2011 to examine the report of the Vigilance about the deficiencies pointed out in preparation of the panel. The Committee, after deliberation, has pointed out deficiencies pointed out by the Vigilance, categorized in the following manner; (1) no weightage was given with regard to experience, the panel has not been prepared in proper category and certain persons who applied in the year 2004 having been left out from the panel and finally the



opinion has been given for preparation of fresh panel. Several writ applications were filed with regard to appointment of those who could not receive the letter of appointment on account of certain deficiency cropped in preparation of panel and, this Court CWJC No. 9608 of 2010 and other analogous cases, has given direction which is as follows:-

“These writ applications are disposed of with a direction to the respondents to consider the cases of the petitioners in their respective categories for their appointment, if they are otherwise eligible, in the light of their ranking in the panel and in preference to the candidates who may have been included in the panel later on. The cases of the petitioners shall be considered and appropriate orders shall be passed preferably within a period of three months from the date of receipt/production of a copy of this order.”

In another case CWJC No. 658 of 2012, one Sujit Kumar has come to this Court making a prayer for quashing the vigilance report having stated that the same has been submitted without proper investigation. The Court has recorded that after vigilance report, the District Magistrate constituted a high level Committee of the officers under the Chairmanship of Deputy Development Commissioner, Nawada which was examining the matter and, at that time, there was nothing on record to show the



deliberation of the High Level Committee and it has been recorded that before passing any order against the petitioner, the Authorities are required to comply the requirement of principle of natural justice, whereafter, another group of persons, namely, Kailash Mandal and others have approached this Court in MJC No. 3938 of 2011 and other analogous cases, the Court has said that the matter was examined by respondents, ultimately found, in the panel of 2004, there was serious irregularities and they finally decided to cancel the same and recorded the stand of the State that a fresh select list of Class-4 employee would be prepared after considering the candidature of all the candidates ignoring the candidates whose names were recorded in 2002-2004 list after judging their suitability as per norms and directed to complete the process within three months. It also appears from the letter of the Civil Surgeon dated 10.12.2012 addressed to the District Magistrate, Nawada submitted the name of persons in the tabular form to examine the validity of their appointment attaching the vigilance report and other materials for necessary action. As it appears that in view of the direction passed in CWJC No. 15961 of 2006 in connection with 2004 panel vide letter dated 24.11.2011, the Committee constituted under the Chairmanship of District Magistrate, has found the panel was not prepared in accordance



with law and recommended to cancel the 2004 panel and directed that those who have been selected from 2004 panel, against them, appropriate action should be taken and, thereafter, in the later part, it is recorded that 130 persons from 2004 panel have been recruited and unanimously the Establishment Committee has taken a decision that services of all the 130 candidates from the panel should be dispensed with. The Civil Surgeon cum Chief Medical Officer vide order dated 18.5.2013 vide Memo No. 1417, 2395, 1381, 1382, 1377, 1383, 1385, 1392, 1414, 1403, 1400, 1372, 1374, 1409, dispensed with the services of the candidates. It has been submitted, certain persons selected have been working under administrative control of Executive Engineer, Phulwaria Canal Division, Sirdala have not been terminated by the Executive Engineer and they are in duty till date their names are in the tabular list. Again the writ application was filed by one Nawal Kishore Paswan and others in CWJC No. 6338 of 2014 and by Surjeet Kumar & Ors. in CWJC No. 7703 of 2014, both were clubbed together and finally, this Court in CWJC No. 6338 of 2014 and other analogous cases, disposed of vide order dated 17.3.2016, paragraph no.17 being relevant, reads as follows:-

“17. It is not abundantly evident from report of five men committee prepared in tabular form



that the discrepancies noticed in Vigilance enquiry set up by this Court were duly addressed. As such, I direct the Principal Secretary, General Administration Department, Government of Bihar (respondent no.2) to once again take an exercise whether it is possible to prepare a rectified panel after meeting the discrepancies as pointed out by the Vigilance department. It is expected that such exercise should be completed within a period of six months from the date of receipt of a copy of this order. If personal hearing is sought, the learned Principal Secretary would provide hearing to one or two persons in representative capacity. In case, after due scrutiny, the aforesaid candidates stand out successful, necessary order for their reinstatement would be issued.”

In that view of the matter, on account of report of the Vigilance and the order dated 12.09.2016 after final exercise conducted by the Principal Secretary, it is very difficult to save the 2004 panel and the persons appointed from that panel cannot be saved as certain persons who were to be in the panel have been left out and certain person has not been given proper place, the panel suffers from several infirmities and has been recorded, the matter has become so complex cannot be rectified. Accordingly, this Court is of the view that the 2004 panel cannot be saved and, accordingly, the same is scrapped but, this Court directs the



Collector, Nawada to prepare a fresh panel for 2004 panel from those persons who were applied against the vacancy published by the Collector attaching proper document and proper experience certificate. It is made clear that it cannot be made to other candidates who have not applied for the said post. The panel should be prepared as per roster, category-wise giving due weightage as per rule prevalent during that period, if those persons who are in service are still found their place in the panel of select list, their past services will be counted for the purpose of seniority.

All the exercised must be complied within a period of six months from the date of receipt/production of a copy of this order.

With the aforementioned observation and direction, all these writ applications are disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2019
Transmission Date	

