

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1359 of 2018

In

Civil Writ Jurisdiction No. 2746 of 2017

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1. Om Prakash Singh, son of Rajendra Prasad Singh, Resident of Village- Bhadaya, P.S. Muffassil, District- Bhojpur.
 2. Vinod Prasad Singh, Son of Late Gajendra Singh, Resident of Village- Mazua, P.S.- Ara, District- Bhojpur, Ara.
 3. Pramod Kumar Tiwari, Son of Rajeshwari Tiwari, Resident of Village- Bharkuia, Tiwari Tola, P.S. Barauli, District- Gopalganj, Bihar.
 4. Sri Krishna Baitha, S/o Phulana Baitha, Resident of Sipayafarm, P.S.- Kuchaikot, Distt- Gopalganj.
 5. Narendra Nath Tiwari, S/o Sri Dasrath Tiwari, Resident of Village- Janghi, P.S.- Garwar, Distt- Balia U.P.
 6. Dharendra Nath Tiwary, S/o Bankadhar Tiwary, Resident of Janghi, P.S.- Garwar, Distt- Balia U.P.
 7. Jitendra Narayan Singh, S/o Ramchandra Singh, Resident of Kachmus, P.S.- Nasariganj, Distt- Rohtas.
 8. Sataya Narayan Singh, S/o Dahibaran Singh, Resident of Bhahura, P.S.- Muffasil Ara, Distt- Bhojpur, Ara.
 9. Jaishankar Rai, S/o Kriti Rai, Resident of Khairwari, P.S.- Bhawarkol, Distt- Gazipur, U.P.
 10. Md. Naimuddin, S/o Awadul Raffik, Resident of Vill- Chandwa, P.S.- Ara Nawada, Distt- Bhojpur.

... .. Petitioners-Appellants

Versus

1. The State of Bihar, through Secretary, Department of Home, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, New Secretariat, Patna.
3. The Director, Department of Home (Prison), Government of Bihar, New Secretariat, Patna.
4. The Inspector General (Prison), Government of Bihar, New Secretariat, Patna.
5. The Central Selection Board (Constable Selection), through the Secretary, Saitara Bhawan, Patna.

... .. Respondents/Respondents

Appearance :

For the Appellant/s : Mr. Awadhesh Kumar Mishra, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-02-2019

Heard learned counsel for the appellants.

The appellants had served as temporary casual Warders. They contend that they ought to be retained in service keeping in view their initial appointment and the fact that when they were appointed, the educational qualification was only 7th pass. The contention raised is that the learned Single Judge has committed an error in arriving at the conclusion that with the aforesaid qualification, the appellants were not entitled to claim appointment as a matter of right. It is also submitted that in the earlier round of litigation, i.e., CWJC No. 2605 of 1992 decided on 20th of April, 1993, the Court had observed that the appellants would be entitled for relaxation. Apart from this, there is requirement of Warders in all the jails and in view of the fact that posts are available, there was no occasion for the respondents to have denied the said benefit to the appellants.

Not only this, learned counsel for the appellants further contends that the appellants are entitled to be treated as having been regularized on the post of Warders in the light of the period of their continuance on temporary basis, more so, when similarly



situate persons have been allowed to continue and are still continuing in service.

We have considered the submissions raised and we find that the qualifications which are prescribed for appointment as a Warder as on the date when the claim was set up was not possessed by the appellants. They may have possessed the qualification at the time of their initial appointment, but the same cannot be a ground to claim that they are entitled to be engaged on the basis of the same qualification even now. The claim of regularization is also equally misplaced inasmuch as if they were allowed to officiate and continued for some time, the same would not create any indefeasible right so as to claim regularization for which no rules are available.

The main ground of contention is that since similarly situate persons are being allowed to continue, the denial of the same benefits to the appellants is discriminatory and violative of Article 14 of the Constitution of India. The contention in short is that the same qualifications are possessed by such persons. In our opinion, if the continuance is *dehors* the rules, then the same cannot be a ground for invoking Article 14 of the Constitution of India, but otherwise, in the event, the State Government by exercising any power of relaxation or otherwise has been



continuing other similarly situate persons, then it will be open to the appellants to raise their claim which can be considered by the respondents in accordance with law. This Court, however, cannot issue a mandamus to the effect as prayed for in the light of what has been said above as we do not find any reason to interfere with impugned judgment on such grounds.

The appeal, therefore, is disposed of subject to the observations made above.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	NAFR
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