

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3585 of 2014

1. Ranjeet Kumar and Ors S/O Sri Ambika Prasad Resident Of Vill - Dhorahan, P.S. - Rampur Chowram, District - Arwal
2. Biswajeet Dasgupta S/O Sri Kalyan Kumar Gupta R/O - B-26/5, ECTP Phase IV E.M. Bypass Kolkata, West Bengal, At Present -C/O Shri Chandrama Singh, Ramlila Mathiya, P.S. - Bhagwanbazar, Chapra, Dist - Saran
3. Rajesh Prasad Singh S/O Late Upendra Prasad Singh R/O Vill - Bhikhanpur, P.O. - Kapsona, P.S. - Sahkund, District - Bhagalpur
4. Neena Kumari W/O Dr. Ravi Anand R/O Flat No. C/2, Patrakar Nagar, Lohia Nagar, Kankarbagh, Patna
5. Uday Balav S/O Sri Ram Bachan Singh R/O Vill. - Gulamihia Bagh, P.S. - Didarganj, District - Patna

... .. Petitioners

Versus

1. The State Of Bihar
2. The Principal Secretary, Health And Family Welfare Department, Government Of Bihar, Patna
3. The Under Secretary, Health And Family Welfare Department, Government Of Bihar, Patna
4. The Secretary, Bihar Public Service Commission, Bailey Road, Patna
5. Sri Chunendra Mahto S/O Late Santosh Mahto R/O - H.E.S.L. Tati Silvery Ranchi, Jharkhand
6. Sri Sachidanand Prasad S/O Sri Lala Prasad R/O Vill - Bind, P.S. - Bind, District - Nalanda
7. Sri Vikash Shiromani S/O Late Kaviraj Narendra Nath Baidya Usha Drug Centre, Pani Tanki Chowk, Katihar - 854105
8. Sri Rajendra Kumar S/O Sri Sita Ram Yadav R/O Mohanpur, P.O. - Sripur Hati, District - Madhubani
9. Sri Anil Kumar Prasad C/O Devi Prasad R/O Chandra Distributor, Tower Road Nawabganj, R/O Radhe Nagar, Hind Mission, Hirapur, Dhanbad, Jharkhand
10. Sri Rajesh Kumar Gupta C/O Devi Prasad R/O Mulli Matarda, P.O. - Sahebganj, District - Sahebganj
11. Sri Upendra Narayan Pandit S/O Late Keshwar Prasad Resident Of Mohalla - House No. 5/A, Tapeswar Nagar, P.O. - Bihar Veterinary College, Patna

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Vipin Kumar, Advocate
For the State	:	Mr. Ajay Kumar, AC to GP 4
For the BPSC	:	Mr. Gyanendra Kr. Skukla, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT



Date : 21-01-2019

Heard learned counsel for the petitioners, the respondents as well as the Bihar Public Service Commission (herein after refereered to as 'the BPSC').

Writ petition has been filed seeking a direction for amending/correcting the gradation/seniority list contained in Notification dated 18.11.2013 bearing No. 1242(15). Petitioners are Drugs Inspectors and are claiming seniority over respondent no.5 to 11 who have been shown above the petitioners in the gradation list dated 18.11.2013.

It is submitted by petitioners's counsel that the petitioners as well as private respondents have been appointed pursuant to recommendation dated 19.1.2002 in the selection process initiated under Advertisement no. 2 of 2000. Since in the recommendation respondent no. 5 to 11 are below the petitioners therefore their placement in the gradation list dated 18.11.2013 above the petitioners is not in accordance with law. It is further pointed out that the petitioners had made their representation when the private respondents were placed in the provisional gradation list published by the department, and that the same has not been considered by respondent authorities in its right perspective.



Learned counsel for the State has appeared and resisted claim of the petitioners. Relying upon the consideration made by the authorities on the representation of the petitioners, contained in notification dated 18.11.2013 it is submitted that the petitioners are not in a position to claim seniority over the private respondents since the private respondents are the beneficiaries of order passed in LPA No.1283 and 1349 of 1999 by a Division Bench of this Court on 16.5.2002.

Learned counsel for the State has pointed out with reference to the notification dated 18.11.2013 that the private respondents were applicant for appointment to the post of Drugs Inspector pursuant to Advertisement No. 29 of 1997. In the result published pursuant to order passed in C.W.J.C.No. 10942 of 1998 private respondents were not recommended for appointment. In the circumstances, they moved this Court. LPA No. 1283 & 1349 of 1999 arising out of the writ proceedings was decided along with MJC No. 3864 of 2000. In light of a decision passed in LPA No.1283 & 1349 of 1999, respondent numbers 5 to 11 were entitled to be treated as successful in the selection process initiated pursuant to Advertisement No. 29 of 1997, whereas petitioners were appointed pursuant to selection process initiated under Advertisement No. 2 of 2000. Paragraph



15 of the LPA judgment clearly contemplates such a situation.

For the sake of ease paragraph 15 of the LPA judgment is being reproduced:-

15. As noticed above, even though 39 candidates initially qualified for the viva voce test against total 215 vacancies, by virtue of the direction of the learned Single Judge only 18 of them were declared successful and accordingly recommended for appointment. The names of such of the candidates (except one S.T. candidate) who secured less than 40% marks were left out. It is thus clarified that by virtue of the present judgment of this Court, having secured the qualifying marks as fixed in the resolution dated 22.12.1990 the remaining candidates too would be treated as successful for the viva voce as test, as already was done. Subject to the result of the viva voce test and as per rule 14 of the Rules, they may be recommended to the government for appointment.”

In view of such situation, benefits of the recommendations made pursuant to Advertisement No. 29 of 1997 was extended to the private respondents. This fact had clearly been mentioned in the provisional gradation list of Drugs Inspector which was published on 7.1.2012. It had been clarified that the private respondents were being granted seniority in accordance with recommendations made on 19.5.2003 by the BPSC pursuant to which successful candidates, of the selection process initiated under Advertisement No. 29 of 1997, had been appointed. Such stand of the state appears to the Court also to be justified.



Private respondents were entitled to benefits of their gradation in terms of the order passed in their favour in LPA No. 1283 & 1349 of 1999.

Merely for the fact that common order of appointment was issued in respect of others also who had been extended the benefits of LPA No. 1283 & 1349 of 1999 vide notification dated 10.6.2004 (Annexure 6), the same cannot enure to benefit of the petitioners.

Their claim over private respondents has been considered in the provisional gradation list. Since no appointment letter was issued to them pursuant to LPA order passed in LPA No. 1283 & 1349 of 1999 private respondents were extended the benefits of decision passed by the Division Bench in LPA No. 1283 & 1349 of 1999 since they were treated as being recommendee under recommendation dated 19.5.2003 as that was a clear mandate of the Division Bench in LPA No. 1283 & 1349 of 1999.

In view of the facts and circumstances, this Court does not find any reason to interference with the final gradation list dated 18.11.2013 as seniority of the private respondents treating them as appointed pursuant to recommendation dated 19.5.2003 arising out of a transaction initiated by Advertisement No. 29 of 1997, is wholly justified in light of order passed in LPA No.



1283 of 1999 of which the private respondents were beneficiaries.

Writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	NAFAR
CAV DATE	NA
Uploading Date	27.2.2019
Transmission Date	NA

