

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2308 of 2017

1. Arun Kumar, son of Sri Nagendra Prasad Singh, resident of Village + P.O. - Rampur, P.S. - Jalalpur, District - Chhapra.
2. Ramdhani Mishra, son of Hira Mishra, resident of Village - Lakhonipur, P.O. + P.S. - Paharpur, District - East Champaran, Bihar.
3. Mithilesh Kumar, son of Vashisth Prasad Singh, resident of Village + P.O. - Kachumma, P.S.-Nasriganj, District – Rohtas, Bihar.
4. Raghunath Lohra, son of Late Gangadhar Lohra, resident of Village - Huddagarda, P.O.-Karaee Kela, District – Singhbhum, Chaibasa, Jharkhand.
5. Arun Kumar Roy, son of Sri Ram Sakal Roy, resident of Village+P.O. Bharthua, P.S. Auraee, District-Muzaffarpur.
6. Ashok Kumar Mishra, son of Sri Jitlal Mishra, resident of village - Bisumpur, P.O.-Khutahi, P.S.- Paro, District – Muzaffarpur, Bihar.
7. Ram Nandan Sah, son of Sri Sahdeo Sah, resident of Village P.O.-Konsar, P.O.-Belsand, District - Sitamarhi.
8. Hari Kishore Singh, son of Sri Haribansh Singh, resident of Village + P.O. Dumra, P.S. Belsand, District Muzaffarpur, Bihar.
9. Hari Kishore Mandal, son of Late Kapileshwar Mandal, resident of village - Kundal, P.O.-Belhiya, P.S.-Belsand, District-Sitamarhi, Bihar.
10. Bipin Kumar Verma, son of Ramjeenish Lal, resident of Village + P.O. Bhinda Pokhar, P.S.-Sheohar, District – Sitamarhi, Bihar.
11. Baleshwar Singh, son of Shri Ramharan Singh, resident of village-Salhanda, P.S.-Makhdumpur, District - Jehanabad.
12. Munga Prasad Yadav, son of Shri Ramagya Prasad Yadav, resident of village+ P.O.-Barharwakala, P.S.-Kotwa, District - East Champaran, Bihar.
13. Ram Babu Das, son of Shri Yogendra Das, resident of Village + P.O. - Jeetwarpur, Kumhar, P.S. Sarai Ranjan, District – Samastipur, Bihar.
14. Md. Mustaque, son of Md. Raees, resident of Village + P.O.- Sarai, P.S. Khalmanpur, District – Begusarai, Bihar.
15. Raghwendra Kumar, son of Shri Ram Saran Singh, resident of village - Birpur Malikana, P.O.+ P.S. - Birpur Malikana, District – Sitamarhi, Bihar.
16. Parvesh Kumar Roy, son of Shree Ram Sakal Roy, resident of Village + P.O. - Bharthua, P.S.-Auraee, District – Muzaffarpur, Bihar.
17. Bhusan Kumar Sharma, son of Bidhya Kishor Sharma, resident of Village + P.O.-Bharthua, P.S.-Auraee, District - Muzaffarpur

... .. Petitioner/s

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 Chairman, Central Selection Board, Shree Sai Tara Complex, I.A.S. Colony, Jawaharlal Nehru Marg, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Advocate
		Mr. Shailesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Apurva Kumar, AC to GA-4

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 18-04-2019

Heard Mr. Tej Bahadur Singh, learned senior advocate for the petitioners and Mr. Apurva Kumar, learned advocate for the State. There is no appearance on behalf of the Central Selection Board (respondent No. 5).

The petitioners have approached this Court under special circumstances with a peculiar prayer viz. to exempt them from being subjected to the same kind of physical test before appointing them as Warders in jails, as is required for fresh aspirants.

As a background fact, it may be stated that the petitioners were appointed as temporary Warders in Central Jail, Muzaffarpur against an advertisement which was issued in the year 1983. The appointment of the petitioners on such



post of Warders was purely temporary but they were allowed to continue on such posts till the year 1992. In 1993, no extension was given to them, forcing them to approach this Court vide C.W.J.C. No. 2605 of 1992 (Prem Sagar Shahi & Ors versus State of Bihar & Ors). Though the Bench which heard the matter, by order dated 20.04.1993 dismissed the writ petition but directed that in case the government felt the necessity of more Warders in the jails of Bihar, the petitioners would be considered and in case of necessity, would be given the privilege of age relaxation.

In deference to the aforesaid order passed by a Bench of this Court way back in the year 1993, an advertisement was issued by the respondents vide Advertisement No. 3 of 2015 dated 07.08.2015 contained in Memo No. 4625. The petitioners were given the age relaxation and were permitted to appear in the selection process.

This Court also has noticed that by the year 2014, the cadre rules for Warders were also framed and the minimum educational qualification for a person to become a



Warder was enhanced from 7th pass to matriculation. However, keeping in mind that age relaxation had been given to some of the persons who had worked as Warders on temporary basis for a long time, the educational qualification requirement was waived and even though some of the retrenched Warders were not matriculates, they were also retained in the service.

Mr. Tej Bahadur Singh, learned senior advocate for the petitioners, therefore infers that the direction of age relaxation, inhered in it the necessary concomitant of relaxation at other fronts as well; otherwise, such age relaxation would have been rendered meaningless. If it were not for this principle, the State would have surely insisted upon the requisite qualification in the cadre rules of 2014, but the same was waived.

In the aforesaid background, Mr. Singh, learned senior advocate has urged before this Court that the order passed by the Division Bench in the year 1993, reference of which has been made in the preceding paragraph, would be said to be taken to its most logical conclusion, if the



petitioners are not put to the same rigours of physical test as the aspirants who apply afresh are being put to.

In support of the aforesaid contention, it has also been argued that while the petitioners were appointed on a temporary basis as Warders, they were put to physical test and which they had passed successfully. Thus, with the passage of time and with the age relaxation to them, it is but logical that they be given relaxation with respect to physical tests as well.

However, the aforesaid issue would have to be decided by the concerned authority and a separate parameter which would be less taxing/enduring may have to be thought of by the concerned authority/respondent.

It has also been urged before this Court that the appointment process against the Advertisement No. 3 of 2015 is still on-going and about 89 posts of Warders are still vacant.

Under the aforesaid circumstances, this Court directs the petitioners to make a representation before the Inspector General (Prisons), Government of Bihar, Patna



(respondent No. 4), seeking some relaxation in the physical test on the ground of their having been appointed on temporary basis in 1983 after successfully passing the physical test and further on the reasoning of age relaxation having been given to them with the necessary corollary of less strenuous physical test, within a period of four weeks from today. On receipt of such representation, the concerned respondent shall look into the matter and consider the desirability/feasibility of making such amendments in the selection process so as to accommodate the petitioners, keeping in mind that they have the experience of Warders and have successfully rendered their services from 1983 to 1992 and most of whom have the requisite qualification of matriculation as set in the cadre rules. The representation of the petitioners shall, on such grounds, be disposed off by a reasoned order within a period of six weeks thereafter.

It is necessary to state that such an observation has been made by this Court only keeping in mind that the State is expected to be a model employer and if in deference of an order passed by this Court, the age requirement has



been relaxed, it is only logical that certain relaxation be given to the petitioners in the physical tests also.

With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25/04/2019

