

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9232 of 2017

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1. Dipak Kumar, Son of Sri Naresh Chandra Verma, Resident of Village/ Mohallah- Gulabbagh, Santoshi Mata Mandir, Bettiah, P.O. & P.S.- Bettiah, District- West Champaran (Bihar).
 2. Raja Kumar Gupta, Son of Shardanand Prasad Gupta, Resident of Village/ Mohallah- Kalwarpatti, Ward No. 05, Chanpatiya P.O. & P.S.- Chanpatiya, District- West Champaran (Bihar).
 3. Ramesh Kumar, Son of Biga Pandit, Resident of Village/ Mohallah- Shivganj, Ward No. 08, P.O.- Narkatiyaganj, P.S.- Shikarpur, District- West Champaran (Bihar).
 4. Dilip Kumar Sharma, Son of Durga Sharma, Resident of Village/ Mohallah- Maldahiya, P.O.- Narkatiyaganj, P.S.- Shikarpur, District- West Champaran (Bihar).
 5. Vikas, Son of Satyendra Singh, Resident of Village/ Mohallah- Harnhiya, P.O. & P.S.- Sathi, District- West Champaran (Bihar).
 6. Khushbu Keshri, Daughter of Jagarnath Prasad, Resident of Village/ Mohallah- New Colony, Rajendra Nagar, Kalibagh, Bettiah, P.O. & P.S.- Bettiah, District- West Champaran (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. Bihar Prasashnik Sudhar Mission Society (BPSM), General Administration Department, Bihar, Patna through the Mission Director.
4. The District Magistrate, West Champaran at Bettiah.

... .. Respondent/s

Appearance :

For the Petitioners : Mr. Raju Giri, Advocate.

For the Respondents : Mr. Md.Nadeem Seraj - GP 5.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 02-01-2019

Heard Mr. Raju Giri, learned advocate for the petitioners and Mr. Md. Nadeem Seraj, G.P. 5 for the State of Bihar.

2. The petitioners have prayed for issuance of a direction to the respondents to appoint them on contractual basis on the post of Executive Assistant in Bettiah



Collectorate and other line departments within the district from the panel prepared in the year 2013. The petitioners have also challenged the decision of the government in not accepting the candidature of the petitioners no. 1, 2, 4 and 5 for being considered for appointment on the post of Executive Assistant on the sole plea that the panel which was prepared in the year 2013 had a life only till 31st of March, 2017 after two extensions having been given to the aforesaid panel.

3. From the perusal of records, it appears that an advertisement was issued by the Bihar Prasashnik Sudhar Mission Society (BPSM, Bihar, Patna) for appointment of Executive Assistant from a panel prepared for the same for one year in different line departments of the district of West Champaran at Bettiah and the aforesaid appointment had to be in order of merit. At the time of the advertisement, referred to above, there were 435 applicants including the petitioners. The life of the panel was twice extended and the validity existed only till 31.03.2017.

4. The appointments had to be made pursuant to the vacancies in the post of Executive Assistant for which requisitions had to be made by the different line departments within the district.



5. It is the case of the State that 123 applicants were appointed from the said panel for the district of West Champaran. The other appointments could not be made despite there being vacancy on the ground that various departments did not send the requisition properly. Some of the requisitions from different departments were found to be incomplete and those departments were directed/requested for issuing fresh requisition as per new model roster, for the appointment process to be completed. Before such requisition on the basis of new model roster could be made available for the purposes of appointment, the validity period of the said panel expired. Faced with this situation, the petitioners have been shut out from being considered for being appointed as Executive Assistant in the aforesaid district.

6. Mr. Nadeem Seraj, learned Government Pleader-5 has submitted that the force of the panel ended on 31.03.2017 and hence no enforceable claim of the petitioners existed. A separate panel has now been made and it would not be in the mouth of the petitioners to claim appointment on the basis of an erstwhile panel which no longer is alive. He has further submitted that the law with respect to the right of a panelist is too well settled to be adumbrated. A person whose name falls in a panel does



not have an authoritative right of being appointed. He has only a right to be considered.

7. As opposed to the aforesaid contention of the State, Mr. Raju Giri, learned advocate for the petitioners has submitted that the stand of the State that the vacancies could not be filled despite requisition because of such requisitions being incomplete, is self-defeating. The petitioners who were the panelists could not have been faulted for such faulty requisition by the respective line departments.

8. He has further submitted that there is no doubt that a person whose name finds mention in a particular panel does not have a right to get appointed but only a right to be considered nonetheless, when persons similarly situated, meaning thereby that whose names fell in the erstwhile panel were also being considered for being appointed on the post of Executive Assistant in different line departments in different districts, there is no reason why the petitioners ought to be shut out from being considered for being appointed.

9. Lastly, it has been submitted by Mr. Giri that the Government of Bihar in its General Administrative Department has come out with a circular in the year 2011, stating that the panel prepared for the consideration for appointment of Executive Assistant would be continuous



and that the next panel would include the names of the candidates who have not been appointed from the erstwhile panel. The circular further indicates that unless all the persons of a particular panel/erstwhile panel had been appointed, persons from the new panel will not be chosen for being appointed on such post.

10. The aforesaid circular however only means that the appointment has to be made from the existing panel and not from a panel which has expired. However, Mr. Giri submits that the inclusion of petitioners no. 3 and 6 in the new panel only reflects that the Government has adopted a pick and chose policy without there being any basis for distinguishing the case of the other petitioners from petitioners no. 3 and 6, whose names have been included in the fresh panel. For the preparation of panel fresh, applications are not required from the persons who had applied earlier. In that view of the matter, there is no justification for keeping petitioners no. 1, 2, 4 and 5 out of the domain of consideration for the post of Executive Assistant.

11. It has further been submitted on behalf of the petitioners that a bench of this Court in C.W.J.C. No. 10281 of 2016 has found that in view of the circular of 2011 of the General Administration Department, no fresh



appointment could be made without exhausting the list of empanelled candidates in the previous panel.

12. The manner in which Mr. Giri seeks to interpret the aforesaid finding of the coordinate bench is not correct in the estimation of this Court. However, what has struck this Court is that the candidates, whose names fell in the earlier panel, are being considered despite the expiry of such panel, in the neighbouring district of East Champaran.

13. In that view of the matter, this Court cannot countenance different treatment to different people who are similarly situated. It would be against the basic principle of service jurisprudence to shut out some persons only on the lame plea that the panel expired on 31.03.2017. That apart, this Court has taken note of the fact that the appointment of the petitioners could not be made for the reason that the requisitions from the various line departments were faulty/incomplete.

14. In that view of the matter, the cases of the petitioners can be likened to the case of the petitioners of C.W.J.C. No. 10281 of 2016 about which reference has been made earlier.

15. Learned counsel for the State is also not in a position to explain as to why different treatment is being given to the panelists in different districts and the reasons



for including petitioners no. 3 and 6 in the new panel, to the exclusion of the other petitioners.

16. This Court, therefore, has no option but to treat the petitioners in the same manner and direct the respondent authorities to consider the claim of the petitioners afresh in the background of the policy decision which was taken on 20.05.2011 and dispose of their representations which they shall file within a period of three weeks from the passing of this order, within a period of four weeks from the date of receipt/production of a copy of this order along with their representation.

17. The writ petition is, accordingly, disposed off.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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