

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18094 of 2018

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1. Arti Kumari Daughter of Sri Kashi Nath Tiwari Resident of Village-Bara Sihanpura, Police Station- Simari, District- Buxar.
 2. Amrita Mishra Wife of Sri Rajesh Tiwari Resident of Village- Pandey Patti, Police Station- Buxar, District- Buxar.
 3. Jyotismati Kumari Daughter of Nagina Prasad Resident of Village- Katgharba, Police Station- Chausa, District- Buxar.
 4. Anju Kumari Wife of Sri Ajay Kumar Resident of Station Road Dumraown, Police Station- Dumraon, District- Buxar.
 5. Kumari Shweta Rai Wife of Dhananjay Rai Resident of Village- Charitrawan, Police Station- Buxar, District- Buxar.
 6. Roopam Kumari Daughter of Dharmnath Kumar Resident of Village- Dumari, Police Station- Simari, District Buxar.
 7. Sadhana Devi Wife of Mahavir Bhagat Resident of Village- Chhotki Sarimpur, Police Station- Buxar, District- Buxar.
 8. Sunita Kumari Wife of Shashi Kant Mishar Resident of Village- Nandpur, Baluan, Police Station- Brahampur, District- Buxar.
 9. Kumari Shashiwala Sharma Wife of Sri Sanjay Kumar Sharma Resident of Village- Kanjharua, Police Station-Dumraon, District- Buxar.
 10. Firoza Bano Wife of Md. Irfan Resident of Village- Raghunathpur, Police Station- Brahampur, District- Buxar.
 11. Sunita Kumari Daughter of Bimal Prasad Resident of Village- Harpur, Basudhar, Police Station- Itadhi, District- Buxar.
 12. Preeti Kumari Daughter of Bhola Kanaujia Resident of Village- Machharhatta Put, Police Station-Buxar, District- Buxa.r
 13. Renu Prabha Wife of Upendra Kumar Ram Resident of Village- Rajpur, Police Station- Buxar, District- Buxar.
 14. Rinku Kumari Daughter of Surendra Ram Resident of Village- Bagen Gola, Police Station- Buxar, District- Buxar.
 15. Shipra Kumri Daughter of Baliraj Thakur Resident of Village- Gai Ghat, Police Station- Brahampur, District- Buxar.
 16. Sweta Kumari Daughter of Govind Singh Resident of Village- Rajpur, P.S. Rajpur, District- Buxar.
 17. Usha Kumari Daughter of Onkar Nath Dubey Resident of Kali Ashtan By Pass Road, Buxar, P.S. Buxar, District- Buxar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Social Welfare, Govt. of Bihar, Patna.
3. The Director, I.C.D.S. Bihar, Patna.
4. The Divisional Commissioner, Patna.
5. The District Magistrate, Buxar.
6. The District Programme Officer, I.C.D.S. Buxar.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Md. Shakir Ahmad
For the Respondent/s : Mr. Md.Raisul Haque -Sc10

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 29-01-2019

Heard Ms. Nivedita Nirvikar, learned counsel for the petitioners and Mr. Krishna Kant Singh, learned AC to SC-10.

The petitioners have approached this Court for quashing of the order contained in Memo No. 401 dated 08.08.2018 issued under the signature of Commissioner, Patna Division, Patna as also the order contained in Memo No. 882 dated 13.08.2018, issued under the signature of the District Magistrate, Buxar, whereby the appointment of the petitioners on contractual basis for one year, to be extendable further, on the post of Lady Supervisor has been cancelled as well as against the decision of the District Magistrate to float an advertisement as well as the advertisement, inviting applications for fresh appointment of Lady Supervisor henceforth.

Learned counsel for the petitioners has drawn the attention of this Court to the fact that pursuant to the



advertisement issued in the year 2010, the petitioners had applied and had become successful in being appointed as Lady Supervisor. On their being successful, they were sent to different centres to perform their duties as Lady Supervisors. The initial period of appointment / engagement was for a period of one year which was to be extended depending upon the facts and situation of the case. The tenure of the petitioners have been extended for several years by now. On a complaint made by one of the unsuccessful candidates, an enquiry was conducted by the Commissioner and it was found that the appointment process was not in consonance with the resolution in that regard which was issued by the Government in the year 2010. As such, by the order impugned, the entire selection process was set aside with a direction to the District Magistrate, Buxar to initiate a fresh process of selection of Lady Supervisors in accordance with the Rules / Resolution of the Government in that regard.

Ms. Nivedita Nirvikar, learned counsel for the petitioners has vehemently challenged the aforesaid order passed by the Commissioner on the ground that the complaint



of an unsuccessful candidate which was lodged earlier and only repeated later, was acted upon without giving any opportunity to the petitioners to show-cause that their appointment was not at all irregular and that they had the qualification and the merit to be engaged as Lady Supervisors. The order does not indicate, it has been argued, as to in what manner was there a departure from the Rules of 2010 while appointing / engaging the petitioners on the post of Lady Supervisors.

It has further been submitted that the successive/repeated extension of the tenure of the petitioners presupposes that there was no complaint against them and they had been performing their duties to the best of their ability and to the satisfaction of everyone concerned. Had it not been the case, the contract would not have been extended for so many years. Under the circumstances, it has been submitted, that if at all the government was desirous of initiating a fresh process of appointment / selection of the Lady Supervisors in tune with the employment policy of the State, there was no reason not to allow the petitioners to complete



their term and only thereafter, fresh process of appointment ought to have been initiated.

True it is, it has been asserted, that the petitioners do not have a right over such post which is only contractual in nature, but considering that the tenure was extended several times, it was not proper / advisable for the government to have passed an order terminating such contractual appointment by one order thereby leaving the post of Lady Supervisors vacant. It was only on the clarification sought by the Director, ICDS, Bihar, Patna that it was again directed that the posts which have become vacant with the cancellation of the appointment of the petitioners, be filled up by a fresh process of appointment. Pursuant to the aforesaid clarification, a fresh advertisement has been issued, which has also been impugned by way of interlocutory application.

Learned counsel appearing for the State however has submitted that with large scale irregularities in the appointment process having been noticed / unearthed, it would not have been practicable / desirable for issuing individual notices to such appointees who were engaged on contract basis. The



learned counsel appearing for the State however does not deny that this litigation could have been averted / avoided, if the appointees / petitioners would have been given one month's prior notice for termination of the contract of service. That not having been done, learned counsel for the State only defends the order on the ground that the petitioners cannot claim perpetuity of a contract in their favour which was granted to them for the first time in the year 2011.

In any view of the matter, it has been argued, the petitioners would not be precluded from applying pursuant to the fresh advertisement for appointment of Lady Supervisors.

From perusal of the advertisement of 2018, which has been brought on record by way of interlocutory application, it appears that the qualification fixed for a desirous applicant is the same what was there in the year 2010. Obviously, this is in terms of the resolution of the State Government passed in that regard.

Taking into account that the terms of contract of appointment of the petitioners still survives and there was no reason for setting aside the entire list of selected candidates



thereby terminating their appointment mid-way as also noticing the other view point that the petitioners do not have a right to continue on the aforesaid post perpetually as well as the employment policy of the State, this Court deems it appropriate to record that the following directions be considered by the respondents concerned:

(1) The appointment process which has begun with the issuance of advertisement be completed finally within a period of four months, with an endeavour of the employer to complete it earlier than the afore-mentioned period;

(2) The petitioners who have served successfully as Lady Supervisor be allowed to apply and participate in the selection process;

(3) If the petitioners have not applied and the date of application has ended, then they be given relaxation with respect to the cut-off date for application so that they are not rendered jobless and left high and dry without any fault of theirs;

(4) In case they have become over-age, i.e., they do not have the requisite age, depending upon the category in



which they apply, their candidature be considered by giving them relaxation of age of two to three years, depending upon the decision of the executive; and

(5) The government should also consider giving some weightage to the experience which the petitioners have gained while serving as Lady Supervisors.

The petitioners are directed to represent before the Principal Secretary, Social Welfare, Government of Bihar, Patna alongwith a copy of this order within a period of two weeks, which shall be acted upon by Respondent No. 2 within a further period of two weeks thereafter, with a speaking order.

Before parting, it is also observed that the Respondent No. 2 shall also consider that till the fresh selection process is given effect to, the petitioners be allowed to function as Lady Supervisors as a stop-gap arrangement which will ensure that scheme is not rendered stand still in between.

With the aforesaid observation / direction and with the hope that the government, as a model employer, shall follow all this, the writ petition is disposed off.



The Interlocutory Applications also stand disposed off,
accordingly.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	04.02.2019
Transmission Date	

