

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24642 of 2018

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1. Rahul Kumar S/o Shri Awadhesh Prasad Gupta R/o Mohalla-Dahiyawa Mahmood chowk, P.O- Chapra, P.S-Chapra, Town Dist- Saran.
 2. Dhiraj Kumar Shrivastava, S/o Late Surya Prakash Shrivastava R/o village-P.O.-Pachvinda, P.S- Taraiya, Dist- Saran.
 3. Kedar Nath Sharma S/o Late Ram Janam Sharma R/o mohalla-Mouna Ahir Toli, P.O.P.S.-Chapra Town Dist-Saran-841301.
 4. Kamlesh Kumar S/o Shri Kedar Nath Sharma R/o VillP.O- Sadhpur P.S-Garkha, Dist-Saran.

... .. Petitioners

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Director, Administration Reforms Mission Society, Patna.
4. The Director General of Police, Vigilance Department. Government of Bihar, Patna.
5. The Additional Director, Bihar Administrative Reforms Mission Society General Administration Depart
6. The District Magistrate, Saran.
7. The Deputy Collector establishment, Saran at Chapra.
8. The District Development Commissioner Saran at Chapra
9. The Officer in charge, RTPS Cell, Saran a Chapra.

... .. Respondents

Appearance :

For the Petitioners :	Mr. Shashi Shekhar Tiwary, Advocate
For the Respondent State:	Mr. Md.Nadim Seraj, G.P.-5
For the Intervenor :	Mr. Atul Kumar Mehta, Advocate
For the Intervenor :	Mr. Mrigank Mauli, Advocate
For the Vigilance :	Mr. Anjani Kumar, Senior Advocate
	Mr. Awadesh Kumar Singh, Advocate
	Ms. Sushmita Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

10 12-11-2020

Though the docket of this case has become voluminous with the filing of so many rival pleadings on behalf of rival parties, since, in my opinion, the writ application is not



maintainable and is fit to be dismissed on the said ground alone, it has not been considered necessary to refer to all such pleadings on the merits of the claim raised by the petitioners. Only such facts are being taken note of which are germane to record the conclusion that this writ application is not maintainable.

2. The petitioners, four in number, have filed the present writ application seeking following reliefs :-

“That the petitioners invoke the jurisdiction of this Hon’ble Court for the following reliefs:

i. The respondent no. 4 or other contempt Authority/committee may kindly be directed to examine the involvement of the District Magistrate, Saran in issuing memo no. 1197 dated- 10.08.2018 with regard to conducting fresh selection process for the post of executive assistants in complete disregard and deviation from the departmental guidelines issued vide letter no. 309 dated 20.05.2011 so also against the Hon’ble Court’s decision passed in CWJC No. 10281/2016.

ii. The Respondents also may kindly be directed to ensure immediate engagement/employment of the petitioners who were/are having remarkable rank in the panel of year 2013-14 prepared on completion of the competitive examination test the validity and suitability of the petitioners alongwith others in view of the guideline issued vide the Govt. letter no. 309 dated 20.05.2011 and the principle so decided by the Hon’ble Court’s order above said while declaring the entire exercise including result of fresh selection continued vide memo. 1197 dated- 10.08.2018 (Annexure 9 Page 6) as nonests in the eye of law.



iii) Adequate compensation along with the cost of this petition be allowed to the petitioners while realizing/recovering the same from the pocket of the erring officials/respondents.

iv) Any other relief/reliefs also may kindly be allowed for which the petitioners be found entitle in the opinion of this Hon'ble Court."

3. The controversy relates to engagement of Executive Assistants in the district of Saran on contractual basis on the basis of advertisement issued in 2013. A panel was prepared in 2014 pursuant to the said advertisement on the basis of written examination and other tests, in accordance with the respective merit of the candidates. The petitioners were empanelled in the panel of 291 successful candidates. Out of 291, 120 were engaged on contractual basis. After appointment of 120 candidates, the respondents initiated fresh steps for engagement of Executive Assistants in 2015 and based on the said advertisement of 2015 a panel has been prepared in 2018. The petitioners, as is evident from the relief sought for in the present writ application, are claiming their right to be engaged/employed on the basis of the panel prepared in the year 2013-14 and are seeking a declaration that entire exercise undertaken right from publication of advertisement in the year 2015 and publication of result of fresh selection on that basis contained in Memo No. 1197 dated 10.08.2018 is *non est* in the



eye of law.

4. In paragraph 6 of the writ application, following statement has been made : -

“ 6. That same (*sic*, some) of the person (*sic*) who claim themselves to be aggrieved with said action of arbitrariness moved before this Hon’ble Court while filing CWJC No. 6495/2017 but failed to point out venous (*sic*) important facts required to be noticed for proper dispensation of justice however the same stand disposed on 18.08.2018 itself.”

5. In paragraph 12 following statement has been made : -

“That the petitioners have not moved before this Hon’ble Court either for the grievances even which are subject matter of this Hon’ble Court.”

6. By making statement in paragraphs 6 and 12 in the writ application, as quoted above, the petitioners have tried to impress upon this Court that not they, but some other persons had approached this Court by filing C.W.J.C. No. 6495 of 2017, but the petitioners of that case had failed to point out various important facts before this Court for proper adjudication. This is an admitted fact that the said C.W.J.C. No. 6495 of 2017 has been disposed of by an order dated 18.08.2018, a copy of which has been brought on record by way of Annexure-6 to the writ application. It is recorded here, at the cost of repetition, that the petitioners have made specific averment in paragraph 12 of the writ application, as quoted above, that they had not moved



before this Court earlier. It transpires from paragraph 9 of the writ application that Civil Review No. 455 of 2018 and L.P.A. No. 1355 of 2018 have been preferred by the petitioners of C.W.J.C. No. 6495 of 2017. Both the cases are still pending before this Court. The petitioners have not stated as to whether they are parties in the said L.P.A. No. 1355 of 2018 and Civil Review No. 455 of 2018.

7. There were 36 petitioners in C.W.J.C. No. 6495 of 2017 as is evident from Annexure-6 to this writ application. On careful scrutiny of the cause title of the said C.W.J.C. No. 6495 of 2017, it has been discerned that petitioners No. 1, 2, 3 and 4 in this writ application were petitioners No. 15, 3, 10 and 26 respectively of C.W.J.C. No. 6495 of 2017. There cannot be any dispute about the fact that the grievance, which the petitioners have raised in the present writ application was raised in said C.W.J.C. No. 6495 of 2017. It is also evident from the said order that Mr. Shashi Shekhar Tiwary, learned counsel, through whom the present writ application has been filed, had appeared in that case representing some of the persons, who had made application to intervene in the matter, which was rejected. The fact that the petitioners had claimed same relief in C.W.J.C. No. 6495 of 2017 on the basis of identical facts is evident from the



following portion of the order dated 18.08.2018 passed in the said case : -

“The short fact of this case is that on 6.6.2013, an advertisement was published by the Bihar Prashasnik Sudhar Mission Society, General Administration Department, Government of Bihar inviting application from the eligible candidates for the post of Data Operator (Executive Assistant) in Bihar. The advertisement mentions that the application has to be filed on-line and they will be paid the consolidated amount of Rs. 7,000/- per month, the age should be in between 18 to 45 but, the number of post has not been mentioned in the said advertisement but, in paragraph no.5, the petitioners has mentioned that 291 seats of the Executive Assistant for the Saran District and the break-up has also been provided as 77 for general, 81 for BC, 87 for EBC, 29 for SC, 1 for ST and 15 for BC Female. As per advertisement, the written examination was conducted, the petitioners and others were declared successful and merit list was prepared which was published on the official website of the Saran Division and, thereafter, the computer test was also taken in between 31.4.2014 to 12.8.2014. Finally, the petitioners were selected and the petitioners and others have been impaneled in the list of successful candidates. As per merit list, this panel was valid for one year but, it was extended and remained valid for three years. The panel was prepared in the year 2014 and, later on, the letter of Principal Secretary cum Director of the Mission shows that instead of life of panel for one year, it was made to three years but, the panel was rescinded vide letter dated 16.11.2016 by the District Magistrate, Munger wherein it has been recorded that the life of panel was three years and that life is over and, ultimately, the petitioners were not appointed as Executive Assistant.”



8. This Court, after taking note of rival pleadings brought on record in the said case and submissions advanced on behalf of the parties, recorded its opinion in following terms : -

“The fact is that the life of panel was one year but, it has been extended up to 2016, 120 persons have been appointed and, at later stage, the District Magistrate, Munger declared the panel to be invalid and no person below the petitioners have been appointed as Executive Assistant. So, he tried his best to persuade this Court for engagement on the basis of letter dated 10.8.2018 but, this letter is not very much clear as to whether this will be applicable to the persons who were impaneled in the year 2014 but, it shows that those applicants invited on the basis of notification dated 31.3.2015 will be covered. Learned counsel for the petitioners has also placed reliance on the letter dated 20.5.2011 written by the Director, Mission that till the panel is exhausted, all the persons under the waiting list should be engaged.”

9. It is to be kept in mind that this Court's order dated 18.08.2018 is in relation to the same selection process in the district of Saran. The Court clearly held that the life of the panel was only one year and it was extended up to 2016.

10. The petitioners main claim of their engagement on contractual basis on the basis of panel prepared in 2014 having been already adjudicated upon by this Court, in my opinion, this second writ application seeking same relief cannot be entertained.

11. This writ application is ill advised and misconceived. I



have failed to appreciate the reasons why the petitioners have sought for directions to examine the involvement of the District Magistrate, Saran, in issuing Memo dated 10.08.2018 with regard to conducting fresh selection process. The Court forms an opinion that such plea has been made only to intimidate an officer, which this Court strongly deprecates. The conduct of the petitioners in failing to specifically disclose that they were petitioners in the earlier proceeding, i.e., C.W.J.C. No. 6495 of 2017, is highly reprehensible and deserves to be deprecated in strong terms, which I do.

12. This Court is of the definite opinion that this second writ application, based on same set of facts between same set of parties, seeking substantially same relief, is barred by the doctrine of *res judicata*.

13. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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