

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21948 of 2019

1. Pramod Kumar Son of Sri Kameshwar Prasad Bhagat, Resident of Village-Goldar Patti, P.S.-Nathnagar, District-Bhagalpur.
2. Ajit Kumar Rajak (M) Son of Sri Jichcho Rajak Resident of -Sahebganj (Dhanuk Toli Lane)-P.S.-Vishwavidayalya, District-Bhagalpur.
3. Sanjay Kumar Bharti Son of Late Shivraj Ram, Resident of-Kushwaha Vatika, Eshaw Chak, P.S.-Bhagalpur.
4. Kumar Gourav Son of Sri Ram Kripal Choudhary, Resident of Village-Fatehpur, P.S.-Zero Mile, District-Bhagalpur
5. Braj Kishore Son of Sri Upendra Lal Rajak resident of Vikhanpur Gumti, P.O.-Sadar, P.S.-District-Bhagalpur.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary General Administration Department, Government of Bihar, Patna.
2. The District Magistrate, Bhagalpur.
3. The Additional Collector Bhagalpur.
4. The Deputy Development Commissioner Bhagalpur.
5. The Establishment Deputy Collector, Bhagalpur.
6. The District Welfare Officer, Bhagalpur.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Arup Kumar Chongdar
For the Respondent/s : Mr.P.K.Verma (Aag3)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 09-01-2020 The matter relates to appointment against Class IV post in Bhagalpur Collectorate and other connected offices under the said Collectorate on the basis of panel prepared of such employees, who were working on daily wages basis.

In my view, the present case is squarely covered by a decision of this Court dated 18.12.2019 passed in case of ***Kapil Kumar and Others vs. The State of Bihar and Others***



(C.W.J.C. No. 18612 of 2019) and analogous cases. Paragraphs

28 and 29 of which read thus : -

‘28. Noticing the constitutional provisions and the law as declared by the Supreme Court referred to above, in my opinion, the advertisement to the extent it allows preference under sub-clause (1)(2)(3)(4)(5) and (6) of Clause 7 are held to be illegal, violative of Articles 14 and 16 of the Constitution of India and are struck down accordingly. Though, it may be open for the respondents to allow some reasonable weightage on rationale basis for those having work experience after having been selected through a transparent process of selection, the work experience as daily wager simpliciter cannot itself be the sole/ main criteria for selection and appointment. The respondents are obliged to follow a fair process of selection in accordance with the statutory rules and constitutional mandate. It is noteworthy that though the rules have been framed for selection and appointment against Class-IV(Group-D) posts, no clear and definite process of selection has been laid down, therein. If no transparent, fair and impartial procedure is adopted for judging the inter se merit of the candidates, who have applied in response to the advertisement made, the eligible candidates cannot get a fair chance to compete, which would be violative of the guarantee enshrined under Article 16 of the Constitution, as held in case of UPSC vs. Girish Jayanti Lal Vaghela (supra).

29. These writ applications are accordingly disposed of with specific direction to the respondents, particularly, the Additional Chief Secretary/ Principal Secretary, General Administration Department, Government of Bihar, Commissioner, Magadh Division, Gaya and the District Magistrate, Gaya to ensure that the process of selection through the advertisement in question



is completed by adopting a fair procedure. In my opinion, holding of written examination of the candidates who have applied against the said advertisement would be a fair procedure for preparation of merit-list, in the absence of any provision in the Rules. This, in my opinion, would ensure transparency in the process of selection. Since the advertisement was issued more than six years ago, the respondents are directed to conclude the process of selection and appointment against such posts, which were available on the date of issuance of advertisement, within a period of three months from today. The respondents are further directed to ensure that a fair process of selection, strictly in accordance with statutory rules and in conformity with the mandate of Articles 14 and 16 of the Constitution is undertaken on regular basis, after advertising number of post, so that the persons acquiring eligibility after the initiation of one selection process have a chance to seek and participate in subsequent selection processes. This practice of fairness in the process of selection for filling up public posts generates faith in the hearts and minds of the citizen in the governance, laws and the Constitution.”

This writ application accordingly stands disposed of
in terms of the said order.

(Chakradhari Sharan Singh, J)

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