

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3784 of 2020

1. Dhirendra Kumar Mishra, Son of Parmeshwar Mishra, Resident of Village- Rouja, P.O. Chapra, P.S. Town Thana, District- Saran.
2. Mukul Kumar Mishra, Son of Anand Mohan Mishra, Resident of Village- Rauza, P.O. Chapra, P.S. Town Thana, District- Saran.
3. Aditya Kumar, Son of Bhagwan Mahto, Resident of Village- Rauza, P.O. Chapra, P.S. Town Thana, District- Saran.
4. Ravi Kumar, Son of Chandradeo Pandit, resident of Village- Bara Telpa Gadh, P.O. Chapra, P.S. Town Thana, District- Saran.
5. Rishikesh Kumar Sharma, Son of Sheetal Sharma, Resident of Village- Bara Telpa, P.O. Chapra, P.S. Town, District- Saran.
6. Mohan Kumar, Son of Shambhu Ram, Resident of Village- Bara Telpa Khanua, P.O. Chapra, P.S. Town, District- Saran.
7. Shashi Bhushan Son of Ramashray Giri, Resident of Village- Saragatti Mathia, P.O. and P.S. Garkha, District- Saran.
8. Vivek Kumar, Son of Krishna Prasad, Resident of Village- Rauza, P.O. Chapra, P.S. Town Thana, District- Saran.
9. Kanak Kumar, Son of Krishna Prasad Gupta, Resident of Village- Rauza, P.O. Chapra, P.S. Town Thana, District- Saran.
10. Sudish Kumar, Son of Prabhunath Ray, Resident of Village- Rauza, P.O. Chapra, P.S. Town Thana, District- Saran.
11. Ashutosh Kumar Mishra, Son of Shashi Bhushan Mishra, Resident of Village- Rauza, P.O. Chapra, P.S. Town Thana, District- Saran.
12. Pintu Kumar, Son of Satyadeo Ray, Resident of Village- East Rauza, P.O. Chapra, P.S. Town Thana, District- Saran.
13. Bhim Kumar, Son of Ramadhar Ray, Resident of Village- Rauza, P.O. Chapra, P.S. Town Thana, District- Saran.
14. Vikash Kumar, Son of Krishna Prasad, Resident of Village-East Rauza, P.O. Chapra, P.S. Town Thana, District- Saran.
15. Niraj Kumar Gupta, Son of Suresh Prasad Gupta, Resident of Village- Rauza(Near Ful Kumari School), P.O. Chapra, P.S. Town Thana, District- Saran.
16. Manoj Kumar Pandit, Son of Ram Surat Pandit, Resident of Village-East Rauza, P.O. Chapra, P.S. Chapra Town, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Director, Administrative Reforms Mission Society, Patna.
4. The Additional Chief Secretary, General Administration Department, Govt.



of Bihar, Patna.

5. The Managing Director, BELTRON, Patna.
6. The District Magistrate, Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shashi Shekhar Tiwary, Advocate
For the Respondent/s : Mr.Manish Kumar, GP-4
Mr. Girijesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 28-06-2021

Heard Mr. Shashi Shekhar Tiwary, learned counsel for the petitioners and Mr. Manish Kumar, learned GA-4 and Mr. Girijesh Kumar, Advocate for the respondents online because of COVID-19 pandemic restrictions.

2. This writ application has been filed seeking following reliefs :-

“(i) The respondents may kindly be directed to issue joining letter in favour of the petitioners who have been declared successful (followed by due selection process) against the existing vacancy of the Executive Assistant under the Saran district.

(ii) The respondents further may kindly be directed to not be prejudiced from the Memo No. 1382 dated 31.07.2019 so also the Memo No. 2341 dated 23.12.2019 (under the General Administration Department, Govt. of Bihar) as the same have not been issued in continuation of earlier notification



No. 491 rather the same have been issued independently to effect that the functioning of the prospective selections more as subject of another proceeding. (iii) The respondents also may kindly be directed to reserve about 10 seats (if so required) for those candidates who are also claiming/ praying for their selection (however from old panel) against the same sets of post but upon surviving vacancy.”

3. It is curious to notice relief no. 3 which the petitioners have sought as has been quoted above, for reserving about 10 seats (if so required) for those candidates who are also claiming/ praying for their selection from old panel.

4. The dispute relates to engagement of Executive Assistants in the district of Saran on contractual basis. On 06.06.2013, an advertisement was published by Bihar Prashashanik Sudhar Mission Society, General Administration Department, Government of Bihar inviting applications from eligible candidates for the post of Data Operators and a panel was prepared in 2014 on the basis of written examination and other tests. A panel of 291 candidates was prepared, out of which 120 were engaged on contractual basis. Subsequently, fresh steps for engagement of Executive Assistants were initiated in 2015, based on which a panel was prepared in 2018.

5. A writ application was filed before this Court giving



rise to CWJC No. 6495 of 2017 seeking a direction, *inter alia*, for making appointment on the basis of panel prepared in 2014. An intervention application was filed in the said case being I.A. No. 5129 of 2018 through Mr. Shashi Shekhar Tiwary, through whom the present writ application has been filed, supporting the case of the petitioners of that case for their engagement on contractual basis on the basis of panel prepared pursuant to advertisement dated 06.06.2013. The application for impleadment as petitioners in that case was rejected by this Court by an order dated 18.08.2018. By the same order the writ application was disposed of with the following observation :-

“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.



This Court is not going to give any opinion on this letter; However, if the Collector finds that the persons from the 2014 panel can also been engaged, it is for him to decide and if he decides in affirmative, in such circumstances, the case of the petitioners will also be considered.

For that, if the petitioners file their respective representation before the Collector, Chapra, he will pass an order in accordance with law within a period of four months from the date of filing of the representation along with a copy of this order.

With the aforementioned observation, this writ application is disposed of.”

6. Another writ application was filed giving rise to CWJC No. 24642 of 2018, again through Mr. Shashi Shekhar Tiwary, learned Advocate 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 non-ests 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."

7. It is evident from relief no. 2 as above that the petitioners of CWJC No. 24642 of 2018 had questioned the result of fresh selection process issued vide Memo No. 1197 dated 10.08.2018. The petitioners of CWJC No. 24642 of 2018, on scrutiny, were found to be the petitioners in CWJC No. 6495 of 2017 also, though there was an averment in the writ application that they had not approached this Court earlier. The said CWJC No. 24642 of 2018 was dismissed by this Court by an order dated 12.11.2020 in following terms :-

"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."

8. The petitioners of the present case claim that they have qualified in the process of selection started vide Memo No. 1197 dated 10.08.2018 and are accordingly seeking a direction to the respondents to issue joining letters in their favour on that basis.

9. It is easy to notice from the relief sought for in CWJC No. 24642 of 2018 and the present case that there is a conflict of interest between the petitioners of the present case and the petitioners of said CWJC No. 24642 of 2018, inasmuch as, the petitioners of CWJC No. 24642 of 2018 had put to challenge Memo No. 1197 dated 10.08.2018, whereas the petitioners of the



present case are relying on the same for the relief which they are seeking.

10. During the hearing of the present writ application online the Court had put a question to Mr. Shashi Shekhar Tiwary, learned counsel for the petitioners as to how he was appearing in the case for the petitioners in the present case once having appeared on behalf of the petitioners in CWJC No. 24642 of 2018. His response was that because of compelling circumstances during the pandemic, in order to sustain, he had accepted this case on behalf of the petitioners. The said statement made during course of hearing of the present case has been found to be incorrect for the reason that this writ application was filed in February 2020, much before imposition of any restriction relating to COVID-19 pandemic.

11. Coming back to the merit of the case of these petitioners, there is no specific averment in the writ application that any person of lower merit has been engaged on the basis of panel in question ignoring the case of these petitioners. Inclusion in a panel does not give any right to a person to be appointed or engaged unless it is demonstrated that the persons with lower merit have been engaged ignoring claim of the persons of higher merit without any valid reason.



12. A counter affidavit has been filed on behalf of the respondents stating therein that Bihar *Prashashanik Sudhar* Mission Society has decided to appoint Executive Assistants/ Data Operators as per requirements and demands of the Department under Saran District through BELTRON.

13. In such view of the matter, I do not find any merit in this writ application, which is accordingly dismissed.

14. Let a copy of this order be sent to the Chairman, Bihar State Bar Council to consider as to whether a case of professional misconduct is made out against Mr. Shashi Shekhar Tiwary or not.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.06.2021
Transmission Date	NA

