

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6539 of 2020

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1. Deena Bandhu Mishra Son of Late Ram Mangal Mishra, Resident of Mohalla-Andarkila near Bharat Bharti High School, Hajipur, District-Vaishali.
 2. Raj Muni Rai, Son of Late Nanhu Rai, Resident of Village-Pananpur, P.S.-Karaghar, District-Rohtas.
 3. Arjun Ram, Son of Slate Jagatu Ram, Resident of Village-Pian, P.S.-Sonhana, District-Kaimur.
 4. Jagannath Sharma, Son of Late Ganga Sharma, Resident of Mohalla-Shivpuri, P.S.-Shashtri Nagar, District-Patna.
 5. Suresh Prasad Sinha, Son of Late Gaya Prasad Singh, Resident of Mohalla near Civil Court Jahanabad, P.S. and District-Jahanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Commissioner cum Secretary, Department of Home, Government of Bihar, Patna.
3. The Commandant General, Bihar Home Guards, Chhajubagh Patna.
4. The Deputy Commandant General, Bihar Home Guards, Chhajubagh Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Binodanand Mishra, Advocate
For the Respondent/s : Mr. Md. Nadim Seraj (Gp5)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 30-11-2021

Heard the learned counsels for the parties.

2. In the instant petition, petitioners have prayed for following reliefs:

“(i) For issuance of an order direction or writ including the writ in the nature of certiorari, quashing the recommendation of the promotion committee dated 20.05.2014, for promotion to the post of District Commandant Home Guards, from the cadre of Inspectors Home Guards Bihar.



(ii) For issuance of an order, direction or writ including the writ in the nature of mandamus commanding the respondents not to give effect to the recommendation dated 20.05.2014.

(iii) For issuance of an order, direction, or writ including the writ in the nature mandamus commanding the respondents to consider the case of the petitioners for the post of District Commandant Home Guard under various Categories.

(iv) For issuance of an appropriate declaration holding that petitioners entitled for promotion to the post of District Commandant Home Guard under various categories.

(v) For issuance of an appropriate declaration holding that since the vacancy of the promoted post arose prior to coming into force the 2005 rules therefore same will not apply in case of the petitioners.

(vi) For any other relief(s) to which the Petitioner may be found entitled in the facts and circumstances of the present case.”

3. For the purpose of promotion to the post of District Commandant Home Guards, petitioners have a cause of action in the months of September, 2005, the date on which relevant rules of recruitment to the post of District Commandant Home Guard amended incorporating eligibility qualification like pass in degree. The petitioners' grievance has been rejected in the year 2007 whereas the present petition is presented in the year 2020.

4. Learned counsel for the petitioners submitted that in the year 2006 one of their immediate senior name has been considered for the purpose of promotion to the post of District Commandant Home Guards, Bihar. Therefore, there is delay in



presenting this petition. The petitioners had cause of action in the month of September, 2005, the date on which rule was amended. If the petitioners' contention is to be appreciated that they are entitled to be promoted to the post of District Commandant Home Guard to a vacancy which accrued prior to September, 2005, in that event, they had a cause of action in the year 2005. That apart, their grievances have been rejected in the year 2007, they have not approached this Court in questioning the validity of rejection of their claim in the year 2007. Thereafter, one of their immediate senior stated to have been promoted in the year 2016 whereas petitioners have presented this petition in the year 2020. The Apex Court in case of ***P.S. Sadasivaswamy Appellant V. State of T.N.*** reported in ***AIR 1974 SC 2271*** held that a person who seeks promotion and appointment must approach the appropriate forum for redressal of his grievance within a reasonable period of time of six months. The petitioners have slept over their right in respect of seeking promotion to the post of District Commandant Home Guard in the year 2005. Further when their claim was rejected in the year 2007, they should have approached this Court within a reasonable period of time. On the other hand, they slept over from 2007 to 2016. That apart, one of their immediate senior is



stated to have been promoted in the year 2016. Still there is delay of four years in approaching this Court.

5. In the light of these facts and circumstances, the petitioners have not made out a case on the ground of delay and laches and in the light of principle laid down in Apex Court's decision (Supra).

6. Accordingly, the instant petition stands disposed of.

7. At this juncture, learned counsel for the petitioners submitted that the official respondent could have consider the litigation policy that if a person is promoted, the others are entitled and in the light of policy decision, the petitioners are entitled to relief.

8. The State policy does not over ride the Apex Court's decision (supra). Accordingly, the aforesaid contention is rejected.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.12.2021
Transmission Date	

