

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1163 of 2018

In

Civil Writ Jurisdiction Case No.2733 of 2018

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1. Manish Kumar, S/o Upendra Kumar Singh, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 2. Amarjeet Kumar, S/o Vinay Singh, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 3. Baijnath Kumar, S/o Rameshwar Yadav, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 4. Nikhil Kumar, S/o Anil Kumar Singh, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 5. Moti Choudhary, S/o Saryug Choudhary, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 6. Niraj Kumar, S/o Krishna Kumar Singh, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 7. Rakesh Kumar, S/o Bijay Prasad, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 8. Nikhil Raj, S/o Kamal Paswan, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 9. Avinash Kumar Singh, S/o Satyendra Pratap Singh, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 10. Shambhu Kumar, S/o Bishwanbath Choudhary, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 11. Ashok Kumar, S/o Kameshwar Yadav, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 12. Adarsh Paswan, S/o Awadhesh Paswan, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 13. Shabana Pravin, S/o Md. Ashraf Ali, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 14. Vivek Kumar, S/o Kamlesh Kumar, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 15. Manti Devi, W/o Suresh Ram, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 16. Aasiya Praveen, S/o Ashraf Ali, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 17. Vishal Kumar Singh, S/o Mithlesh Singh, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 18. Prem Kumar, S/o Ramjiwan Prasad, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
 19. Praveen Azmi, D/o Ashraf Ali, Class- IV, employee of Anugrah Narayan



Magadh Medical College, Gaya, Town- Gaya, District- Gaya.

20. Sufiya Perween, D/o Md. Ashraf Ali, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
21. Gorakh Kumar, S/o Om Prakash Singh, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
22. Jai Prakash Kumar, S/o Rajendra Tiwari, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
23. Kundan Kumar Singh, S/o Rabindra Kumar Singh, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
24. Jyoti Prakash Yadav, S/o Pradip Yadav, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
25. Binita Kumari, W/o Late Jitendra Choudhary, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
26. Usha Devi, W/o Ashok Choudhary, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.
27. Vikash Thakur, S/o Munna Thakur, Class- IV, employee of Anugrah Narayan Magadh Medical College, Gaya, Town- Gaya, District- Gaya.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Commissioner, Magadh Division, Gaya.
4. Vishesh Karya Padadhikari, Health Department, Govt. of Bihar, Patna.
5. The Principal, Anugrah Narayan Magadh Medical College, Gaya.
6. The District Development Officer, Gaya.
7. The Secretary to the Commissioner, Gaya.
8. The Regional Additional Director, (Health Services), Magadh Division, Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajeev Kumar Singh, Adv.
For the Respondent/s : Mr. S.D. Yadav, AAG 9

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 02-02-2021



Heard the parties.

Aggrieved by judgment and order dated 16.07.2018 passed by learned Single Judge of this Hon'ble Court passed in C.W.J.C. No. 2733 of 2018, present L.P.A. has been filed by appellant/petitioner.

Briefly stated, the facts of the case is that advertisement was published on 02.12.2016 for contractual appointment on 62 posts of class IV employee against sanctioned vacant post in Anugrah Narayan Magadh Medical College. Contractual appointment was for one year/till regular appointment with clause of extension of service. Necessity for appointment arose as there were acute shortage of Class IV employees in Medical College.

Five-member-committee was constituted for interview, in which Secretary to the Commissioner was also member of Interview Board and after selection process was over, merit list was prepared which included the name of petitioners and pursuant thereto, petitioners were appointed and joined their posts in 1st week of February, 2017 and were continuing as class iv employee in Anugrah Narayan Medical College, Gaya.

Complaints were made by unsuccessful candidates



and on such complaint a three member committee was constituted vide memo dated 25.07.2016 comprising of Deputy Development Commissioner, Gaya. Secretary to Commissioner, Magadh Division, Gaya and Regional Additional Director (Health Services), Magadh Division, Gaya which reported that irregularity was committed in the appointment and on basis of said enquiry, services of petitioners were cancelled by order dated 22.12.2017, as contained in Annexure-1 of writ petition.

Counter affidavit was filed in which it is stated that on receipt of complaint in contractual appointment, three members enquiry committee was constituted by the Divisional Commissioner under the Chairmanship of Deputy Development Commissioner and on basis of enquiry report submitted by said three men committee, services of petitioners were cancelled.

Learned Single Judge has held that when the Secretary of the Commissioner was one of the member of Selection Process and proceeding dated 19.11.2016 itself records that there was a roster clearance whereafter giving the finding of violation of roster clearance *prima facie* appears to be wrong, reflects conflicting situation.

The learned Single Judge has also held that it appears that the Commissioner had committed a wrong, when



his Secretary is member of the Selection Committee, in such circumstances his Secretary should not have been member of the inquiry committee, entails subsequent committee was not constituted fairly and properly, it itself shows that something wrong has been done with regard to the constitution of committee.

It is an admitted position that enquiry was conducted, for which no notice or hearing was given to petitioners and on basis of said enquiry, services of petitioners have been terminated, as such, there has been violation of principles of natural justice, as they have been removed without any show cause and giving a copy of enquiry report, on basis of which, their appointment has been cancelled. It is true that petitioners are not regular employees, as such, they do not have protection under Article 311 of the Constitution of India but even for removal of contractual employees by the State Government, principle of natural justice and fairness and reasonableness in action has to be followed.

For the reasons, as stated above, the enquiry report dated 04.10.2017, as contained in Annexure-A of counter affidavit, as well as order dated 22.12.2017 passed by Vishesh Karya Padadhikari, Health Department, Government of Bihar,



Patna, (respondent no. 4) and order dated 23.12.2017 passed by Principal of Anugrah Narayan Singh, Magadh Medical College, Gaya are set aside and appellants/petitioners are directed to be re-instated in service without any back-wages. However, respondents are at liberty to get a fresh enquiry conducted as directed by learned Single Judge in accordance with law.

This LPA is allowed to the extent as indicated above.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2021
Transmission Date	NA

