

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21219 of 2018

1. Suprabhat Kumar Son of Ganesh Mishra Resident of Village- Chhatauna, P.O.- Chhatauna, P.S. Naokothi, District- Begusarai.
2. Gaurav Kumar Son of Surendra Prasad Resident of Village- Gokulchak Milki, P.O.- Kapsiyawan, P.S. Hilsa, District- Nalanda.
3. Vishwajeet Kumar Son of Bipin Bishwas Resident of Mohalla- Rajendragram, P.S and P.O.- Katihar, District- Katihar.
4. Prashant Kumar Son of Bishwamohan Thakur Resident of Mohalla- Ramnagar Bishnupur, P.S. and P.O.- Begusarai, District- Begusarai.
5. Jagat Narayan Rai Son of Radha Prasad Rai Resident of Village- Mahadev Chak, Post- Purana Haripur, P.S. Koelwar, District- Bhojpur.
6. Pramod Kumar Burnawal Son of Pradeep Burnawal Resident of Village and P.O. and P.S. Sono, District- Jamui.
7. Amrish Kumar Tripathy Son of Ashok Kumar Tripathy Resident of Mohalla- 20/A Railway Colony, Railway Station Ara, P.S. and P.O.- Ara, District- Bhojpur.
8. Vipin Kumar Son of Rajendra Prasad Singh Resident of Village and P.O. and P.S. Kako, District- Jehanabad.
9. Randhir Kumar Mahto Son of Ramchandra Mahto Resident of Village- Bisfigola, P.O. and P.S. Bisfi, District- Madhubani.
10. Ajay Kausal Son of Lal Babu Bhagat Resident of Village- Mohanpur, P.O. and P.S.- Maner, District- Patna.
11. Dheeraj Kumar Son of Shailendra Kumar Singh Resident of Village- Rakasiya, Post- Lalabhadsara, P.S.- Dulhin Bazar, District- Patna.
12. Shyam Babu Kumar Son of Prabhu Prasad Resident of Village- Bhaluwahiya, P.O. and P.S. Mainatand, District- West Champaran.
13. Naveen Kumar Son of Kamal Mistri Resident of Village- Kakariya, P.O.- Kalpa, P.S. Jehanabad, District- Jehanabad.
14. Mritunjay Kumar Son of Ram Naresh Tiwari Resident of Village- Chakarpetta Tola Tewsa, P.O. and P.S.- Madhurapur, Phenhara, District- East Champaran.
15. Pankaj Kumar Son of Birendra Sah Resident of Village- Chaura, P.O. and P.S. Chaura, District- Jamui.
16. Prem Shankar Lal Son of Mohan Lal Resident of Mohalla- Mithapur B Area



Shastri Lane, P.O. GPO, P.S. Jakkanpur, District- Patna.

17. Karan Gupta Son of Lakshman Prasad Resident of Village- Kazipur, P.O. Dumri, P.S.- Simri, District- Buxar.
18. Ajeet Kumar Son of Tuli Yadav Resident of Village- Konhwa, P.O.- Karariya, P.S. Kotwa, District- East Champaran.
19. Monu Kumar Son of Sheodyal Das Resident of Village- Chamardih, P.O.- Alawalpur, P.S.- Gaurichak, District- Patna.
20. Sujeet Kumar Son of Sitaram Mahto Resident of Village- Madudabad, P.O. and P.S. Mohaddinagar, District- Samastipur.
21. Ajay Kumar Jha Son of Pramod Jha Resident of Village- Chouri, P.O. Balua Kaliyanganj, P.S.- Palasi, District- Araria.
22. Nikhil Kumar Son of Brajesh Prasad Resident of Village- Bhawanipur, P.O.- Thikahan Bhawanipur, P.S. Sangarampur, District- East Champaran.
23. Vikash Kumar Son of Anil Prasad Resident of Mohalla- Chiriyatand, Janta Path Lane, P.O.- GPO, P.S. Kankarbagh, District- Patna.
24. Tarun Kumar Son of Jagdish Prasad Resident of Village and P.O. Dhanchhuhan, P.S. Chauri, District- Bhojpur.
25. Shreekant Kumar Son of Ramkundal Mahto Resident of Village and P.O.- Onda, P.S. Sare, District- Nalanda.
26. Dew Kumar, Son of Basudew Bhagat Resident of Village- Mahaddipur, P.O.- Sinduari, P.S. Uphara, District- Aurangabad.
27. Saurabh Kumar Son of Satyanand Prasad Resident of Village and P.O.- Khanetoo, P.S. Tekari, District- Gaya.
28. Ajit Kumar Roy Son of Sanjay Kumar Yadav Resident of Village and P.O.- Maricha, P.S. Tajpur, District- Samastipur.
29. Saket Kumar Aman Son of Baliram Prasad Resident of Village- Pariom, P.O. Makhmilpur, P.S. Paliganj, District- Patna.
30. Abhishek Kumar Son of Kameshwar Pathak Resident of Village- Bikram, P.O. Bikram, P.S. Bikram, District- Patna.
31. Pankaj Singh Son of Lal Babu Singh Resident of Village- Marar Kala, P.O.- Chorma, P.S. Bhagwanpur Hat, District- Siwan.
32. Kunal Son of Shivnandan Prasad Yadav Resident of Village- Alinagar, P.O. Barbiga, P.S. Sare, District- Nalanda.
33. Dhiraj Kumar Son of Ramprit Mahto Resident of Village- Bahrapur, P.O. Naipur, P.S. Bachhwara, District- Begusarai.
34. Sanoj Kumar Mandal Son of Mahesh Mandal Resident of Mohalla- Boudh



- Vihar, Kahalgaon, P.O. and P.S.- Kahalgaon, District- Bhagalpur.
35. Anant Kumar Son of Ramanand Paswan Resident of Mohalla- Bahadurpur, P.S. Bahadurpur, P.O. Samastipur, District- Samastipur.
 36. Saurav Kumar Son of Jai Prakash Lal Resident of Village- Nerut, P.O.- Nerut, P.S. Sare, District- Nalanda.
 37. Kunal Kumar Verma Son of Ajay Kumar Verma Resident of Village- Janakpur (Morya Nagar), P.O. Buniyaganj, P.S. Muffsil, District- Gaya.
 38. Vinti Ranjan Son of Satyendra Singh Resident of Village- Simaru, P.O.- Gurua, P.S. Gurua, District- Gaya.
 39. Sanjay Son of Ramjee Singh Resident of Mohalla- Gardanibagh, P.O.- GPO, P.S. Gardanibagh, District- Patna.
 40. Nityanand Kumar Son of Sitaram Prasad Resident of Village- Bediban Madhuban, P.O.- Madhuban, P.S. Pipra, District- East Champaran.
 41. Ram Krishna Singh Son of Chaturbhuj Nath Singh Resident of Village- Basudeopur Chandel, P.O. Basudeopur Chandel, P.S. Mahnar, District- Vaishali.
 42. Amrendra Kumar Son of Sakaldeo Vind Resident of Village- Kare, P.S. and P.O.- Sheikhpura, District- Sheikhpura.
 43. Amit Kumar Son of Vidya Sagar Gupta Resident of Mohalla- Chiriyatand, P.O. GPO, P.S. Jakkanpur, District- Patna.
 44. Priyatam Patel Son of Ramesh Patel Resident of Village- Kuttubchak, P.O. Ramjanpur, P.S. Barbiga, District- Sheikhpura.
 45. Prabhash Kumar Watsa Son of Vivekanand Thakur Resident of Village- Birvan, P.O. Ghatchikni Via Kursakanta, P.S. Sonamani Godawn, District- Araria.
 46. Chandan Kumar Son of Nand Kishor Sah Resident of Village- Bishnupur, P.O.- Bishnupur, P.S. Bela, District- Sitamarhi.
 47. Kamlesh Kumar Son of Late Hazari Baitha Resident of Mohalla- Mangal Chowk, P.O.- New Jaganpura, P.S. Ramkrishna Nagar, District- Patna.
 48. Chandra Prakash Ajit Son of Akshaya Kumar Mishra Resident of Village- Hariharpur, P.O. and P.S.- Teghra, District- Begusarai.
 49. Satish Prakash Son of Rajendra Kumar Resident of Village- Tiyya, P.O.- Jaijore, P.S. Andar, District- Siwan.
 50. Chandan Pandey Son of Mithila Bihari Sharan Resident of Mohalla- Diwan Mohalla, Khanger Gali, Sarvodaya Colony, PS- City Chowk, District- Patna.



... .. Petitioners

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Law Secretary, Law Department Govt. of Bihar, Patna.
3. The Patna High Court through its Registrar General.
4. Registrar General, Patna High Court, Patna.
5. The Convener, Co-ordination Committee-cum- District and Sessions Judge, Patna, Judges Court, Road, Civil Court, Patna, P.O.- Bankipur, District- Patna.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 24716 of 2018

Aditya Prakash son of late Pankaj Prakash Resident of C/o. Sri Gopal Prasad, mohalla -Moti Chowk, Thana Road, P.O. and P.S. - Khagaul, town and district- Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. The Registrar General, Patna High Court, Patna
3. The Convener, Co-ordination Committee-cum-District and Sessions Judge, J.C. Road, Civil Court, Patna.
4. The Registrar, District and Sessions Judge, Patna

... .. Respondents

with

Civil Writ Jurisdiction Case No. 6259 of 2019

1. Prince, male, aged about 30 years, son of Sri Prabhat Chandra Verma resident of C/o Sri Prabhat Chandra Verma, House No. B- 92, Buddha Colony, P.S. Buddha Colony, P.O.- G.P.O., Patna- 800001.
2. Anup Kumar Trilok male, aged about 26 years, son of Sri Rajkishore Thakur resident of C/o Sri Rajkishore Thakur, Chainpur, P.O.- Chainpur, P.S.- Bangaon, District- Saharsa, Pin Code- 852212.
3. Prince Kumar male, aged about 26 years, son of Sri Jagdish Sah resident of C/o Sri Jagdish Sah, Village- Govindpur, P.O.- Fatuha, P.S. Fatuha, District-



Patna, Bihar- 803201.

4. Vikash Kumar male, aged about 24 years, son of Sri Krishna Prasad Gupta resident of C/o Sri Krishna Prasad Gupta, Kanap Road, Haspura, P.O. and P.S.- Haspura, District- Aurangabad, Bihar- 824120.
5. Rahul Kumar male, aged about 30 years, son of Sri Radheshyam Pandey resident of C/o Sri Radheshyam Pandey, Village- Morauna, P.O.- Durgadih, P.S.- Bikramganj, District- Rohtas, Bihar- 802212.
6. Jaywardhan Kumar male, aged about 28 years, son of Sri Ram Pratap Singh resident of C/o Sri Rampratap Singh, Village and P.O.- Meghi, P.S. Deepnagar, District Nalanda, Bihar- 803111.
7. Uday Prakash Bhaskar male, aged about 32 years, son of Sri Raghu Nandan Ram resident of C/o Sri Raghu Nandan Ram, Village and Post- Dhandiha, Near State Boring No. 24, P.S. Koilwar, Bhojpur, Bihar- 802160.
8. Shubhendu Jha male, aged about 26 years, son of Sri Jitendra Jha resident of C/o Sri Jitendra Jha, Adarsh Nagar, Behind Shyam Sisu Sadan, P.S. Mufassil, P.O.- Dhurlakh, District- Samastipur, Bihar- 848101.
9. Anand Kumar male, aged about 26 years, son of Sri Foujdari Ram resident of C/o Sri Foujdari Ram, Village- Kajha Kothi, P.O. Kajha, P.S. K. Nagar, District- Purnea, Bihar- 854301.
10. Md. Sarfraz Alam male, aged about 38 years, son of Sri Shamim Uddin resident of C/o Sri Md. Shamim Uddin, Mohalla- Pakki Talab, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda, Bihar- 803101.
11. Md. Farrukh Imam male, aged about 38 years, son of Sri Md. Nesar Ahmad resident of C/o Sri Md. Jamaluddin, Charuanwan, P.O. Charuanwan, Via- Nimi, District- Sheikhpura, Bihar- 811103.
12. Bhanupratap Rai male, aged about 40 years, son of Sri Radheshyam Rai resident of C/o Sri Radheshyam Rai, Village- Chakigarh, P.O. Saidpur, P.S.- Shikarpur, District- West Champaran, Bihar- 845455.
13. Nikhil Vinay male, aged about 25 years, son of Sri Ashok Kumar Srivastava resident of C/o Sri Ashok Kumar Srivastava, Purnea College Campus, Jaiprakash Nagar, P.O. H.P.O., Purnea, P.S. K. Hat, District- Purnea, Bihar- 854301.
14. Shankar Kumar Gupta male, aged about 26 years, son of Sri Birchand Prasad Gupta resident of C/o Sri Birchandra Prasad Gupta, Sharifganj, P.O.- Daheria Mills, P.S. Katihar, District- Katihar, Bihar- 854105.



15. Ravi Ranjan male, aged about 23 years, son of Sri Mukesh Pandey resident of C/o Sri Mukesh Pandey, Village- Nawalpur, P.O.- Mushahari, P.S. Kathaiyan, District- Muzaffarpur, Bihar- 843124.
16. Suresh Kumar Singh male, aged about 30 years, son of Sri Bindeshwari Singh resident of C/o Sri Bindeshwari Singh, Village- Kudiya, P.O. and P.S.- Piprakothi, District- East Champaran, Pin Code- 845429.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Law Department, Bihar, Patna.
2. Patna High Court, Patna through the Registrar General.
3. The Convenor, Coordination Committee Patna-cum- District and Sessions Judge, Patna.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 21219 of 2018)

For the Petitioners : Mr. Rajendra Narayan, Sr. Adv. With
Mr. Arvind Kumar Sharma, Adv.

For the State : Mr. S.K. Mandal, SC-3 with
Mr. Bipin Kumar AC to SC-3.

For Respondent Nos. 3 &4 : Mr. Sanjeev Kumar, Adv.

(In Civil Writ Jurisdiction Case No. 24716 of 2018)

For the Petitioner : Mr. Shivendra Kishore, Sr. Adv. With
Mr. Bimlendu Shekher Thakur, Adv.

For the State : Mr. Sunil Kumar Mandal -SC3
Mr. Bipin Kumar AC to SC-3.

For the High Court : Mr. Sanjeev Kumar, Adv.

(In Civil Writ Jurisdiction Case No. 6259 of 2019)

For the Petitioners : Mr. Abhinav Srivastava, Adv. With
Mr. Kumar Kaushik, Adv.
Mr. Chitranjan Sinha, Adv.

For the State : Mr. Prashant Pratap, GP-2

For respondent No.2 : Mr. Sanjeev Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

Date : 29-09-2022

Heard learned senior counsel for the petitioners,
learned counsel for the State and learned counsel for the Patna
High Court.



2. Employment Notice No. 1 of 2016 was published by the Respondent No.5, inviting applications in the recruitment process undertaken for appointment of 1681 Clerks in the Subordinate Courts of the State of Bihar. The writ petitioners were applicants. They, however, did not figure in the select list of 1681 candidates, which result was published on 26.09.2018.

3. The petitioners, after being unsuccessful in the process of recruitment, have filed the writ petition, for the following reliefs:

"(A) For commanding the respondents to revise the result published on 26.09.2018 as contained in Annexure-6 against employment notice No 1/2016 as contained in Annexure-2 to the post of Clerk in the subordinate court, Bihar deleting after marks allowed against Question No. 20 and 24 which has proved incorrect answer.

(B) Also for commanding the respondents to revise the merit list issued on 26.09.2018 as contained in Annexure-6 and 7.

(C) Also for commanding the respondents to revise the appointment letter issued on 26.09.2018 as contained in Annexure-8 considering result has been published without meeting with objection of question no.20 and 24 as well as option 20(c) and 24(B) which are incorrect.

(D) Also commanding the respondents to declare the petitioner as successful candidates against employment notice no. 1/2016 as contained in Annexure-2 to the post of Clerk.

(E) Also for commanding the respondents to give appointment letter in favour of the petitioners on the basis of merit against employment notice No. 1/2016 and other consequential service benefit as per the merit position.

(F) Also for commanding the respondents to prepare the waiting list to exhaust the vacancy which will occur in upcoming two years from 26.09.2018 as per Rule 7(13) & 7(14) Bihar Civil Court (Class III & Class-IV) Rules, 2009 (hereinafter referred in short Rule, 2009).

(G) Also commanding the respondents to fill up the vacancy which is occur after the advertisement as contain in annexure 2 dated 07.02.2016 and 25.09.2020 the last date of life of panel of Class-III employee as per advertisement as



contained in Annexure 2 considering advertisement of notice as set indicate vacancy position will increase or decrease.

(H) Also for necessary relief/reliefs, order/orders, direction/directions for which the petitioner is entitled in the eye of law as well as on the facts of the case."

4. When the matter is taken up, the petitioners counsel(s) have specifically taken a stand that they are not pressing the writ petition in so far as reliefs (A) to (E) is concerned. They are confining their reliefs to relief (F) (G) and (H).

PETITIONERS' CASE

5. The learned senior counsels representing the petitioners have submitted that the Recruitment process was, at the relevant time, conducted in terms of the Bihar Civil Courts Staffs (Class III & Class IV) Rules, 2009 (hereinafter referred to as "the 2009 Rules") (Annexure-1). Rule 6 is concerned with the Recruitment to be done by the District and Sessions Judge for Class IV posts. In respect of Class-III posts Rule-7(4) contemplates that in January of every alternate year, existing as well as anticipated vacancies likely to occur by December of the next year are to be determined. The concerned District Judge is required to send the same to the Co-ordination Committee constituted, as per Rule 2(b) read with Rule 7(3) of the 2009 Rules. After receiving such information from all the judgeships, all the vacant posts determined in such manner are to be advertised by the Co-ordination Committee in the manner prescribed.



6. Placing reliance on Sub-Rules 11 to 16 of Rule 7 of the 2009 Rules, he submits that the Scheme of the 2009 Rules requires preparation of a Panel in order of merit for all the judgeships in the State of Bihar after assessment and declaration of successful candidates in the process of Recruitment. The Rule further requires the Panel to be valid for a period of two years. Existing as well as anticipated vacancies occurring within the period were to be filled up from amongst the candidates in the Panel in order of merit.

7. The learned Senior Counsel has drawn attention of the Court towards Rules 7(4) and 7(11) to 7(16) of the 2009 Rules, which are being reproduced herein for ease of reference:-

"7(4) In the month of January of every alternate year, the District Judge will determine the existing vacancies as well as the anticipated vacancies, likely to occur by December of the next year and will send the same to the Co-ordination Committee and after receiving information from all the Judgeships, all the vacant posts available for direct recruitment shall be advertised by the Co-ordination Committee at least in two daily newspapers having wide circulation in the State of Bihar, one of such Newspapers shall be in Hindi.

"....7(11) The written test/tests in typing and short-hand shall consist of 90 Marks 10 Marks shall be allotted for personality test and interview. For the written test normally the qualifying marks will be 45, but in case of female candidates and candidates from the reserved categories, the Appointment Committee/Co-ordination Committee may make suitable relaxation in the qualifying marks, interview shall be held by the Selection Committee in each zone on the date to be specified for the purpose by the Coordination Committee. The ration in which the candidates would be called for final written examination would normally not be less than 9 times of the number of vacancies and for interview not less than three times the number of vacancies available and likely to be available in near future.



(12) A panel of successful candidates shall be prepared on the basis of total marks obtained in written examination as also in the interview. After the selection tests (both written and oral) are over, a common panel shall be prepared by the Co-ordination Committee in order of merit for all the Judgeship in the State of Bihar.

(13) The aforesaid panel shall remain valid for a period of two years.

(14) The existing vacancies as also the anticipated vacancies occurring within the aforementioned period may be filled up from amongst the candidates in the said panel in order of merit.

(15) The Co-ordination Committee may form different panels for different types of posts, namely (i) Clerk (ii) Stenographer (iii) Typist etc.

(16) From the panel of successful candidates as prepared under Rule 12 or 14, the names shall be recommended to each District Judge for appointment on the post of Class III"

8. It is submitted that the anticipated vacancies as per Rule 7(4),(13) and(14) have not been determined and included in the process of recruitment. The Respondent-Authorities, therefore, have violated their own Rule. Had the Authorities determined and included anticipated vacancies and created a Panel for two years, as mandated by the Rules, the petitioner would surely have come within the zone of consideration and offered appointment. The respondents could not have limited the selection process to existing vacancies. The respondents, could also not limit the duration of the Panel to period of one year. It is their specific case that 273 successful candidates did not join and at least that many "existing vacancies" remained unfilled in the process of Recruitment.



9. He submits that from perusal of the Advertisement (Employment Notice No 1/2016), it is apparent that the Authorities embarked upon the process of Recruitment, as per the prescription in the 2009 Rules. The advertisement clearly contemplates that existing vacancies as also any future vacancies, due to retirement, resignation and non-joining, occurring within a period of two years, shall be filled up from amongst the candidates in the Panel in order of merit. The prescription in the 2009 Rules, regarding including anticipated vacancies and determining the life of Panel to be two years, has thus been followed by the Respondent-Authorities till the stage of issuance of advertisement. However, when the Panel has been prepared, the Respondent-Authorities have limited the same to be a select list of only 1681 candidates.

10. The marks, obtained by the candidates, in the final written test as well as interview in order of merit, was published on 26.09.2018 (Annexure-7). On the same date, the select list of 1681 candidates for appointment as Clerk in the Subordinate Courts throughout Bihar with their place of posting was published. Copy of the same is Annexure-8 to the writ petition. When this select list came to be published, the petitioners' realized that they have not been selected. On going through the select list, they also



realized that the same was not for two years; and did not include any anticipated vacancies.

11. The learned senior counsel for the petitioners, submits that non-inclusion of anticipated vacancies and the fact that the panel had not been prepared for two years was contrary to the 2009 Rules and to their prejudice, as anyone beyond 1681 candidates, including the petitioners were deprived. Thus, they have approached this Court with a grievance that due to non-compliance with the provisions contained in Rule 7(4), 7(11) to 7(16) of the 2009 Rules, the petitioners' consideration in the process of Recruitment was totally shut out.

12. The submission is that once the selection process had started by an Advertisement under the 2009 Rules, the same was required to be concluded in terms of the same Rule. Any change or departure while publishing the panel, by not including anticipated vacancies, and not publishing a Panel for two years, is to the prejudice of the petitioners, is illegal and unsustainable in terms of the 2009 Rules. This Court should, therefore, issue a direction to the Respondent Authorities to make a Panel and to provide for filling up of anticipated vacancies, from the panel for two years, including the 273 vacancies due to non-joining of



successful candidates. The petitioners, by virtue of their position in the merit Panel may then most likely be offered appointment.

13. Mr. Rajender Narayan, learned Senior counsel has placed reliance on a decision of the Apex Court in *AIR 2014 SC 2175 (Renu vs. District and Sessions Judge, Tis Hazari)* and *AIR 2006 SC 1806 (Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.)*.

14. Learned counsel Mr. Kumar Kaushik has adopted the arguments/ submissions of the learned senior counsels. In addition thereto, he has drawn attention of the Court towards Annexure 9 of the second Supplementary Affidavit, filed by the petitioner in CWJC No. 6259 of 2017; the same is dated 21.09.2018, being a copy of communication of minutes of the meeting of Respondent No.5 held on 20.09.2018 and 21.09.2018, along with the Merit Panel. He has drawn attention of the Court towards the direction of the Committee to prepare the list of 1681 selected candidates as per Roster reservation policy of the State of Bihar as well as category wise selected candidates. He submits that communication of the Respondent No.5 was clearly in terms of the provisions of the 2009 Rules relied upon by the petitioners as also in terms of the Employment Notice, which contemplated preparation of a waiting list of candidates, obviously for filling up



vacancies due to non-joining or future vacancies as per the 2009 Rules.

15. He has further submitted that the candidates had represented for at least making available the 273 vacancies remaining on account of non-joining of successful candidates from the remaining Merit Panel. Rejection of the same, by communication dated 19.02.2019, Annexure-P/14 of CWJC No. 21219 of 2018 is contrary to the provisions of the 2009 Rules and clearly unsustainable. The Respondent-Authorities have communicated the resolve of the High Court that the vacancies existing due to non-joining of the selected candidates was to be treated as fresh vacancies for a new Recruitment. The details of the resolve, referred to in the communication dated 19.02.2019, however, has not been mentioned to show that it is a resolve taken at the time of publication of the select list.

16. He submits that the reliance placed by the High Court on Rule-9 of the 2009 Rule are unsustainable. After the recruitment process is complete in terms of Rules 3 to 7; these Rules have become inoperative. Requirement of determining and including future vacancies in the process of Recruitment and preparation of Panel for two years are contemplated in this part of the Rules. Rule 9(6) contemplates that all appointments would be



subject to "such directions as may be issued by the High court from time to time". Submissions, in respect of Rule 9(6) are two fold: (i) that the discretion contemplated under this Rule cannot be exercised so as to render nugatory any other provision contained in the 2009 Rules. Such discretion in Rule 9(6) is to be exercised in respect of the matters, not provided for in the Rules. The prescription in Rule 7(4), 7(11) to 7(16) cannot be obviated by the High Court, in exercise of its administrative discretion, under Rule 9(6). (ii) No contemporaneous decision under Rule 9(6) has been placed on record in the entire pleadings to show that the High Court ever exercised discretion contemplated under Rule 9(6) at the time of publication of the select list.

17. He has relied upon **2019(1) PLJR 332 (SC)**
(Dinesh Kumar Kashyap & Ors. Vs. South East Central
Railway & Ors.).

18. Learned counsel(s) representing petitioners in all the writ petitions have unanimously placed reliance on decision of the Division Bench of this Court in the case of **Rajeev Kumar Verma and Anr. Versus State of Bihar & Ors. in LPA No 1361 of 2018**, paragraph Nos, 22 to 24 of the judgment has been relied upon, which reads as follows:

"22. We have heard learned counsel for the parties and given a deep consideration to the arguments advanced on both sides. In order to proceed further to decide the present lis,



we deem it would be appropriate to refer to the Bihar Civil Court Staff (Class-III & IV) Rules, 2009 which provides for the preparation of panel of successful candidates which would remain valid for a period of 2 years and the existing vacancies as also the anticipated vacancies occurring within the aforesaid period may be filled up from amongst the candidates of the said panel. The relevant Rule of Rule -7 of the Bihar Civil Court Staff (Class-III & IV) Rules 2009 are quoted hereinunder:-

“7(12) A panel of successful candidates shall be prepared on the basis of total marks obtained in written examination as also in the interview. After the selection tests (both written and oral) are over, a common panel shall be prepared by the Co-ordination Committee in order of merit for all the Judgeship in the State of Bihar.

(13) The aforesaid panel shall remain valid for a period of two years.

(14) the existing vacancies as also the anticipated vacancies occurring within the aforementioned period may be filled up from amongst the candidates in the said panel in order of merit.”

23. This Court while hearing the appeal preferred by the writ petitioners and taking into consideration the contention that on account of non joining, many posts had been remained vacant, directed and called upon the respondents to file their affidavits bringing on record the number of candidates who did not join in spite of having offered appointment against the respective category of vacancies. The respondents have filed an affidavit in the appeal (Annexure -A) which reveals that a total number of 53 candidates did not join but in view of the fact that there was no waiting list, subsequent advertisement was issued. It was thus, submitted that there is no merit list and since the subsequent advertisement has also been issued, there was no question regarding appointment of the present appellants.

24. We are unable to appreciate as to under what circumstances, the respondents did not prepare a waiting list when the relevant rules as well as advertisement specifically provide for the same and the action of the respondents keeping in posts vacant despite the decision of the Standing Committee to lower down the marks and bring in the candidates into the ambit of the select zone by including those who had less than 20 per cent mistakes and both the appellants having earlier been selected and having secured 87.33 marks, the non preparation of the panel does not seem to have any rationale and must be deprecated. The said action of the respondents is not only in violation of the rules as has been quoted hereinabove but is also clearly in derogation of the instructions issued by the Standing Committee.”

CASE OF THE RESPONDENTS



19. Learned counsel on behalf of the High Court has submitted that Rule 7(12) of the 2009 Rules has to be read with Rule 7(13) and 7(14) of the 2009 Rules. While Sub-Rules (12) and (13) mandates creation of a Panel for a period of two years, Sub-Rule (14) gives a discretion to the Authority by using the word "may". Under this discretion, read with discretion conferred under Rule 9(6) of the 2009 Rules, the High Court has published the select list of 1681 candidates.

20. Another submission on behalf of the respondents is that no one has an indefeasible right to appointment. Not to fill up a post is a policy decision of the employer. This Court should not exercise its discretion under Article 226 of the Constitution of India in the matter. In support of this decision, he relies on the following decisions:

(i) (2005)3 SCC 618 para 14 (Food Corporation of India & Ors. Vs. Bhanu Lodh & Ors.)

(ii) (2013)12 SCC 171 para 10 and 12 (Manoj Manu & Anr. vs. Union of India & Ors.)

(iii) (2009) 2 SCC 479 para 12,13,14 and 15 (S.S. Balu & Anr. Vs. State of Kerala & Ors.)

(iv) (2003)11 SCC 584 para 9 and 14 (Ashwani Kumar Singh Vs. U.P. Public Service Commission & Ors.)

21. He submits that the new rules for recruitment, namely, the Bihar Civil Court Officers and Staff (Recruitment Promotion, Transfer and Other Service Conditions) Rules, 2017 (for short '2017 Recruitment Rules') for recruitment came into



force on 23.05.2017. The same brought about total transformation in the administrative structure, hierarchy, and qualification for the various posts. The process of appointment and promotion, character of posts of Class C and D were also considerably altered. Thus, it was not possible to continue to make appointments from the recruitment process initiated under the earlier 2009 Rules, as per Employment Notice No 1/2016. Accordingly, upon receipt of the minutes of the Coordination Committee dated 21-09-2018, the result of the process of selection, based on Employment Notice No. 01 of 2016, was approved by the High Court, under communication dated 25-09-2018, bearing Letter No. 72595. The High Court did not approve any wait list; and further appointment, thus, could not be made against any remaining vacancies. The Appointment Committee has, thus, decided that they would no longer be interested in taking any more persons from the recruitment process, based on Employment Notice No 1/2016.

22. In support of this submission, he has also relied upon (2012) 1 SCC 432 para 17 (*Union of India & Anr. vs. Pradip Kumar Kedia & Ors.*). The Appointment Committee as a delegate of the powers of the High Court was fully competent to exercise its discretion under Rule 9(6) of the 2009 Rules and has accordingly done so.



23. The petitioners' case is factually distinguishable from the case of *Rajeev Kumar Verma* (supra) relied upon by the petitioners. In that case the Standing Committee of the High Court was keen on getting more candidates and thus there was a conscious decision by the Standing Committee for reducing the qualifying marks. It was in this context that the Division Bench was of the opinion that there was no rational in not preparing the Panel for two years. On the contrary, in the present case, due to coming into force of the 2017 Recruitment Rules, the High Court has decided not to prepare the wait list for being filled up under the old Rules.

COURT'S CONSIDERATION

24. Having considered the rival submissions, this Court would observe that the Advertisement was issued in the year 2016. The Result/Select list was published on 26-09-2018. A relevant undisputed fact, in the meantime, is coming into force of the 2017 Recruitment Rules w.e.f. 23-05-2017, much before publication of the Result. It is also not denied or disputed by the petitioners that the 2017 Recruitment Rules brought about a transformation in the Administrative structure, hierarchy and requisite qualification for the various posts. The process of appointment and promotion, and the character of posts of Class- C and D were also considerably



altered. The futuristic mandate of the 2009 Rules, in the opinion of this Court, cannot be stretched beyond the existence of the Rules itself since in the instant case the new rule has totally transformed the entire Administrative structure, hierarchy and requisite qualification for the various posts.

25. This Court would thus observe that the petitioners are not in a position to claim filling up of vacancies from a Panel prepared under the 2009 Rules. This Court would, therefore, note with approval the stand of the respondents that after coming into force of 2017 Recruitment Rules transforming the entire administrative structure, hierarchy and requisite qualifications, it was not possible to continue to make appointment from the recruitment process initiated by the Employment Notice No. 01 of 2016, under the 2009 Rules.

26. The new 2017 Recruitment Rules were, framed by the High Court specifically repealing the 2009 Rules. This Court, thus, does not find any force in the submission on behalf of the petitioners that the High Court's decision thereafter to approve the result, as per minutes of the Coordination Committee dated 21-09-2018; and not direct for preparation of any Panel/ wait list for filling up vacancies in excess of 1681 originally advertised, under the repealed 2009 Rules, suffers from any illegality



whatsoever. This Court is of the considered opinion that the petitioners cannot claim that appointments be continued to be made, even though the 2009 Rules has been specifically repealed w.e.f. coming into force of 2017 Recruitment Rules on 23-05-2017. The specific repealing provision is under Rule-23, of the 2017 Recruitment Rules, which reads as follows:-

“23. Repeal and Saving.- (i) Bihar Civil Court Staff (Class III and Class IV) Rules, 1998, Bihar Civil Courts Staff (Class III and Class IV) (Amendment) Rules, 2001 and Bihar Civil Court Staff (Class III and Class IV) Rules, 2009 Rules are hereby repealed.

(ii) Notwithstanding such repeal, anything done or any action taken under aforesaid Rules shall be deemed to have been done or taken under the corresponding provisions of this Rule.”

27. The decisions relied upon by the petitioners’ counsel that the Authorities are obliged to conclude the selection process in accordance with the Rules and Advertisement, under which, the same has been initiated contains expression of an undeniable proposition of law. In the instant case also it is not in dispute that the process of selection initiated under Advertisement No. 1 of 2016, for 1681 posts has been conducted in accordance with the 2009 Rules wherein the District and Sessions Judge was the Appointing Authority for Class-III employees, the State was divided into seven zones and selection was to be done by a Zonal Selection Committee comprising of all District and Sessions Judges of all judgeships of the Zone, to be presided by the Senior



most District Judge as Chairman of the Zonal Selection Committee. The requisite qualifications and all other procedure as per 2009 Rules have been followed. The petitioners' grievance is limited to the non preparation of panel for two years and non filling up of vacancies from such panel.

28. After coming into force of the 2017 Recruitment Rules, the Appointing Authority had changed, and the Registrar General of the High Court became the Appointing Authority. A "Centralized Selection and Appointment Committee" constituted by the High Court under Rule 6(i) was to carry out the process of selection. Therefore, it is apparent that the 2017 Recruitment Rules substantially altered the Appointing Authority and process of selection. Method of selection, staffing pattern, life of panel etc., have all been altered under the 2017 Recruitment Rules. The petitioners, thus, cannot claim that even after coming into force of the new 2017 Recruitment Rules, the respondent was under any legal obligation to continue to fill up vacancies, as per the old and repealed 2009 Rules. Judgment of the Apex Court in the case of *Renu* (supra) and *Uma Devi* (supra), therefore, are distinguishable on facts and, therefore, would have no application in the facts and circumstances of the present case. The petitioners, therefore, in the opinion of this Court, have no right by virtue of



their unsuccessful participation in the appointment process under the 2009 Rules, against the 273 vacancies existing due to non-joining; or any vacancies, which remained unfilled, for any reason whatsoever. After coming into force of 2017 Recruitment Rules, the remaining vacancies could only be filled up in accordance with the 2017 Recruitment Rules.

29. The petitioners' case is also different from the case of ***Rajeev Kumar Verma*** (supra) decided by a Division Bench of this Court in ***LPA No. 1361 of 2018***. In that case, the Division Bench has taken note of a conscious decision by the Standing Committee for reducing the qualifying marks for getting more candidates. Therefore, Division Bench concluded that there was no rational in not preparing a panel. The judgment cannot be cited as an Authority in the facts and circumstances of the instant case where there is no such conscious decision by any Competent Authority. This judgment relied upon by the petitioners' counsel, therefore, does not help the case of the petitioners.

30. The decision in the case of ***Dinesh Kumar Kashyap*** (supra) relied upon by the petitioners is also inapplicable to the facts and circumstances of the instant case. In that case subsequent and parallel recruitment processes had been initiated and the claim of the candidates for appointment were being resisted on the



ground that they had obtained lower marks than cut-off prescribed in the other contemporaneous selection process. It is, under such circumstances, that the Hon'ble Apex Court has held that such a stand amounts to comparing apples to oranges and such plea has been rejected. In the instant case, Respondent-High Court has come forward with justifiable and non-arbitrary reason, being coming into force of the 2017 Recruitment Rules for not filling up further vacancies on the basis of Employment Notice No. 1 of 2016, which was issued under the earlier 2009 Rules.

31. The Court would consider with approval decision relied upon by the learned counsel for the respondents. The judgment relied upon by the respondents' counsel substantially are binding expression of established principle that no one has an indefeasible right to appointment. Not to fill up a post is a policy decision and when such policy decision is taken which otherwise does not suffer from any illegality no *mandamus* can be issued for filling up the posts. The only caveat being that the decision may not be infected by the vice of arbitrariness or offend Article 14 of the Constitution of India. The decision not to appoint is required to be based on sound rational and conscious application of mind, once it is found that it is based on some valid reason, as in this



case, by virtue of coming into force of 2017 Recruitment Rules, the Court should not issue a *mandamus* for making appointments.

32. In view of the foregoing discussions and consideration of settled binding precedents expressing established principle with respect to the scope and exercise of writ jurisdiction, this Court is of the opinion that no case is made out for issuance of any direction, as prayed for, in the instant writ proceedings.

33. The writ applications are devoid of merit and dismissed.

(Madhuresh Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	24-08-2022
Uploading Date	23-10-2022
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