

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5826 of 2020

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1. Dr. Manoj Kumar Singh, S/o Sri Raj Narayan Singh, Resident of Shiv Shakti Colony, Road No. 24K, Rajiv Nagar, P.S.- Rajiv Nagar, Post- Keshari Nagar, District- Patna, Patna- 800024.
 2. Rajesh Ranjan Kumar, S/o Sri Dev Narayan Yadav, Resident of Village- Tirhuta, Post- Tirhuta, P.S.- Babu Barahi, District- Madhubani, Madhubani- 842221.
 3. Dr. Eena Bahan, W/o Sri Raj Shekhar Prasad, Resident of 8E/13, Bahadurpur Housing Colony, Kankarbagh, P.S.- New Agamkuan, District- Patna, Patna- 800026.
 4. Dr. Mukesh Kumar Sinha, S/o Late Ram Chandra Prasad, Resident of Ramraji Road, Maripur, P.S.- Kazimohammadpur, District- Muzaffarpur, Muzaffarpur- 842001.
 5. Dr. Manoj Kumar Singh, S/o Late Shiv Nandan Singh, Resident of Shaligram Sadan, J.P. Pandey Lane, Upper Tola, Jogeshar, P.S.- Kotwali, District- Bhagalpur, Bhagalpur- 812001.
 6. Dr. Kumar Amitabh, S/o Sri Arvind Kumar Singh, Resident of Mohalla- Bharat Raut (Katra), Post- Hajipur, P.S., District- Vaishali, Hajipur- 844101.
 7. Dr. Ashok Kumar, S/o Late Dudeswar Singh, Resident of Village- Tarari, P.S.- Daudnagar, Post- Tarari, District- Aurangabad, Aurangabad- 824113.
 8. Dr. Sarangdhar Singh, S/o Late Dipnarayan Singh, Resident of Ward No.16, Vidyapatinagar, near Vaishali Sadan, P.S.- Saharsa, Post- Saharsa, District- Saharsa, Saharsa- 852201.
 9. Dr. Shwetambara, D/o Prof. Lalan Jha, Resident of Ward No.18, Mohan Singh Labe, Gangajala, P.S.- Saharsa, District- Saharsa, Saharsa- 852201.
 10. Dr. Rakesh Roshan, S/o Late Sahdeo Prasad Verma, Resident of Chandel Bhawan, A. Nagar, Road No.8, Ramlakhan Path, P.S.- Kankarbagh, Post- Lohiyanagar, District- Patna, Patna- 800020.
 11. Kumar Sanjay Sinha, S/o Sri Ravi Bhushan Prasad Srivastava, Resident of Sushma Sadan, House No. 105, Ward No.14, Mohalla- Adhivakta Nagar, P.S.- Gopalganj, District- Gopalganj, Gopalganj- 841428.

... .. Petitioner/s



Versus

1. The State of Bihar through the Principal Secretary, Department of Science and Technology, Government of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Bailey Road, District- Patna, Patna-800001.
2. The Joint Secretary, Department of Science and Technology, Government of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Bailey Road, District- Patna, Patna- 800001.
3. The Deputy Secretary, Department of Science and Technology, Government of Bihar, Technology Bhawan, Vishweswaraiya Bhawan Campus, Bailey Road, District- Patna, Patna- 800001.
4. The Principal, Supaul College of Engineering, Supaul.
5. The Principal, B.P. Mandal Institute of Technology, Madhepura.
6. The Principal, Government Engineering College, Jamui.
7. The Principal, Purnia College of Engineering, Purnia.
8. The Principal, Sher Shah Engineering College, Sasaram.
9. The Principal, Government Engineering College, Vaishali, Hajipur.
10. The Principal, Lok Nayak Jaiprakash Institute of Technology, Chapra.
11. The Principal, Rashtrakavi Ramdhari Singh Dinkar College of Engineering, Begusarai.
12. The Principal, Saharsa College of Engineering, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Adv.
For the Respondent/s : Mr. Satya Vrat, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 29-01-2022

Heard Mr. Kumar Kaushik, the learned Advocate
for the petitioners and Mr. Satya Vrat, the learned AC to GP-



10 for the State.

2. The petitioners seek setting aside the order contained Memo No. 256, dated 23.01.2020, issued under the signature of the Joint Secretary, Department of Science and Technology, Govt. of Bihar, Patna, whereby their appointment as Assistant Professors in various subjects in several Government Engineering Colleges has been declared to be in conflict with the Rules of Reservation and, therefore, their contractual appointment has been done away with.

3. As a sequel to the aforesaid prayer, the petitioners have prayed for extension of their service as Assistant Professors in different subjects in which they had been rendering their services from 2013.

4. It is the case of the petitioners that pursuant to an advertisement dated 26.05.2012 inviting on-line application for contractual appointment against vacant posts of Professors, Associate Professors and Assistant Professors in Engineering Colleges and on the vacant posts of Lecturers and Heads of the Department in Government Polytechnics in



Engineering as well as Non-Engineering and Humanities streams, the petitioners applied and were engaged against such vacant posts. It has been pointed out by the learned counsel for the petitioners that in the advertisement itself, it was mentioned that the reservation rules applicable in the State of Bihar shall be applicable in such appointment process.

5. There is no dispute with respect to the eligibility of the petitioners for being taken in as contractual teachers in various Departments.

6. The services of the petitioners were extended on yearly basis till 2018, when a decision was taken not to extend the same for the eleven petitioners any further by order dated 23.01.2020, as their continuation in such contractual appointment would be against the reservation rules applicable in the State of Bihar.

7. In the year 2019, an exercise was conducted for regular appointment on the post of Assistant Professors in various Engineering Colleges in the State of Bihar for Engineering and Humanities streams, but the process was



set aside by a judgment of this Court in *C.W.J.C. No. 9152 of 2019*. Because of that, no appointment process could be conducted.

8. The counsel for the petitioners has submitted that now the process has again begun in the year 2020, but it has not yet been concluded. The process, this Court has also been informed, has been initiated only for few of the subjects and not for all Engineering, Non-Engineering and Humanities subjects.

9. In order to buttress the claim of the petitioners for further extension of such contractual appointment, it has been brought to the notice of the Court that a High Level Committee was constituted through the Resolution of the General Administration Department of the Government in the year 2015 for making recommendations with respect to the matters of services on contractual basis in various Departments of Government of Bihar. The report of the High Level Committee with respect to the Department of Science and Technology has affirmed that in the appointments made prior to 2012 only, no reservation rules



were followed, but appointments post-2012 were in accordance with the rules of reservation.

10. Since the petitioners were the appointees of the year 2013, it would be presumed that their appointment was in consonance with the reservation rules and not otherwise.

11. Pursuant to the aforesaid recommendation of the High Level Committee, another Resolution dated 17.09.2018 was passed which reflects that most of the recommendations of the Committee was accepted by the Government. In the same transaction however, the Department of Science and Technology has permitted twenty six of such contractual appointees, like the petitioners, to continue on such contractual engagement; but that privilege has been not given to the petitioners.

12. Mr. Kaushik has submitted that a specious plea has been taken by the Department that those twenty six persons whose contractual appointment have been further extended were initially appointed against the unreserved seats, whereas the petitioners were the



appointees against the reserved seats, but in the absence of any suitable candidate being available at that time.

13. Under the aforesaid circumstances, it has been urged that the discontinuation of their contractual engagement cannot be countenanced on the issue that their appointment was not in consonance with the reservation rules and that by accepting the carry-forward principle, such contractual employment of the petitioners could also be tinkered/interfered with. Additionally, it has been urged that the carry-forward rule would not apply to the cases of the contractual employees.

14. It has also been submitted that the respondents ought to have taken into account that the petitioners are eligible to be kept in contractual service and have been rendering their services to the satisfaction of all and there is no emergent necessity for discontinuing with such engagement, without the fresh appointment process having been concluded.

15. True it is that the appointment of the petitioners, in the first instance, was not de hors the rules of



reservation as would appear from the terms of the advertisement issued in the year 2012 as also by the fact that they were engaged against vacant reserved posts for the reason that no suitable candidate in such category was available. This continued for five years, but before fresh advertisement could be made for regular appointment, the services of the petitioners out of those total of the appointees, have been discontinued.

16. There is no merit in the contention of the petitioners that in cases of contractual employment, the rule of carry-forward with respect to the reserved seats would not be *ipso facto* available as carry-forward principle is with respect to the number of posts *qua* the vacancies every year. This does not have any bearing with respect to any contractual appointment against the reserved seats of the candidates of general category in the absence of any suitable candidate of the reserved category. Precisely for this reason, the appointment of the petitioners was contractual and it has not been made permanent. In fact, in the scheme of the advertisement of 2012, engagement was contractual



for one one year to be renewed further.

17. However, there is substance in the contention of the petitioners that till the time the process of fresh appointment in accordance with reservation rules is concluded, no distinction should have been made with respect to the petitioners who are eleven in number and twenty six others who were appointed against the vacant posts in the general category. Even their appointments would not be for perpetuity and fresh selection process has to be gone into by the Department/Government. If they have been allowed to continue in the service on contract, there is no explicable reason for picking-up the petitioners for discontinuing with their contractual engagement.

18. Under the aforesaid circumstances, this Court can only direct that in case the petitioners make a suitable representation before the Principal Secretary, Department of Science and Technology, Govt. of Bihar, Patna within a period of thirty days with a plea that till the time the fresh recruitment process is concluded, they be allowed to continue with such contractual engagement, the



concerned respondent, after looking into the matter and its feasibility as also the rules in that regard, shall take a decision within a further period of six weeks, preferably by an order, which shall be communicated to the petitioners.

19. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01.02.2022
Transmission Date	N/A

