

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17544 of 2015

1. Miss Anamika Kumari Wife of Sri Rajeev Kumar Gupta Resident of Village and P.O.- Chandpura, P.S.- Bidupur R.S., District- Vaishali (Bihar).
2. Bipin Bihari Raman Son of Sri Ashok Prasad Resident of Village- Dharampur, P.O.- Rasalpura, P.S.- Doriganj, District- Saran (Bihar).
3. Dinesh Chaudhary Son of Sri Ram Lakhan Chaudhary Resident of Village- Gajipur, P.O.- Malikpur, Via- Silao, P.S.- Rajgir, District- Nalanda (Bihar).
4. Sukesh Raj Son of Sri Upendra Prasad Resident of Village- Shantipuram, P.O.- Pariyari, P.S.- Kinjar, District- Arwal (Bihar).
5. Amitabh Kumar Son of Sri Vashisth Das Resident of Village- Ranibigha, P.O.- Uttarain, P.S.- Tekari, District- Gaya (Bihar).
6. Subodh Kumar Son of Sri Shiv Lakhan Singh Resident of Gulzarbagh, P.O.- Karpi, P.S.- Karpi, District- Arwal (Bihar).
7. Subhadra Kumari Daughter of Sri Suresh Pandit Resident of Village and P.O.- Shahjahanpur, P.S.- Shahjahanpur, District- Patna (Bihar).
8. Jitendra Kumar Son of Sri Bishundeo Singh Resident of Village- Kewaidih, P.O.- Dahpar, P.S.- Noor Sarai, District- Nalanda (Bihar).
9. Suman Kumar Son of Sailendra Kumar Resident of Village- Gondarbiga, P.O.- Dariyapur, P.S.- Hisua, District- Nawadah (Bihar).
10. Santosh Kumar Son of Ganesh Singh Resident of Village- Mungila, P.O.- Shankarpur Imamganj, P.S.- Paliganj, District- Patna (Bihar).
11. Sarita Kumari Daughter of Rameshwar Singh Resident of Village- Dharampur, P.O.- Rasalpura, P.S.- Doriganj, District- Saran (Bihar).
12. Sujish Kumar Gupta Son of Pramod Kumar Sah Resident of Mohallah- Sadipur, P.S.- Kotwali, District- Munger (Bihar).
13. Shyam Babu Kumar Paswan Son of Sri Kishundeo Manjhi Resident of Village- Ariyanw, P.O.- Phulwariya Tajpur, P.S.- Daudpur, District- Saran (Bihar).
14. Sindhu Kumari Wife of Akhilesh Kumar Resident of Village- Chhatwara Chak Sheikh Nizam, P.O.- Madhopur Nizma, P.S.- Mahua, District- Vaishali (Bihar).
15. Kamlesh Kumar Singh Son of Deodatta Singh Resident of Village- Ambika Bigha, P.O.- Orhanpur, P.S.- Muffassil, District- Nawadah (Bihar).
16. Om Prakash Son of Suraj Ram Resident of QTR. No. 1122, ST-31, Sector- 8C, P.O.- Section-IX, P.S.- Harla Thana, District- Bokaro (Jharkhand).
17. Chhotu Kumar Choudhary Son of Ramu Choudhary Resident of Village- Shokhara-1, Ward No.6, P.O.- Barauni, P.S.- Phulwaria, District- Begusarai (Bihar).
18. Guddu Kumar Son of Umesh Kumar Resident of Village- Pakari, P.O.- Amhara, P.S.- Bihta, District- Patna (Bihar).
19. Suraj Kumar Son of Kailash Chaudhary Resident of Village- Jagdish Kamtaul, P.O.- Anant Kamtaul, P.S.- Kurhani, District- Muzaffarpur (Bihar).



20. Ramesh Kumar Son of Ram Swarath Kumar Resident of Village- Jagish Kamtaul, P.O.- Anant Kamtaul, P.S.- Kurhani, District- Muzaffarpur (Bihar).
21. Loknath Patra Son of Rabindra Kumar Patra Resident of Village- Surujpur Maraura, P.O.- Maraura, Via- Bihar Sharif, District- Nalanda (Bihar).
22. Shubu Kumar Son of Sri Sadhu Pandit Resident of Village and P.O.- Lakhisarai, P.S.- Lakhisarai, District- Lakhisarai (Bihar).
23. Dhiraj Kumar Son of Sri Maheshwar Prasad Resident of Village- Chaurasa, P.O.- Abgila Chaurasa, P.S.- Chandradeep, District- Jamui (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secetariat, Patna.
2. The Principal Secretary, Department of Energy, Government of Bihar, Patna.
3. The Chief Managing Direction-cum-General Manager, The Bihar State Power Holding Company Limited, Vidyut Bhawan, Patna.
4. The General Manager (Human Resources and Administration), Bihar State Power Transmission Company Limited, Vidyut Bhawan-I, Jawahar Lal Nehru, Patna- 800021.
5. The Deputy General Manager (Human Resources and Administration), Bihar State Power Transmission Company Limited, Vidyut Bhawan-I, Jawahar Lal Nehru, Patna- 800021.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. M.P. Dixit, Adv Mr. S.K. Dixit, Adv Mr. Sanjay Kr. Chaubey, Adv
For the Respondent/s	:	Mr. Anand Kr Ojha, Adv Mr. J.K. Rout, SC-13 Mr. Ashok Karna, Adv Mr. Ujjwal Bhushan, Adv

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 30-06-2022

Heard learned counsel for the petitioners and learned counsel representing the respondent-Board.

The respondent-Board had come up with an advertisement 'Job Contract Notice No. 01/2014'. The



applications were invited from eligible candidates for engagement on contract basis, as junior operator for different sub-stations under the Bihar State Power Transmission Company Limited on a consolidated pay of Rs. 8,000/- per month. The qualification prescribed in the advertisement was ITI with electrical trade from any recognized institute. The selection criteria was based on percentage of marks obtained in the requisite qualification. 105 vacancies have been advertised.

The petitioners applied for the said post and under notice dated 01.12.2014, (Annexure-2) persons empanelled were called for counseling and documents verification.

It is the petitioners' case that thereafter they had gone through the process of documents verification also.

On 16.05.2015, the respondent-company had come out with a notice canceling the 'Job Contract Notice No. 01/2014' under which the petitioners had participated.

The writ application has been filed assailing cancellation of the selection process.

Mr. M.P. Dixit, appearing on behalf of the petitioners, has submitted that the petitioners had been declared successful as per notice dated 01.12.2014. Having been declared successful, their documents were also verified and counseling



had been done. Petitioners have a legitimate expectation to appointment in terms of the Job Contract Notice No. 01/2014. The authorities could not have cancelled the selection process, more so without assigning any reasons. Such cancellation is arbitrary and prejudicial to the petitioners' interest. He submits that only in this proceeding, the authorities have come out with a reason in support of cancellation of the job contract notice, and the reason assigned is unsustainable. The reason which has been assigned is that the authorities had taken a decision to regularise persons who had been working on daily wages basis/ad hoc basis since before.

It is his specific case that regularization of the existing employees is against other vacant posts, with which the petitioners have no conflict.

The submissions are two fold; 1) there is no reason in support of cancellation, 2) that the reason provided is unsustainable on merits, and also because reason has been assigned by way of counter-affidavit, and thus not tenable in view of decision of the Apex Court in the case of ***Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.*** reported in AIR 1978 SC 851.

Mr. Anand Kr. Ojha, appearing for the Board, on the



other hand, submits that the facts being undisputed, the legal position stands settled. By participating in the process of engagement; and merely because the petitioners' name had figured in the result, after which they had been subjected to document verification and counseling, they cannot claim any vested right to be appointed. He submits that the policy decision which is apparent from Annexures C-1 and C-2 of the counter-affidavit, is for regularizing existing contractual/ad hoc employees. It is for the Board to decide whether it wants to induct new contractual employees, or induce more efficiency in the organisation by regularising those who are already serving contractual/ad hoc employees, and have acquired experience. The policy decision is based on the requirements, and various other operational and administrative reasons. He submits that such decision cannot by any means be said to be arbitrary or unsustainable in the eyes of law.

In view of the law laid down in the case of ***Shankarsan Dash v. Union of India***, reported in (1991) 3 SCC 47 as also ***Punjab State Electricity Board & Ors. v. Malkiat Singh*** reported in (2005) 9 SCC 22, the decision not to proceed with the selection process, based on the internal policy of the Board, cannot be assailed in the writ proceedings as petitioners cannot



claim to have any right to be appointed. He has also relied upon the division bench decision of this Court in the case of ***Bihar State Electricity Board & Ors. v. Abhishek Ranjan & Anr.*** in LPA No. 289/2014.

The Court has considered the rival submissions. In view of the law emanating from judgement of the Hon'ble Apex Court in the case of ***Shankarsan Dash*** (supra), the axiomatic position is that by virtue of being declared successful in the selection process, and because the petitioners have participated in document verification/counselling, petitioners cannot claim a legal and vested right that they must be appointed.

The decision not to proceed further and make appointments from the selection process initiated by Job Contract Notice No. 01/2014, is clearly based on the internal policy of the Board to regularise existing employees, having regard to its own resources, and other administrative and operational requirements over which the Court exercising jurisdiction under Article 226 of the Constitution of India should not sit in appeal. Such decisions based on administrative, requirements and organisational capacity, in the opinion of this Court, are best left to be decided by the organisation.



Petitioners' reliance on decision in the case of ***Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.*** reported in AIR 1978 SC 851 is also misplaced. In that case, the facts were essentially different where the appellant had a vested right in respect of votes cast in their favour in certain segments of the parliamentary constituency. There was no contemporaneous allegation that the polling process in respect of these segments was in any way disturbed or vitiated, still the Election Commission had directed for repolling in these segments also. The decision to direct for repolling was sought to be explained by the authorities before the Apex Court by stating in its affidavit for the first time that for such segments also there were reports that polling was disturbed/vitiated. Whereas no such report was considered by the Electoral Authorities while directing for repolling.

Paragraph 8 of decision in the case of ***Mohinder Singh Gill & Anr.*** (supra) which is relevant to submission advanced by petitioners' counsel reads as follows:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the



reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

The factual position in the present case, however, is different. In view of the settled legal position emerging from



decision of the Apex Court in the case of *Shankarsan Dash* (supra), recently relied upon by the Apex Court in the case of *K. Meghachandra Singh & Ors. v. Ningam Siro & Ors.* reported in (2020) 5 SCC 689, the petitioners cannot claim any vested right to be appointed pursuant to their successful participation in the selection process. Therefore, it cannot be said the respondents are under any corresponding duty to issue a reasoned and speaking order while cancelling the selection process.

Having said so, this Court would observe that it was open to the respondents to cancel the selection process on legal justifiable grounds or in furtherance of executive policy taken in the interest of administration, which is based on an interplay of the various factors. This Court would find the reasons assigned by the respondents for preferring regularisation of existing ad hoc/contractual employees rather than adding more ad hoc appointment to be a legal and valid consideration for cancelling the selection process initiated under Job Contract Notice No. 01/2014. Such consideration is bonafide, reasonable and not in the least arbitrary. On the contrary, the Apex court and this Court also in various decisions has deprecated ad hocism and administrative uncertainties arising



out of ad hocism.

In their counter-affidavit, respondents have disclosed reasons, which reasons, as noted above, have been found by this Court to be valid. The reasons disclosed by the respondents are not any supplementary or fresh reasons which were non existent when the respondents decided to go for regularisation of existing ad hoc/contractual employees, instead of introducing more ad hocism in the organisation. Thus, factually, the instant case is different from facts, in the case of *Mohinder Singh Gill & Anr.* (supra). Petitioner's reliance on the said case is thus misconceived and unsustainable.

In view of discussions above, writ application is devoid of merit and is dismissed.

(Madhuresh Prasad, J)

SUMIT/-

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

