

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10392 of 2020

1. Manohar Kumar Yadav Son of Ram Sagar Yadav Resident of Village- Vidyarthi Tola, Pakrail Ward No. 12, Post- Pakrail, P.S.- Maheshkhut, Distt.- Khagaria, Roll No. 14531 Distt.- Munger.
2. Avinash Kumar S/o Sahdev Prasad Yadav R/o- Village- Raghunathpur, P.S.- and Anchal- Sahebpur Kamal, Begusarai, Roll No. 13875 Distt.- Muzaffarpur.
3. Hridaya Paswan Son of Ram Bali Paswan R/o- Village- Bishanpur, Anchal and P.S.- Balia, Distt.- Begusarai, Roll No. 9799 Applied Dist.- Patna BMP- 10.
4. Ajay Kumar Son of Ram Bhujhawan Paswan R/o- Village- Hajipur, Pipra Devas, P.S.- Barauni, Distt.- Begusarai, Roll No. 19577 Applied Dist.- Patna BMP- 10.
5. Pradeep Kumar Son of Shankar Prasad Yadav R/o- Raghunathpur, Barari, Anchal and P.S.- Sahebpur Kamal, Distt.- Begusarai, Roll No. ----- Dist.- Begusarai.
6. Ranjeet Kumar Son of Chandra Deo Prasad Yadav R/o- Raghunathpur, Barari, Anchal and P.S.- Sahebpur Kamal, Distt.- Begusarai, Roll No. 8299 Applied Dist.- Munger.
7. Dharmendra Kumar Sharma Son of Suresh Sharma R/o- Village- Malhipur, P.S.- Sahebpur Kamal, Distt.- Begusarai, Roll No. 28870 Applied Dist.- Bhagalpur BMP- 9.
8. Ram Dhayan Yadav Son of Ram Vriksh Yadav R/o- Badki, Chilmi Tola, Bodhi Sthan, Bakdi Chilmi, Gaya, P.S.- Nima Bidhol, Distt.- Gaya, Roll No. -- Dist.- Aurangabad.
9. Saroj Kumar Son of Jhaweshwar Prasad Yadav R/o- Village- Shaligrami, Post- Saligrami, Block and P.S.- Begusarai, Roll No. 726 Dist.- Munger.
10. Rajesh Kumar Son of Parmeshwar Prasad Yadav R/o- Village and Post- Saligrami, Block and P.S.- Sahebpur Kamal, Distt.- Begusarai, Roll No. 20149 Applied Dist.- Patna BMP- 14.
11. Rakesh Kumar Son of Kapildev Prasad Singh R/o- Village- Sri Chandrapur, Ward No.- 15 Post- Saligrami, Under Gram Panchayat- Raghunathpur, Karari, P.S. and Block- Sahebpur Kamal, Roll No. 30546 Applied Dist.- Darbhanga.
12. Kumar Kranti Anand Son of Ram Nivas Prasad Yadav R/o- Village- Srinagar, Post- Chharra Patti, P.S. and Block - Sahebpur Kamal, Distt.- Begusarai, Roll No. 13873 Applied Dist- Muzaffarpur.
13. Sanjay Kumar Son of Ganesh Prasad Yadav R/o- of Village- Pratappur Post- Hussaina, P.S. and Block - Dandari, Distt.- Begusarai, Roll No. 28572 Applied Dist.- Begusarai and also apply in Dist.- Khagaria Roll No. 12433.
14. Mahesh Kumar Son of Lakshmi Prasad Yadav Resident of Village- Srinagar, Post- Charrapatti, P.S. and Anchal - Sahebpur Kamal, Distt.- Begusarai, Roll No. 39307 Applied Dist.- Aurangabad. and also applied in Jahanabad Road No. 24.



15. Mukesh Kumar Son of Prabhakar Yadav Resident of Village- Kharhat, Ward No. 11, Under Gram Panchayat- Phul Malik, Block and P.S.- , Distt.- Begusarai, Roll No. 58786 Applied Dist.- Muzzaffarpur.
16. Ranjan Kumar Son of Shambhu Sah Resident of Village- Tetari, Ward No. 11, Under Gram Panchayat - Tetari, Block and P.S.- Dandari, Distt.- Begusarai, Roll No. 158992 Applied Dist.- Patna.
17. Tuntun Sharma Son of Late Panchu Sharma Resident of Village- Kharhat, Ward No. 09 Under Gram Panchayat- Phul Malik, Block and P.S.- Sahebpur Kamal, Distt.- Begusarai, Roll No. 3947 Applied Dist.- Jamui (B.M.P.)
18. Devendra Kumar Deo Son of Chano Tanti Resident of Village- Sahebpur Kamal, Ward No. 02, Block and P.S.- S. Kamal, Distt.- Begusarai, Roll No. 129718 Applied Dist.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through The Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police Old Secretariat, Bihar, Patna.
3. The Deputy Inspector of Police Munger Range, Munger.
4. The Deputy Inspector of Police Bihar Military Police Central Range, Patna.
5. The Deputy Inspector General of Police Magadh Range, Gaya.
6. The Deputy Inspector General of Police Tirhut Division, Muzaffarpur.
7. The Chairman Through Regional Board 1, Muzaffarpur.
8. The Chairment North Division Board 1, Bihar Military Police, Muzaffarpur.
9. The Deputy Inspector General of Police Patna Division, Police Selection Committee through the Superintendent of Police, Patna.
10. The Senior Superintendent of Police, Patna.
11. The Superintendent of Police Khagaria.
12. The Superintendent of Police Gaya.
13. The Superintendent of Police Muzaffarpur.
14. The Superintendent of Police Darbhanga.
15. The Superintendent of Police Bhagalpur.
16. The Superintendent of Police, Bhagalpur cum Chairmen of Central Selection Board Patna.
17. The Superintendent of Police Saharsa.
18. The Superintendent of Police Aurangabad.
19. The Inspector General Human Rights Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shekhar Kumar Singh
For the Respondent/s : Mr. M.N.H. Khan, SC 1



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

Date : 11-01-2022

The matter is heard via video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

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

“(i) For issuance of writ/writs, relief/reliefs, order/orders, direction/directions, In the nature of mandamus commanding the respondent hold and enquiry/ investigation into the minor in which a large scale irregularities have been committed in the process of selection of Police Constables in the Selection/ Appointment Process which commenced in 2004 in pursuant to Advertisement NO. 01/2004, 02/2004 and 03/2004 in which there is serious illegalities where committed by the Selection Committee during the course of Selection Process accordingly the some of the petitioners along with several other candidate, they were moved before the Hon’ble High Court, Patna and also before the Hon’ble Supreme Court of India, in which Hon’ble Supreme Court of India was pleased to heard this case on 20.02.2020 In Writ Petition (Civil) No. 320/2020, Jai Krishna Kumar Yadav & Other versus the State of Bihar and other upon hearing the Counsel the Court made the following Order since the High Court, Patna has taken sole Moto Cognizance and is in seisin of the matter (Civil Writ Jurisdiction Case No. 6995 of 2019), we do not deem it appropriate to entertain this writ petition filed under Article 32 of the Constitution of India. The Petitioners are however at liberty to take appropriate proceedings in the High Court and agitate the Concerned issues. Therefore in view of the order of Hon’ble Apex Court, the petitioners being the bonafied candidate preferred the present writ petition and praying for appointed/ selected the petitioners on the post of constable in Bihar Police Department and Bihar Military Force.

(ii) For further prayed for issuance of necessary direction to the respondent in the present writ petition take consequential steps Issuance of necessary directions to the respondents in the present writ petition to take consequential



steps pursuant to such enquiry/investigation to ensure that only duly qualified candidates are appointed/retained in service;

(iii) Issuance of such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. In the event of allowing the petitioners' petition, third party rights are likely to be affected and without hearing them, it is not proper to entertain the present petition in the light of the Apex Court decision in the case of ***Ranjan Kumar vs. State of Bihar*** reported in (2014) 16 SCC 187, in paragraphs nos. 4 to 13 held as under:-

"4. On a perusal of the orders impugned, we find that only 40 persons were made respondents before the High Court and hardly a few appointees filed applications for intervention. It is well settled in law that no adverse order can be passed against persons who were not made parties to the litigation. In this context, we may refer with profit to the authority in Prabodh Verma v. State of U.P. [Prabodh Verma v. State of U.P., (1984) 4 SCC 251 : 1984 SCC (L&S) 704] , wherein a three-Judge Bench was dealing with the constitutional validity of two Uttar Pradesh Ordinances which had been struck down by the Division Bench of the Allahabad High Court on the ground that the provisions therein were violative of Articles 14 and 16(1) of the Constitution of India. In that context, a question arose whether the termination of the services of the appellants and the petitioners therein as secondary school teachers and intermediate college lecturers following upon the High Court judgment was valid without making the said appointees as parties. The learned Judges observed that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects; the core defect was that of non-joinder of necessary parties, for respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned and those who were vitally concerned, namely, the reserve pool teachers, were not made parties — not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined



individually as respondents. Thereafter the Court ruled thus: (Prabodh Verma case [Prabodh Verma v. State of U.P., (1984) 4 SCC 251 : 1984 SCC (L&S) 704] , SCC pp. 273-74, para 28)

“28. ... The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.”

5. In the case at hand neither was any rule nor any regulation challenged. In fact, we have been apprised that at the time of selection and appointment there was no rule or regulation. A procedure used to be adopted by the administrative instructions. That apart, it was not a large body of appointees but only 182 appointees. Quite apart from that the persons who were impleaded, were not treated to be in the representative capacity. In this regard, it is profitable to refer to some authorities.

6. In Indu Shekhar Singh v. State of U.P. [Indu Shekhar Singh v. State of U.P., (2006) 8 SCC 129 : 2006 SCC (L&S) 1916] it has been held thus: (SCC p. 151, para 56)

“56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.”

7. In Rashmi Mishra v. M.P. Public Service Commission [Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] , after referring to Prabodh Verma [Prabodh Verma v. State of U.P., (1984) 4 SCC 251 : 1984 SCC (L&S) 704] and Indu Shekhar Singh [Indu Shekhar Singh v. State of U.P., (2006) 8 SCC 129 : 2006 SCC (L&S) 1916] , the Court took note of the fact that when



no steps had been taken in terms of Order 1 Rule 8 of the Code of Civil Procedure or the principles analogous thereto all the seventeen selected candidates were necessary parties in the writ petition. It was further observed that the number of selected candidates was not many and there was no difficulty for the appellant to implead them as parties in the proceeding. Ultimately, the Court held that when all the selected candidates were not impleaded as parties to the writ petition, no relief could be granted to the appellant therein.

8. In Tridip Kumar Dingal v. State of W.B. [Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] , this Court approved the view expressed by the tribunal which had opined that for absence of selected and appointed candidates and without affording an opportunity of hearing to them, the selection could not be set aside.

9. In Public Service Commission v. Mamta Bisht [Public Service Commission v. Mamta Bisht, (2010) 12 SCC 204 : (2011) 1 SCC (L&S) 208] this Court, while dealing with the concept of necessary parties and the effect of non-implementation of such a party in the matter when the selection process is assailed, observed thus: (SCC pp. 207-08, para 9)

“9. ... in Udit Narain Singh Malpaharia v. Board of Revenue [Udit Narain Singh Malpaharia v. Board of Revenue, AIR 1963 SC 786] , wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called ‘Code of Civil Procedure’) provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of the Code of Civil Procedure are not applicable in writ jurisdiction by virtue of the provision of Section 141 of the Code of Civil Procedure but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat [Gulabchand Chhotalal Parikh v. State of Gujarat, AIR 1965 SC 1153] , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Sarguja Transport Service v. STAT



[Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19] .)”

10. *In J.S. Yadav v. State of U.P. [J.S. Yadav v. State of U.P., (2011) 6 SCC 570 : (2011) 2 SCC (L&S) 140] , it has been held that: (SCC p. 583, para 31)*

“31. No order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice.”

It was further held that: (SCC p. 583, para 31)

“31. ... The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity.”

11. *In Vijay Kumar Kaul v. Union of India [Vijay Kumar Kaul v. Union of India, (2012) 7 SCC 610 : (2012) 2 SCC (L&S) 491] it has been ruled thus: (SCC p. 619, para 36)*

“36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.”

12. *Recently in State of Rajasthan v. Ucchab Lal Chhanwal [State of Rajasthan v. Ucchab Lal Chhanwal, (2014) 1 SCC 144 : (2014) 1 SCC (L&S) 34] , it has been opined that: (SCC p. 149, para 14)*

“14. ... Despite the indefatigable effort, we are not persuaded to accept the aforesaid proponent, for once the respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed



against them as that would go against the basic tenet of the principles of natural justice.”

13. In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioners.

4. Accordingly, writ petition stands dismissed for non
joinder of necessary and proper parties, reserving liberty to the
petitioners to file a fresh petition in accordance with law.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	19.01.2022
Transmission Date	

