

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.4 of 2022

In

Civil Writ Jurisdiction Case No.10685 of 2019

1. Diwakar Kumar S/o Sakheechand Mahto Permanent Address- at Chilmil Tola, P.S.- Mufasil, District- Begusarai, presently residing at C/o Bhushan Jee, Sakuntala Kunj, Subhkarmana Colony, East Laxminagar, P.S.- Ramkrishna Nagar, Patna formerly posted as Dresser in O.T.- 4, Patna Medical College and Hospital, Patna.
2. Ajay Kumar S/o Suryabansh Singh presently residing at C/o, Mohalla- Janta Lodge, Bihari Sao Lane, P.S.- Pirbahor, District- Patna, formerly posted as Dresser in the Department of Plastic Surgery (Warn Ward), Patna Medical College and Hospital, Patna.
3. Ramesh Prasad S/o Ram Jatan Kanu resident of C/o Ram Bachan Prasad, Kankarbagh, Janta Path Road, Near Bachchan Kirana Store, District- Patna, formerly posted as Dresser in Burn Ward Patna Medical College and Hospital, Patna.
4. Ravi Ranjan Kumar S/o Kapil Deo Thakur presently residing at C/o House of Suryadev Prasad, Bahadurpur housing Colony, Sector-07, Block-8, Flat No.-22, Kankarbagh, P.S.- Agamkuan, District- Patna, formerly posted as Dresser in O.T.-2, Patna Medical College and Hospital, Patna.
5. Premlata Kumari W/o Niraj Kumar resident of Prasad Bhawan, East Ram Krishna Nagar, Patna, formerly posted as Dresser in R.S. Ward, Patna Medical College and Hospital, Patna.
6. Munni Devi W/o Late Promod Sah Resident of Main Road, Nagar Panchayat, Ward No. 15, Bakhri, Begusarai, Bihar- 848201, presently residing at C/o Bachchu Rajak, Mohalla- Mahendru, Near Malariya Office, P.S.- Sultanganj, District- Patna, formerly posted as Dresser in the Department of Surgical I.C.U. Patna Medical College and Hospital, Patna.
7. Pushpa Rani W/o Purshottam Das presently residing at - C/o Sitabji, Dariyapur, Mohar Tola, P.S.- Kadamkuan, District- Patna, formerly posted as Dresser in Female O.T. (Gayni) Patna Medical College and Hospital, Patna.
8. Madhaw Murari Singh S/o Baban Singh presently residing at C/o, Mohalla- Janta Lodge, Bihari Sao Lane, P.S.- Pirbahor, District- Patna, formerly posted as Dresser in the Department of Plastic Surgery (Warn Ward), Patna Medical College and Hospital, Patna.
9. Romeo Sunil Kumar S/o Krishna Pandit resident of Village- Usri, P.O. Sikarpur, P.S.- Shahpur, District- Patna, formerly posted as Dresser in O.T.- 2, Patna Medical College and Hospital, Patna.
10. Pinki Kumari W/o Mukesh Kumar resident of Rajendra Nagar, Road No. 15, Kankarbagh, District- Patna, formerly posted as Dresser in M.N. Ward, Patna Medical College and Hospital, Patna.
11. Bibha Kumari W/o Late Shashi Bhushan Prasad resident of House No. 679, Lalit Niketan Colony, Kali Mandir Road, Hanuman Mandir Road, Patna- 20, formerly posted as Dresser in the Dept. of E.N.T- O.T. Patna Medical College and Hospital, Patna.
12. Rekha Kumari W/o Abdhesh Paswan resident of Prasad Bhawan, East Ram Krishna Nagar, Patna, formerly posted as Dresser in O.T.- 1, Patna Medical College and Hospital, Patna.
13. Putul Kumari D/o Ramadhar Manjhi resident of Telpa House, Bhawar



Pokhar, Vijay Gopal Banarge Path, P.S.- Pirbahore, District- Patna, formerly posted as Dresser in C.H.O.T, Patna Medical College and Hospital, Patna.

14. Arpana Kumari D/o Krishnadeo Prasad Vishwkarma presently residing at- C/o Bachchu Rajak, Mohalla- Mahendru, Near Malariya Office, P.S.- Sultanganj, District- Patna, formerly posted as O.T. Assistant in the Department of Eya O.T. Patna Medical College and Hospital, Patna.
15. Sangeeta Kumari W/o Rajnish Kumar Arya resident at East Ashochak, P.O.- Laxminagar, P.S.- Ramkrishna Nagar, District- Patna, formerly posted as X-Ray Technician, Department of Radiology, Pediatric (NICU), Patna Medical College and Hospital, Patna.
16. Subhash Kumar S/o Harinath Prasad resident of Dr. Narayan Prasad Lane, Math Laxmanpur, P.S.- Alamganj, District- Patna, formerly posted as Dresser in R.S.B. O.T. No. 5, Patna Medical College and Hospital, Patna.

... ... Appellants

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-in- Chief (Administration), Health Services, Govt. of Bihar, Patna.
4. The Superintendent, Patna Medical College and Hospital, Patna.
5. The Principal, Patna Medical College and Hospital, Patna.
6. Vinni Kumari presently residing at Bhawar Pokhar, Behind Khetan Market, P.S.- Pirbahore, District- Patna, presently posted as Dresser in Lebor O.T., Patna Medical College and Hospital, Patna.
7. Prabhat Priyakinkar S/o Deonandan Mahto resident of Sundarpur, P.S.- Dharhara, District- Munger, presently posted as Dresser in Neuro O.T., I.G.C.C. Patna Medical College and Hospital, Patna.
8. Chandan Kumar S/o Sudama Singh resident of Village- Karma, Post- Karma, Via- Nasriganj, P.S.- Karakat (Gorari), District- Rohtas, presently posted as Dresser in R.S.B. O.T. No. 3, Patna Medical College and Hospital, Patna.

... ... Respondents

Appearance :

For the Appellants	:	Mr. Kumar Kaushik, Advocate
For the Respondents	:	Mr. S. D. Yadav AAG 9
		Mr. B. B. Mishra, AC to AAG 9

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

4 25-02-2023

The appellants, in the present appeal, under the



Letters Patent of this Court, have put to challenge an order passed by the learned Single Judge, dated 30.11.2021 in CWJC No. 10685 of 2019, whereby the aforesaid writ application has been dismissed. The appellants had approached this Court by filing CWJC No. 10685 of 2019, challenging memo No. 623(4) dated 26.04.2019 and memo No. 5536 dated 02.09.2019, to the extent the same related to the writ petitioners, whereby their appointments, on contractual basis, came to be terminated.

It is not in dispute that the appellants were appointed on contractual basis for a period of one year on 10.03.2018, against various posts in Patna Medical College and Hospital, Patna, based on a selection process. Subsequently, the authorities, in the Department of Health, found major discrepancies in the process of selection of the nature that backlog vacancies were not duly computed, roster points for giving effect to reservation in employment were not followed and some of the candidates selected did not have the requisite qualification(s) in terms of the departmental instructions contained in letter No. 74(2) dated 25.01.2017, issued by the Health Department, Government of Bihar.

The learned Single Judge has dismissed the writ petition, mainly on the ground that the order of termination



dated 26.04.2019, was issued after the appellants had already completed more than one year of their service on contractual basis and because they did not have any legal right to continue thereafter.

Mr. Kumar Kaushik, learned counsel appearing on behalf of the appellants, has made threefold submissions. He has, firstly, submitted that in terms of a decision of the State Government dated 17.09.2018, issued by the General Administration Department, Government of Bihar, the services of contractual employees under the State were required to be extended till appointments were made on regular basis. He has submitted that had the said circular dated 17.09.2018 been applied in case of these appellants, they could have continued till the regular appointments were made on the said posts. He has, thus, submitted that if, according to the respondents, some appellants were not fulfilling the requisite criteria in terms of educational qualification, they ought to have been given an opportunity to satisfy the concerned respondents that they did have such requisite qualification. He has, accordingly, submitted that the impugned order dated 26.04.2019 is in violation of principles of natural justice, which aspect has not been gone into by the learned Single Judge.



It has, thirdly, been submitted that the entire appointment has been cancelled on the ground that the authorities, while making selection, failed to compute properly the backlog vacancies and follow the reservation roster points. He submits that even upon applying roster points, selection of some of the candidates could have been saved and, thus, they could have been given the benefits of resolution of the State Government dated 17.09.2018.

We have carefully perused the pleadings on record and the impugned order passed by the learned Single Judge. It is an admitted fact that the department found serious irregularities in making appointments on contractual basis of the nature that backlog vacancies were not duly computed and roster points were not followed. These aspects, in our opinion, go into the root of the matter. In such circumstance, in our considered opinion, we do not find any illegality in the decision of the department to declare the process of selection illegal. As regards the submission made on behalf of the appellants, pertaining to violation of principles of natural justice, we find that the appellants have not been able to demonstrate that the selection process was done in accordance with the State Government's decisions/ roster points. As the selection process itself has been



found by the respondents to be invalid, we do not find any reason to interfere with the impugned order passed by the learned Single Judge. We further observe that, in any event, persons appointed on contractual basis do not have any legal right to continue beyond the term of their contractual appointment. Further, in our view, the impugned order, whereby the appointments of these appellants have been cancelled, does not appear to be stigmatic in nature. We, however, made it clear that for any purpose, any observation made in the said order or any report, based on which the said order has been passed, shall not be treated to be adverse to the interest of these appellants. We clarify that if the appellants apply for any process of selection for appointment against any post, the cancellation of their appointment by the impugned order dated 26.04.2019, shall not come in way, in any manner.

This application is dismissed with the observation, as noted above.

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

Pawan/Nishant-

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