

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3119 of 2020

1. Md. Shoaib Anwar Son of Rayazuddin Resident of Village- Kakurwa Basti, Ward No. 29, District- Araria (Bihar).
2. Rajesh Kumar Yadav Son of Sri Dayanand Yadav Resident of Village- Bara, P.O.- R.T. Mohan, Vial and District- Ararha, Pin- 854311.
3. Ranjan Kumar Singh Son of Ram Karan Singh Resident of Kali Bazar, Ward No. 23/13, Distt.- Araria.
4. Md. Harish Son of Late Shekh Sattar Resident of Village- Rahikpur, Ward No. 1, P.O.- Araria, P.S.-Araria, Distt.- Araria.
5. Mukesh Kumar Rai Son of Ram Sograt Ray Resident of Araria, Ward No. 6, Araria, Distt.- Araria.
6. Md. Bahrudin Son of Majuddin Resident of Village- Sachheli, P.O.- Chhationa, P.S.-Raniganj, Distt.- Araria.
7. Abdul Rasid Son of Md. Ishaque Resident of Village- Nij Gehuan, P.O.- Ahilgaon, P.S.-Jalalgarh, Distt.- Purnea.
8. Md. Inteshar Ansari Son of Md. Badriujjama Resident of Village- Khaira Basti, Ward No. 5, Distt.- Araria.
9. Rakesh Kumar Jha Son of Baidyanath Jha Resident of Village- Thekpura, P.O.- Hansa, P.S.-Raniganj, Distt.- Araria.
10. Ramdeo Ram Son of Late Uttam lal Ram Resident of Village- Doriyare, P.O.- Mirajpur, P.S.-Bounsi, Distt.- Araria.
11. Md. Zafar Alam Son of Md. Badiujjama Resident of Village- Kharaiya Basti, Ward No. 11, Araria, Distt.- Araria.
12. Vivekanand Pandit Son of Baleshwar Pandit Resident of Om Nagar, Ward No. 8, Araria, Distt.- Araria.
13. Ranjit Ranjan Mishra Son of Rakesh Ranjan Mishra Resident of Village- Chitragupta nagar, Ward No. 21, Distt.- Araria.
14. Jay Narayan Paswan Son of Simraha District- Araria.
15. Sukrati Dharkar Son of Uttim Lal Dharkar Resident of Village and P.O.- Madhulata, Ward No. 9, Via.- Meriganj, District- Araria.
16. Kanhaiya Lal Jha Son of Late Gaurishankar Jha Resident of Village -Adarsh Nagar, Ward No. 15, Araria, District- Araria.
17. Subodh Chaudhary Son of Ashok Chaudhary Resident of Village Phulwari, P.O.- Bhojpur, P.S.- Tarabari, District- Araria.
18. Dharmendra Kumar Verma Son of Late Pran Mohan Prasad Resident of Ward No. 9, Shivpuri, Araria, District- Araria.
19. Shankar Kumar Yadav Son of Mangal Yadav Resident of Village -Aurahi (East), P.O. and P.S.- Simraha, District- Araria.
20. Yashwant Kumar Paswan Son of Fate Chand Paswan Resident of Village- Kupari, P.O.- Permanandpur, P.S.- Raniganj, District- Araria.
21. Yashu Kumar Jha Son of Nagendra Nath Jha Resident of Village and P.O.-



Bhadeshwar, Via.- Bathnaha, District- Araria.

22. Abhinash Kumar Paswan Son of Vidyanand Paswan Resident of Village - Aurahi Navkothi, P.O.- Simraha, District- Araria.
23. Deen Bandhu Singh Son of Sita Ram Singh Resident of Village - Ramai, P.S.- Farbisganj, Ward No. 15, Araria, District- Araria.
24. Shankar Jha Son of Bindeshwar Jha Resident of Village and P.O.- Kusikara, District- Araria.
25. Rupesh Kumar Jha Son of Sri Kumar Nath Jha Resident of Shivpuri, Ward No. 9, Araria, District- Araria.
26. Subhash Kumar Jha Son of Gauri Shankar Jha Resident of Village - Adarsh Nagar, Ward No. 15, P.O.- Araria, District- Araria.
27. Suchit Narayan Mandal Son of Fateh Chand Mahdan Resident of Village -Kharhat, P.O.- Gidwas, P.S.- Raniganj, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary Govt. of Bihar, Patna.
3. The Principal Secretary General and Administrative Department, Govt. of Bihar, Patna.
4. The Commissioner Purnia Division, Purnea.
5. The District Magistrate Araria.
6. The Deputy Collector Establishment, Araria.
7. The Executive Engineer Building Division, Araria.
8. The Chief Engineer Irrigation Department, Araria.
9. The Rural Engineering Organization Works Division, Araria.
10. The District Welfare Officer Araria.
11. The District Education Officer Araria.
12. The District Agriculture Officer Araria.
13. The District Fisheries Officer Araria.
14. The Executive Engineer Public Health Division, Araria.
15. The Executive Engineer Irrigation Division, Bathnaha, Araria.
16. The Executive Engineer Irrigation Division, Narpatganj, Araria.
17. The Executive Engineer Irrigation Division, Araria.
18. The Executive Engineer Road Construction Department, Road Pramandal, Araria.
19. The Executive Engineer Road Works Department, Work Division, Forbesganj, Araria.
20. The Forest Division Officer Forest Division, Araria.
21. The District Welfare Officer Araria.



22. The District Education Officer Araria.
23. The District Animal Husbandary Officer Araria.
24. The District Agriculture Officer Araria.
25. The District Fisheries Officer- Cum-Chief Executive Officer Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Nivedita Nirvikar, Sr. Advocate Mr. Siddharth Shankar Pandey, Advocate
For the State	:	Mr. Sheeo Shankar Prasad, SC- 8 Mr. Ruchikar Jha, AC to SC- 8

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT**

Date : 16-08-2023

Heard learned senior counsel for the petitioners and learned counsel for the State.

2. Petitioners' were empanelled for consideration of their appointment by way of regularisation in the District of Araria. Out of 124 empanelled candidates, some were selected. The petitioners, however were not appointed. They had approached this Court by filing writ petition. ***C.W.J.C. No. 17578 of 2015*** filed by the petitioners (except petitioner No. 22, namely, *Abhinash Kumar paswan*) was disposed of on 16-04-2018, as per order contained in Annexure- 14 to the writ petition.

3. In the order, Court had taken note of the stand of the State in the counter affidavit, that if vacancies arise, posts will be filled from the panel as per roster. The Court also took



notice of the stand of the State that different Departments had not cleared the roster position till that date, and the petitioners claim was, thus kept pending. In view of such stand of the State in the counter affidavit, the **C.W.J.C. No. 17578 of 2015** was disposed of in the following terms:-

“ 5 State has filed a counter affidavit. Stand of the State is that if vacancies arise, the post will be filled up from the panel as per roster. It is further submitted that the different Departments have not cleared the roster position till now and, as such, the petitioners’ claim had been kept pending.

6 Prayer of the petitioners’ counsel is that the petition may be disposed of since, as per instructions after filing of the counter affidavit in February 2016, the process for roster clearance has been done.

7 What is the position obtaining today is not clear. However, keeping the matter pending is not expected from the State authorities.

8 In view of the stand of the State communicated in the counter affidavit, this Court disposes of the instant writ petition with a direction to the District Magistrate, Araria to conclude the process and decide the petitioners’ claim in accordance with law as, admittedly, they are empanelled candidates. Final decision



in respect of the petitioners' claim should be taken by a reasoned and speaking order within a period of three months from the date of receipt/production of a copy of this order."

4. Insofar as Petitioner No. 22 is concerned, he had approached this Court by filing a separate writ petition, bearing **C.W.J.C. No. 19344 of 2017**. The petitioner was directed to file a representation and the respondent was directed to dispose of the same within four weeks'. Both the representations have been disposed of. Disposal is by an order dated 12-12-2018 (Annexure- 2 series) for petitioner No. 22, and for the remaining petitioners, who were petitioners in **C.W.J.C. No. 17578 of 2015**, by an order dated 29-07-2018, as contained in Annexure- 1 to the writ petition. These orders are impugned by the petitioners by filing the instant writ petition in the year 2020.

5. It is submitted by learned senior counsel for the petitioners that the Authorities are bound by their stand taken in the counter affidavit that they were going to fill up vacancies from the panel, wherein the petitioners' names figured. The stand has specifically been recorded in the order of this Court, and it is not open to the respondent-Authorities now to make a volte-face in these proceedings and contend that the panel had



lapsed in the year 2015 itself.

6. Learned senior counsel has placed reliance on decisions of the Hon'ble Apex Court in the case of ***State of UP v. Ram Swarup Saroj***, reported in ***(2000) 3 SCC 699***, the case of ***Purushottam vs. Chairman, M.S.E.B. and Anr.***, reported in ***(1999) 6 SCC 49*** and decision of the Division Bench of this Court in the case of ***State of Bihar and Anr. vs. Awadhesh Singh & Ors***, reported in ***2007 (2) PLJR 828***.

7. The Court, having considered the impugned orders as well as the earlier order passed by this Court in ***C.W.J.C. No. 17578 of 2015***, would find that the stand of the State, which was recorded in the order passed in the writ proceedings, was as per averments made in the counter affidavit, at paragraph Nos. 6 & 7. In the counter affidavit, relevant extract is being quoted herein below:-

“.....,however it is stated that the panel is valid for the year 2014-15, and there may be further appointment as per roaster.

7. That it is humbly submitted that the present panel is valid for the year 2014-15 and if the vacancy arises the said post can also be filled up from the panel as per roaster.”

8. The State had taken a stand in the counter affidavit filed in the petitioners earlier writ proceedings in ***C.W.J.C. No.***



17578 of 2015 itself that the panel is valid for the year 2014-15.

9. **C.W.J.C. No. 17578** was filed in the year 2015, and therefore, this stand in the counter affidavit was on the records. Neither there is any averment in the counter affidavit that it is to be carried beyond 2014-15, nor is there any such fact recorded in the order of this Court. It is not a case that today the respondents have come out with a new plea. It is manifest from averments made in Paragraph Nos. 6 & 7 of the counter affidavit filed in **C.W.J.C. No. 17578 of 2015** that the panel is valid only for the year 2014-15.

10. The factual position in this case, is therefore, at variance with the decisions relied upon by learned senior counsel for the petitioners. The Authorities in the case of **Ram Swarop Saroj** (*supra*) had not taken a plea regarding validity of the panel for 1 year, and therefore, taking notice of this fact in Paragraph No. 10, the Apex Court had refused to accept such plea, later on that the panel was valid only for 1 year.

11. Insofar as the case of **Purushottam** (*supra*) is concerned, bare perusal of Paragraph No. 4, relied upon by the learned senior counsel shows that the petitioners therein were duly selected persons for being appointed. In the instant case,



the petitioners were never selected, but were only empanelled.

12. The law with respect to rights that may be claimed by virtue of empanelment is settled by decision of the Hon'ble Apex Court in the case of *Shankarsan Dash vs. Union of India* reported in (1991) 3 SCC 47 is clear in its intent that mere empanelment does not confer any right.

13. Insofar as the *Awadhesh Singh* (supra) is concerned, from paragraph No. 11 of the decision, it is apparent that no time schedule was fixed in the panel in that case. Thus the case of *Awadhesh Singh* (supra) is also distinguishable on facts.

14. The factual position being different in the three cases being relied upon by the petitioners' counsel, this Court would observe that the petitioners cannot claim any advantage or benefit from the three decisions.

15. The life of the panel in the instant case was determined to be valid only in between the years 2014 and 2015 as per counter affidavit filed by respondents in *C.W.J.C. No. 17578 of 2015*. The position remains same even today in the impugned order dated 29-07-2018. This Court, therefore, finds no infirmity in the impugned order.

16. For the above noted reasons, this Court finds that



no enforceable claim is made out in the writ petition, and the same is dismissed.

(Madhuresh Prasad, J)

Raj kishore/-

AFR/NAFR	NAFR
CAV DATE	N/A
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