

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1015 of 2023

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1. Vijay Kumar, Son of Shri Ramji Prasad, Resident of Purani Gudari Ward No. 9, Post and Police Station- Bettiah, District- West Champaran.
 2. Yogendra Prasad, Son of Shri Sheonath Prasad, Resident of Rajguru Chowk, Post and Police Station- Bettiah, District- West Champaran.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Bettiah, West Champaran.
4. The Deputy Development Commissioner, Bettiah, West Champaran.
5. The Deputy Collector, Nazarat /Establishment, Bettiah, West Champaran.
6. The District Welfare Officer, Bettiah, West Champaran.
7. The District Employment Officer, Bettiah, West Champaran.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Manoj Kumar, Advocate Mr. Prabhakar Sahai, Advocate
For the Respondents	:	Mr. Dhurendra Kumar, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 08-05-2023

Petitioners have invoked the extra writ jurisdiction of this Court seeking quashing of the order passed by the Collector, West Champaran at Bettiah vide Memo No. 466/ Nazarat dated 18.08.2018 (Annexure '19' to the writ application) whereby and whereunder he has rejected the claim of the petitioners for grant of age relaxation and appointment on the post of Class IV employee under the advertisement published in the year 2011.



2. The petitioners have also prayed for a direction particularly to the respondent no. 3 to appoint the petitioners against the sanctioned and vacant post of Class IV employees in the district of West Champaran at Bettiah and its attached offices. Prayer is to treat the petitioners without discrimination and to act upon the direction/guidelines communicated to respondent no. 3 vide letter no. 12678 dated 11.09.2014 (Annexure '14' to the writ application).

Brief Facts of the Case

3. It is the case of the petitioners that they were engaged as peon/driver on daily-wages basis in the Collectorate of West Champaran at Bettiah and its attached offices in the year 1983. In compliance of the direction of the Government vide Letter No. 3955 dated 10.04.1990, a panel was prepared at the district level on the basis of 240 working days and the name of the petitioner no. 1 figured at serial no. 365 in the panel of 1991-92. It is stated that since the copy of the panel is illegible, therefore, the name of the petitioner no. 2 could not be searched.

4. It is stated that thereafter no panel was prepared at the district level and the empanelled daily-wagers were directed to perform various works from time to time. Reliance has been placed to Annexure '1 Series' to show that the petitioner no. 1 was



given an experience certificate under the signature of the Executive Officer, Nagar Parishad, Bettiah showing the number of days he had worked during the year 1983 to the year 1987 and according to this Annexure '1', the petitioner no. 1 had worked for 1,500 days. Petitioner no. 2 was given a certificate that he had worked as a Jeep Driver on daily wages from 03.05.1988 in the National Rural Employment Section, West Champaran, Bettiah. It is the further case of the petitioners that in the year 1987, an exercise of absorption and regularization on Class IV post was taken up and vide Resolution dated 25.04.1997 (Annexure '3' to the writ application), it was directed by the Government that the process for preparation of panel will be carried on keeping in mind the conditions mentioned in Annexure '3' which includes the educational qualification of minimum 8th pass but below intermediate. It is stated that with the passage of time, the Government came with a Resolution vide Memo No. 639 dated 16.03.2006 whereunder it was resolved to take steps for absorption/regularization of the daily-wage earners. It was decided that those who have completed more than 240 working days shall be given preferences. Clause '3' of the said Resolution provides that the benefit of relaxation of age ought to be given to the daily wage earners to cover up their selection/absorption/regularization.



This resolution of the Government is said to have generated hopes in the petitioners of getting regular employment.

5. It is stated that vide an advertisement published in daily newspaper 'Hindustan' on 29.01.2011, the District Magistrate invited applications from the people of the district to empanel them for the appointment of the Class IV employees. The said notice categorically mentions that the daily wagers are to be given weightage in accordance with law. Annexure '6' is the copy of the advertisement. Later on, vide Letter No. 7365 dated 29.06.2011, guidelines/directions for selection of Class IV employees have been circulated.

6. The petitioners claimed that they had applied for employment by furnishing all the requisites and thereafter their names appeared in the panel published on 22.10.2011 at Serial Nos. 64 and 135 respectively but in the remarks column, their candidatures were mentioned as cancelled due to their age. A final panel was prepared vide Memo No. 264 dated 22.10.2011 on the same day leaving out the petitioners. The respondents, however, gave an opportunity to those who were left out to file their objections, the objections filed by the petitioners were, however, rejected vide Memo No. 293 dated 30.11.2011 (Annexure '10' to the writ application). It is admitted that on the date of



advertisement, the petitioners were overage by three and one years respectively.

7. The petitioners mention the earlier round of litigation brought by some of the candidates like the petitioners. Reference has been made to CWJC No. 5947 of 2012 (**Sunil Kumar Chaubey and Others Vs. The State of Bihar and Others**) wherein it was observed that “if a decision to grant age relaxation has been taken in the district of Bhojpur, reasonableness and requirement of Article 14 of the Constitution mandates that the benefit be extended to appointment in the West Champaran Collectorate also. It is expected that the respondents while drawing up the separate panel of daily wages under the advertisement in accordance with the criteria that they may have fixed, shall give adequate weightage to the question of age relaxation as being done in the District of Bhojpur.”

Submissions on behalf of the Petitioners

8. Learned counsel for the petitioners submits that these petitioners' names were included in the panel of the year 1991-92 but in the year 2011, the petitioners were left out because of their overage. Relying upon the judgments of this Court in the case of **Ashok Kumar Sharma and Others versus State of Bihar and Others** reported in **2016 (1) PLJR 232** as also in the case of **Jai**



Kishun Ram and Others versus The State of Bihar and Others reported in **2016 (1) PLJR 512**, learned counsel submits that these petitioners having worked for 240 days their names have been duly mentioned in the Panel of 1991-92 would be covered in the first category of the employees who were required to be considered for regularization. The petitioners filed a writ application being CWJC No. 16663 of 2015 and the same was disposed of with a direction to respondents to consider the case of the petitioners in view of the stipulations made in CWJC No. 10627 of 2014 (**Rajendra Kumar Yadav versus the State of Bihar and Others**) and the settled legal positions appearing from the judgment and order passed in CWJC No. 692 of 2017 (**Pandav Yadav and Others versus the State of Bihar and Others**) reported in **2017 (4) PLJR 352**.

9. It appears that pursuant to the judgment of this Court passed in CWJC No. 16663 of 2015, the petitioners made a representation before the District Magistrate, West Champaran, Bettiah vide Annexure '17' to the writ application whereupon Deputy Collector, Nazarat, West Champaran, Bettiah called for the evidences about the working of the petitioners and in response of the same, the petitioners submitted their reply vide Annexure '18' to the writ application. But ultimately the District Magistrate, West Champaran rejected the claim of the petitioners vide Memo No.



466/Nazarat dated 18.08.2018 (Annexure '19' to the writ application) which is impugned in this case.

10. Learned counsel submits that while rejecting the case of the petitioners, the respondents have come out with a different ground:-

(i) Petitioner no. 1 has neither worked as Class IV employee on daily wages in Government office nor he had been paid Government money as his wages, hence, he is not entitled to be appointed as Grade IV employee.

(ii) Petitioner no. 2 has neither worked as Class IV employee on daily wages in Government office nor he had been paid Government money as his wages, hence, he is not entitled to be appointed as Grade IV employee.

11. It is submitted that the petitioners have been discriminated as on the one hand, respondents denied the claim of petitioner no. 2 and at the same time in the meeting dated 30.10.2009, steps were taken for absorption of driver also on Class IV posts in the light of the Resolution No. 639 dated 16.03.2006. It is submitted that the Government vide its Resolution No. 796 dated 02.02.2018 has also issued direction to all concerned to regularize the employee of the other department. In this regard,



Annexure '24' to the writ application has been placed for consideration.

Submission on behalf of the State.

12. Learned counsel for the State has opposed this writ application. It is submitted that the impugned order of the District Magistrate, West Champaran, Bettiah (Annexure '19') is a well reasoned order and it has considered each and every aspect of the matter including the various orders of this Court. He has referred paragraph 2(1) and 3(1) of the Resolution contained in Memo No. 639 dated 16.03.2006. The District Magistrate has also considered the claim of the petitioners and the documents placed by them in support of their claim. As regards petitioner no. 1, the remarks of the District Magistrate is that the working days of petitioner no. 1 has been shown in the document dated 10.04.2010 which does not contain any letter number or memo number, it is a photocopy and does not show that against which post the petitioner has worked and has received remuneration. There is no proof of payment of remuneration to the petitioner no. 1. Similar is the remarks with respect to petitioner no. 2. As regards works said to have been done by the petitioner no. 2 during the Panchayat election, it is stated that after the elections are notified, during the election period work is taken from a large number of daily wagers which



are above the sanctioned strength, for this period of work no benefit of experience is given. It is further mentioned that in the Panel of 1991-92, the working days of the petitioners are not mentioned.

13. Learned counsel has submitted that reliance placed by learned counsel for the petitioners on the judgment of this Court in the case of **Ashok Kumar Sharma** (supra) as well as **Pandav Yadav** (supra) are misplaced, inasmuch as it would appear that in place of **Ashok Kumar Sharma** (supra), the writ petitioners were earlier regularized in service but the said order and judgment was set aside. Similarly. in the case of **Pandav Yadav** (supra), the Hon'ble Writ Court has taken note of the undisputed fact that the petitioners were working on daily wage post in the respondents office-Water Resources Department since last about 25 years and the details of work done were present which were not disputed by the respondents.

14. Learned counsel for the State has heavily relied upon the judgment of learned Co-ordinate Bench of this Court in the case of **Kapil Kumar and Others versus the State of Bihar and Others** reported in **2020 (1) PLJR 287** in which after a threadbare discussions on how a selection process is to be carried out for any appointment to a public post keeping in view Article 14 and 16 of



the Constitution of India, the learned Writ Court referred the judgment of the Hon'ble Supreme Court in the case of **Renu and Others versus District and Sessions Judge, Tis Hazari Courts, Delhi and Another** reported in **(2014) 14 SCC 50** in which it has been held that no authority is above law and no man is above law. It is submitted that in view of the judgment of this Court in the case of **Kapil Kumar** (supra) now all appointments against Class IV posts are to be made after advertisement and examination. A copy of information relating to appointment on the post of Peon as contained in Memo No. 1555 dated 31.03.2023 issued by the Bihar Staff Selection Commission has been placed before this Court for perusal.

15. Learned counsel further submits that recently this Court has considered similar matter in the case of **Ramanand Sah and Another versus The State of Bihar and Others (CWJC No. 1005 of 2023)** and the said writ application has been dismissed vide judgment dated 25.04.2023.

Consideration

16. Having heard learned counsel for the petitioners and the State as also on perusal of the records, this Court finds that so far as the remarks made by the District Magistrate, West Champaran at Bettiah in his order contained in Annexure '19' to



the writ application are concerned, those are not at all disputed or explained by the petitioners in the writ application. This Court, therefore, takes it as an undisputed fact that in the panel of 1991-92, the number of days worked by the petitioners are not mentioned. The so-called certificate issued by the Executive Officer, Nagar Parishad, Bettiah in favour of petitioner no. 1 would not inspire confidence as it does not contain any description of the post against which the petitioner has worked, it does not contain any memo number/letter number and there is nothing on the record to show that the petitioner no. 1 was paid Government money during this period. As regards petitioner no. 2, the same situation exists, documents showing that he had worked during the Panchayat elections are not clinching the issue. Therefore, on facts, this Court finds no error with the impugned order.

17. Learned counsel for the petitioners has relied upon the judgment of the Hon'ble Division Bench in the case of **Ashok Kumar Sharma** (supra), however, this Court finds that in the said case, the petitioners were earlier regularized but then their regularization were cancelled by the Government. The Hon'ble Division Bench went through the Government's Resolution No. 639 dated 16.03.2006 and history of events up to 1990, came to a conclusion that the writ petitioners/appellants were falling in the



first category i.e. within the period till 11.12.1990 and, therefore, they were deemed to be worth duly regularized. Accordingly, their terminations were set aside.

18. The another judgment relied upon is in the case of **Jai Kishun Ram** (Supra), the Hon'ble Court found that the Committee which considered the claim of the petitioners had clearly noted the period for which the petitioners/appellants had worked in the year 1986, 1987, 1988, 1989 and 1990 which shows that each had worked for more than 1000 days, therefore, it was held that the petitioners had worked for more than 240 days prior to 11.12.1990. Yet another case on which reliance has been placed by learned counsel for the petitioners is the case of **Pandav Yadav** (Supra) wherein a learned Co-ordinate Bench of this Court has taken note of the admitted facts that the petitioners had worked on daily wage basis under Respondent Nos. 6 to 8 since last about 25 years.

19. In the opinion of this Court, the three judgments on which reliance has been placed by learned counsel for the petitioners are clearly distinguishable and those would not help the petitioners in this case.

20. On the other hand, this Court finds that the judgment of the learned Co-ordinate Bench of this Court in the case of **Kapil**



Kumar (Supra) has examined the scheme of selections against Group 'D' posts. It has been noticed that there is a rule namely Group 'D' (Recruitment and Service Condition) Rules, 2010 framed by the State of Bihar under the proviso to Article 309 of the Constitution of India. The advertisement talks of a panel list be prepared for selection against Class IV post in the light of the orders of the Court and subsequent letters issued by the General Administration Department and the Chief Secretary of Bihar.

21. The learned Co-ordinate Bench noticed the order of this Court passed in CWJC No. 19120 of 2010 and observed that this Court has settled the matter that unless in the advertisement itself, it is otherwise provided, the panel would lose its validity after one year. This is the Government's instruction also. The learned Co-ordinate Bench deprecated the authorities who were not following the law which was settled on this point and were creating confusion.

22. The learned co-ordinate Bench referred another judgment in relation to the District of Gaya, in the case of **Vijay Kumar Vs. the State of Bihar and Others** being CWJC No. 2964 of 2009 in which it has been held that panels prepared earlier had outlived its utility and if the vacancies exist, the same would be filled up by fresh notification and a fresh panel would be prepared.



23. Paragraphs ‘17’, ‘18’ and ‘19’ of the judgment in the case of **Kapil Kumar** (supra) are being reproduced hereunder for a ready reference:-

“**17.** In case of **Renu v. District and Sessions Judge, Tis Hazari Courts, Delhi and Another** reported in (2014) 14 SCC 50, [2014(2) PLJR (SC)270], the Supreme Court observed that no authority is above law and no man is above law. Referring to the purport of Article 13(2) of the Constitution, the Supreme Court remarked that the object of such a provision is to ensure that instructions emanating from any source of law, permanent or temporary, legislative or judicial or any other source, ‘pay homage’ to constitutional provisions relating to fundamental rights.

18. Article 14 of the Constitution has been considered to be forming the corner stone of our Constitution, which mandates the equality of opportunity. It is an integral part of our system. Any selection process or any appointment made to a public post is to be tested on the touchstone of equality and equal opportunity guaranteed under Articles 14 and 16 of the Constitution. It is mandatory on the part of an employer, which is State within the meaning of Article 12 of the Constitution, to allow all eligible candidates from the open market to participate in the process of selection. An appointment made in violation of the mandate of Articles 14 and 16 of the Constitution is intolerable as it offends one of the most fundamental pillars on which our Constitution rests.

19. Will it not amount to giving premium to the persons who managed to obtain back door engagements as daily wage employees by allowing them first, second and third preferences in the matter of selection, leaving out those who did not have such opportunity, by placing them at the bottom in the merit-list, for all times to come? Does this process not exclude a large number of competent persons, who if given an opportunity, would have applied for their engagement on daily wage basis? These are the questions, which are required to be kept in mind while considering the procedure which has been adopted for preparation of panel, through the advertisement in question.”



24. This Court further finds that in the case of **Kapil Kumar** (supra) reliance has been placed on the judgment of the Hon’ble Supreme Court in the case of **UPSC versus Girish Jayanti Lal Vaghela** reported in **(2006) 2 SCC 482** in which it has been held that an appointment to any post in the State can only be made after a proper advertisement inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee. It has been held that any regular appointment made on a post under the State or Union without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution of India.

25. In the light of the aforementioned discussions, this Court finds that these petitioners who are claiming their entry in the panel of the year 2011 have no basis to stand. The impugned order as contained in Annexure ‘19’ does not suffer from any infirmity and it requires no interference.

26. This writ application stands dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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CAV DATE	05.05.2023
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