

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7657 of 2022

1. Sunil Kumar Yadav son of Daya Ram Yadav, R/o Village- Govindpur (Kalhapur), P.O.- Bairamur, P.S.- Tahbarpur, District- Azamgarh (U.P.).
2. Mohan Kumar Sinha Son of Rajendra Prasad Sinha, Resident of Village- Jagdishpur, P.S.- Korma, District- Sheikhpura (Bihar)
3. Md. Modasseer Son of Md. Halimuddin, Resident of Village- Asyani, P.S.- Jalalgarh, District- Purnea (Bihar)
4. Rituraj Vasant Son of Santosh Kumar, Resident of Khetj Bari Khad Dukan Road Jandaha, P.S.- Jandaha, P.S.- Jandaha, District- Vaishali (Bihar)
5. Mukesh Kumar Son of Mahendra Prasad Yadav, Resident of Village- Chakla, P.S.- Saur Bazar, District- Saharsa (Bihar)
6. Ravi Kumar Son of Shiv Shankar Prasad, Resident of Village and P.O.- Chakand Station, P.S.- Chakand, District- Gaya (Bihar)
7. Amit Kumar Son of Premchand Singh, Resident of Village- Sihari, P.S.- Haspura, District- Aurangabad (Bihar)
8. Mukesh Kumar Prasad Son of Ram Sakal Prasad, Resident of Village and P.O.- Barhulya, P.S.- Ander, District- Siwan (Bihar)
9. Vikash Kumar Son of Vijay Prasad Gupta, Resident of Village and P.S.- Govindpur, District- Nawada (Bihar)
10. Tej Prakash Son of Surendra Prasad, Resident of Village- Sarwarpur, P.S.- Mehendiya, District- Arwal (Bihar)

... .. Petitioners

Versus

1. The State of Bihar through Additional Chief Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Special Secretary to the Government, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Director, Land Records and Survey, Govt. of Bihar, Patna.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 8128 of 2022

1. Amit Kumar Ajad, Son of Shiv Shankar Yadav R/o Village-Laxmipur, Ward No. 14, North of FCI Godown, P.O. and P.S. and District-Madhepura (Bihar)
2. Kumar Suryamani Son of Arvind Kumar R/o Village-Apsarh, P.S.- Warisaliganj, District-Nawada (Bihar)
3. Ritesh Kumar Son of Jagan Prasad R/o Village-Godhaila, P.S. and District-Madhepura (Bihar).
4. Mrityunjay Kumar Son of Vishwanath Prasad Gupta, R/o Village-Hridya Nagar, P.O.-Basantpur, P.S.-Birpur, District-Supaul (Bihar).
5. Rahul Ranjan Son of Mangal Singh R/o Village and P.O.-Mujrarh, P.S.- Nokha, District-Rohtas (Bihar).



6. Nawal Kumar Son of Krishna Paswan R/o Village-Alawalpur, P.S.-Kurtha, District-Arwal (Bihar)
7. Md. Amir Hamza, Son of Md. Gausul Azam, R/o Village-Sohdih, P.O. and P.S.-Sohsarai, District-Nalanda (Bihar).
8. Shashi Kishore Pandey Son of Dinanath Pandey R/o New Bank Colony near Khiri Tree, 51 no. Railway Crossing, Shyam Chak, P.S. and District-Saran at Chapra (Bihar)
9. Abhay Kumar Singh Son of Rama Shankar Singh R/o Village-Khanethi, P.O.-Bhadaula, P.S.-Kudra, District-Kaimur at Bhabhua (Bihar)
10. Md. Raunaque Zamir, Son of Late Modh. Khalil, R/o Village-Singhari, P.S.-Kochadhaman, District-Kishanganj (Bihar).

... .. Petitioners

Versus

1. The State of Bihar through Additional Chief Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Special Secretary to the Government, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Director, Land Records and Survey, Govt. of Bihar, Patna.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 9605 of 2022

1. Suman Kumar Son of Ram Chandra Mahto, R/o Village-Amarpur, P.O. Singchak, P.S.-Suryagarha, District-Lakhisarai (Bihar).
2. Deepak Kumar, Son of Rajendra Pandit, R/o Village-Shahpur Mali, P.O.-Mali, P.S.-Banshi, District-Arwal (Bihar).
3. Murlidhar Das, son of Vishnu Deo Das, R/o and P.O. and P.S.-Barari, District-Bhagalpur (Bihar).
4. Abhishek Kumar Das, son of Satyanarayan Das, R/o Village-Gayatri Nagar, P.O. and P.S.-Jamalpur, District-Munger (Bihar).
5. Uttam Kumar Gupta, son of Nandlal Gupta, R/o Village-Bariyarpur West, P.O.-Tarabariyarpur, P.S.-Khodawandpur, District-Begusarai (Bihar).
6. Rajvendra Kumar, Son of Jaykaran Ray, R/o Village-Nayagaon Bariyarpur, P.S.-Desari, District-Vaishali (Bihar).
7. Priti Singh, Son of Rajbali Verma, R/o village-Mohanpur, P.O.-Birapatti, District-Varanasi (U.P.).
8. KM Pooja Gupta, Daughter of Jayram Gupta, R/o Village-Ashok Nagar, Ward No. 5 Nagarpalika, P.S. and District-Maharajganj (U.P.).
9. Prite Sonkar, daughter of Achhaylal Sonkar, R/o Village-Paharpur, P.S.-Sadar, District-Azamgarh (U.P.).
10. Kumari Kanchan Chauhan, Daughter of Ram Vilash Chauhan, R/o Village-Khanwar Englishiya, P.O. Khanwar, P.S. and District-Baliya (U.P.).
11. Sumanta, Son of Ram Kesh Bharti, R/o-C/5 C.O. Office, New Police Colony, Tedi Bazar, Ayodhya, District-Faizabad (U.P.).



12. Dimpal Yadav, Son of Brijbhan Yadav, R/o Village-Judanpur Katri Taran, P.S. and District-Mau (U.P.).
13. KM Archana, Daughter of Ramdular Yadav, R/o Village-Kudha Chavar Samanpur, P.S. and District Gajipur (U.P.).
14. Simpall Yadav, Daughter of Rohit Yadav, R/o Village-Judanpur, P.O. and P.S.-Katharn, District-Mau (U.P.).
15. Kumari Priyargi Mall, Daughter of Dharmendra Mall, R/o Village-Pipra Tulsi, P.O.-Baidauli, District-Deoria (U.P.).
16. Kumari Kusum Yadav, Daughter of Prakash Yadav, R/o Village-Baraipar, P.O.-Panail, P.S. and District-Mau (U.P.).
17. KM Rinku Bharti, Daughter of Sudama Ram, R/o Village-Sarar URF Haiderganj, P.S.-Maidah, District-Ghazipur (U.P.).
18. KM Shweta, Daughter of Sudhir Kumar Upadhyay, R/o House No. 91, Ghorahra, P.O.-Bhaisar, P.S. and District-Baliya (U.P.).
19. Anjali, Daughter of Ram Narayan, R/o village-Manjhkhor, P.S. and District-Hamirpur (U.P.).
20. Sanny Kumar, Son of Kauleshwar Ram, R/o Village and P.O.-Sugaon, P.S.-Makhdumpur, District-Jehanabad (Bihar).
21. Rinku Kumar, Son of Siya Sharan Prasad, R/o Village-Navdiha, P.O. Dhurgaon, P.S.-Hilsa, District-Nalanda (Bihar).
22. Avinash Kumar Yadav, Son of Ram Prasad Yadav, R/o Village-Kosumbha, P.O.-Ghoraghat, P.S.-Dobhi, District-Gaya (Bihar).
23. Raju Kumar, Son of Lalan Prasad, R/o Village-Idinpur Mahimapur, District-Gaya (Bihar).
24. Md. Shahbaz Alam, son of Md. Kalimuddin, R/o Village-Purandaha, P.S. Simraha, District-Araria (Bihar).
25. Tinku Kumar, Son of Lalbiju Prasad, R/o Village-Lodipur, P.O. Dharampur, P.S.-Kako, District-Jehanabad (Bihar).
26. Niranjana Kumar, Son of Kanchan Thakur, R/o Village-Lodipur, P.O. Dharampur, P.S.-Kako, District-Jehanabad (Bihar).
27. Manish Kumar, Son of Bishwanath Prasad Sah, R/o village-Siswa Barahi, P.O.-Siswa Barahi, P.S. Phulparas, District-Madhubani (Bihar).
28. Sandeep Kumar, son of Jitan Pandit, R/o Village-Nargada, P.O.-Jamsaut, P.S. Shahpur, District-Patna (Bihar).
29. Sanjeev Kumar, son of Ganga Prasad Yadav, R/o Village and P.O.-Madhiya, P.S.-Basopatti, District-Madhubani (Bihar).
30. Akhilesh Kumar, Son of Vidhan Chandra Brajesh, R/o village-Motha, P.O.-Bhadasi, P.S. and District-Arwal (Bihar).
31. Ranvir Kumar, son of Mani Prasad Singh, R/o village Kalyanpur, P.O. and P.S.-Harpur, District-Munger (Bihar).
32. Ravi Kumar, Son of Ramesh Prasad, R/o Village-Mahawar, P.S.-Daudnagar, District-Aurangabad (Bihar).
33. Deepak Kumar, son of Shashi Kant, R/o Village-Damodarpur, P.O.-Amba,



P.S.-Shahkund, District-Bhagalpur (Bihar).

34. Mukesh Kumar Ranjan, son of Raj Kishore Singh, R/o Village-Green City Colony Near Airport, Tilkamanjhi, P.S.-Tilkamanjhi, District-Bhagalpur (Bihar).
35. Sudhir Kumar, son of Bindeshwari Paswan, R/o Village-Salempur, P.O. and P.S.-Suryagarha, District-Lakhisarai (Bihar).
36. Rajesh Kumar, son of Dinesh Kumar, R/o Village and P.O.-Bichhway, District-Lakhisarai (Bihar).
37. Gaurav Kumar, son of Gautam Paswan, R/o Village and P.O.-Ulao, P.S.-Muffasil, District-Begusarai (Bihar).
38. Rajesh Kumar Singh, son of Lakshman Singh, R/o Village-Nabhtoli, P.O.-Parwa, P.S.-Jaynagar, District-Madhubani (Bihar).
39. Pintu Kumar, son of Pramod Ray, R/o Village-Sahariya, P.O.-Sahadei Buzurg, P.S. Desari, District-Vaishali (Bihar).
40. Guddu Kumar, son of Ravindra Choudhary, R/o Village-Thanapur, P.O.-Sadopur, P.S.-Alipur, District-Gaya (Bihar).
41. Md.Parwez Alam, son of Zahir Hussain, R/o Village and P.O.-Piprahan, P.S.-Minpur, District-Muzaffarpur (Bihar).
42. Pankaj Kumar Sah, son of Sudama Sah, R/o Village-Lawanpura, P.O. Panchrukhi, P.S. Bheldi, District-Saran (Bihar).
43. Vikash Kumar, son of Balmiki Prasad, R/o Village-Sanalpur, P.O.-Gopalpur, P.S.-Harnaut, District-Nalanda (Bihar).
44. Niraj, son of Ashok Thakur, R/o Village-Bhelu Bigha, P.O. and P.S.-Kako, District-Jehanabad (Bihar).
45. Rajan Kumar Sah, son of Baijnath Sah, R/o Village and P.O.-Simiri, Ward No. 6, P.S. and District-Samastipur (Bihar).
46. Md. Ehtesham Akhtar, son of Md. Khursheed Alam, R/o Village-Emadpur, P.O. and P.S.-Biharsharif, District-Nalanda (Bihar).
47. Upendra Kumar, son of Deonandan Ravidas, R/o Village-Baniyan, P.O.-Nagmatiya, P.S.-Madanpur, District-Aurangabad (Bihar).
48. Durganand Kumar, son of Rajdev Yadav, R/o Village-Khajedih, P.O.-Dalakhar, District-Madhubani (Bihar).
49. Gautam Kumar, son of Manoj Pandit, R/o Village-Sandohra, P.O.-Bhadokhara, P.S.-Nardiganj, District-Nawada (Bihar).
50. Abhishek Ranjan, son of Bisheshwar Prasad Ray, R/o Village-Gangajal, P.O.-Bishnupur Said, P.S. Rajapakar, District-Vaishali (Bihar).
51. Gaurav Kumar, son of Ajeet Kumar, R/o Village-Makhdumpur Tola Munshi Chak, P.O. and P.S. and District-Arwal (Bihar).
52. Rakesh Kumar, son of Mahendra Prasad, R/o Village-Dhauri, P.O. and P.S.-Harpur, District-Munger (Bihar).
53. Prabhat Kumar, son of Biranjan Kumar Ranjan, R/o Village-Hetampur Mirjapur, P.O.-Parmanandpur, P.S.-Baliya, District-Begusarai (Bihar).

... .. Petitioners

Versus



1. The State of Bihar through Additional Chief Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Special Secretary to the Government, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Director, Land Records and Survey, Govt. of Bihar, Patna.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 7657 of 2022)

For the Petitioner/s : Mr. Dinu Kumar, Advocate

Ms. Ritika Rani, Advocate

For the Respondent/s : Mr. Md. Khurshid Alam, AAG 12

Mr. Majid Mahboob Khan, AC to AAG 12

(In Civil Writ Jurisdiction Case No. 8128 of 2022)

For the Petitioner/s : Mr. Dinu Kumar, Advocate

Ms. Ritika Rani, Advocate

For the Respondent/s : Mr. W.A. Khan, AC to SC 25

(In Civil Writ Jurisdiction Case No. 9605 of 2022)

For the Petitioner/s : Mr. Dinu Kumar, Advocate

Ms. Ritika Rani, Advocate

For the Respondent/s : Mr. W.A. Khan, AC to SC 25

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

10 04-04-2023 Heard Mr. Dinu Kumar, learned counsel for the petitioners, Mr. Majid Mahboob Khan, learned AC to AAG-12 and Mr. W.A. Khan, learned AC to SC-25 for the State.

2. On the request of learned counsel for the petitioners and with the consent of learned counsel for the State, these matters have been taken up for consideration together.

3. In CWJC No. 7657 of 2022, the petitioners are seeking following reliefs:-

“(A) For quashing the record no. 606 dated 12.03.2022 as contained in Annexure-18 (wrongly typed Annexure-19 in the petition) issued under the signature of Director, Land Records and Survey, Revenue and Land Reforms Department, Govt. of Bihar, Patna with respect to advertisement no. 4/2019 Special Survey Kanoongo as contained in Annexure-13 by which earlier order no. 2590 dated 27.08.2021



as contained in Annexure-17 with respect to appointment of Special Survey Kanoongo which was advertised vide Advertisement No. 4/2019 as contained in Annexure-13 has been cancelled regarding filling up the vacancies from the waiting list after recommendation of the competent authority with direction vacancy of Special Survey Kanoongo will also be filled up after fresh advertisement as per Bihar Vishesh Survekshan Mandey Adharit Samvida Niyojan Niymawali, 2019 hereinafter referred as Samvida Niyojan Niymawali, 2019.

(B) Also for quashing clause-3 of the advertisement no. 4/2019 for giving 40% reservation of the candidates who have got degree of Diploma for Civil Engineering from the Govt. Polytechnic in appointment of 550 posts of Special Survey Kanoongo.

(C) Also commanding the respondents to modify the selected and appointment list of Special Survey Kanoongo against advertisement no. 4/2019 as per law laid down by the Hon'ble High Court, Patna on 19.04.2021 in CWJC No. 7312/2021 Vinit Kumar & Ors. vs. State of Bihar & Ors. in giving reservation of 40% of the candidates who have got 3 years degree of Diploma from the Government polytechnic situated in Bihar in the ends of justice.

(D) For issuance of writ in the nature of Mandamus to fill up the vacant 190 posts which remained vacant due to non-joining post against advertisement no. 4/2019 as contained in Annexure-13 for appointment to the post of Special Survey Kanoongo as per direction contained in Record No. 2590 dated 27.08.2021 issued under the signature of Director, Land Records and Survey, Revenue and Land Reforms Department, Govt. of Bihar, Patna as contained in Annexure-17 from the petitioners considering life of 190 posts unfilled up vacancy due to non-joining has live to fill up 26.08.2022.

(E) Also commanding the respondents to grant pay protection, seniority and consequential service benefit from the date of appointment of other candidates against advertisement no. 4/2019 to the post of Special Survey Kanoongo.

(F) Also commanding the respondents to restrain taking any action in issuing advertisement to fill up



also 190 non-joining post against advertisement no. 4/2019 to the post of Special Survey Kanoongo considering the said vacancy has to be filled up from the eligible candidates who were eligible to make application as per advertisement no. 4/2019 and not from the candidates who have passed Diploma in Civil Engineering and 2 years experience who have obtained degree after issuance of advertisement no. 4/2019 dated 01.03.2019.

(G) Also for necessary relief/reliefs, order/orders, direction/directions for which the petitioner is entitled in the eye of law.”

4. In CWJC No. 8128 of 2022, the petitioners are seeking following reliefs:-

“(A) For quashing the record no. 606 dated 12.03.2022 as contained in Annexure -18 issued under the signature of Director, Land Records and Survey, Revenue and Land Reforms Department, Govt. of Bihar, Patna with respect to advertisement no. 3/2019 Special Survey Assistant Settlement Officer as contained in Annexure -13 by which earlier order no. 2590 dated 27.08.2021 with respect to appointment of Special Survey Assistant Settlement Officer which was advertised vide Advertisement No. 3/2019 as contained in Annexure -13 has been cancelled regarding filling up the vacancies from the waiting list after recommendation of the competent authority with direction vacancy of Special Survey Assistant Settlement Officer will also be filled up after fresh advertisement as per Bihar Vishesh Survekshan Mandey Adharit Samvida Niyojan Niymawali, 2019 hereinafter referred as Samvida Niyojan Niymawali, 2019.

(B) For issuance of writ in the nature of Mandamus to fill up the vacant 54 posts which remained vacant due to non-joining post and other vacant post against advertisement no. 3/2019 as contained in Annexure-13 for appointment to the post of Special Survey Assistant Settlement Officer as per direction contained in Record No. 2590 dated 27.08.2021 issued under the signature of Director, Land Records and Survey, Revenue and Land Reforms Department,



Govt. of Bihar, Patna as contained in Annexure-17 from the petitioners considering life of 54 posts and others unfilled up vacancy due to non-joining is to fill up 26.08.2022.

(C) Also commanding the respondents to grant pay protection, seniority and consequential service benefit from the date of appointment of other candidates against advertisement no. 3/2019 to the post of Special Survey Assistant Settlement Officer.

(D) Also commanding the respondents to restrain taking any action in issuing advertisement to fill up also 54 non-joining post against advertisement no. 3/2019 to the post of Special Survey Assistant Settlement Officer considering the said vacancy has to be filled up from the eligible candidates who were eligible to make application as per advertisement no. 3/2019 and not from the candidates who have passed Diploma in Civil Engineering and 2 years experience who have obtained degree after issuance of advertisement no. 3/2019 dated 01.03.2019.

(E) Also for necessary relief/reliefs, order/orders, direction/directions for which the petitioner is entitled in the eye of law.”

5. In CWJC No. 9605 of 2022, the petitioners are seeking following reliefs:-

“(A) For quashing the record no. 606 dated 12.03.2022 as contained in Annexure -60 (wrongly typed Annexure -61 in the petition) issued under the signature of Director, Land Records and Survey, Revenue and Land Reforms Department, Govt. of Bihar, Patna with respect to advertisement no. 1/2019 Special Survey Amin as contained in Annexure-55 by which earlier order no. 2590 dated 27.08.2021 with respect to appointment of Special Survey Amim which was advertised vide Advertisement No. 1/2019 as contained in Annexure-55 has been cancelled regarding filling up the vacancies from the waiting list after recommendation of the competent authority with direction vacancy of Special Survey Amin will also be filled up after fresh advertisement as per Bihar Vishesh Survekshan Mandey Adharit Samvida Niyojan Niymawali, 2019 hereinafter referred as



Samvida Niyojan Niymawali, 2019.

(B) Also for quashing clause-3 of the advertisement no. 1/2019 for giving 40% reservation of the candidates who have got degree of Diploma for Civil Engineering from the Govt. Polytechnic in appointment of 550 posts of Special Survey Amin.

(C) For issuance of writ in the nature of Mandamus to fill up the vacant 1495 posts which remained vacant due to non-joining post against advertisement no. 1/2019 as contained in Annexure-55 for appointment to the post of Special Survey Amin as per direction contained in Record No. 2590 dated 27.08.2021 issued under the signature of Director, Land Records and Survey, Revenue and Land Reforms Department, Govt. of Bihar, Patna as contained in Annexure-6 from the petitioners considering life of 1495 posts unfilled up vacancy due to non-joining has live to fill up 26.08.2022.

(D) Also commanding the respondents to grant pay protection, seniority and consequential service benefit from the date of appointment of other candidates having lesser marks than the petitioner against advertisement no. 1/2019 to the post of Special Survey Amin.

(E) Also commanding the respondents to restrain taking any action in issuing advertisement to fill up also 190 non-joining post against advertisement no. 1/2019 to the post of Special Survey Amin considering the said vacancy has to be filled up from the eligible candidates who were eligible to make application as per advertisement no. 1/2019 and not from the candidates who have passed Diploma in Civil Engineering and 2 years experience so degree of diploma in Civil Engineering after issuance of advertisement no. 1/2019 dated 01.03.2019.

(F) Also for necessary relief/reliefs, order/orders, direction/directions for which the petitioner is entitled in the eye of law.”

6. In these writ applications, the petitioners are questioning the order vide Record No. 606 dated 12.03.2022 as contained in Annexure ‘18’, Annexure ‘18’ and Annexure ‘60’



respectively issued under the signature of Director, Land Records and Survey, Department of Revenue and Land Reforms, Government of Bihar with respect to Advertisement no. 04 of 2019 regarding Special Survey Kanoongo. The advertisement is Annexure '13' to the writ application in CWJC No. 7657 of 2022. Learned counsel has assailed Annexure '18' by which the earlier order no. 2590 dated 27.08.2021 as contained in Annexure '17' to the writ application has been cancelled.

7. Since the issues involved in all these writ applications are identical, CWJC No. 7657 of 2022 has been taken as the lead case.

8. Learned counsel submits that by Annexure '17', a decision was taken by the Government to fill up the vacant posts (the vacancies arising out of non-joining of the selected candidates) from amongst the candidates who participated in the selection process after making a waiting list. It is submitted that instead of making a waiting list, by the impugned order the Department took a decision to fill up the vacant posts in accordance with the Bihar Special Survey Honorarium based Contractual Employment Rules, 2019 (hereinafter referred to as the 'Rules of 2019').

8. Learned counsel submits that subsequently some advertisements were issued by the respondents which were



challenged by filing I.A. No. 1 of 2022 and I.A. No. 2 of 2022 in CWJC No. 8128 of 2022. It is, however, submitted that those advertisements have already been withdrawn by the respondents, therefore, challenge to those advertisements do not survive at this stage.

9. Learned counsel has also questioned clause (3) of the Advertisement no. 04 of 2019 which provides for giving 40% reservation to the candidates who had got Degree or Diploma in Civil Engineering from the Government Polytechnic. Learned counsel submits that this clause giving special treatment to those who have done their Diploma from Government College has been found manifestly arbitrary and unconstitutional in the case of **Vinit Kumar and Others Vs. State of Bihar and Others (CWJC No. 7312 of 2021 and its analogous cases)**. It is, therefore, submitted that any select list prepared after taking into consideration the special privilege as per advertisement would suffer from the vice of being based on manifestly arbitrary reasons, hence, would be liable to be cancelled.

10. On the other hand, learned counsel for the State submits that these petitioners have no *locus standi* to maintain these writ applications. It is submitted that neither in the rules governing the appointment of the Special Survey Kanoongo, Special Survey Settlement Officer and Special Survey Amin nor in



any other Government decision, there is any provision for making of a wait list. It is submitted that in this case also, vide Memo No. 2590 dated 27.08.2021 (Annexure '17'), even as a decision was taken by the Directorate to prepare a permanent waiting list to fill up the rest of the posts, the said decision has been cancelled vide Memo No. 606 dated 12.03.2022 (Annexure '18').

11. Learned counsel for the State submits that neither in the writ application nor in the supplementary affidavit there is any statement that these petitioners had been selected and/or that their names were present in the select list. Similarly, there is no statement that any waiting list was prepared and these petitioners' names were present in the waiting list. It is further submitted that in catena of judgments, the Hon'ble Supreme Court has held that mere presence of the name in a panel or wait list would not confer any indefeasible right upon the candidates to claim appointment.

12. Attention of this Court has been drawn towards the statements made in paragraph '7' of the counter affidavit filed on behalf of Respondent No. 3. It is stated that the petitioners were not selected for the post of Special Survey Kanoongo against the Advertisement no. 04 of 2019 as their merit point was below the final point of selected candidates. Hundred posts of Special Survey Kanoongo remained vacant on account of non-joining of the selected candidates but since there is no provision for adoption



of remaining list as waiting list or selection on the vacant posts from the said waiting list in the Rules of 2019 as well as in the Advertisement. The Selection Committee in its meeting dated 30.12.2021 took decision to cancel the Memo No. 2590 dated 27.08.2021 issued by the Directorate of Land Record and Survey. Accordingly, the cancellation was issued after obtaining necessary approval from the competent authority.

13. There is no rejoinder to the counter affidavit of respondent no. 3.

14. Learned counsel for the State has also clarified by producing a copy of the Memo No. 14 of 2019 - 113 dated 13.11.2019 that in the light of the decision of the Hon'ble High Court in CWJC No. 14533 of 2019 (**Amit Kumar Azad versus The State of Bihar and Others**), the reservation provided in paragraph 3(ii) of the advertisement to the candidates who had obtained their civil engineering degree from a Government Engineering College in the State of Bihar has been cancelled. Learned counsel submits that the respondents considered the candidature of the applicants without giving effect to paragraph 3(ii) of the advertisement.

15. In Rejoinder, learned counsel for the petitioners has submitted that because these vacancies occurred due to non-joining of the candidates who were selected for the vacant posts,



the respondents are obliged to consider the remaining candidates from the select list. Learned counsel submits that the respondents should consider the case of the petitioners against vacant posts if they have obtained cut off marks. Reliance has been placed in this regard on the judgment of the Hon'ble Supreme Court in the case of **Manoj Manu and Another versus Union of India and Others** reported in **(2013) 12 SCC 171**.

16. Learned counsel further submits that earlier some of the persons similarly situated to the petitioners had moved this Court in CWJC No. 20663 of 2021. They had applied for the post of Special Survey Amin. The learned Writ Court directed the respondents to take decision and pass speaking order on the representations read with order dated 27.08.2021 within a period of four months from the date of receipt of the order. It is submitted that instead of considering the case of the petitioners, the respondents came out with the impugned order as contained in Annexure '19' to the writ application.

17. Learned counsel for the petitioners submits that when the matter went to the Hon'ble Division Bench in LPA No. 11 of 2022, the Hon'ble Division Bench was informed on behalf of the State that the Department had taken a decision of carrying out a fresh exercise for appointment of Special Survey Amins for which an advertisement had been issued. Taking note of this, the



Hon'ble Division Bench mooted a question as to whether the representation preferred by the appellants were required to be disposed of by the concerned authority before taking a decision with respect to initiating a fresh exercise for recruiting Special Survey Amins. Having said so, the Hon'ble Division Bench left it open for the appellants to agitate before the appropriate forum that the order passed by the learned Single Judge was flouted with impunity and an attempt has been made by the Directorate to frustrate the claim of the appellants, thereby completely negating their legitimate expectation of being appointed.

18. Having heard learned counsel for the petitioners and the State and after taking note of the aforementioned materials available on the record, this Court finds that at this stage all subsequent advertisements have already been withdrawn. The posts of Special Survey Kanoongo, Special Survey Settlement Officer and Special Survey Amin are still vacant and even fresh posts have been sanctioned which are yet to be filled up.

19. This Court further finds that there is already an order of a learned Single Judge as well as the Hon'ble Division Bench of this Court in CWJC No. 20663 of 2021 and LPA No. 11 of 2022 respectively wherein the respondent authorities are obliged to consider the representations of the petitioners in those cases. The case of these petitioners are definitely similarly situated



to the petitioners in CWJC No. 20663 of 2021. This being the position, instead of going into the merit of the contentions of the petitioners, this Court deems it just and proper to direct the respondents to consider the case of the petitioners along with the petitioners of CWJC No. 20663 of 2021, keeping in view that the Hon'ble Division Bench has also left it open for the appellants in the said case to agitate such issues on the principle of their legitimate expectation of being appointed.

20. This order is being passed after having been informed by learned counsel for the State that no decision as yet has been taken in terms of the order dated 22.12.2021 passed in CWJC No. 20663 of 2021.

21. These writ applications stand disposed of.

(Rajeev Ranjan Prasad, J)

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