

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3520 of 2018

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1. Pankaj Kumar Son of Rama Shankar Prasad Yadav, Resident of Village-Pervejabad, Baturahi, P.O.- Sonapur, District- Saran.
 2. Nisha Bharti, Wife of Ranjeet Pandit, Resident of Village- Gita Dedha, P.S.- Hasanpur, District- Samastipur at present 6 Bailey Road, P.O. G.P.O., P.S. Phulwarisariiff, District- Patna.
 3. Vikash Kumar, Son of Devendra Rajak, Resident of Akash Ganga, J.K., S/H-27, Old Jakkanpur, Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, General Administration Department, Old Secretariat, Patna.
3. The Commissioner, Patna.
4. The District Magistrate-cum- Chairman, District Establishment Committee, having his office is Colle
5. The Deputy Collector, Establishment having his office in Collectariate Compound, Patna.
6. The Deputy Collector, Nazarat having his office in Collectariate Compound, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rashid Izhar, Advocate
For the Respondent/s : Mr. Md. N.H. Khan- SC-1

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 22-09-2023 Heard Mr. Rashid Izhar, learned Counsel for the
petitioners and Mr. Md. N.H. Khan, learned Standing Counsel-

1.

2. The present writ petition has been preferred for the
following reliefs:



(i) for issuance of writ or writs in the nature of Certiorari quashing the Order dated 20.11.2017 vide Memo No. XII- 03/2016-409/Stha. passed by the District Magistrate, Patna, whereby the prayer of the Petitioners for completing the selection process and to fill up the remaining 320 vacant posts lying with the Respondent Patna District Collectorate Services in terms of Advertisement No. 03 of 2010 is refused and the Respondents have only issued appointment letter for 90 candidates and despite the observations of this Hon'ble Court to show the facts relating to the prevailing circumstance passed in L.P.A. No. 1266 of 2016 vide Order dated 28.07.2017, the Respondent District Magistrate failed to reconcile and have rejected the claim of the Petitioners on the basis that the Petitioners were not working on the daily wage with the Respondent State Authorities as directed in the Circular dated 29.06.2011 issued by the General Administration Department, Government of Bihar;

(ii) for issuance of writ or



writs in the nature of Mandamus commanding the Respondents to complete the process of fulfilling the 320 vacant posts in the Respondent's Collector Office out of the panel prepared by the District Selection Committee as Group- 'Ka'. 'Kha', 'Ga' & 'Gha' and not to create a new ground of selection only in form of regularization to Group- 'Ka' candidates and reject the candidature of other category of candidates by differing with the terms of Advertisement and also in terms of the Circular of the Government dated 29.06.2011.

3. A counter affidavit on behalf of respondent nos. 4 and 5 is on record in which paragraphs **6,7,8 and 9** read as follows:

6. That the Hon'ble Court in L.P.A. No. 1266/2016 passed the following order on 28.07.2017:-

"Having heard learned counsel for the respondent and on going through the records, we find that the learned writ court has only remanded the matter back to the District Magistrate, Patna for re-examination with regard to the fact as



to whether petitioner is fulfilling the criteria of having five years experience of 240 days in a year apart from any other circular or guidelines or policy of the State Government as is applicable in the matter.

The petitioner will have liberty to bring these facts also before the District Magistrate shall evaluate the matter and take decision within three of receipt/production of a copy of this

7. That in pursuance of the order dated 28.07.2017 passed in L.P.A. No. 1266/2016, the petitioner submitted their representation on 08.08.2017 in the matter to appoint them on Class-IV posts.

8. That in the light of the representation of the appellants, they were directed to submit the document/evidence in support of claim of their working experience. The appellants submitted the petition that their matter is for direct appointment; therefore, they did not submit the evidence of working experience. During the hearing also on 16.11.2017 they stated that they had no working experience of daily wages even of a single day.



9. That it is submitted that the advertisement no. 3/10 dated 03.06.2010 was issued inviting application from the concerned applicants for the purpose of only regularization of daily wages employee for regularization of the daily wages employee on Class-IV post under Patna Coliectorate & its attached offices.

4. He as such submits that any decision now has to be taken in the light of the order passed by the Division Bench in LPA No. 1266 of 2016 disposed of on 28.07.2017.

5. Mr. Rashid Izhar, learned Counsel for the petitioners submit that though the petitioners are in the panel, the respondents are doing pick and choose.

6. He has further cited a case of **Kapil Kumar and Ors vs State of Bihar and Ors of Patna High Court** reported in **2020 (1) PLJR 287** (decided by the learned Single Judge) with specific reference to paragraphs **28** and **29** which read as follows:

28. Noticing the constitutional provisions and the law as declared by the Supreme Court referred to above, in my opinion, the advertisement to the extent it allows



preference under sub-clause (1) (2) (3) (4) (5) and (6) of Clause 7 are held to be illegal, violative of Articles 14 and 16 of the Constitution of India and are struck down accordingly. Though, it may be open for the respondents to allow some reasonable weightage on rationale basis for those having work experience after having been selected through a transparent process of selection, the work experience as daily wager simpliciter cannot itself be the sole/main criteria for selection and appointment. The respondents are obliged to follow a fair process of selection in accordance with the statutory rules and constitutional mandate. It is noteworthy that though the rules have been framed for selection and appointment against Class-IV (Group-D) posts, no clear and definite process of selection has been laid down, therein. If no transparent, fair and impartial procedure is adopted for judging the inter se merit of the candidates, who have applied in response to the advertisement made, the eligible candidates cannot get a fair chance to compete, which would



*be violative of the guarantee enshrined under Article 16 of the Constitution, as held in case of **UPSC vs. Girish Jayanti Lal Vaghela** (supra).*

29. These writ applications are accordingly disposed of with specific direction to the respondents, particularly, the Additional Chief Secretary/Principal Secretary, General Administration Department, Government of Bihar, Commissioner, Madadh Division, Gaya and the District Magistrate, Gaya to ensure that the process of selection through the advertisement in question is completed by adopting a fair procedure. In my opinion, holding of written examination of the candidates who have applied against the said advertisement would be a fair procedure for preparation of merit-list, in the absence of any provision in the Rules. This, in my opinion, would ensure transparency in the process of selection. Since the advertisement was issued more than six years ago, the respondents are directed to conclude the process of selection and appointment against such posts, which



were available on the date of issuance of advertisement, within a period of three months from today. The respondents are further directed to ensure that a fair process of selection, strictly in accordance with statutory rules and in conformity with the mandate of Articles 14 and 16 of the Constitution is undertaken on regular basis, after advertising number of post, so that the persons acquiring eligibility after the initiation of one selection process have a chance to seek and participate in subsequent selection processes. This practice of fairness in the process of selection for filling up public posts generates faith in the hearts and minds of the citizen in the governance, laws and the Constitution.

7. Having gone through the facts of the case, the submissions put forward by the parties as also the case cited by the learned Counsel for the petitioners of **Kapil Kumar and Ors (supra)**, this Court is of the view that any fresh selection has to be made in line with the aforesaid order.

8. At this stage, learned Counsel for the petitioners submit that the District Magistrate, Patna is doing pick and



chose method instead of referring the names of all the empanelled person before the Staff Selection Commission.

9. Learned State Counsel submits that the submission is unfounded and is not supported by any document. Still he will ensure that the respondents take steps in line with the order.

10. In that view of the matter, this Court directs the concerned respondents to act only in accordance with the order passed, as incorporated above and it is expected that no pick and choose method will be applied in the said process.

11. The petitioners are free to submit representation.

12. The writ petition stands disposed of.

(Rajiv Roy, J)

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