

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19886 of 2011

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1. Ashok Kumar Singh Vide Order Dated 09/12/2021 Dismissed as Withdrawal Son of Late Bir Bahadur Singh Resident Of Village - Sareya Ward No. 6, Block Colony, P.S. Gopalganj, District -Gopalganj
 2. Balindra Tiwari, Son of Late Fulena Tiwari Resident of Village - Bansghat Malamiya, P.S. Mohammadpur, District - Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Gopalganj
3. The Civil Surgeon-Cum-Chief Medical Officer, Gopalganj

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Naresh Chandra Verma, Advocate
For the Respondent/s	:	Mr. P.K.Verma, AAG-3
		Mr. Rakesh Kumar Shrivastava, AC to GP-16

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL ORDER

11 25-08-2023 In the instant petition, petitioners have prayed for the following relief(s):-

“That this writ application is for issuance of a direction to the Respondents to consider the case of appointment of the petitioners on the Class-IV Post under the jurisdiction of the Respondent nos. 2 and 3.”

2. Initially, these two petitioners were stated to have been appointed on voluntary basis. Accordingly, they were continued from time to time, whereas the 1st petitioner, who has been treated as a Daily Wager, whereas the 2nd petitioner was continued as a voluntary basis.



3. Learned counsel for the petitioners submitted that 1st petitioner has been extended the benefit of appointment to the Class-IV post, pursuant to the advertisement read with the service rendered by him as a Daily Wager which is one of the conditions taken into consideration with reference to judicial pronouncement of this Court dated 29.07.2009 passed in C.W.J.C. No. 10444 of 2005 and connected matters.

4. In Para-6, the following observation has been made.

“6. I regret not to accept such submission. After orders having been passed in the contempt application, the Collector of the district noticed mistake in the panel on the basis of which appointment orders, Annexures-6 and 7 have been issued, this Court should not allow the mistake to be perpetuated, accordingly, while setting aside the panel, Annexure-5 and the appointment orders, Annexures-6 and 7 as also the subsequent panel, Annexure-C, direct the Collector, Gopalganj to prepare fresh panel in the light of the advertisement, Annexure-3 from amongst those who were the applicants pursuant to Annexure-3 taking into account the length of engagement rendered by the applicants in the Collectorate, its attached offices, government offices, including, government schools and hospitals situate within the district of Gopalganj. While preparing the fresh panel, the Collector, Gopalganj shall allow all those who are included in the panel, Annexure-5, Annexure-C as also the intervenors to put forth their case, if they are willing to satisfy the Collector, Gopalganj about the length of engagement rendered by them as candidate peon/ daily wager in the Collectorate, attached offices, Government offices, including Government School/ Hospital situate within the district of Gopalganj. Having prepared the panel,



the Collector, Gopalganj will make appointment in the Collectorate and attached offices on the basis of the roster finalized by him and recommend for appointment in the other government offices, including Government School and Hospital from the panel as per the requisition furnished by the respective appointing authority, which shall be prepared considering the length of engagement in the light of this order. While preparing the panel, the Collector, Gopalganj shall grant the benefit of age relaxation for the period between the date of advertisement till the date of publication of the panel in the light of this order. While making appointment against the 158 vacancies notified in the advertisement, there is hardly any occasion for making appointment by applying sub- section (6) of Section 4 of the Act as the appointment on those posts were never deferred on account of non-availability of suitable candidates. It was for administrative reasons that the appointments were deferred and delayed. In case of delay in appointment on account of administrative reasons, sub-section (6) of Section 4 of the Act has no application, which applies only in case of non-availability of suitable candidates.”

(Underline supplied)

5. Taking note of the observations to the extent that such of those candidates, who were appointed as a Peon/Daily Wager in the Collectorate, attached offices, Government's offices including Government schools/hospitals situated within the district of Gopalganj, are entitled to preference while appointing them pursuant to the advertisement. Thus, 1st petitioner has been given preferential treatment on par with the 2nd petitioner on the score that 1st petitioner was a Daily Wager. On the other hand, 2nd petitioner was not brought on as a Daily



Wager and he was continued as voluntary worker. However, the same is being disputed by the learned counsel for the petitioners with reference to Annexure-8 to the supplementary affidavit filed on 17.05.2023. The same is being disputed by the official respondents, to that effect, an affidavit has been filed. Therefore, one has to draw inference that 2nd petitioner was not brought on the daily basis with any of the Government's offices so as to give preference on par with the 1st petitioner.

6. In the light of these facts and circumstances, the 2nd petitioner has not made out a case, hence, 2nd petitioner's writ petition stands dismissed.

(P. B. Bajanthri, J)

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