

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7831 of 2016

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Jai Jai Ram Mahto, Son of Shri Jageshwar Mahto, Resident of Village- Kiratpur, P.O- Ishapur, Via & PS- Bhagalpur, District- Begusarai, At Present Posted as Male ward Attendant at District T.B. Centre, Katihar.

... .. Petitioner

Versus

1. The State of Bihar, through Principal Secretary Department of Health, Govt. of Bihar, Patna
2. The Director in Chief, Department of Health, Govt. of Bihar, Patna.
3. The Director, Tuberculosis Demonstration and Training Centre, Agamkuan, Patna.
4. Incharge Officer, District T.B. Centre, Katihar.
5. District Provident Fund Officer, Katihar.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 16484 of 2018

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1. Bahuron Baraik, Son of Late Mangal Baraik, Resident of Village- Krushkela Jamtoli P.O. & P.S. Krushkela Dist. Simdega Jharkhand, presently posted as T.B. Assistant, T.B. Center Siwan.
2. Kashi Kumar, Son of Late Indra Prasad Resident of Village- Bari Machhua Toli Kalisthan P.O. Danapur Kantt. Danapur Dist. Patna, Retired as T.B. Assistant from T.B. Center Biharsharif Nalanda.
3. Niranjan Kumar, Son of Late Tetar Prasad, Resident of Village- Kharatola, P.O.- Khara, P.S.- Udakishanganj, Dist.- Madhepura, presently posted as IV Grade employee at T.B. Center Motihari, East Champaran.
4. Dilip Kumar, Son of Sri Ram Ratan Paswan, Resident of Chitakohara Maharpur, P.S.- Gardanibagh in the town and Dist. Of Patna Presently posted as IV grade employee T.B. Centre Madhubani.

... .. Petitioners

Versus

1. The State Of Bihar through Principal Secretary, Dept. of Finance, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health and Family Welfare Government of Bihar, Patna.
3. The Director-in-chief Department of Health and Family Welfare Government of Bihar, Patna.
4. The District Provident Fund Officer, Siwan
5. The In-charge Officer, T.B. Center, Siwan
6. The District Provident Fund Officer, Biharsharif, Nalanda



7. The In-charge T.B. Center Bihar Sharif Nalanda
8. The District Provident Fund Officer, East Champaran, Motihari
9. The In-charge Officer, T.B. Center, East Champaran, Motihari
10. The District Provident Fund Officer, Madhubani
11. The In-charge Officer, T.B. Center, Madhubani

... .. Respondents

with

Civil Writ Jurisdiction Case No. 7581 of 2022

Badare Alam Son of Late Umaraw Miyan Resident of Village- Barnaya Bisa,
P.S.- Kuchayat Kot, District- Gopalganj.

... .. Petitioners

Versus

1. The State of Bihar Through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Director-In- Chief Health Services, Govt. of Bihar, Patna.
3. The Civil Surgeon-cum-Chief Medical Officer Gopalganj.
4. The District Provident Fund Officer Gopalganj.
5. The District Immunization Officer Gopalganj.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 13654 of 2022

1. Anil Kumar Dubey Son of Late Indradeo Dubey Resident of village - Dubauli Ward No. 4, P.O. Ammapali, P.S. - Pirpaiti, District - Bhagalpur, presently posted as T.B. Assistant Primary Health Centre Ram Nagar West Champaran.
2. Madan Kumar, Son of Devaki Mochi at Resident of Rajgir Gandtola, P.S. Rajgir, District- Nalanda, presently posted as T.B. Assistant at presently Health Centre, Yogapatti West Champaran.
3. Lal Babu Bhagat Son of Late Bacha Bhagat Resident of Village Koyala Belwa, P.S. Chakiya, District East Champaran, posted as 4th Grade Employee at T.B Centre - Bettiah, West Champaran.

... .. Petitioners

Versus

1. The State of Bihar through Principal Secretary, Department of Health Government of Bihar, Patna.
2. The Director-in-Chief Department of Health, Government of Bihar, Patna.
3. The Civil Surgeon-cum-Chief Medical Officer, West Champaran at Bettiah.
4. The In-charge District T.B. Center Bettiah West Champaran.
5. The In-charge Medical Officer, Primary Health Center, Ramnagar, Bettiah.
6. The In-charge Medical Officer, Primary Health Center Yogapatti.



7. The District Provident Fund Officer, West Champaran Bettiah.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 7831 of 2016)

For the Petitioner/s : Mr. Kapil Deo Singh, Advocate

For the Respondent/s : Mr. Ajeet Kumar, GA-9

Mr. Nalim Vilochan Tiwary, AC to GA-9

(In Civil Writ Jurisdiction Case No. 16484 of 2018)

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

For the Respondent/s : Mr. Kamlesh Kishore, AC to SC-12

(In Civil Writ Jurisdiction Case No. 7581 of 2022)

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

For the Respondent/s : Mr. Vasant Vikas, AC to GP-12

(In Civil Writ Jurisdiction Case No. 13654 of 2022)

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

For the Respondent/s : Mr. Anil Kumar Verma, AC to AAG-9

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 03-04-2023 Heard learned counsel for the petitioners and learned
counsel for the State in all these writ applications.

With the consent of the parties, these matters have
been taken up for consideration together and are being disposed
of by this common order.

Learned counsel for the State has pointed out that in
CWJC No. 7581 of 2022, a counter affidavit has been filed and
the same would be the stand of the State in all the writ
applications.

It is not in dispute that the advertisement for
appointment to different posts of Tuberculosis Department
under the Department of Health Services, Government of Bihar
was published on 05.05.1997 vide Advertisement No. 1 of 1997.
The advertisement included the post of Category 9- Jeep Driver,



Category 10- T.B. Assistant and Category 12- Class IV employees.

All these petitioners being eligible for consideration, participated in the examination and they were declared successful. The grievance of the petitioners is that similarly situated persons who were below the petitioners in the merit list were given appointment during the period 2001-04 but these petitioners were left out arbitrarily and for no valid reasons.

It is the case of the petitioners that persons similarly situated to the petitioners came to this Court in CWJC No. 20654 of 2010 (**Raj Narayan and Ors. Vs. The State of Bihar and Ors.**) and in their case, a learned co-ordinate Bench of this Court having taken note of the entire materials on the record took a view that their date of appointment would be 19.02.2002 for the post of T.B. Attendant and 27.02.2002 for the post of IVth grade. The learned co-ordinate Bench held that the petitioners in the said writ application would be entitled for all kinds of monetary benefits from their actual date of appointment i.e. 26.11.2005 and since their juniors were appointed in the year 2002 and they would be governed by the old pension scheme, the petitioners would also be entitled for the pensionary benefits under the old pension scheme itself in view of the fact that on



the date of advertisement, old scheme was in force.

Learned counsel for the petitioners submits that the similarly situated persons who had applied for the post of Health Visitor under the same advertisement and in whose case also breaking the seniority from the merit list, the respondents made appointment, they approached this Court by filing a writ application. In the said matter, the Hon'ble Division Bench of this Court in LPA No. 326 of 2009 held that they would be entitled to be appointed with effect from the date on which earlier notification was issued and they were also found entitled for their seniority and other notional benefits.

Learned counsel submits that the petitioners in CWJC No. 16484 of 2018 were appointed on various dates in the year 2014. Learned counsel points out that in the appointment letters issued to all these petitioners, it is stated that they will maintain their seniority as per the merit list.

In the aforementioned background, learned counsel for the petitioners submits that all these petitioners are liable to be treated in service with effect from the date the juniors to them were allowed to join. In CWJC No. 16484 of 2018, prayer has also been made to quash the letter contained in Memo No. 415(11) dated 21.05.2018 issued under the signature of



Director-in-Chief, Health Services, Government of Bihar and a prayer has been made to accept the joining of the petitioner nos. 1 and 2 with effect from 24.12.2001 for the post of T.B. Assistant (Category-10), petitioner nos. 3 and 4 with effect from 27.02.2002 for Class-IV post (Category-12). In the other three writ applications, almost similar prayers have been made with the only difference that in those writ applications, there is no impugned order like CWJC No. 16484 of 2018.

Learned counsel has further pointed out that the order passed by this Court in CWJC No. 20654 of 2010 contains identical reasons and rationale which have been approved by the Hon'ble Division Bench in the case of the Drug Inspectors under Advertisement No. 02 of 2002 in whose case also, the similar situation had taken place. The Hon'ble Division Bench has categorically held that they would be entitled for the benefits of old pension scheme.

Mr. Ajeet Kumar, learned GA-9 and other learned counsel representing the State do not dispute that the case of the petitioners in these writ applications are identical to the case of CWJC No. 20654 of 2010 decided by this Court on 11.02.2016. They, in fact, have fairly placed before this Court that the reasoning and rationale provided in the Hon'ble Division Bench



judgment in LPA No. 589 of 2013 would equally apply in the case of these petitioners.

Having regard to the aforementioned submissions and the materials on the record as also taking note of the stand of the State, this Court allows these writ applications in terms of the prayers made therein. The impugned order in CWJC No. 16484 of 2018 is hereby quashed. The State respondents are directed to confer similar benefits to the petitioners as has been granted to the petitioners in CWJC No. 20654 of 2010.

Let the consequential order be issued within a period of one month from the date of receipt/production of a copy of this order.

These writ applications are accordingly allowed.

(Rajeev Ranjan Prasad, J)

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