

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5863 of 2020

-
1. Chandra Kant Singh Son of Late Baleshwar Singh Resident of Village and Post- Sambey, Police Station- Warisaliganj, District- Nawada.
 2. Ajay Kumar Son of Late Bidya Sager Ram Resident of Village and Post- Jamuaon, Police Station- Piro, District- Bhojpur at Aara.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General-cum-Commandant General, Bihar Home Guard Head Quarter, Patna.
4. The Inspector General, Bihar Home Guard Head Quarter, Patna.
5. The Deputy Inspector General, Bihar Home Guard Head Quarter, Patna.
6. The Commandant, Bihar Home Guard Head Quarter, Patna.
7. The Commandant, Bihar Home Guard, C.T.I.-cum-Special Battalion, Bihta.
8. The District Commandant, Bihar Home Guard, District Unit, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Adv.
	:	Mr. Lakshmana, Adv.
For the Respondent/s	:	Mr. Dr. Mankeshwar Tiwari, AC to AAG3

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

14 09-08-2024 Heard learned counsel for the petitioners and learned counsel for the State.

2. Counsel for the petitioners submits that the present writ petition has been filed for quashing the order contained in Memo No.3420 dated 22.07.2019 passed by the Commandant, Bihar Home Guard Head Quarter, Patna by which the claim of the petitioners on appointment on Class III post (Clerical Cadre)/ Adhinayak Lipik. The further prayer has been made by



the petitioners that a direction may be given to the respondent to appoint the petitioners on the post of Sepoy/Adhinayak Lipik (Clerical Cadre) in pursuance of the Memo No.1018 dated 28.04.2011. The further prayer has been made for directing the respondent to take action according to the seniority list prepared and forwarded under Secretary to the Government, Department of Home, Bihar, Patna vide letter No.556, dated 04.03.2014.

3. Counsel for the petitioners further submits that the petitioners have earlier moved before this Court for the relief in C.W.J.C. No.17695 of 2016 in which the vide order dated 08.05.2019, a direction was given to respondents to take final decision on the claim of the petitioners in accordance with law expeditiously without any undue delay thereafter, the petitioners have filed the representation and their representation has been disposed off vide Annexure-18 which is the order impugned in which the claim of the petitioner has been rejected. Then, the present petitioners have filed petition challenging the same.

4. Counsel further submits that during pendency of the writ petition, subsequent decision has come in case of **Pramod Narain Tiwari & Ors. Vs. State of Bihar** reported in **(2017) 3 PLJR 778** decided on 27.07.2017 which was challenged by the State before the Hon'ble Supreme Court in



SLP No.7436 of 2018 in which vide order dated 08.02.2020, the SLP of the State has been rejected and the order passed in case of *Pramod Narain Tiwari & Ors. Vs. State of Bihar (supra)* has been approved. He further submits that petitioners' case is squarely covered with the said case which has been approved by the Hon'ble Supreme Court and the respondent authority at the time of deciding the representation, could not consider the case of *Pramod Narain Tiwari & Ors. Vs. State of Bihar(supra)* due to the reason that it was pending before Hon'ble Supreme Court, but after passing order by the Hon'ble Supreme Court, issues have been settled and applying Clause 4 of Bihar State Litigation Police, 2011, the said decision in case of *Pramod Narain Tiwari & Ors. Vs. State of Bihar (supra)* is now binding on the State and it is necessary to be considered for the case of the petitioners also.

5. Counsel for the State submits that the post of Clerk is not available in the cadre in which the petitioners are working, and therefore, the petitioners' promotion on the post of Clerk is not possible. But on the other hand, he submits that as per the length of service, petitioners are entitled for promotion and according to the rule, the petitioners are entitled for promotion on the post of *Hawaldar*.



6. Counsel for the petitioners happily accepts this contention of the State. Though this statement is not in the counter-affidavit which has been mentioned by the counsel for the State. It is due to this reason, this Court hereby set aside the order contained in Memo No.3420 dated 22.07.2019 passed by the Commandant, Bihar Home Guard Head Quarter, Patna and directs the respondent No.3 to take a decision in the matter of the petitioners after considering the promotion avenue relating to the services of the petitioners considering the case of *Pramod Narain Tiwari & Ors. Vs. State of Bihar (supra)* as well as Clause 4(C) of the Bihar State Litigation Policy, 2011 within 90 days after filing their representation afresh before him within 30 days along with the order of this Court.

7. It is made clear that till final decision, the status of the petitioners as today shall not be disturbed.

8. With the aforesaid directions and observations, the present writ application is hereby allowed.

(Dr. Anshuman, J.)

Prakashmani/-

U			
---	--	--	--

