

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22606 of 2012

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1. Sunil Kumar Choubey, S/O Ramashray Choubey, Resident Of Village + P.O.- Nusaharawah, P.S.- Sathi, District- West Champaran Bettiah
 2. Dinesh Mishra, S/O Sitaram Mishra, Resident Of Village- Barbat Iachchhu, P.S.- Bettiah Muffasil, District- West Champaran Bettiah
 3. Ramashray Ram, S/O Sri Deodatta Ram, Resident Of Village- Charampur, P.S. Sathi, District- West Champaran Bettiah
 4. Rajesh Rai S/O Palton Rai Resident Of Village- Karnamaya, P.S.- Bettiah Muffasil, Dist.- West Champaran

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Personnel And Administrative Reforms Department, Govt. Of Bihar, Patna
3. The Secretary, Revenue And Land Reforms Department, Govt. Of Bihar, Patna
4. The Secretary, General Administration Department, Govt. Of Bihar, Patna
5. The Deputy Secretary, General Administration Department, Govt. Of Bihar, Patna
6. The Add. Secretary, General Administration Department, Govt. Of Bihar, Patna
7. The Commissioner, Tirhut Division, Muzaffarpur
8. The Secretary Of The Commissioner, Tirhut Division, Muzaffarpur
9. The District Magistrate Cum Collector, West Champaran At Bettiah
10. The Sub Division Officer, Narkatiyaganj, District- West Champaran, Bettiah

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar, Advocate
For the Respondent/s : Mr. Mithillesh Kumar Upadhyay, AC to GP 3

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 20-06-2024

Heard Mr. Anil Kumar, learned counsel appearing
on behalf of the petitioners and Mr. Mithillesh Kumar
Upadhyay, learned AC to GP 3 for the State.

2. Learned counsel appearing on behalf of the



petitioners submits that the case of the petitioners is squarely covered by the previous direction given by this Court *vide* order dated 23.04.2012, passed in CWJC No.5947 of 2012. it is also being informed that the petitioners were engaged from time to time and keeping their long period of the engagement as daily wagers, they become entitled for grant of age relaxation, though it is the policy matter. He, however, informs that advertisement dated 29.03.2011 provides for preferential treatment to daily wagers. Learned counsel further informs that the petitioners cannot be discriminated in appointment, considering the fact that the benefit of age relaxation has been extended to appointment in West Champaran at Bettiah collectorate. Learned counsel in support of his claim has relied upon several judgments of this Hon'ble Court.

3. *Per contra*, Learned counsel appearing on behalf of the State informs that the appointment on the post of Group D employee as on date is being done through Staff Selection Commission and the relief, as prayed for in the present writ petition, don't deserve any merit.

4. Heard the parties.

5. I find that there are sufficient materials on record to show that the respondents have caused much prejudice and



frustrated the expectation, insofar as it has not considered the case of the petitioners by taking different course for appointment, which will amount to abuse of power, once the legitimacy of expectation is established.

6. The Hon'ble Supreme Court in case of ***NOIDA Entrepreneurs Assn. v. NOIDA***, has reiterated the principle on the following terms:

“39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a “democratic form of Government demands equality and absence of arbitrariness and discrimination”. The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

...

41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. “Public authorities cannot play fast and loose with the powers vested in them.” A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power



reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other...]

7. The above judgment has been followed by the Apex Court in case of *State of Jharkhand and Others vs. Brahmputra Metallics Ltd., Ranchi and Another* 2020 SCC OnLine SC 968. The Apex Court in this judgment and relevant paragraphs 36 and 56 are reproduced hereunder:

"36. Under English Law, the doctrine of promissory estoppel has developed parallel to the doctrine of legitimate expectations. The doctrine of legitimate expectations is founded on the principles of fairness in government dealings. It comes into play if a public body leads an individual to believe that they will be a recipient of a substantive benefit. The doctrine of substantive legitimate expectation has been explained in R v. North and East Devon Health Authority, ex p Coughlan in the following terms:

55.... But what was their legitimate expectation? Where there is a dispute as to this, the dispute has to be determined by the court, as happened in In re Findlay. This can involve a detailed examination of the precise terms of the promise or representation made, the circumstances in which the promise was made and the nature of the statutory or other discretion.

.....

56....Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy."



8. Of recent, the Hon'ble Supreme Court in *State of Bihar & Ors. Versus Shyama Nandan Mishra 2022 LiveLaw (SC) 449* has held that if the government authority induced an expectation which was substantive, the upsetting of that expectation, through departure from the expected course of action in the absence of compelling public interest, would be so unfair, that it would amount to abuse of power. In this regard following paragraphs are produced hereunder:-

"32. To understand the legal consequences arising therefrom, useful reference can be made to *R. V. Inland Revenue Commissioners, ex parte M.F.K. Underwriting Agents Ltd.*⁹ (1989) where Lord Justice of Appeal, Thomas Bingham, while invoking fairness as a rationale for protecting legitimate expectations, expressed the following :-

"If a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. ... The doctrine of legitimate expectation is rooted in fairness."

33. Another facet of denial of legitimate expectations is underscored by the Court of Appeal of England and Wales in the seminal case of *Coughlan*¹⁰, where the Court preferred to use abuse of power as one of the criteria for testing whether a public body could resile from a *prima facie* legitimate expectation. In the Court's opinion, if the government authority induced an expectation which was substantive, the upsetting of that expectation, through departure from the expected course of action in the absence of compelling public interest, would be so unfair, that it would amount to abuse of power. In the present case, the abuse of power is discernible in the State's disparate decision in encadring the +2 lecturers with the teachers of nationalized schools, notwithstanding the contrary representation through the 1985 notification which created the +2 lecturer posts and the 1987 advertisement under which, the respondents entered service. Such manifest departure from the



projected course smacks of arbitrariness and the government action, to selectively protect the interest of the BES cadre, does not conform to rules of justice and fair play.

34. Taking a cue from above, where the substantive legitimate expectation is not ultra vires the power of the authority and the court is in a position to protect it, the State cannot be allowed to change course and belie the legitimate expectation of the respondents. As is well known, Regularity, Predictability, Certainty and Fairness are necessary concomitants of Government's action and the Bihar government in our opinion, failed to keep to their commitment by the impugned decision, which we find was rightly interdicted by the High Court."

9. In the above case, the Hon'ble Apex Court dismissed the appeal preferred by State of Bihar and affirmed the impugned order passed by Patna High Court.

10. In above view of the matter, petitioners are entitled to be considered for appointed or giving weightage of preferential treatment. As per the terms and conditions of the advertisement dated 29.03.2011 (Annexure 6), preferential treatment to the daily wagers has been enumerated therein. I am of the opinion that the subsequent policy decision taken in the year 2020 cannot deprive the petitioners from not considering his case on preferential basis, which is also as per the policy decision of the State Government. So far the relaxation of the age is concerned in respect of daily wagers, the petitioners require preferential treatment and any change by the State Government in terms and conditions of the advertisement



dehors the policy of the State Government, as was prevalent as on the date of advertisement. It is well settled principle of law that change of rule of game is undesirable.

11. In above facts and circumstances, the petitioners are directed to approach the District Magistrate, West Champaran, Bettiah for redressal of their grievance. The District Magistrate is directed to consider the case of the petitioners in light of the order dated 23.04.2012 passed in CWJC No.5947 of 2012 well within a period of six weeks from the date of communication of this order.

12. The writ petition is, accordingly, disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.06.2024
Transmission Date	NA

