

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.727 of 2023

In

Civil Writ Jurisdiction Case No.1414 of 2019

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1. Vikash Kumar Son of Shri Ajit Kumar Resident of Village/Town/City Samastipur, Post office- Samastipur, Police Station- Samastipur, District- Samastipur.
 2. Nayan Prakash, Son of Shri Rajesh Prakash Singh Resident of Village- Mahamadpur Damodar, Post Office- Mahamadpur Badal, Police Station- Sakra Muzaffarpur, District- Muzaffarpur.
 3. Avinash Kumar Gupta, Son of Ramjee Prasad Gupta Resident of Mohalla- Block Colony Road Bihta Bhojpur, Post office and Police Station- Bihiya, District- Bhojpur.
 4. Arjun Kumar, Son of Shambhu Prasad Resident of Mohalla- Paligram Apartment Block- A, Bajran Puri Sahid Bhagat Singh Patna City Sampak Chak, Patna Police Station- Sampak Chak, District- Patna.
 5. Pawan Kumar, Son of Rammurat Thakur Resident of Village- Bhabua Ward No. 01 Post Office- Bhaua, Police Station- Bhabua, District- Kaimur.
 6. Rajesh Ranjan, Son of Birendra Prasad Resident of Chandrika Bhawan, House No. 50A/1452 Parwati Devi Path-1, New Chitragupta Nagar, Police Station- Kankarbag, District- Patna.
 7. Nitish Bhardwaz, Son of Ajay Kumar Pandey Resident of Village- Kudaro, Post Office- Golhatti Banka, Police Station- Bausi, District- Banka.
 8. Roshan Kumar, Son of Shri Rajendra Kumar Bhelahi Resident of Ward No. 19, Supaul, Police Station- Supaul, District- Supaul.
 9. Prakash Kumar Karan, Son of Sushil Kumar Das Resident of Mohalla- Station Road, Near of G.R.P Thana, Ward No. 25, Police Station- Samastipur, District- Samastipur.
 10. Raushan Kumar, Son of Shri Kapil Deo Prasad Resident of Village- Dumrawan Post Office- Abdachak, Police Station Asthawan, District- Nalanda.
 11. Rajeev Ranjan, Son of Arjun Sahni Resident of Cheeni Mil Chowk, near Over Bridge, Ward No. 10, Police Station- Samastipur, District- Samastipur.

... .. Appellant/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Law Secretary, Law Department, Government of Bihar, Patna.
3. The Honble High Court of Judicature at Patna, through its Registrar General.
4. The Registrar General, Honble High Court of Judicature at Patna, Patna.
5. Members of the Co-ordination Committee, Bihar, Patna, through the Convener, Co-ordination Committee.
6. The Convener, Co-ordination Committee-cum- District and Sessions Judge, Patna, Judges Court Road, Civil Court, Patna- P.O. Bankipur, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate



	:	Mr. Ankit Katriar, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha (G.A.-7)
For the PHC	:	Mr. Piyush Lall, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-01-2024

1. The issue arising in the above L.P.A is with respect to the employment notice dated 07.02.2021⁶ bearing No. 01 of 2016 which was issued to fill up 1681 tentative posts to the post of Clerk in the Civil Courts within the State of Bihar. The said advertisement was issued based on Bihar Civil Court (Class III and Class IV) Rules, 2009. After the selection was initiated, the rule was amended and notified in the year 2017. The selection was completed and there were non joining posts to which the Registry of the High Court directed fresh selection to be carried out, based on the 2017 Rules.

2. The number of candidates who expected the posting on such appointments made to non-joining vacancies came before this Court.

3. Learned Single Judge declined their prayers in a batch of cases, the judgment in which is annexed as Annexure-1, CWJC No. 21219 of 2018 and analogous cases (*Suprabhat Kumar & others vs State of Bihar and others*). The order



impugned in the present appeal also relied on the aforesaid judgment and the writ petition was dismissed.

4. An appeal was filed from the original judgment of the learned Single Judge in which interference was caused as per Annexure-A/4. We extract paragraph 19 and 20 of the aforesaid appeal in which the judgment of the learned Single Judge was set aside and the non-joining vacancies directed to be filled up from the list prepared as per employment Notice 01 of 2016 based on the Rules of 2009:

(19). The learned Single Judge has not appreciated that statutory rule will prevail over the executive instruction/decision. Further it is to be noted that the opinion expressed by the committee is to be upheld in such an event the proper course for the concerned competent authority is to take appropriate steps to amend Sub-rule 12, 13 and 14 of Rule 7 of Rules, 2009. In the absence of amendment to Rules, 2009 that too with retrospective effect, i.e., prior to 07.02.2016 the date on which Clerk post was notified. Executive decision cannot override statutory rules. Therefore, the learned Single Judge has committed error in dismissing the writ petitions filed by



the appellants.

(20). Accordingly, the order of the learned Single dated 29.09.2022 passed in CWJC No. 6259 of 2019 and connected matters stands set aside. While allowing LPA No. 650 of 2022 (arising out of CWJC No. 6259 of 2019), LPA No. 657 of 2022 (arising out of CWJC No. 21219 of 2018), & LPA No. 661 of 2022 (arising out of CWJC No. 21219 of 2018) the concerned selecting/appointing authority is hereby directed to consider each of the petitioners name for the purpose of appointment to the post of Clerk against unfilled vacancies and anticipated vacancies during the relevant period of two years and necessary order of appointment shall be issued to each of the eligible petitioner within a period of three months from the date of receipt of this order. If any, of the candidate is not suitable or eligible in that event necessary speaking order shall be passed and communicated to such petitioner/s.

5. In the above circumstances we find that the impugned judgment has to be set aside and we respectfully



follow the judgment in L.P.A. No. 650 of 2022 and analogous cases, produced as Annexure-A/4.

6. The appeal is allowed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Adnan/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.01.2024
Transmission Date	

