

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2043 of 2021

1. Avinash Kumar Son of Sanjay Kumar Srivasatva, resident of Azad Nagar, Balua Tal, P.O. and P.S.- Motihari, District - East Champaran, Bihar.
2. Aparna Kumari, daughter of Anil Kumar Sharma, resident of MIG- 340, P.O. and P.S. - Lohia Nagar, Kankarbagh, District - Patna - 800020.
3. Sandeep Rai, Son of Sukhdev Rai, C/o Aman Kumar, Gali No. 5, Bangali Colony, P.O., P.S. and District - Motihari - 845401.
4. Sitaram Kumar, Son of Upendra Poddar, resident of Village and P.O.- Muraul, P.S. Sakra, District - Muzaffarpur.
5. Gulshan Kumar, Son of Vijay Kumar Gupta, resident of Village and P.O. Khajuri, P.S. Bhargama, District - Araria.
6. Piyush Ranjan Kumar, Son of Ramchandra Pandey, resident of Village - Gamhariya, P.O. and P.S. Raxaul, District - East Champaran, Motihari.
7. Arpit Kumar @ Arpit Tomar, Son of Virendra Singh Tomar, C/o Rajnath Prasad, Flat No. 303, Ranjan Niwas, Near Sharma Lodge, Mohanpur, P.O. and P.S. - Punaichak, District - Patna - 800023.
8. Mona Haldkar, daughter of Subhash Chandra Haldkar, C/o Ravi Verma, Near Devi Sthan, Mohanpur, P.O. and P.S.- Punaichak, District - Patna - 800023.
9. Mayanka Madhav @ Dhurin, Son of Ram Sewak Das, resident of Village- Imadpur, P.O. Pastara, P.S.- Baligawn, District - Vaishali.
10. Manoranjan Kumar Rai, Son of Naresh Rai, resident of Village and P.O. - Bardih, P.S. Islampur, District - Nalanda - 801303.
11. Jyotsna Bharti, Daughter of Chandradeo Mandal, resident of Village - Tarha, P.O. - Baihari, Vai and P.S. - Singheshwar, District - Madhepura - 852128.
12. Gaurav Kumar Pandey, Son of P.N. Pandey, C/o Sangita Devi, Atardah, Ramdayalu Nagar, P.O.- Ramna, P.S. and District - Muzaffarpur - 842002.
13. Manish Kumar, Son of Janardan Lal Das, resident of Hanuman Bag Colony, North of Railway Gumti No. 13 C, P.O. - Madhubani, P.S. - Raj Nagar, District Madhubani, Bihar - 847211.
14. Khushboo Kumari Suman, daughter of Amar Nath Raut, resident of Village - Sain Tole Chand Pandey, P.O. and P.S. - Kanti, District - Muzaffarpur - 843109.
15. Raman Kumar, Son of Ramjee Choudhary, resident of Village- Kowa, Mohabbatpur Pokri, P.O. and P.S. - Lalganj, District - Vaishali (Bihar) 844121.
16. Vikash Kumar Singh, Son of Late Surendra Narayan Singh, resident of Village and P.O.Datuar, P.S. Khajauli, District - Madhubani - 847228.
17. Deepak Kumar, Son of Dinesh Dass, resident at Shivedham Paswan Tola, Madhubani, P.S. - K. Hatt Thana, District - Purnia, Pincode - 854301.



18. Santosh Kumar, Son of Krishna Dev Prasad Singh, resident of at and P.O. Pausaina, P.S. Beldar, District - Khagaria (Bihar) 852161.
19. Roqaiyan Perween, Wife of Md. Tausif Mahmood, resident of Village-Bhikhanpur, G.No. - 3, Abdulmojib Road, Fidabari, P.O. , P.S. and District-Bhagalpur (Bihar) Pincode - 812001.
20. Prafulla Kumar Singh, Son of Hari Prasad Singh, resident of Near TYK College Road, Pratapnagar, P.O. - Dumra, P.S. - Mehasaul, District - Sitamarhi, Pincode - 843302 (Bihar).
21. Ravi Kumar Kaushal, Son of S.N. Prasad, C/o Pushpa Singh, Amar Shanti Niwas, Balbhadrapur, Laheriasarai, P.S. Laheria Sarai, P.O. and District - Darbhanga - 846001.
22. Suniti Kumari, daughter of Baidyanath Jha, resident of Village and P.O. - Ganauli, P.S. Andhrathadi, District - Darbhanga.
23. Ashish, Son of Mithlesh Kumar, resident of Village - Mahmaddpur Deepar, P.O. and P.S. - Pusa, District - Samastipur.
24. Amarjeet Kumar, Son of Binod Prasad, resident of Mohalla - Bankipur Garkha, P.O. and P.S. - Phulwari, District - Patna - 803201.
25. Anand Kumar, Son of Ram Vant Sah, resident of Mohalla - Azad Nagar, East of RRB College, P.O., P.S. and District - Samastipur, Pincode - 848101.
26. Amit Kumar Soren, Son of Solomon Soren, resident of Village - Tarauna, P.O. - Geruna, P.S. Belhar, District - Banka, Pincode - 813202.
27. Nandan Kumar, Son of Sudhir Kumar Verma, resident of Village - Maqsoodpur, via - Barbiga, P.O. and P.S. - Asthawan, District - Nalanda, Pincode - 811101.
28. Aditya Sao, Son of Satyendra Prashad, resident of C/o Shanti Raman Gupta, Old CBI Road, P.O. and P.S. Rajgir, District - Nalanda.
29. Rahul Kumar, Son of Tej Narayan Mandal, resident of At- Dumaria, P.O. - Palasi, Via- Forbesganj, P.S. Narpatganj, District - Araria - 854318.
30. Bipin Kumar, Son of Bijendra Ray, resident of Village, P.O. and P.S. - Pusa, District - Samastipur - 848125.
31. Arun Kumar Yadav, Son of Jai Hind Yadav, C/o Abhay Rai, Hariwatika Colony, Near Bus Stand, P.O. and P.S. Bettiah, District - Bettiah - 845438.
32. Bharat Patel, Son of Ramsiya Patel, C/o Aatish Ranjan, Subhash Nagar, Parwatiya Tola, P.O. and P.S. - Bettiah, District - Bettiah - 845438.
33. Maneesh Bihare, Son of Chandralal Bihar, C/o Aatish Ranjan, Subhash Nagar, Parwatiya Tola, P.O. and P.S. - Bettiah, District - Bettiah - 845438.
34. Vikash Kumar Son of Binod Singh, resident of Village - Balwa Dhemukhi, P.O. - Bankatwa, P.S. Jistna, District - East Champaran (Motihari) Bihar.
35. Suchitra Suman, daughter of Om Prakash Prasad, resident of Village - Jagdishpur, P.O., P.S. and District - Nalanda, Pincode - 803111.
36. Md. Niyazuddin, Son of Md. Tazuddin, resident of Village and P.O. Mahmuda, P.S. Khudaganj, District - Nalanda, Pincode - 801303.
37. Siddharath Kumar, Son of Sachidanand Singh, Resident of Village - Nawagarh, P.O. - Tankuppa, P.S. Wazirganj, District - Gaya, Pincode-



824232.

38. Raghib Hussain, Son of Md. Kalam, resident of Village - Dumri, P.O. - Rashalpur, P.S. - Chandauti, District - Gaya, Pincode - 823003.
39. Amit Kumar, Son of Ashok Kumar Chaudhary, resident of Village and P.O. - Bandwah, Via - Rajauha, P.S. - Nimachandpura, District - Begusarai, Pincode - 841131.
40. Deepak Kumar Choudhary, Son of Dharamdas Choudhary, C/o S.K. Thakur, Aamla Tola, P.O., P.S. and District - Katihar - 854105.
41. Dr. Md. Aman Hassan, Son of Md. Shamim Hassan, resident at Jabbar Chak, P.O. - Talow pur, P.S. Bhagalpur, District - Bhagalpur, Bihar, Pincode - 812002.
42. Arvind Singh Gond, Son of Shri Ram Singh Gond, C/o Rajnath Prasad, Flat No. 303, Ranjan Niwas, Near Sharma Lodge, Mahonpur, P.O. and P.S. - Punaichak, District - Patna - 800023.
43. Om Prakash Patel, Son of Bhanu Pratap Patel, C/o Pankaj Mandal, Shashtri Chowk, Near Old Bus Stand, Banka, P.O., P.S. and District - Banka - 813102.
44. Ruchi Mehta, daughter of Upendra Prasad, resident of Nirmala Nivas, Pather Ki Masjid, Tekari Road, P.S. Sultanganj, P.O. - Mahendru District - Patna, Pincode - 800006.
45. Uday Choudhary, Son of Vishwanath Mahto, resident of Mohalla-Belwaganj, P.O. and P.S. - Laheria Sarai, District - Darbhanga, Pincode-846001.
46. Subhash Kumar, Son of Lakshman Mahto, resident of Village - Simra, P.O. - Simra (Shreekant), P.S. - Piar, District - Muzaffarpur, District - Bihar 843115.
47. Manjari Mehra, Son of R.D. Mehra, C/o Rakesh Sharma, Ramsan Plaza, Chhota Bariyarpur, P.O. and P.S.- Motihari, District - Motihari - 845401.
48. Manoj Kumar Ghanghoria, Son of Late Heeralal, C/o Lalan Singh, Ward No. 1, Bara Bariyarpur, Opposite Mani Hospital, P.O. and P.S. - Motihari, District - Motihar - 845401.
49. Ashok Kumar, Son of Shree Krishna Kumar Prasad, resident of At P.O. - Kamtaul, P.S. - Kamtaul, District - Darbhanga, State - Bihar, Pincode - 847304.
50. Manish Kumar, Son of Kailash Prasad Singh, resident of Old CPM Office, Mugrichowk, Khagaria, Ward No. 04, P.O. and P.S. Khagaria, Pincode - 851204.
51. Aditya Kumar, Son of Arunesh Kumar, C/o Manoj Kumar, Ward No. 3, Station Road, Belbanwa, P.O. and P.S. Motihari, District- Motihari - 845401.
52. Sweta Prabhakar, Son of Jainarayan Paswan, resident of Village - Nawada, Kali Mandir Road, Road No. - 2, Lalwanti Bhawan, Phulwari Sharif, Patna, P.O. - Ganghara, P.S. Phulwari Sharif, District - Patna, Bihar, Pincode - 801507.
53. Sanjeet Kumar, Son of Yogendra Sah, resident of AT and P.O. - Madhaili Bazar, P.S. Shankarpur, District - Madhepura, Bihar, Pincode- 852128.



54. Ritik Kumar, Son of Arun Kumar, resident of Chiraiyatard, Devi Asthan, Janta Path Gali, P.S. - Kankarbagh, P.O. - GPO, District - Patna, Pincode - 800001.
55. Ranjeet Raj, Son of Jagannath Prasad, resident of Village - Kushiya, P.O. - Hajipurwa, Karua, Block - Kalyanpur, P.S. Chakmehsi, District - Samastipur, Bihar, Pincode - 848125.
56. Ranjan Kumar, Son of Jagdish Prasad Sahni, resident of At and P.O. - Rahua, P.S. Rosera, District - Samastipur, Pincode - 848210
57. Priya Kumari, daughter of Maheswari Prasad Sharma, resident of At, P.O. and P.S. - Kishanpur, Ratwara, District - Madhepura- 852210.
58. Munna Rajak, Son of Ram Kumar Rajak, resident at Fakdoliya, P.O. - Kewatgama, P.S. - Kusheshwar Asthan, District - Darbhanga.
59. Bijay Kumar Paswan, Son of Ram Sanjiban Paswan, resident of Vilage and P.O.- Simrigoath, P.S. - Rajnagar, District - Madhubani.
60. Swati Kumari, daughter of Umashankar Ray, resident At Hajipurwa, P.O. - Karua, P.S. - Chakmehsi, District - Samastipur.
61. Rajesh Ranjan, Son of Late Modnarayan Yadav, resident At, P.O. and P.S. - Rajnagar, District - Madhubani.
62. Gaurav Kumar Sudama, Son of Anil Kumar Thakur, resident At, P.O. and P.S. - Katoria, District - Banka, Bihar.
63. Santosh Kumar Choubey, Son of Late Ramashray Choubey, resident of Village - Kotra, P.O. Gopalbad, P.S. - Sarmera, District - Nalanda, Bihar.
64. Rahul Kumar, Son of Sikandar Ravidas, resident at, P.O. Nerut, P.S. - Sare, District - Nalanda, Pincode - 803107.
65. Navin Kumar, Son of Satyanarayan Ram, resident at Harpur Pusa, P.O. and P.S. - Pusa, District - Samastipur, Pincode - 848125.
66. Bishwajeet Kumar, Son of Late Jaglal Choudhary, resident At Gola Road, (New Bailey Road), P.O. - Danapur Cantt. P.S. - Rupaspur, District - Patna, Bihar.
67. Ravikant Bharti, Son of Ravikant Bharti, resident At, P.O. - Sonbarsha Ghat, P.S.- Chautham, District - Khagaria.
68. Sadhwi Priya, Son of Gopal Jha, resident At, P.O. and P.S. - Forbesganj, District - Araria, Bihar, Pincode - 854318.
69. Chandan Kumar, Son of Arun Kumar Mehta, resident At Litiyant, P.O. and P.S. - Basha Pipra, District - Supaul, Pincode - 852131.
70. Puja Kumari, daughter of Surendra Singh, resident At Ward No. 5, Tenduni Tola, P.O. and P.S. - Bikramganj, District - Bikramganj.
71. Sarbottam Kumar, Son of Late Rameshwar Kumar Verma, resident At Kotra, P.O. and P.S. - Gopalbad, District - Nalanda - 811104.
72. Sujeet Kumar, Son of Suresh Chaudhary, resident At Thana Bigha, P.O. and P.S. - Chandimow, District - Nalanda - 803109.

... .. Petitioner/s



Versus

1. The State of Bihar through the Chief Secretary, Animal Husbandry and Fisheries Resources (Fisheries) Department, Government of Bihar.
2. The Principal Secretary, Animal Husbandry and Fisheries Resources (Fisheries) Department, Government of Bihar.
3. The Principal Secretary, General Administration Department, Government of Bihar.
4. The Director, Directorate of Fisheries, Animal Husbandry and Fisheries Department (Fisheries), Fisheries Officers Hostel, Block - A, Bailey Road, Bihar, Patna.
5. The Bihar Staff Selection Commission Patna, Bailey Road Veterinary College, Patna.
6. The Secretary, Bihar Staff Selection Commission Patna, Bailey Road Veterinary College, Patna.
7. The Bihar Technical Service Commission, 19 Harding Road, Patna.
8. The Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.

... ... Respondent/s

with

Civil Writ Jurisdiction Case No. 17781 of 2021

1. Master David Son of Sri Jogendra Ram, Resident of Colony Parsuram Colony, Kumhrar Gumti, Sandalpur More, Police Station - Mahendru, District - Patna (Bihar).
2. Vikash Kumar, Son of Sri Nandlal Paswan, Resident of Village - Rampura Ratnakar / Sarsai, Post Office - Rampur Ratnakar, Police Station - Dumri, District - Vaishali (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Principal Secretary, Animal and Fisheries Resources Department, Government of Bihar, Patna.
3. The Secretary General Administration Department, Government of Bihar, Patna.
4. The Under Secretary, General Administration Department, Government of Bihar, Patna.
5. The Deputy Secretary of Government, Animal and Fisheries Resources Department, Government of Bihar, Patna.



- 6. The Director Animal and Fisheries Resources Department, Government of Bihar, Patna.
- 7. The Bihar Technical Service Commission through its Chairman, Bailey Road, Patna.
- 8. The Chairman, Bihar Technical Service Commission, Bailey Road, Patna.
- 9. The Secretary, Bihar Technical Service Commission, Bailey Road, Patna.
- 10. The Under Secretary - Cum - Examination Controller, Bihar Technical Service Commission, Bailey Road, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 2043 of 2021)

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Ms. Shrishti Singh, Advocate Mr. Ashish Giri, Advocate Mr. Pranav Kumar, Advocate
For the B.T.S.C.	:	Mr. Nikesh Kumar, Advocate Mr. Praveen Kumar, Advocate
For the State	:	Mr. Khurshid Alam, AAG-12 Mr. Shailendra Kumar Dwivedi, A.C. to AAG-12 Mr. Vikas Kumar, AC to AG
For the Intervenor	:	Mr. Kumar Kishan, Advocate Mr. Avinash Raushan, Advocate

(In Civil Writ Jurisdiction Case No. 17781 of 2021)

For the Petitioner/s	:	Mr. Gaurav Bihari, Advocate
For the Respondent/s	:	Mr. Nikesh Kumar, Advocate Mr. Amish Kumar, A.C. to AG

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

Date : 08-02-2024

The petitioners in both the above writ petitions impugn the weightage granted to contractual employees in the Government and specifically asserts that as per Government resolution it could have been granted only to those persons who are continuing in the post of Fisheries Extension Officer. Two



writ petitions were filed when the advertisement was issued in the year 2021. The selection had gone ahead and appointments have been made. In CWJC No. 2043 of 2021, the Government resolution regarding weightage to contractual employees, is relied on to argue a prohibition from conferring such weightage to other contractual employees, working in posts other than Fisheries Extension Officers and asserts that only the petitioners and like contractual employees can be conferred with such weightage. In CWJC No. 17781 of 2021, the petitioners challenge the provision for weightage in Bihar Animal and Fisheries Resources (Fisheries) Service Recruitment (Amendment) Rules, 2020.

2. Learned Senior Counsel Shri Y.V. Giri took us to Annexure-17, which is a resolution issued by the Department of General Administration, Bihar Government. Weightage as provided in Clause (4) of the resolution is only to regular appointment in that post on which work has been done under contractual employment. It is also pointed out that as per the resolution, such appointment can only be to those who were appointed and continued in sanctioned posts. It is argued that there have been many instances pointed out in the memorandum of writ petition itself; shown in the tabular form, wherein



persons appointed even to projects on a temporary basis have been given weightage. It is urged that the Government resolution was clearly in so far as the weightage, with reference to the instant selection being permissible only to contractual employees appointed and continued in the posts of Fisheries Extension Officers; who were conferred the benefit of regular appointment to that post. The advertisement, however, provided for a weightage to those employees from other departments also, without work experience in the post to which selection is made and without verification as to whether the contractual appointment is made to a sanctioned post.

3. Learned counsel appearing in CWJC No. 17781 of 2021 Shri Gaurav Bihari adopts the arguments already addressed and further submits that the provision in the rule itself is challenged in the said writ petition.

4. Learned Government Advocates appearing in both the writ petitions Shri Vikash Kumar, and Shri Amish Kumar specifically refer to the rules produced as Annexure-4 in CWJC No. 2043 of 2021 and the provision which provides for weightage to all contractual employees. Learned Counsel also relies on the decisions of a Division Bench and a Full Bench of this Court in ***Dr. Dharmbir Kumar & Ors. v. The State of***



Bihar & Ors; 2015 (2) PLJR 916 and Krishna Pratap Singh & Ors. v. The State of Bihar & Ors.; 2017 (3) PLJR 642. Benefit of weightage and age relaxation granted to the contractual employees were upheld by the Division Bench and on a doubt raised was referred to a Full Bench, which affirmed the Division Bench decision. Reliance is also placed on the decision of another Division Bench of this Court in ***Abhay Kumar Patel and Others v. State of Bihar through the Chief Secretary and Others; 2023 SCC OnLine Pat 3080.***

5. First we look at the Government resolution produced as Annexure-17 in CWJC No. 2043 of 2021. The translation of the relevant clauses are extracted hereunder:-

“(4) Preference in regular appointment- In order to make regular appointment, the following weightage will be given to the contractual employees in the process of appointment-

(i) Preference of maximum 25 marks at the rate of maximum five marks per year for satisfactory service rendered by the candidate in the past on contract basis (after multiplying the number of working days by 5 and dividing by 365 for any part of a year) the proportionate marks obtained will be added.

(ii) Relaxation in the maximum age limit equal to the period of work done as a result of contractual employment will be given. Part of any working year will also be included in this.

(iii) All departments will make amendments in the service/cadre rules under their control in accordance with the above sub-paragraph (i) and (ii) related to seniority.



Provided (i) The benefit of relaxation in the age limit mentioned above and preference in appointment on the basis of work experience will be given only at the time of regular appointment to that post on which work has been done under contractual employment.

(ii) As far as preference on the basis of experience is concerned, while giving preference, it is necessary to keep in mind the guidance prescribed by authorized regulatory bodies or University Grants Commission, All India Council for Technical Education etc. In other words, the guidance given by these authorized regulatory bodies is applicable in gig banks and the eligibility and preference for appointment in them will be as per the guidance.

(iii) Provided also that relaxation in age limit shall not be allowed in cases where it is not permitted under law/appointment rules. Yes, for example, the law/appointment rules do not allow relaxation in the age limit in police appointments or many other cases. Therefore, in such cases the benefit of relaxation in age limit will not be payable.

(5) The above mentioned facilities will be available only to duly employed contract workers. These facilities will not be applicable in respect of illegal appointments, daily wage workers and workers getting services from musical service providers. In other words, only those contractual employees who have been appointed in accordance with the procedure laid down in the General Administration Department's Resolution Memorandum No. 2401 dated 18.07.2007 (as amended from time to time). The above mentioned features would be acceptable in the context.

Only those employments are valid contract employments in respect of which-

- (1) the post is sanctioned,*
- (2) the appointed employee must be qualified for the post,*
- (3) the post has been advertised,*
- (4) a selection/screening committee has*



been constituted for appointment and the selection process has been adopted,
(5) *the appointment has been made by the competent authority”*

6. Learned Senior Counsel for the petitioners had emphasized the date of the resolution which was 22.01.2021 to pertinently point out that this was in force when the advertisement came. However, in the advertisement, for the process of selection, the eligibility was as follows:-

“Fisheries Extension Officer- Process of selection:-

(i) For marks obtained in Bachelor’s degree in Fisheries Science- 75 points

(ii) For Work experience to the personnel appointed on contract basis for work in agriculture and fisheries sector in Directorate of Fisheries and subordinate Offices or other departments under Bihar Government or offices attached to the State Government (5 marks for each year, maximum 25 marks)- 25 points

Total- 100 marks”

It is hence the contention that the clause in the advertisement deviates from the resolution of the Government.

7. In this context, we also have to notice the Bihar Animal and Fisheries Resources (Fish) Service Recruitment (Amendment) Rules, 2020, which amended the recruitment rules of 2007. The provision provided for recruitment in Rule 6 was substituted as follows:-



“6. Procedure of the Recruitment- (1) For recruitment to the posts described in Sl. no. 5 and 6 of the Appendix-I, the department, after calculating the vacancies on the basis of 1st April, shall send the requisition to the Bihar Technical Service Commission. Accordingly the advertisement will be issued by the Commission and the merit list shall be prepared in the following manner:-

(a) Marks obtained for the educational qualification described for the direct recruitment in Para 7 of Sl. no. 5 and 6 of the Appendix-I

75 marks.

(b) On the basis of work experience of the employees appointed on contract basis for the work of agriculture and Fisheries sector in the Fisheries Directorate and subordinate offices or in other department of State Government or in the offices affiliated to the Government of Bihar-

25 marks.

(2) For educational qualifications, the work experience of the employees appointed on contract basis, calculation of marks shall be made in the following manner:-

(i) For the educational qualifications described in column-4, determination of marks to be given to the candidates shall be made by multiplying the percentage of marks obtained in the examination of the said courses by 0.75. Such as if 50% marks has been obtained by the candidates then $50 \times 0.75 = 37.5$ marks shall be given to them.

(ii) 5 marks for each working year maximum limit of which shall be 25 marks. For part of the year, proportionate marks will be added after multiplying the numbers of working days by 5 and then dividing it by 365.

[underlining by us for emphasis]

8. We cannot but notice that there is a specific rule for recruitment to the post, brought out under Article 309 of the



Constitution of India, at Annexure-5. The rules of recruitment to the specific cadre overrides the general resolution issued by the General Administration Department based on the principle of “*generalibus specialia derogant*” (special things derogate from general things). We place reliance on this legal maxim quite conscious of the fact that while the rules are under Article 309 of the Constitution of India, the resolution relied on is only in the nature of a guideline.

9. Now, we come to the challenge to the rule as raised in the other writ petition. We notice the Division Bench judgment of this Court in ***Dr. Dharmbir Kumar*** (supra) wherein it was held that awarding of marks for experience is not an uncommon phenomenon and that the State is entitled to prefer candidates engaged on contractual basis. The principle in the Division Bench decision was doubted and the matter was placed before a Full Bench specifically noticing the decision of the Constitution Bench of the Hon’ble Supreme Court in ***Secretary, State of Karnataka v. Uma Devi; (2006) 1 SCC 1***.

10. The learned Judges of the Full Bench found that ***Uma Devi*** (supra) laid down the principle that appointment to public service has to be made after following the mandate of equality as enshrined in Article 14 of the Constitution of India.



The Constitution Bench categorized the appointments as illegal and irregular; the former being carried out without following any process of appointment; through the backdoor and the latter being irregular and not illegal. In *Uma Devi* (supra), it was held that such “litigious employment” cannot be regularized. The permitted regularizations were only of irregular appointments, that too as a one time measure. The Full Bench clarified that the Division Bench judgment cited above does not have universal application and experience of service in contractual appointments can be counted for regular appointment only if the contractual appointment was after following some process known to law and induction into service by a procedure that meets the requirement of Article 14 of the Constitution of India.

11. *Abhay Kumar Patel* (supra) was another case in which the weightage/preference granted in a notification conferring advantage to contractual employees in proportion to the number of years served in such employment subject to a maximum of 25 marks on a scale of 100 was held to be proper since it does not altogether exclude others from the selection process. It was clearly found in that case also; the contractual appointments were made after due compliance with Articles 14 and 16 of the Constitution of India.



12. In the instant case, we do not find any person other than contractual employees in the post of Fisheries Extension Officer, having been impleaded in CWJC No. 17781 of 2021 which challenged the rule. In CWJC No. 2043 of 2021, there was no impleading made of any of the persons affected, but, some of them have been impleaded as intervening respondents, on their application.

13. The learned Senior Counsel would contend that even a single person can be impleaded in a representative capacity and there would be no defect found in the writ petition. We, however, have to caution ourselves that such impleadment in a representative capacity can only be on orders of the Court which could even be, subject to a publication being taken out, so as to inform the pendency of the litigation to all the affected parties, who cannot be ascertained. There is no such application filed even in CWJC No. 2043 of 2021.

14. We also have to pertinently observe that despite the persons who sought interventions having been impleaded, the persons who were specifically named in the memorandum of writ petition have not been impleaded in its entirety, as seen from the tabular form. Both the writ petitions are imperfect in so far as the same being not properly instituted, for reason of it



being defective for non-impleadment of necessary parties.

15. Be that as it may, we have held that the resolution has no effect in so far as the subject recruitment is concerned since the rule brought out under Article 309 of the Constitution of India prevails. The rule as brought out, granting weightage to contractual employees, is only to the extent of providing a maximum of 25 marks for every completed year of service; each year being granted 5 marks. The cited decisions of this Court approve such weightage being granted. As was found in ***Abhay Kumar Patel*** (supra), it does not exclude the candidates from the general public and only enables a weightage to those persons who are employed contractually, that too appointed after a regular process of selection, in compliance with Articles 14 and 16 of the Constitution of India. But for the contentions aired of the appointments having been made to temporary posts in temporary projects and not in sanctioned posts, there is no allegation raised with respect to the persons who have been given weightage having been appointed though the backdoor in violation of Articles 14 and 16 of the Constitution of India.

16. We find absolutely no reason to interfere with the selection conducted and on the reasoning above, reject both the writ petitions. The parties to suffer their respective costs.



17. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

P.K.P./-

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CAV DATE	
Uploading Date	13.02.2024
Transmission Date	

