

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13607 of 2024

1. Raman Kumar Ranjan Son of Ganga Nand Thakur Resident of Village and P.O.- Bhirha, P.S. Rosera, District-Samastipur, Pin- 848216.
2. Babu Lal Mahto, Son of Rajendra Mahto, Resident of Village at and P.O.- Mathurapur, Warisnagar, District- Samastipur, Pin- 848101.
3. Sanjay Kumar, Son of late Brijnandan Prasad, Residence of Mohalla- Mahalpur, P.O. and P.S.- Biharsharif, District- Nalanda, Pin- 803101.
4. Manish Kumar Sinha, Son of Anandi Prasad, Residence of Mohalla- V and P.- Ichahosh, P.S. Islampur, District-Nalanda, Pin- 801303.
5. Vijay Kumar Yadav, Son of Brijnandan Yadav, Residence of Village- Durdih, P.O. Ramgarh Chauk, District-lakhisarai, Pin - 811311.
6. Raja Adil, Son of Humayun Ansari, Resident of Mohalla- Chhajju Naseerpur, P.O. and P.S.-Biharsharif, District-Nalanda, Pin - 803101.
7. Vinay Kumar, Son of Rajeshvar Prasad, Residence of Village-Gaura, P.O. Kaliya Chak, P.S. Hilsa, District-Nalanda-801302.
8. Madhusudan Son of Chandrashekhar Prasad, Residence of Village- Barara, P.O.- Barara, P.S. Noorsarai, District-Nalanda, Pin- 803118.
9. Neelam W/o Niranjana Kumar, Residence of Village- Thaman Bigha, P.O. Peshaur, P.S. Rahui, District- Nalanda, Pin- 803119.
10. Deepak Kumar, Son of Braj Kishore Prasad Singh, Residence of Mohalla- Amber, Shekhana, P.O. and P.S.- Bihar Sharif, District-Nalanda, Pin- 803101.
11. Dileep Chaudhary, Son of Ganauri Chaudhary, Residence of V and P- Silao , P.S. and Block- Silao, Distt-Nalanda-803117.
12. Santosh Kumar, Son of Deovrat Choudhary, Residence of Vill- Sohdihi, P.O. Sohsarai, District- Nalanda, Pin- 803118.
13. Raj Kishor Son of Anil Kumar Residence of Vill- Madhopur, P.O. and P.S.- Silao, District- Nalanda, Pin- 803117.
14. Shambhoo Nath, Son of Ram Deo Pasawan, Residence of Village and P.O.- Chero, P.S. Harnaut, District-Nalanda, Pin- 803110.
15. Jairatna Prasad Saxena, Son of Ram Bilash Singh, Residence of Village- Alipur, P.O. Bisai Bigha Prwalpur, District-Nalanda, Pin - 801301.
16. Soni Kumari, Daughter of Harendra Prasad Singh, Residence of At-East of R.N. A.R. College, Samastipur, P.O. and P.S. and District- Samastipur, Pin- 848101.
17. Manoj Kumar, Son of Ramshankar Choudhary, Residence of Village- Mohamadpur Deopar, Ward no. 2, P.O. and P.S. -Pusa, Pin-848125.
18. Chandan Prasad, Son of Umesh Prasad, Residence of Village and Post- Hasanpur, P.S. Hasanpur, District-Samastipur, Pin- 848205.
19. Ravikesh Kumar, Son of late Nand Kishor Prasad Singh, Residence of Vill- Vasovinda Barah, P.O. Bhuapur, P.S. Belchhi, Via- Athamal Gola, District- Patna, Pin- 803211.
20. Kaushal Kumar, Son of late Bhagwan Gop, Residence of Village-Dinachak,



- P.O.- Korawan, P.S. Naubatpur, District-Patna, Pin- 801109.
21. Nishant Kumar, Son of Bilas Paswan, Residence of V and P- Karara, P.S. Ghosawari, District- Patna, Pin- 803302.
 22. Jitendra Kumar, Son of Ishwardhari Pandit, Residence of Village- Aunta, P.O. and P.S.-Hathidah, District- Patna, Pin- 803303.
 23. Shashi Kant Kumar, Son of Brihaspati Mahto, Residence of V and P- Kurmichak, P.S.- Ghoswari, District- Patna, Pin- 803306.
 24. Sanjeev Kumar, Son of Umesh Singh, Residence of V and P- Mehus, P.S. Mehus District- Sheikhpura, Pin- 811102.
 25. Sheo Kumar Rajak, Son of Saryu Rajak, Residence of Vill- Baruna, Post- Chorver, P.S. Chorwar, Distt- Sheikhpura, Pin - 811105.
 26. Ajeet Krishna , Son of Bajarangi Prasad, Residence of Mohalla- Chndukuan, P.O. and P.S. Barbigha, District-Sheikhpura, Pin- 811101.
 27. Satyendra Kumar, Son of Bhukhar Singh, Residence of Vill- Hajratapur, P.O.- Mararo, P.S. Ariyari, District-Sheikhpura, Pin- 811105.
 28. Ranjeet Kumar Suman, Son of Rajendra Prasad Mahtha, Residence of Vill- Singhauli, P.O. and P.S.- Hisua, District-Nawada, Pin- 805103.
 29. Vinay Kumar, Son of Navin Prasad, Residence of Vill- Thalposh, P.O. Bhatta, Distt- Nawada, Pin- 805130.
 30. Shushil Kumar, Son of Rajnath Rajak, Residence of Vill and P.O.- Bajitpur, P.S. Karpi, District-Arwal, Pin- 804426.
 31. Milan Kumar Gupta, Son of Mahadeo Sah, Residence of At and P.O.- Lakshmipur, P.S.-Barari, District-Katihar, Pin- 854104.
 32. Jai Prakash Narayan Thakur, Son of Mahabir Thakur, Residence of At-Sita Nagar, Bhagwan Chowk, Ward no. 17, P.O. and P.S.- Katihar, Distt. Katihar- 854105.
 33. Minu Kumari, W/o Shyamal Kishor Jha, Residence of At- TV Centre, P.O.- BMP-7, P.S.- Katihar, District-Katihar- 854105.
 34. Sajjan Kumar Nayak, Son of Mangal Prasad Nayak, Residence of At- Gami Tola Katihar, P.O. and P.S.- Katihar- 854105.
 35. Nikky Masum, W/o Manas Ranjan, Resident of AT- Hridyaganj Simra Bagan Road, P.O. and P.S.- Katihar.
 36. Vijay Laxmi Rai, Son of Durga Nath Rai, Residence of At- Rajhata Binodpur, P.O. and P.S.- Katihar, District- Katihar, Pin- 854105.
 37. Kanisht Kumar, Son of Yogendra Mandal, Residence of At- V and P- Nawbabganj, P.S. Manihari, Katihar, Pin- 854113.
 38. Janmajay Son of Anant Prasad Gupta, Residence of At-Shitla Colony, P.O. and P.S. District- Jamui, 811307.
 39. Avinash Kumar Pandey, Son of Kamala Kant Pandey, Residence of Village- Purnakhaira, P.O. and P.S.- Khaira, District- Jamui, Pin Code- 811317.
 40. Makhan Lal Chaturvedi, Son of Karyanand Mishra, Residence of Vill and P.O.- Sijhouri, P.S.- Sikandra, District-Jamui, Pin- 811315.
 41. Md. Zakir Hussain, Son of Md. Jabir Hussain, Resident of Mohalla- Manpur



- Pehani, P.O. and P.S.- Buniyadganj, District-Gaya, Pin code- 823003.
42. Sanjay kumar Sudhanshu, Son of Ramawatar Prasad Pankaj, Residence of Vill- Pirwan, P.O.-Balua, P.S. Guria, District- Gaya, Pin- 824205.
 43. Maya Kumari, W/o Vivek Kumar, Residence of At- Near Dr. Jaydev, West Ramasar, P.S.Gaya, District- Gaya- 823001.
 44. Raushan Kumar, Son of Ram Sharan Das, Resident of Mohalla- Koeri Bari, Chik Gali, P.S. Civil Line, P.O. Gaya, District-Gaya, Pin- 823001.
 45. Ajay Kumar Bharti, Son of Ramchandra Saw, Residence of V and P- Tanvan, P.S.- Wajirganj, District-Gaya, Pin- 805128.
 46. Dhanajay Kumar Rakesh, Son of Surnedra Thakur Residence of Vill- Guljana, P.O. Ark Dhibariya, P.s. Tekarim, District-Gaya, Pin- 824236.
 47. Amit Sharma, Son of Ramdayal Sharma, Residence of Vill- Baliyari, P.O. Jhari, P.S.- Aamas, District-Gaya, Pin- 824208.
 48. Priti Kumari, W/o Pramod Kumar, Residence of V and P and P.S.- Shankarpur Sonbarsha, District- Madhepura- 852128.
 49. Chandan Kumar Jaiswal, Son of Om Prakash jaiswal, Residence of At - Rampur, Ward No. -03, P.S. Farbisganj, District-Araria, Pin- 854318.
 50. Rajdeep Raman, Son of Chandeshwari Mandal, Residence of Vill- Parwa Ward No. 04, P.O.- Parwa, P.S. Murliganj, District- Madhepura, Pin 852122.
 51. Kundan Kumar, Son of late Basudeo Jha, Residence of Vill- Sugiyakatsari, P.O. Pardesiya, P.S. and District- Sheohar, Pin- 843329.
 52. Krishna Kumar Jha, Son of Amarendra Jha, Residence of Vill- Singarpur, P.O. Mahua Bajar, P.S. Udakishunganj, District- Madhepura, Pin - 852210.
 53. Binay Prasad Yadav, Son of Jahuri Prasad Yadav, Residence of Village- Madanpur Ward No. 16, P.O. -Madanpur-Kahra, P.S. and District- Madhepura, Pin- 852107.
 54. Ruby Kumari, W/o Arun Kumar Akela, Residence of Village- Moura Khab, P.O. Moura Ramnagar, P.S. Shankarpur, District-Madhepura, Pin - 852128.
 55. Pawan Kumar, Son of Ramashankar Prasad Chaurasiya, Residence of Village- Brawa, P.O. Tribhauni, P.S. Bhairoganj, District-West Champaran, Pin Code- 845106.
 56. Anand Kumar Kushwaha, Son of Harendra Prasad Kushwaha, Residence of V and P- Mathia Kathia, P.S. Kangali, District-West Champaran, Pin- 845307.
 57. Manisha Kumari, D/o Mahesh Prasad, Residence of Mohalla- Rajendra Nagar Kalibagh Ward No. 04, P.O. Bettiah, P.S. Town Bettiah, District-West Champaran, Pin- 845438.
 58. Mukesh Kumar Patel, Son of Vashisht Prasad Patel, Residence of Mohalla- Teen Lalten Chowk, Near Gurudawara, P.O. and P.S.- Bettiah, District-West Champaran, Pin- 845438.
 59. Vijay Kumar, Son of Rajendra Ram, Residence of V and P- Majhauria, P.S. Bettiah, District-West Champaran, Pin- 845454.
 60. Krishna Kumar Jha, Son of Vijay Kumar Jha, Residence of Vill- Barharwa, P.O. Turhapatti, P.S. Sirisiya, District-West Champaran, Pin- 845450.



61. Akhilesh Kumar Pandey, Son of Late Suresh Kumar Pandey, Residence of At-Shikchak Nagar Baswariya Near K.R. School Ward -20, P.O. Bettiah, P.S. Town Thana Bettiah, District- West Champaran- 845438.
62. Jai Prakash Prasad Son of Rampukar Ray, Residence of Vill- Mahana, P.O. Bansohi, P.S. Bhagwanpur Hat, District-Siwan, Pin- 841417.
63. Deepak Kumar, Son of Dashrath Prasad, Residence of V and P- Basantpur, P.S. Basantpur, District-Siwan, Pin- 841406.
64. Harkesh Ram, Son of Bhirgunath Ram, Residence of Vill- Aharin, P.O. Chauki, Hasanpur, P.S. Tarwara, District- Siwan, Pin- 841506.
65. Satyam Prakash, Son of Vijay Kumar Prasad, Residence of V and P- Kurshar, P.S. Raghunathpur, District-Siwan, Pin- 841504.
66. Shyam Sundar Singh, Son of Jawahar Lal Singh, Residence of V and P- Sonbarsa, P.S. G.B. Nagar, Distt- Siwan, Pin- 841241.
67. Upendra Kumar, Son of Lalji Ram, Residence of Vill- Baraso, P.O. Anugrah Nagar, P.S. Mairwa, District-Siwan, Pin- 841239
68. Shiopukar Yadav, Son of Rajendra Yadav, Residence of V and P- Rafipur, P.S. Hussainpur, Distt- Siwan, Pin- 841286.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
3. The Secretary, Social Welfare Department, Government of Bihar, Patna.
4. The Director, Integrated Child Development Scheme (ICDS), Social Welfare Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Avinash Kumar, Advocate Mr.Abhishek Kumar Pandey, Advocate Mr.Harsh Kaushal, Advocate
For the Respondent/s	:	Mr.Raj Kishore Roy, GP 18

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 10-09-2024

Heard Mr. Avinash Kumar along with Mr. Abhishek Kumar Pandey & Mr. Harsh Kaushal, learned counsels appearing on behalf of the petitioners and Mr. Raj Kishore Roy, learned GP 18 for the Respondents/State.

2. Petitioners in paragraph no. 1 of the present writ



petition have sought *inter alia* following relief(s), which is reproduced hereinafter:-

“To issue an appropriate writ/orders/direction in the nature of mandamus commanding the respondents to identify and declare the petitioners as regular employee by regularizing the services of the petitioners in terms of Rule 3(2) of the Bihar Integrated Child Development Statistical Assistant Cadre Rule, 2017 (hereinafter called ‘Rule, 2017’) and in consequence thereof to grant the regular pay scale attached with the post along with the other monetary benefits from the date of commencement of the Rule, 2017.

(ii) For any other relief/s for which these petitioners be found entitled in the eye of law.”

3. The present writ petition has jointly been filed by 68 Statistical Assistants, who were appointed on the said post as per the terms and conditions contained in the advertisement duly published in the newspaper “Hindustan” dated 28.12.2011.

4. The petitioners have been working on the said post as per the service conditions issued on behalf of the Integrated Child Development Scheme Directorate, Social Welfare Department contained in Memo No.369 dated 09.12.2011.

5. While the petitioners are posted in the said capacity, the State Government came out with “Bihar Integrated Child Development Statistical Assistant Cadre Rule, 2017” (hereinafter to be referred as the ‘Cadre Rule, 2017’) framed in exercise of power conferred by the proviso to Article 309 of the



Constitution of India. Service condition of the petitioners is being affected in view of Sub Cause (2) of Rule 3 of Cadre Rule, 2017.

6. It is the case of the petitioners that Sub Clause (2) of Rule 3 of Cadre Rules, 2017 changes their status as government servant by virtue of deeming clause as contained in Rule 3 (1) to be included automatically in the services of Bihar Integrated Child Development Statistical Assistant.

7. Mr. Avinash Kumar, learned counsel appearing on behalf of the petitioners submitted that the information relating to the service particulars of all the 68 petitioners has been given in detail in paragraph no.7 (in the tabular form) of the writ petition, who have joined in the year, 2012 on different dates. Learned counsel admits that he has not given the detail relating to the other particulars in respect of each and individual petitioners considering the fact that there is no objection from any corner in respect of their status that they are posted as Statistical Assistant in the State of Bihar.

8. Learned counsel further submitted that in view of specific provision contained in Sub Clause 1 & 2 of Rule 3 of Cadre Rule, 2017, the petitioners' case is required to be automatically included in government service as per the



provision of Cadre Rule, 2017. Learned counsel also submitted that subsequent to framing of Cadre Rule, 2017, the State Government has now taken a policy decision in respect of all the contractual employees and communicated vide memo no.12534 dated 17.08.2018 for the induction into regular establishment.

9. Learned counsel in view of the development, which has taken at the State level has submitted that in view of the provision contained in Sub Clause (2) of Rule 3 of Cadre Rule, 2017, the petitioners status deemed to have attained the status of a government employee.

10. *Per contra*, Mr. Raj Kishore Roy, learned counsel appearing on behalf of the State informs that the present writ petition is premature. The petitioners have no locus. The plight of the contractual employees, who are serving the State of Bihar in different capacity, is under active consideration of the State Government and the State Government, vide its policy decision contained in Memo No.12534 dated 17.09.2018, has taken a decision that the very scheme of the Integrated Child Development Scheme (ICDS) is funded by the World Health Organization and is being implemented on behalf of the United Nation Organization by the Government of India and the State.



As per the law laid down by the Apex Court in the case of **State of Karnataka & Others vs Ameerbi and others**, reported in **(2007) 11 SCC 681**, unless and until they attained the status of the permanent employee, the petitioners can not take aid of Cadre Rules, 2017.

11. Leander counsel further clarified that the policy decision taken by the State Government can not be interfered by this Court, in which it has already been clarified that the Statistical Assistants are required to be appointed following the process of the appointment as per the terms and conditions of the Statistical Rule.

12. In these backgrounds, the learned counsel submitted that the writ petition is premature and not maintainable on merits and it is also fit to be dismissed.

13. Having considered the rival submissions made on behalf of the parties, as well as, having perused the pleadings made in the writ petition, I find that in absence of any proper pleadings and information in respect of all 68 petitioners, I find it fit to observe that the writ petition can not be considered on merit, however, considering the fact that the State Government has framed the Cadre Rule, 2017 in exercise of power conferred by proviso of Rule 309 of the Constitution of India and the



petitioners have been able to show the provision of Rule 3 of Cadre Rule, 2017 which I find proper to reproduce *inter alia* hereinafter as follows :-

“3. Structure of Cadre. -

(1) This cadre shall be under the administrative control of Social Welfare Department. The structure of the posts of different categories at this service shall be determined as follows : -

<i>Sl. No.</i>	<i>Level of Post Category</i>	<i>Name of the Post</i>
<i>1</i>	<i>2</i>	<i>3</i>
<i>1</i>	<i>Basic Category (Non-Gazetted)</i>	<i>Statistical Assistant</i>
<i>2</i>	<i>Promotion (First level-Gazetted)</i>	<i>Statistical Officer</i>

Pay Scale of the posts will be same which will be determined from time to time by the Government.

(2) On the date of the commencement of these rules, the Statistical Assistant/Statistical Officer already appointed and working on the posts mentioned in Rule 3(1) to those Rules shall be deemed to be included automatically in this service.

3. Statistical Assistant shall be Non-Gazetted employees and Statistical Officer shall be Gazetted employees of Bihar Integrated Child Development Statistical Assistant Cadre.

(4). The Department of Social Welfare, State Government shall revise/determine the number of posts and structure of this cadre from time to time.

(5) Department of Social Welfare shall review the number of posts and structure of the cadre, after five years interval, on the basis of the recommendation of the committee constituted comprising of following members :-

- (a) Secretary/Principal Secretary,
Social Welfare Dept.

: - Chairman
- (b) Director, ICDS Directorate

: - Member
- (c) Representative of SC/ST nominated
by General Administration Department

: - Member
- (d) Department Internal Financial Advisor

: - Member
- (e) Establishment Officer
in charge of ICDS

: - Member-Secretary”

14. On careful consideration of Sub Clause (1) and (2)



of Rule 3 of Cadre Rule, 2017, I find that Sub clause 2 provides that on the date of commencement of the Rules itself, the Statistical Assistant/Statistical Officer, who are already appointed and working on the post, which are mentioned in Rule 3(1) to this Rule shall be deemed to be included automatically in the service. Sub Clause 1 mentions the level of post category and name of the post. The petitioners have claimed themselves to be in level basic category (non-gazetted) level, which is basic category (non gazetted post) due to have automatically included in the Cadre Rule, 2017 in the Social Welfare Department, Government of Bihar or its Integrated Child Development Scheme (ICDS) directorate. However, the State Government has not given them the permanent status by appointing them in terms of Cadre Rule, 2017 but the State Government has taken a policy decision, which has statutory force as contained in Memo No.12354 dated 17.09.2018, in view of Article 162 of the Constitution of India.

15. I find, once the State Government has come out with a policy decision, they must respect their own decision to act in accordance with the decision taken by them in respect of the petitioners, who are Statistical Assistant.

16. I do not agree with the submissions made on



behalf of the State that till date the petitioners do not hold the status of the government employee, in view of the law laid down by the Apex Court in the case of **State of Karnataka & Others vs Ameerbi and others**, reported in (2007) 11 SCC 681 not maintainable is misconceived.

17. In this regard, I find the State Government has now find out better modalities in providing better service condition to the petitioners, which commensurate to their nature of job by enacting Cadre Rules, 2017.

18. I find it to apt **Paragraph Nos. 32, 38, 52 and 81** passed by the Apex Court in the case of **Maniben Maganbhai Bhariya versus District Development Officer Dahod and others** reported in **AIR 2022 (SC) 2119** , which are *intre alia* re-produced hereinafter as follows : -

“32. The mission and mandate of the scheme of ICDS is to promote social and economic empowerment of women through crosscutting policies and programmes, mainstreaming gender concerns, creating awareness about their rights and facilitating institutional and legislative support for enabling them to realize their human rights and develop to their full potential. The second is to ensure development, care and protection of children through crosscutting policies and programmes, spreading awareness about their rights and facilitating access to learning, nutrition, institutional and legislative support for enabling them to grow and develop to their full potential”.



The Apex Court in Paragraph No. 38 of the said judgment has held as follows:-

“38. Anganwadi workers/helpers are the key facilitators of child nutrition initiatives at the ground level and involved in performing the work of dissemination, publicity, building awareness, and implementation of various schemes of the Government. No wonder, the strength of Anganwari Centres has increased manifold by passage of time in the country”.

The Apex Court in Paragraph No. 52 has clarified and has shown its concern for providing better service condition: -

“52. “.....Anganwadi workers/helpers coupled with lack of job security which albeit results in lack of motivation to serve in disadvantaged areas with limited sensitivity towards the delivery of services to such underprivileged groups, still being the backbone of the scheme introduced by ICDS, time has come to find out modalities in providing better service conditions of the voiceless commensurate to the nature of job discharged by them”.

(Emphasis Supplied)

The Apex Court in Paragraph no.81 has concluded as under : -

“81. For the reasons recorded above, I have no manner of doubt that the 1972 Act will apply to Anganwadi Centres and in turn to AWWs and AWHs. In the impugned judgment, the Division Bench was swayed by the view taken by this Court in the case of Ameerbi which was followed by the Delhi High Court in the case of Akhil Bhartiya Anganwadi Kamgar Union (Regd.) (supra). These decisions, for the reasons recorded earlier, have no



bearing on the issue involved in these appeals. The learned Single Judge was right in holding that 1972 Act was applicable to AWWs and AWHs. The Controlling Authority has granted simple interest at the rate of 10% on the overdue gratuity amounts. All eligible AWWs and AWHs shall be entitled to the benefit of interest.”

19. In view of the discussions made hereinabove and the law laid down by the Apex Court in the case of **Maniben Maganbhai Bhariya** (supra), I find that the petitioners also are working on contractual basis after the State Government has come out with Cadre Rules, 2017. In view of Rule 3(1) of Cadre Rule 2017, the petitioners shall be deemed to have been included in the said service on the post of Statistical Assistant.

20. At this stage, learned counsel appearing on behalf of the petitioners informs that petitioners have already filed their representation before the Secretary, Social Welfare Department and now they seek to file fresh individual representation before the Director, Integrated Child Development Scheme (ICDS), Social Welfare Department, for considering their grievance.

21. In view of the discussions made hereinabove, in case, the petitioners, if so desire, file their individual representation giving their service particulars before the appropriate authority, the concerned authority is required to consider the case of the individual petitioner in view of



discussion made hereinabove in accordance with law.

22. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

chn/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.09.2024
Transmission Date	NA

