

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1706 of 2017

-
1. Bhartendu Jha and Anr S/o Shri Devendra Jha R/o Village - Jalwar Kamrauli, P.S. - Simri, District - Darbhanga.
 2. Nishant Kumar Bhagat S/o Binod Prasad Bhagat R/o Mohalla - Kabirchak, P.S. - Sadar, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Principal Secretary, Home Special Department, Govt. of Bihar, Patna.
3. District Magistrate, Darbhanga.
4. District Commandant, Home Guards, Darbhanga.
5. District Selection Committee, Darbhanga through its Member Secretary.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2645 of 2022

1. Hareram Paswan Son of Sri Gaya Paswan Resident of Village - Nardariya, P.O. - Dih Lahi, P.S. Bishanpur, District- Darbhanga, Bihar - 846003.
2. Ramsogarath Sahni Son of Sri Hiralal Sahni Resident of Village - Nardariya, P.O. - dih lahi, P.S. - Bishanpur, District- Darbhanga, Bihar - 846003.
3. Raja Ram Paswan Son of Sri Kant Paswan Resident of Village - Atahar, P.O. - Atahar, P.S. - Baheri, District- Darbhanga, Bihar - 847201.
4. Pankaj Kumar Jha Son of Sri Devchandra Jha Resident of Village - Ojhaul, P.O. - Ojhaul, P.S. Bahadurpur, District- Darbhanga, Bihar - 846003.
5. Bhagya Narayan Paswan Son of Sri Shiv Sagar Paswan Resident of Village - Sahila, P.O. - Dhoi, P.S. - Sadar, District- Darbhanga, Bihar - 846009.
6. Arjun Kumar Chaudhary Son of Sri Mithilesh Choudhary Resident of Village - Darhar, P.O. Laheriasarai, P.S. - Bahadurpur, District- Darbhanga, Bihar - 846001.
7. Arjun Kumar Son of Sri Ramchandra Yadav Resident of Village - Hulas, P.O. - Shekhpur Dangarwara, P.S. - Keoti, District- Darbhanga, Bihar - 847306.
8. Arjun Ram Son of Sri lakhan Ram Resident of Village - Dekuli, P.O. - Dekuli, P.S. - Bahadurpur, District- Darbhanga, Bihar - 846002.
9. Manoj Kumar Yadav Son of Sri Jugut Narayan Ray Resident of Village - Ujjaina, P.O. - Bhachhi, P.S. - Baheri, District- Darbhanga, Bihar - 847101.
10. Sudarshan Kumar Kumer Son of Sri Bharat Kumer Resident of Village - Gangapatti, P.O. - Laheriasarai, P.S. - Bahadurpur, District- Darbhanga, Bihar - 846001.
11. Jitendra Paswan Son of Sri Ramu Paswan Resident of Village - Poariya



- Makhanahi, P.O. - Narsara, P.S. - Vishanpur, District- Darbhanga, Bihar - 846003.
12. Manoj Paswan Son of Sri Thithar Paswan Resident of Village - Lagma, P.O. - Lagma, P.S. Ghanshyampur, District- Darbhanga, Bihar - 847427.
 13. Hira Yadav Son of Sri Jugut Narayan yadav Resident of Village - Ujjaina, P.O. Bhachhi, P.S. - Baheri, District- Darbhanga, Bihar - 847101.
 14. Ratan Kumar Yadav Son of Sri laxman yadav Resident of Village - Postapur, P.O. - Pindaruch, P.S. - Keoti, District- Darbhanga, Bihar - 847306.
 15. Rakesh Kumar Paswan Son of Sri Pachchu Paswan Resident of Village - Chandi, P.O. - Pindaruch, P.S. - Kamtaul, District- Darbhanga, Bihar - 847306.
 16. Ram Vinay Paswan Son of Sri Ram Sagar Paswan Resident of Village - Ojhaul, P.O. - Laheriyasari, P.S. Bahadurpur, Darbhanga, Bihar - 846003.
 17. Rajkishor Paswan Son of Sri Rajgeer Paswan Resident of Village - Dihchhaprar, P.O. Milkichak, P.S. Bahadurpur, District- Darbhanga, Bihar - 846009.
 18. Ashok Sahni Son of Sri Upendra Sahni Resident of Village - Nardriya, P.O. - Dihlahi, P.S. Bishanpur, District- Darbhanga, Bihar - 846003.
 19. Rajesh Nandan Jha Son of Sri Ram Nath Jha Resident of Village - Sinuar Gopal, P.O. - Laheriasarai, P.S. - Bahadurpur, District- Darbhanga, Bihar - 846001.
 20. Naseruddin Khan Son of Sri Ajaz Khan Resident of Village - Sinuar Gopal, P.O. - Laheriasarai, P.S. - Bahadurpur, District- Darbhanga, Bihar - 846001.
 21. Aashish Kumar Choudhary Son of Sri Rameshwar Choudary Resident of Village - Pali, P.O. - Pali, P.S. Ghanshyampur, District- Darbhanga, Bihar - 847427.
 22. Jay Prakash Paswan Son of Sri Upendra Paswan Resident of Village - Pali, P.O. - Pali, P.S. Ghanshyampur, Darbhanga, Bihar - 847427.
 23. Bambai Sahni Son of Sri Jicachh Sahani Resident of Village - Nardariya, P.O. - Dihlahi, P.S. - Bishanpur, District- Darbhanga, Bihar - 846003.
 24. Lalbabu Sahni Son of Sri Satto Sahani Resident of Village - Nardariya, P.O. - Dihlahi, P.S. - Vishanpur, District- Darbhanga, Bihar - 846003.
 25. Kapildev Kumar Yadav Son of Sri Raj Kishor Yadav Resident of Village - Kyamchak, P.O. - Pindaruch, P.S. - Keoti, District- Darbhanga, Bihar - 847306.
 26. Ghanshyam Yadav Son of Sri Devnarayan Yadav Resident of Village - Karbariya, P.O. - Karbariya, P.S. - Sadar, District- Darbhanga, Bihar - 846009.
 27. Akalu Mahto Son of Sri Dev Narayan Mahto Resident of Village - Lagama, P.O. - Lagama, P.S. Ghanshyampur, District- Darbhanga, Bihar - 847427.
 28. Mohan Yadav Son of Sri Halkhori Yadav Resident of Village - Kyamchak, P.O. - Pindaruch, P.S. - Keoti, District- Darbhanga, Bihar - 847306.
 29. Sovindra Kumr Yadav Son of Sri Nand Kishor Yadav Resident of Village - Kyamchak, P.O. Pindaruch, P.S. - Keoti, District- Darbhanga, Bihar -



847306.

30. Murari Paswan Son of Sri Sidheshwar paswan Resident of Village - Govindpur, P.O. Laheriasarai, P.S. - Bahadurpur, District- Darbhanga,
31. Gautam Kumar Paswan Son of Sri Thakko Paswan Resident of Village - Kabirchak, P.O. - Kabirchak, P.S. - Sadar, District - Darbhanga, Bihar - 846009.
32. Sihesar Paswan @ Sigheshwar Paswan Son of Sri Ram Paswan Resident of Village - Poariya Makhanhi, P.O. - Narsara, P.S. - Bishanpur, District- Darbhanga, Bihar - 846003.
33. Shambhu Kumar Paswan Son of Sri Mahesh Paswan Resident of Village - Asgaon, P.O. - Milkichak, P.S. - Sonki, District- Darbhanga, Bihar - 846009.
34. Zafrullah Khan Son of Sri Ahamdullah Khan Resident of Village - Ahilwara, P.O. - Ahilwara, Ramnagar, P.S. - Birual, District- Darbhanga, Bihar - 847203.
35. Sarita Jha Daughter of Sri Krishna Kumar Resident of Village - Keoti, PO. - Keoti, P.S. - Keoti, District- Darbhanga, Bihar - 847121.
36. Manoj Mahto Son of Sri Gango Mahto Resident of Village - Ahilwara, P.O. - Ahilwara, Ramnagar, P.S. - Biraul, District- Darbhanga, Bihar - 847203.
37. Amola Devi Daughter of Sri Arun Mahto Resident of Village - Ladha, P.O. - Pindaruch, P.S. - Radha, District- Darbhanga, Bihar - 847306.
38. Ravindra Kumar Mishra Son of Sri Mithilesh Kumar Mishra Resident of Village - Dularpur, P.O. - Mokrapur, P.S. - Sadar, District- Darbhanga, Bihar - 847234.
39. Ajay Paswan Son of Sri Bhola Paswan Resident of Village - Basatpur, P.O. - Ughra, P.S. Bahadurpur, District- Darbhanga, Bihar - 847101.
40. Ravi Ranjan Paswan Son of Sri Ram Krishna Paswan Resident of Village - Mustafapur, P.O. Godhriyari, P.S. - Bishanpur, District- Darbhanga, Bihar - 846003.
41. Kumod Ranjan Singh Sobn of Sri Bipin Prasad singh Resident of Village - Makhanahi, P.O. Bariaul, P.S. - District- Darbhanga, Bihar - 846005.
42. Keshav Kumar Shukla Son of Sri Krishan Dev Shukla Resident of Village - Majhauilya, P.O. Majhuliya, P.S. - Ashok Paper Mill, District- Darbhanga, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Director General of Police, Bihar.
4. The Director General - cum- Commandant General, Home Guard and Fire Service, Patna.
5. The District Selection Committee Through the Chairman cum District Magistrate, Darbhanga.



6. The District Magistrate, Darbhanga.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 1706 of 2017)

For the Petitioner/s : Mr. Kumar Kaushik, Adv.

Mr. Ujjawal Bhushan, Adv.

For the State : Mr. Sheo Shankar Prasad- SC- 8

Mr. Anil Kumar, AC to SC- 8

(In Civil Writ Jurisdiction Case No. 2645 of 2022)

For the Petitioner/s : Mr. Kumar Kaushik, Adv.

Mrs. Namrata Dubey, Adv.

For the State : Mrs. Divya Verma, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

7 21-02-2025 Heard Learned Counsel for the petitioners and
Learned Counsel for the State.

2. The present writ petitions have been filed seeking a direction to the respondent authorities to consider the case of the petitioners and select them for the Home Guard Panel in Darbhanga District in terms of Advertisement No. 02 of 2011.

3. Learned Counsel for the petitioner submits that the claims of all the petitioners are common, as they are asserting their entitlement to be appointed on the post of Home Guard pursuant to the above-mentioned Advertisement, with the minimum qualifications prescribed for the said post. Counsel further submits that the issue involved in both cases is the same, i.e., whether the appointment as Home Guard by the respondent authorities should be made on a Block-wise or District-wise basis, as per the law. Counsel further submits that recruitment to



the post of Home Guard, according to Bihar Home Guard Act, 1947, read with the relevant Rules of 1953, is to be made either District-wise or Block-wise. The issue has already been addressed and tested by the Hon'ble Division Bench of this Court in Letters Patent Appeal No. 645 of 2021 in CWJC No. 11645 of 2019, along with other analogous cases.

4. In the said Judgment the Hon'ble Division Bench has pleased to held in para 3 to 7 as under:-

3. The State Government evolved policy decision in so far as identification of home guard post namely Urban and Rural. For Urban, 1090 vacancies and for Rural 10032. Among these vacancies, it was allotted to respective 38 revenue districts plus two police district overall forty districts. Except Patna, East Champaran, Purnea and Khagaria these four districts are concerned. Home Guard post are filled up by the concerned district magistrate with reference to district wise and not block wise as narrated in advertisement. The petitioners are all from the Muzaffarpur district, Supaul, Vaishali, Samastipur and Bhagalpur. In so far as Vaishali district is concerned, there were two advertisement namely in the year 2009, there are 40 petitioners and 107 vacancies are available and advertisement 02 of 2011 notified on 16.07.2011 is concerned, there are 75 petitioners and 76 vacancies are available.



Similarly, in Muzaffarpur 28 petitioners read with 74 vacancies; Supaul 62 petitioners 99 vacancies; Samastipur 18 petitioners 138 vacancies and 31 petitioners in Bhagalpur and 67 vacancies are available. Faced with these material information question for consideration is whether petitioners could be accommodated against vacancy earmarked for other than the block in which petitioners have made application or not. In other words, each of the petitioners who have applied in the particular block, they are lesser merited. Further, the post is governed by the Bihar Home Guards Act, 1947 read with Rules 1953.

4. Rule 5 deals with the Procedure for appointment of officers and men of the Home Guards Force. Sub-rule 4 read as under :-

"(4) (i) Applications for enrolment as a Home Guard shall be made in Form A (in Hindi) to the District Magistrate of the district in which the applicant ordinarily resides or to the Commandant.

(ii) Home Guards shall be enrolled by the District Magistrate on the recommendation of-

(a) A District Committee in each district consisting of the Commandant or, in his absence, Battalion Commander, the District Magistrate and the Superintendent of Police of the district, and a non-official member nominated by the State Government.



The District Magistrate shall be the Chairman of the Committee; or

(b) A State Committee consisting of the Commandant and such other members as the State Government may, by notification in the Official Gazette, appoint. The Chairman of this committee shall be nominated by the State Government.

(iii) After holding tests of the general knowledge, alertness, intelligence and physical fitness of the candidates (who make applications to the District Magistrate) under its supervision, the district committee shall interview all or such of the candidates as it thinks fit and recommend, in order of preference, to the District Magistrate such number of candidates as may be equal to fifty per cent more than the number of vacancies. The State Committee shall likewise interview all the candidates, who make applications to the commandant or such of them as it thinks fit, and recommend, in order of preference, any number of candidates it considers suitable to the District Magistrate of the district in which the candidate ordinarily resides.

(iv) After such verification of character and antecedents of the candidates recommended by the District Committee and the State Committee as may be necessary,



the District Magistrate shall enroll the required number of Home Guards.

(v) The Home Guards will be enrolled before joining the training centre by the District Magistrate, or at the time of joining the training camp by the Officer Commanding, Training Centre, who shall obtain the approval of the District Magistrate of the district concerned within a month of such enrollment.

(vi) A Home Guard, who has been discharged from the Home Guards Force in accordance with Section 8 of the Act, may be enrolled for a fresh term of service in accordance with the provisions of the Act and these Rules.

(vii) Ex-Home Guards, who have a satisfactory record of service and volunteer for re-enrollment, may be re-enrolled by the District Magistrate on receipt of a proposal from the Superintendent of Police and after obtaining the declaration of the Ex-Home Guard concerned in the Form prescribed in the Second Schedule.

(viii) For the sake of maintenance of peace and tranquility and to develop in the volunteers a sense of civic responsibility, the Inspector-General of Home Guards may constitute from among the Home Guards of technical corps of the Home Guards force.



The members of the technical corps of the Home Guards may be selected by the Commandant in consultation with such technical experts as the Inspector-General considers necessary and the recommendation will be sent to the District Magistrate of the districts concerned for appointment. The members of the technical corps may be required to enter into an agreement in Form G to serve in the Home Guards Force for a period of three years.

5. The advertisement issued on 16.07.2011 vide 02 of 2011 is not in terms of sub-rule 4 of Rule 5 of Rules 1953. No doubt, rule does not stipulate the recruitment to the post of home guard is required to be restricted to block wise in rural areas and in urban district it should be district wise. Prima facie, there would be a discrimination among the candidates restricting them to apply for the Home Guards in a particular block and restricting not to apply in other block in the very same district. That apart, a candidates who intends to participate in the process of selection and appointment to the post Home Guards in Patna district, he is entitled to make application to all the posts which were earmarked for Patna District. On the other hand, other than Patna, Khagaria, East Champaran and Purnea where the authorities have proceeded to recruit Home Guards is district wise and it would result in



violation of Article 14 and 16 of the Constitution. Further, it is noticed that selecting and appointing authorities have not been given any power under the Rule 1953 to laid down certain principles in so far as bifurcation of urban and rural. Even such bifurcation is contrary to Rules, 1953. Therefore, learned advocate general is requested to get suggestion or instruction from the concerned department whether petitioners could be accommodated against the vacancies available in the respective districts like Muzaffarpur, Supaul, Vaishali, Samastipur and Bhagalpur. Such instruction shall be provided on the next dated of hearing. If there are no favourable instruction to the respondents in that event, the matter would be decided on merits.

6. At this stage, learned Advocate General submitted that classification of urban and rural is in the light of the compendium of instruction 2007 governing Home Guards (incorporating all orders and instructions issued by Govt. of India up to December, 2006). The aforementioned instruction cannot override Act, 1947 and Rules 1953 in so far as governing the post of Home Guards. In other words, any qualifications or category stipulated under the Govt. of India instructions of the year 2007 cannot be read into the advertisement 02 of 2011 for the reasons that Govt. of India instructions cannot override and statute like 1947 Act read with 1953



*Rules in the light of Hon'ble Supreme Court decisions in the case of **B.N. Nagarajan & Ors. Vs State of Karnataka & Ors. (1979) 4 SCC 507** (Para 25), **Ashok Ram Parhad Vs State of Maharashtra** decided on 15.03.2023, **(2023) SCC Online SC 265**, in which it is held that in service jurisprudence, Service Rule will prevail over conflicting Government resolutions. Similarly in the case of **Nair Service Society Vs Dr. T.Beermasthan & Ors. Reported in (2009) 5 SCC 545** at para 48 held as under :-*

"48. Several decisions have been cited before us by the respondents, but it is well established judgments in that service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block,"

7. Taking note of the aforementioned principle laid down by the Hon'ble Supreme Court, the instruction issued by the Govt. of India in so far as bifurcation of urban and rural and block wise is contrary to Act, 1947 read with Rules, 1953.



5. Counsel further submits that from pages 30, 34 and 36 of the counter affidavit filed by the State, it is crystal clear that total number of vacancies remaining is 97, while the total number of persons in the “not selected” list is only 64. Therefore, Counsel submits that the present writ petitions are pending prior to the decision of Hon’ble Division Bench of this Court. The total No. of candidates in the first writ petition is two, and in the second writ petition is 42, making a total of 44 candidates, whereas the number of vacancies is 97.

6. In view of the above facts and circumstances, and particularly in light of the ratio laid down by the Hon’ble Division Bench in Letters Patent Appeal No. 645 of 2021 in CWJC No. 11645 of 2019, along with other analogous cases, this Court hereby directs the Respondents to consider the case of the petitioners in both the writ petitions and accommodate them in the vacancies under the District of Darbhanga. If the respondents find that the petitioners are otherwise eligible for selection, necessary and corrective measures may be taken by the respondents within 90 days from the date of production/receipt of a copy of this order.

7. With the aforesaid directions the present writ petitions stands allowed.



8. It is made clear that this Court is inclined to grant relief to the present petitioners solely because they have already moved before this Court earlier. No new candidates who file writ petition afresh shall be covered under this decision.

(Dr. Anshuman, J.)

Aman Kumar/-

U			
---	--	--	--

