

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6934 of 2022

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1. Kameshwar Pd. Yadav @ Kameshwar Prasad Yadav S/o - Sukdeo Ray, Resident of Village - Samanpur, P.S. - Kundwa Chainpur, District - East Champaran.
2. Ramadhar Yadav, S/o Bashisht Yadav, Resident of Village- Samanpur, P.S. - Kundwa Chainpur, District - East Champaran.
3. Kashi Sah, S/o Narsingh Sah, Resident of Village - Samanpur, P.S. - Kundwa Chainpur, District- East Champaran.
4. Jayashree Prasad Yadav, S/o Nirekhan Ray, Resident of Village - Samanpur, P.S.- Kundwa Chainpur, District - East Champaran.
5. Shailendra Kumar Sawtntra S/o Shivwaran Thakur, Resident of Village - Samanpur, P.S.- Kundwa Chainpur, District - East Champaran.

..... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Health Commissioner, Govt. of Bihar, Patna.
4. The Health Secretary, Govt. of Bihar, Patna.

5. The Chief Malaria Officer, Govt. of Bihar, Patna.
6. The District Magistrate, East Champaran at Motihari.
7. The District Malaria Officer, East Champaran at Motihari.

..... Respondent/s

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A. Appointment to Class-IV / Group-D Post – to be made – through the process of examination – appointment cannot be directly made – without resorting to the process of examination. (Para-7)

B. Constitution of India- Article 14 – Article 16 – Process of Selection – Granting weightage of experience to daily wage workers – in absence of any transparent, fair and impartial procedure – illegal – violative. (Referred to; UPSC V. Girish Jayanti Lal Vagliela AIR 2006 SC 1165) ,(Para-4)

C. Constitution of India – Article 14 – Article 16 – Selection to Class IV / Group – D Post – Eligibility Criteria – Daily Wager - Work Experience - cannot itself be the sole / main Criteria. - Fair Procedure – Written Examination- in absence of any Provision. (Referred to: - CWJC No. 18612 of 2019; Kapil Kumar & Others Vs. The State of Bihar and Others and analogous cases) (Para-28)

No merit – Petition Stands dismissed.

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Jitendra Kumar, Adv.
For the Respondent/s : Mr.Mujtabaul Haque, GP-12
Mr.Pranoy Kumar, AC to GP-12

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 23-01-2024

1. The present writ petition has been filed for directing the respondents to appoint the petitioners on Class-IV post in the district of East Champaran.

2. The brief facts of the case, according to the petitioners are that the petitioners were appointed as DDT Sprayer, as seasonal employee on daily wages under the district Malaria



Office, East Champaran, whereafter, work was being taken from them and wages were being paid to them. It is submitted that the petitioners had requested the Civil Surgeon-cum-Chief Medical Officer as well as the learned District Magistrate to consider the case of the petitioners for preparing a panel and appointing them in the regular service of the State Government, however, to no avail. It is also submitted that the respondents have adopted pick and choose policy inasmuch as while some daily wage DDT Sprayer have been appointed on regular basis, whereas the petitioners have not been accommodated.

3. The learned counsel for the petitioner has submitted that some similarly situated daily wage workers of Gaya district had filed a writ petition before this Court, bearing C.W.J.C. No.17637 of 2010, whereafter contempt petition was filed by them, bearing M.J.C. No. 3426 of 2016. A co-ordinate Bench of this Court had observed therein vide order dated 14.12.2016, that DDT Sprayers have already been appointed in eight districts, however, no steps have been taken for appointment in the District-Gaya, hence the District Magistrate, was directed to file affidavit, clarifying the position.

4. Per contra, the learned counsel for the respondent-State has submitted by referring to the counter affidavit filed in the



present case that similar issue has been decided by a co-ordinate Bench of this Court vide judgment dated 18.12.2019, passed in ***C.W.J.C. No.18612 of 2019 (Kapil Kumar & Ors. vs. State of Bihar and Ors.)*** and other analogous cases, paragraphs no.28 and 29, whereof are being reproduced herein below:-

"28. Noticing the constitutional provisions and the law as declared by the Supreme Court referred to above, in my opinion, the advertisement to the extent it allows preference under sub-clause (1)(2) (3) (4) (5) and (6) of Clause 7 are held to be illegal, violative of Articles 14 and 16 of the Constitution of India and are struck down accordingly. Though, It may be open for the respondents to allow some reasonable weightage on rationale basis for those having work experience after having been selected through a transparent process of selection, the work experience as daily wage simpliciter, cannot itself be the sole/ main criteria for selection and appointment. The respondents are obliged to follow a fair process of selection in accordance with the statutory rules and constitutional. mandate. It is noteworthy that though the rules have been framed for selection and appointment against Class-IV (Group-D) posts, no clear and definite process of selection has been laid down, therein. If no transparent, fair and impartial procedure is adopted for judging the inter se merit of the candidates, who have applied in response to the advertisement made,



*the eligible candidates cannot get a fair chance to compete, which would be violative of the guarantee enshrined under Article 16 of the Constitution, as held in case of **UPSC vs. Girish Jayanti Lal Vagliela** (supra).*

29. These writ applications are accordingly disposed of. with specific direction to the respondents, particularly, the Additional Chief Secretary/ Principal Secretary, General Administration Department, Government of Bihar, Commissioner, Madadh Division, Gaya and the District Magistrate, Gaya to ensure that the process of selection through the advertisement in question is completed by adopting a fair procedure. In my opinion, holding of written examination of the candidates who have applied against the said advertisement would be a fair procedure for preparation of merit-list, in the absence of any provision in the Rules. This, in my opinion, would ensure transparency in the process of selection. Since the advertisement was issued more than six years ago, the respondents are directed to conclude the process of selection and appointment against such posts, which were available on the date of issuance of advertisement, within a period of three months from today. The respondents are further directed to ensure that a fair process of selection, strictly in accordance with statutory rules and in conformity with the mandate of Articles 14 and 16 of the Constitution is undertaken on regular basis,



after advertising number of post, so that the persons acquiring eligibility after the initiation of one selection process have a chance to seek and participate in subsequent selection processes. This practice of fairness in the process of selection for filling up public posts generates faith in the hearts and minds of the citizen in the governance, laws and the Constitution.”

5. It is further submitted by the learned counsel for the respondents that considering the law laid down by the aforesaid judgment rendered in the case of **Kapil Kumar & Ors.** (supra), whereby and whereunder the process of selection undertaken earlier by preparing a panel vide memo dated 25.06.2009 by granting weightage of experience to daily wage workers has been found to be illegal and violative of Article 16 of the Constitution of India as also considering the fact that it had been clearly held by this Court that the work experience as daily wager simplicitor cannot itself be the sole/main criteria for selection and appointment and on the contrary holding of written examination would be a fair procedure for preparation of merit list in absence of any provision in the Rules, the Government of Bihar, through the General Administration Department, has issued a notification dated 23.06.2020, whereby and whereunder now the appointment of Group-D (प्र) posts are required to be made through the process



of examination to be conducted by the Staff Selection Commission, Bihar. The relevant portion of the said notification dated 23.06.2020 is being reproduced hereinbelow:-

“ उपर्युक्त वर्णित परिस्थितियों में सरकार द्वारा निर्णय लिया गया है कि—

(i) सामान्य प्रशासन विभाग, बिहार, पटना द्वारा निर्गत उक्त विभागीय परिपत्र संख्या/ज्ञापांक— 7365 दिनांक 29.06.2011 को रद्द किया जाता है।

(ii) सामान्य प्रशासन विभाग, बिहार, पटना के परिपत्र संख्या/ज्ञापांक— 7365 दिनांक— 29.06.2011 के निर्देशों के अनुरूप कार्यालय परिचारी/ परिचारी (विशिष्ट) की रिक्तियों के विरुद्ध नियुक्ति हेतु विभिन्न विभागों/जिलों द्वारा प्रकाशित विज्ञापनों में निहित अभ्यर्थियों की कार्यानुभव आधारित प्राथमिकता निर्धारण से संबंधित मानदंड नियुक्ति प्रक्रिया में लागू नहीं माने जाएँगे।

(iii) संबंधित सभी विभागों/ जिलों द्वारा प्रकाशित विज्ञापनों के आलोक में समर्पित हुए आवेदन तथा संदर्भित विज्ञापनों की प्रतिलिपि और आरक्षण कोटिवार रिक्तियों की गणना सहित संबंधित अभ्यर्थियों की प्रमाणिक सूचियों (Hard Copy with Soft Copy) की माँग सामान्य प्रशासन विभाग, बिहार, पटना द्वारा की जाएगी और उन्हें समेकित रूप से बिहार कर्मचारी चयन आयोग, पटना को भेजा जाएगा। बिहार कर्मचारी चयन आयोग, पटना के स्तर से प्रकाशित विज्ञापन के आलोक में ऑन लाइन समर्पित आवेदनों का सत्यापन आयोगद्वारा आलोच्य कागजात से



मिलान कर किया जाएगा।

(iv) उक्त विभागीय पत्र के अनुरूप विभिन्न विभागों/ जिलों द्वारा पूर्व में प्रकाशित विज्ञापन के आलोक में समर्पित आवेदनों से संबंधित सभी अभ्यर्थियों के बीच **One time measure** के रूप में एक प्रतियोगिता परीक्षा आयोजित की जायेगी, जिसके लिये विज्ञापन का प्रकाशन तथा परीक्षा का आयोजन बिहार कर्मचारी चयन आयोग, पटना द्वारा किया जायेगा। विज्ञापन के आलोक में संबंधित अभ्यर्थियों द्वारा ऑनलाईन आवेदन दिया जाएगा।

(v) माननीय पटना उच्च न्यायालय, पटना द्वारा सामान्य प्रशासन विभाग, बिहार, पटना के परिपत्र संख्या/ ज्ञापांक— 7365 दिनांक 29.06.2011 में निहित समूह 'घ' के कार्यालय परिचारी/ परिचारी (विशिष्ट) पदों पर नियुक्ति हेतु अभ्यर्थियों की कार्यानुभव आधारित प्राथमिकता संबंधी मानदंड को निरस्त कर दिये जाने के कारण उक्त मानदण्डों के अनुरूप विभिन्न जिलों में प्रकाशित विज्ञापनों के माध्यम से हुई नियुक्तियों से संबंधित व्यक्ति भी बिहार कर्मचारी चयन आयोग, पटना द्वारा आयोजित होने वाली आलोच्य परीक्षा में अनिवार्यतः शामिल होंगे।

(vi) परीक्षा में पूछे जाने वाले प्रश्न वस्तुनिष्ठ प्रकृति के होंगे, जो दसवीं/समकक्ष स्तर के सामान्य ज्ञान, सामान्य अंक गणित और सामान्य हिन्दी ज्ञान से संबंधित होंगे। प्रश्न पत्र का पूर्णांक 100 होगा।

(vii) परीक्षा भुल्क का निर्धारण बिहार कर्मचारी चयन आयोग, पटना द्वारा किया जाएगा।

(viii) कार्यालय परिचारी/ परिचारी (विशिष्ट) की नियुक्ति की



उपर्युक्त प्रक्रिया से आच्छादित पूर्व से विज्ञापित रिक्तियों के विरुद्ध विभाग/ जिला स्तर पर नियुक्ति की कार्यवाही विभाग/जिला पदाधिकारी द्वारा नहीं की जाएगी। इस हेतु स्वच्छ विज्ञापन का प्रकाशन बिहार कर्मचारी चयन आयोग, पटना द्वारा प्रकाशित किया जाएगा।”

6. In view of the aforesaid, it is submitted by the learned counsel for the respondents that the petitioners would now be required to undergo the examination process to be conducted by the Staff Selection Commission, Bihar, hence the prayer made in the present writ petition cannot be acceded to, thus the present writ petition is fit to be dismissed.

7. I have heard the learned counsel for the parties and perused the materials available on record. It is not in dispute that a co-ordinate Bench of this Court, by a judgment dated 18.12.2019, passed in ***C.W.J.C. No.18612 of 2019 (Kapil Kumar & Ors. vs. State of Bihar and Ors.)*** and other analogous cases has held that the work experience as daily wager simplicitor, cannot by itself be the sole/main criteria for selection and appointment to the Group-D post, hence the process of selection should be concluded by adopting a fair procedure i.e. holding of written examination of the candidates who have applied against the advertisement in question, whereafter, the respondents, in compliance of the said judgment dated 18.12.2019, have issued a



notification dated 23.06.2020, wherein it has been postulated that appointment to Group-D posts shall be made through the process of examination to be conducted by the Staff Selection Commission, Bihar, after issuance of the requisite advertisement for making such appointments and the said procedure shall also be applicable to those cases where the advertisements have already been issued. In such view of the matter, this Court finds that the petitioners cannot now be directly appointed on the Class-IV posts/Group-D posts, without resorting to the process of examination, as aforesaid, i.e. as stipulated in the aforesaid notification dated 23.06.2020.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.03.2024
Transmission Date	NA

