

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.159 of 2018

1. Smt. Krishnavati Devi and Ors D/o Bachha Sharma, W/o Ram Pratap Sharma, resident of Village- Bhairpatti, P.O.- Shiswaniya, P.S.- Mirganj, Distt.- Gopalganj.
2. Kumari Seema Gupta, D/o Ramakant Gupta, resident of Village- Sabeya, P.O. Gaura, P.S.- Kateya, Dist.- Gopalganj.
3. Rani Kumari, D/o Ramashray Mali, resident of Village- Jangaliya, P.S. and District- Gopalganj.
4. Phulmati Devi, W/o Sanjay Pandhit, resident of Village- Ghortha P.S Bhore, Dist.- Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Director General of Police, Bihar at Patna.
3. The Director, Bihar Home Guard at Patna.
4. The District Commandant, Gopalganj, Dist.- Gopalganj.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 14693 of 2017

1. Raghwendra Kumar Rai and Ors Son of Sri Mahtma Rai R/o - Gram Post- Siswania, P.S. - Ucchka Gaon, Block-ucchka Gaon, District- Gopalganj.
2. Ankit Kumar Son of Mahashray Pandey R/o- Gram Post- Siswania, P.S.- Ucchka Gaon,Block- Ucchka Gaon, District- Gopalganj.
3. Manish Yadav Son of Shivnath Yadav R/o- Gram-Bhagwanpur Vikramtola, P.O.- Chitauna, P.S. Katiya, Block- Panchdevri, District- Gopalganj.
4. Nawal Kishore Ray Son of Hiralal Ray R/o- Gram- Bandhauli, P.O. - Usari Bazar, P.S. Baikunthpur, Block- Baikunthpur, District- Gopalganj.
5. Dayanand Yadav Son of Prabhu Yadav R/o- Gram- Sarupai, P.O. Jagdishpur, P.S. Vijaypur, Block- Vijaypur, District- Gopalganj.
6. Dhananjay Prasad Singh Son of Lalbabu Singh R/o - Gram- Supaul, P.O. - Akshwabar Pipra, P.S. - Sidhwaliya, Block- Sidhwaliya, District- Gopalganj.
7. Santosh Kumar Singh Son of Lalan Singh R/o- Gram- Bishun Pura Kothi, P.O. - Sidhwaliya, P.S.- Sidhwaliya, Block- Sidhwaliya, District- Gopalganj.
8. Vikash Kumar Singh Son of Amarnath Singh R/o Gram P.O.- Pakauli Badi, P.S. Phuwariya , Block- Phulwaria, District- Gopalganj.
9. Upendra Kumar Son of Dinanath Yadav R/o- Gram-Bakrgaon Tiwari Tola, P.O. - Bakrgaon, P.S. Mirganj, Block- Hathwa, District- Gopalganj.
10. Haradeshwar Kumar Shahi Son of Chandrama Shashi R/o Atwa Karn, P.O.- Barirajvar, P.S.- Hathwa, Block- Hathwa, District- Gopalganj.



11. Niraj Kumar Tiwari Son of Awdhesh Tiwari R/o- Gram P.O.- Salempur, P.S.- Sidhwaliya , Block- Brauli, District- Gopalganj.
12. Raju Ram Son of Lakhraj Ram R/o- Gram Post- Sadava, P.S.- Sidhwalia, Block- Barauli, District- Gopalganj.
13. Mukesh Kumar Pandey Son of Munna Kumar Pandey R/o - Gram P.O. - Sadava, P.S.- Sidhwaliya, Block- Barauli, District- Gopalganj.
14. Sawan Kumar Son of Bharat Ram R/o- Gram - Bakhari, P.O. - Maniyari, P.S. Block- Kuchai Kote, District- Gopalganj.
15. Kamlesh Kumar Son of Kedar Sah R/o -Gram Bakhari, P.O. - Maniyara , P.S. Block- Kuchai Kote, District- Gopalganj.
16. Sushil Kumar Son of Ashok Prasad R/o Gram Bakhari, P.O. Kuchai Kote, P.S. Block- Kuchai Kote, District- Gopalganj.
17. Sanjeet Kumar Tiwari Son of Byas Tiwari R/o- Gram-Bengal Khand, P.O.- Sasamusa, P.S. Block- Kuchai Kote, District- Gopalganj.
18. Baban Yadav Son of Dalsingar Chaudhari R/o Gram- Mahuawan, P.O.- Sasamusa, P.S.Block- Kuchai Kote, District- Gopalganj.
19. Lalan Kumar Ram Son of Subhash Ram R/o - Gram- Isharpatti, P.O. Siswa, P.S.- Vishmbharpur, Block- Kuchai Kote, District- Gopalganj.
20. Sukesh Ram Son of Bipat Ram R/o - Gram- Daleya, P.O.- Amwaan Kachhed, P.S. Block- Kuchai Kote, District- Gopalganj.
21. Baccha Manjhi Son of Vibhishan Manjhi R/o- Gram- Belwa, P.O.- Maniyara, P.S.Block- Kuchai Kote, District- Gopalganj.
22. Ashok Ram Son of Bhagrashan Ram R/o- Gram -Chouchaka, P.O.- Sasamusa, P.S. Block- Kuchai Kote, District- Gopalganj.
23. Rajan Manjhi Son of Thug Manjhi R/o- Gram - Amwa Vijaypur, P.O. Rampur Dawood, P.S. Block- Kuchai Kote, District- Gopalganj.
24. Manoj Kumar Yadav Son of Rudal Yadav R/o- Bangal Khan, P.O.- Sasamusa, P.S.Block- Kuchai Kote, District- Gopalganj.
25. Mukesh Kumar Son of Rudal Yadav R/o- Bangal Khan, P.O.- Sasamusa, P.S.Block- Kuchai Kote, District- Gopalganj.
26. Vikash Kumar Yadav Son of Dhrupeo Yadav R/o- Gram- Mahuawan, P.O. - Sasamusa, P.S. Block- Kuchai Kote, District- Gopalganj.
27. Guddu Kumar Son of Sagar Ram R/o - Bargachiya, P.O.- Ramchandrapur, P.S.Block- Thawe, District- Gopalganj.
28. Rakesh Kumar Manjhi Son of Gyanchandra Manjhi R/o - At Bhusao Dera, P.O.- Thawe, P.S.Block- Thawe, District- Gopalganj.
29. Mithilesh Kumar Singh Son of Ramjee Singh R/o - Gram- Ramchanrapur Ramayan Ray Katola, P.O.- Ramchandrapur, P.S. Block- Thawe, District- Gopalganj.
30. Vinay Kumar Prasad Son of Bhagravan Sah R/o- Gram- Devariya, P.O.- Bangra, P.S. - Thawe, Block- Majha, District- Gopalganj.
31. Ankit Kumar Singh Son of Mukhtar Singh R/o- Gram- Chandarpur, P.S.Block- Thawe, District- Gopalganj.



... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Principal Secretary, Home Department, Government of Bihar, Patna.
4. The District Magistrate- Cum-Chairman, District Selection Committee, Gopalganj. null null
5. The Superintendent of Police, Gopalganj.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 14876 of 2017

1. Ranjani Kumari and Ors D/o Sri Prabhunath Tiwari, R/o Vill-Rupanchhap, P.S.-Barauli, District-Gopalganj.
2. Kumari Chandrakala, D/o Baduram Prasad Gond, R/o-Vill-Gram-Barahara, P.O. P.S.-Bhore, District-Gopalganj
3. Shobha Kumari, D/o Late Prabhunath Dubey, R/o-Vill-Lakdi Banvir, P.O.-Bathua Bazar, P.S.-Phulwaria, District-Gopalganj
4. Gayatri Devi, D/o Pashuram Manji, R/o Gram-Bharkuiya, P.O. P.S.-Barauli, District-Gopalganj
5. Mira Kumari, D/o Chirkut Prasad, R/o Gram-Hasanpur, P.O.-Hasanpur Mathiya, P.S.-Sidhwaliya, District-Gopalganj
6. Mamita Kumari @ Mameeta Kumari D/o Baban Ram, R/o-GramP.O.-Chakkha Khasa, P.S.-Bhore, District-Gopalganj.
7. Manju Devi, D/o Parmatma Manjhi, R/o-Gram-Bharkuiya, P.O.+P.S.-Barauli, District-Gopalganj.
8. Baby Kumari, D/o Sanjay Manjhi, R/o-Aeraji Math Hankar, P.O.-Bodha Chapar, P.S.-Gopalpur, District-Gopalganj
9. Rima Kumari, D/o Rajendra Prasad Bin, R/o-Vill-Paithanpatti, P.O.-Pathara, P.S.Block-Manjhagarh, District-Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General, of Police, Bihar, Patna
3. The Principal Secretary, Home Department, Govt. bihar, Patna
4. The District Magistrate-cum-Chairman, District Selection Committee, Gopalganj
5. The Superintending of Police, Gopalganj

... .. Respondent/s



with
Civil Writ Jurisdiction Case No. 17260 of 2018

Munna Kumar Yadav Son of Sri Ramprit Yadav, Resident of Village- Rampur Tengrahi, P.S.- Jadopur, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police-cum-Samadesta, Home Guards, Government of Bihar, Patna.
3. The District Magistrate, Gopalganj.
4. The Superintendent of Police, Gopalganj.
5. The Additional Collector, Gopalganj.
6. The District Account Officer, Gopalganj.
7. The Incharge Officer, General Administration, Gopalganj, Bihar.
8. The District Samadesta, Home Guard, Gopalganj.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 18137 of 2018

1. Manish Yadav and Ors Son of Shivnath Yadav, Resident of Village- Bhagwanpur Vikramtola, P.O.- Chitauna, P.S.- Katiya, Block- Panchdevri, District- Gopalganj.
2. Nawal Kishore Ray, Son of Hiralal Ray, Resident of Village- Bandhauli, P.O.- Usari Bazar, P.S.- Baikunthpur, Block- Baikunthpur, District- Gopalganj.
3. Dayanand Yadav, Son of Prabhu Yadav, Resident of Village- Sarupai, P.O.- Jagdishpur, P.S.- Vijaypur, Block- Vijaypur, District- Gopalganj.
4. Dhananjay Prasad Singh, Son of Lalbabu Singh, Resident of Village- Supaul, P.O.- Akshwabar Pipra, P.S.- Sidhwaliya, Block- Sidhwaliya, District- Gopalganj.
5. Vikash Kumar Singh, Son of Amarnath Singh, Resident of Village P.O.- Pakauli, P.S.- Phulwaria, Block- Phulwaria, District- Gopalganj.
6. Mukesh Kumar Pandey, Son of Munna Kumar Pandey, Resident of Village P.O.- Sadava, P.S.- Sidhwaliya, Block- Barauli, District- Gopalganj.
7. Sawan Kumar, Son of Bharat Ram, Resident of Village- Bakhari, P.O.- Maniyara, P.S. Block- Kuchai Kote, District- Gopalganj.
8. Kamlesh Kumar, Son of Kedar Sah, Resident of Village- Bakhari, P.O.- Maniyara, P.S. Block- Kuchai Kote, District- Gopalganj.
9. Sushil Kumar, Son of Ashok Prasad, Resident of Village- Bakhari, P.O.- Maniyara, P.S. Block- Kuchai Kote, District- Gopalganj.



10. Sanjeet Kumar Tiwari, Son of Byas Tiwari, Resident of Village- Bengal Khand, P.O.- Sasamusa, P.S.Block- Kuchai Kote, District- Gopalganj.
11. Baban Yadav, Son of Dalsingar Chaudhari, Resident of Village- Mahuawan, P.O.- Sasamusa, P.S.Block- Kuchai Kote, District- Gopalganj.
12. Lalan Kumar Ram, Son of Subhash Ram, Resident of Isharpatti, P.O.- Siswa, P.S.- Vishambharpur, Block- Kuchai Kote, District- Gopalganj.
13. Sukesh Ram, Son of Bipat Ram, Resident of Village- Delyya, P.O.- Amwaan Nachhed, P.S.Block- Kuchai Kote, District- Gopalganj.
14. Bachha Manjhi, Son of Vibhishan Manjhi, Resident of Village- Belwa, P.O.- Maniyara, P.S.Block- Kuchai Kote, District- Gopalganj.
15. Ashok Ram, Son of Bhagrashan Ram, Resident of Village- Chouchaka, P.O.- Sasamusa, P.S.Block- Kuchai Kote, District- Gopalganj.
16. Rajan Manjhi, Son of Thug Manjhi, Resident of Village- Amwa Vijaypur, P.O.- Rampur Dawood, P.S.Block- Kuchai Kote, District- Gopalganj.
17. Manoj Kumar Yadav, Son of Rudal Yadav, Resident of Bangal Khan, P.O.- Sasamusa, P.S.Block- Kuchai Kote, District- Gopalganj.
18. Mukesh Kumar, Son of Rudal Yadav, Resident of Bangal Khan, P.O.- Sasamusa, P.S.Block- Kuchai Kote, District- Gopalganj.
19. Vikash Kumar Yadav, Son of Dhrupeo Yadav, Resident of Village- Mahuawan, P.O.- Sasamusa, P.S.Block- Kuchai Kote, District- Gopalganj.
20. Guddu Kumar, Son of Sagar Ram, Resident of Bargachiya, P.O.- Ramchandrapur, P.S.Block- Thawe Kote, District- Gopalganj.
21. Rakesh Kumar Manjhi, Son of Gyanchandra Manjhi, Resident of Bhusao Dera, P.O.- Thawe, P.S.Block- Thawe, District- Gopalganj.
22. Mithilesh Kumar Singh, Son of Ramjee Singh, Resident of Village- Ramchandrapur Ramayan Ray Katola, P.O.- Ramchandrapur, P.S.Block- Thawe, District- Gopalganj.
23. Vinay Kumar Prasad, Son of Bhagravan Sah, Resident of Village- Devariya, P.O.- Bangra, P.S.- Thawe, Block- Majha, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Principal Secretary, Home Department, Government of Bihar, Patna.
4. The District Magistrate-cum-Chairman, District Selection Committee, Gopalganj.
5. The Superintendent of Police, Gopalganj.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 21212 of 2019



1. Vinay Kumar Mishra Son of Shiromani Mishra Resident of Village-Mishra Batraha Police-Station-Phulwariya District-Gopalganj
2. Krishna Kumar Rai Son of Uday Shankar Rai Resident of Village-Devapur Akil Tola District-Gopalganj
3. Byas Kumar Son of Ramayan Prasad Resident of Village-Kotwa Police Station-Barauli District-Gopalganj
4. Akhilesh Kumar Giri Son of Satyadeo Giri Resident of Village-Bhawaniganj Police Station-Manjhagary District-Nawada (Bihar).
5. Narendra Kumar Yadav Son of Sudarshan Prasad Yadav Resident of Village-Dhara, Parsa Police Station-Manjhhagarh District-Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. The Director General of Police, Bihar, Patna.
3. The Principal Secretary, Home Department, Government of Bihar, Patna.
4. The District Magistrate-Cum-Chairman, District Selection Committee Gopalganj District Gopalganj
5. The Superintendent of Police, Gopalganj District-Gopalganj.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 22747 of 2019

Nagendra Yadav Son of Hira Yadav Resident of Village- Madhu Saraiya, Police Station- Manjhagarh, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Principal Secretary, Home Department, Government of Bihar, Patna.
4. The District Magistrate-cum-Chairman, District Selection Committee, Gopalganj, District- Gopalganj.
5. The Superintendent of Police, Gopalganj, District- Gopalganj.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 22807 of 2019

Pappu Yadav S/o Laxman Yadav Resident of Village- Rani Sarisawan, P.s.- Mirganj, Distt.- Gopalganj

... .. Petitioner/s



Versus

1. The State of Bihar
2. The Director General of Police Bihar, Patna
3. The Principal Secretary Home Department, govt. of Bihar, Patna
4. The District Magistrate-cum-Chairman District Selection Committee, Gopalganj
5. The Superintendent of Police Gopalganj, Distt.- Gopalganj

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 159 of 2018)

For the Petitioner/s : Mr.Mahendra Thakur, Adv
Mr. Krishna Thakur, Adv

For the Respondent/s : Mr. Ajay Kumar, AC to GP-4

(In Civil Writ Jurisdiction Case No. 14693 of 2017)

For the Petitioner/s : Mr.Rajeev Kumar Singh, Adv
Mr. Mahendra Thakur, Adv

For the Respondent/s : Mr.P.K. Verma-AAG-3
Mr. Suman Kumar Jha, AC to AAG-3

(In Civil Writ Jurisdiction Case No. 14876 of 2017)

For the Petitioner/s : Mr.Rajeev Kumar Singh, Adv
Mr. Gyanandra Kumar Diwakar, Adv
Mr. Prabhjot Singh, Adv
Mr. Abhijeet Singh, Adv

For the Respondent/s : Mr.Md. Nadeem Seraj-GP-5
Ms. Shalini Mishra, AC to GP-5

(In Civil Writ Jurisdiction Case No. 17260 of 2018)

For the Petitioner/s : Mr.Ranjan Kumar Srivastava, Adv
Mr. Shashwat Srivastav, Adv

For the Respondent/s : Mr.Md. Nadeem Seraj- GP-5

(In Civil Writ Jurisdiction Case No. 18137 of 2018)

For the Petitioner/s : Mr.Mahendra Thakur, Adv
For the Respondent/s : Mr.Manish Kumar- GP-4
Mr. Ajay Kumar, AC to GP-4

(In Civil Writ Jurisdiction Case No. 21212 of 2019)

For the Petitioner/s : Mr.Umesh Kumar Singh, Adv
For the Respondent/s : Mr.Md. N.H. Khan (SC-1)
Mr. Md. Isha, AC to SC-1

(In Civil Writ Jurisdiction Case No. 22747 of 2019)

For the Petitioner/s : Mr.Umesh Kumar Singh, Adv
For the Respondent/s : Mr.Manish Kumar (GP-4)
Mr. Ajay Kumar, AC to GP-4

(In Civil Writ Jurisdiction Case No. 22807 of 2019)

For the Petitioner/s : Mr.Umesh Kumar Singh
For the Respondent/s : Mr.P.K. Verma (AAG3)
Mr. Mankeshwar Tiwari, AC to AAG-3

**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT**

Date : 13-08-2024

Heard learned counsel for the petitioners and learned



counsel for the State.

2. The present writ petition has been filed for a direction to the respondent authorities to consider the case of the petitioners and select them as a Home Guard panel in the District of Gopalganj in terms of advertisement No. 02/2011.

3. Counsel for the petitioners submits that the claim of all the petitioners are common that they are claiming about their entitlement to be appointed on the post of Home guard pursuant to the above mentioned advertisements with minimum qualification prescribed for the said post. The issue involved in all cases are common i.e. the appointment as Home Guard, by the respondent authorities have been made Block-Wise whereas, those appointments have to be made District-Wise, as per law.

4. Counsel for all the writ petitioners jointly submits that the recruitment to the post of Home Guard according to the Bihar Home Guard Act, 1947 read with Rule 1953 was to be made through District-Wise or Block-Wise has already been tested by Hon'ble Division Bench of this Court in L.P.A. No. 645 of 2021 titled as *State of Bihar & Ors. Vs. Manjay Kumar & Ors. with analogous cases* arising out of C.W.J.C. No. 11645 of 2019 and the Hon'ble Division Bench has pleased to held in Paragraphs 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 Gurads 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 that judgments in 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. Hon’ble Court has pleased to decide the said in L.P.A. No. 645 of 2021 titled as *State of Bihar & Ors. Vs. Manjay Kumar & Ors.* with analogous cases this Hon’ble Court has decided that the stand which has been allowed in terms of order dated 05.02.2021 passed in C.W.J.C. No. 11645 of 2019 has been approved by the Hon’ble Division Bench.

6. The findings of the Hon’ble Single Bench vide order



dated 05.02.2021 in C.W.J.C. No. 11645 of 2019 which has been approved by Hon'ble Division Bench is as follows;

From the pleadings it is apparent that though the respondents have advertised the vacancy district wise but in the process of selection and roster clearance they have not relied upon district wise vacancy but for their own convenience at Block level and now they are justifying the action saying that the selection process has been completed and therefore, the Court should not interfere in the matter of selection of Home Guard. The advertisement is rule of game which binds the parties. The Court finds that the terms of advertisement has not been followed by the respondents in the process of preparation of select list and instead of district wise vacancy they have adopted block wise vacancy and even in the preparation of select list block wise vacancy as is evident from the averment made in the counter affidavit there is departure.

Considering the aforesaid, although the Court finds that the entire selection process undertaken by the respondents is contrary to Advertisement and vitiates the entire selection process but for the reason that only two petitioners have approached this Court, the respondents are directed to consider their case and accommodate them against the vacancy in the district of Muzaffarpur if they find the petitioners otherwise eligible for selection then necessary corrective measure may be taken by the respondents within a period of three months from the date of receipt/production of the copy of this order.

With the aforesaid, the writ petition stands allowed and disposed of.

7. In view of the aforesaid submissions, it appears to this Court that though the ratio laid down by the Hon'ble Single



Bench which has been approved by Hon'ble Division Bench is relating to District Muzaffarpur, and here in the present case, petitioners belong to the district of Gopalganj. But this Court held that the issues directly and substantially involved in the present case and in L.P.A. No. 645 of 2019 (Supra) are identical. In that background, this Court hereby directs the respondent authorities that respondent has advertised the vacancy, district-wise but in the process of selection and roaster clearance, they have not relied on district wise vacancy. But for their own convenience they are justifying the action saying that the selection process has been completed and therefore, this Court should not interfere in the matter of selection of the Home Guard. The advertisement is the rule of game which binds the parties. The Court finds the term of advertisement has not been followed by respondent in the process of preparation of the select list and instead of district wise vacancy, they have adopted block-wise vacancy and even in the preparation of the select list, block-wise vacancy as is evident in the averments made in the counter affidavit, there is departure and particularly in the light of the legal analysis made by Hon'ble Division Bench, the vacancy ought to be made completely in accordance with the Bihar Home Guard Acts 1947 read with Rule 1953



only.

8. It is due to this reason, the respondent is directed to consider the case of the petitioners of all the writ petitions and accommodate them in the vacancy against the district of Gopalganj. If they find the petitioner's otherwise eligible for selection, then necessary and corrective measures may be taken by the respondents within 90 days from the date of production/receipt of a copy of the order.

9. With the aforesaid observation, the present writ petition stand disposed off and allowed.

(Dr. Anshuman, J)

Sunnykr/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.08.2024
Transmission Date	NA

