

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18612 of 2019

1. Kapil Kumar S/o Ram Ishwar Yadav R/o Nai Bazar Sahabazapur, P.O. Takya Karpi, P.S. Mahkar, District-Gaya, presently residing at Mohalla-Katari Mor, P.S. Chanduti, District-Gaya
2. Hardeo Prasad S/o Sri Ramdeo Mahto R/o Village-Prewa, Post-Bhadeji, P.S. Bodh Gaya, District-Gaya
3. Raj Kishore Prasad Son of Late Rachhya Prasad R/o Village-Mubarkpur, Post Purhuriya, P.S. Paraiya, District-Gaya
4. Ramjivan Prasad Son of Sita Prasad R/o Village-Chamandi, P.S. Chakan Bazar, District-Gaya
5. Mahendra Prasad Son of Sita Prasad Village P.G. Marg Chamandi, P.S. Chakan Bazar, District-Gaya
6. Raju Thakur Late Shivnanadan Thakur R/o Tarari, P.S. Konch, District-Gaya
7. Md. Ishteyak S/o Late Md. Ekram R/o Village Bara, P.S. Chakand, District-Gaya

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. The Principal Secretary General Administrative Department, Govt. of Bihar, Patna
3. The Commissioner Gaya
4. The Collector Gaya cum Chairman Selection Committee Group Gha Posts Gaya
5. The Additional Collector Gaya
6. The District Development Commissioner Gaya
7. The District Welfare Officer Gaya
8. The Additional Collector Estb. Gaya
9. The Deputy Collector establishment Gaya

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 19179 of 2019

1. Shambhu Prasad Son of Baijnath Prasad Resident of Mohalla- Dakhin Darwaza, P.S.- Chand Chaura, District- Gaya.
2. Ajay Kumar Son of Mahavir Prasad Resident of Village- Bhane Bigha, P.S.- Makhdumpur, District- Jehanabad.
3. Dhanwanti Kumari Daughter of Tulsi Prasad Resident of Village- Bitho Sharif, P.S.- Chanauti, District- Gaya.
4. Surendra Kumar Sinha Son of Late Kapildeo lal Resident of Mohalla- Maal



Godam, Bairagi Road, P.S.- Town, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Commissioner, Magadh Range, Gaya.
3. The District Magistrate Cum Collector, Gaya.
4. The Deputy Collector, Establishment, Gaya Collectriate, Gaya.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 19753 of 2019

1. Aftab Hussain Son of Md. Mahboob Hussain Resident of Gilani House, Mohalla- Panchatiya Akhara, P.S.- Town, District- Gaya.
2. Ravindra Kumar Son of Sri Sachidanand Singh Resident of Village - Patiyama, House, Chowk Road, Tutwari, P.S.- Tutwari, District- Gaya.
3. Md. Shamim Son of Md. Zahoor Miyan Resident of Village- Nehuta, P.S.- Chilim, District- Gaya.
4. Satish Kumar Son of Sri Tapeswar Lal Resident of Village- Haridaspur, P.S.- Phurhuriya, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Commissioner Magadh Range, Gaya.
3. The District Magistrate Cum Collector Gaya.
4. The Deputy Collector Establishment, Gaya Collectriate, Gaya.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 18612 of 2019)

For the Petitioner/s : Mr. Amarendra Narayan, Adv.

For the Respondent/s : Mr. Md. Fazle Karim, AC to SC-1

(In Civil Writ Jurisdiction Case No. 19179 of 2019)

For the Petitioner/s : Mr. Suraj Narayan Yadav, Adv.

For the Respondent/s : Mr. Anil Kumar, AC to SC-8

(In Civil Writ Jurisdiction Case No. 19753 of 2019)

For the Petitioner/s : Mr. Md. Shakir Ahmad

For the Respondent/s : Mr. Dr. Mankeshwar Tiwari, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT



Date : 18-12-2019

Part III of the Constitution of India, which deals with fundamental rights, has its own special status in our constitutional scheme. Article 13(2) of the Constitution declares that State shall not make any law which takes away or breaches the rules conferred by this part and any law made in contravention of this clause shall, to the extent of contravention, be void. The expression 'law' for the purpose of sub-clause (2) of Article 13 has been explained in sub-clause (a) of Article 13(3) to include any ordinance/order/bye-law/rule/ regulation/notification/ custom or uses.

2. Articles 14 and 21 of the Constitution are heart and soul of the Constitution of India. Whereas Article 14 prohibits the State, within the meaning of Article 12 of the Constitution, to deny any person equality before the law or equal protection of laws within the territory of India, Article 21 prohibits deprivation of life or personal liberty of a person except according to the procedure established by law. Article 16 guarantees equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State. Article 16 is, manifestly, an incident to or an instance of Article 14. The scope of Article 21 of the Constitution, which guarantees protection of life and personal liberty to a person has witnessed immense transformation



through judicial pronouncements. Complete denial of equal opportunity for citizens to participate in the process of selection for appointment against Class-IV posts under the State, whether will amount not only to violation of Articles 14 and 16 of the Constitution of India but Article 21 too, is a question which also needs a revisit in the background of Article 39(a) under Chapter IV of the Constitution which lays down the principles of policy to be followed by the State and requires the State to direct its policy towards securing that citizens 'equally' have the right to 'adequate means of livelihood'; in the present matter, where the State contemplates to fill up vacancies by such persons only who had been given opportunity to work as daily wage employees at some point of time, without following any selection procedure and without giving other similarly situated persons, a fair and equal opportunity to seek employment on daily wage basis.

3. In *Ramana Dayaram Shetty vs. International Airport Authority of India and others* reported in (1979) 3 SCC 489, the Supreme Court in unequivocal terms declared that where the Government is dealing with public, whether by way of giving jobs or entering into contracts issuing quotas or licences or granting other forms of largesse, Government cannot act arbitrarily at its sweetwill and, like a private individual; deal with any person



it pleases, but its action must be in conformity with standards or norms, which is not arbitrary, irrational or irrelevant. The Supreme Court held that if the Government departs from such standards or norms in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory. Keeping in mind the said exposition of law and the constitutional mandate under Articles 14, 16 and 21 of the Constitution of India, the controversy, which has been raised in the present matter, has to be looked into.

4. Since all the writ applications arise out of the same selection process, they have been heard together and are being disposed of by the present order and judgment. The facts have been taken from CWJC No. 16812 of 2019.

5. What has transpired on the basis of the pleadings on record and submissions made on behalf of the parties that a system has developed for filling up Class-IV posts in the collectorates in the State of Bihar on the basis of panel of daily wage workers under the collectorate. I must record here that in response to a query made by this Court as to whether any selection process has



been undertaken for filling up the said posts from open market giving unemployed youths an opportunity to participate in last few decades, nothing positive has been shown. It has, therefore, become imperative for this Court to keep in mind this aspect of the matter while testing the action of the State.

6. The dispute in the present writ application arises out of a selection process for preparation of 'Panel List' for appointment against 'new vacancies' of Class-IV posts under the collectorate of Gaya. The advertisement inviting applications has been brought on record by way of Annexure-1 to the writ application. It refers to orders of this Court dated 18.01.2010 and 10.07.2013, passed in CWJC No. 2964 of 2009 and CWJC No. 19120 of 2010 respectively and thereafter refers to following letters issued by the Personnel and Administrative Reforms Department (General Administrative Department), as the reason as also the procedure for preparation of panel :-

“Letter no. 16441 dated 03.12.1980, letter no. 3577 dated 25.04.1997, letter no. 7365 dated 19.06.2011, letter no. 3242 dated 24.10.2011, letter no. 972 dated 19.01.2012, letter no. 16970 dated 12.12.2012, letter no. 2124 dated 06.02.2013 ;

and letter issued by the Chief Secretary of Bihar vide no. 14241 dated 28.12.2011.”



7. The said advertisement also refers to Bihar Group-D (Recruitment and Service Condition) Rules, 2010 framed by the State of Bihar under the proviso to Article 309 of the Constitution of India. The advertisement mentions that a Panel List has been prepared for selection against Class-IV posts in the light of the orders of the Court and subsequent letters issued by the General Administration Department and the Chief Secretary of Bihar in this regard. Reference to order dated 18.01.2010 of this Court, passed in CWJC No. 2964 of 2009 finds place in the order dated 10.07.2013, passed in CWJC No. 19120 of 2010 which is available on record by way of Annexure-C to the counter affidavit filed on behalf of respondents no. 4 to 6. Since an order of this Court has been made a basis for issuance of advertisement in question for preparation of a 'Panel List', in the manner the same has been prescribed in the advertisement, the said order is being reproduced hereinbelow :-

“This is a writ petition from persons who seek employment as Class IV personnel in the district of Gaya. They state that they had been empanelled earlier and vacancies subsisting, the vacancies should be filled up by the panel prepared earlier in the year, 2008-2009 and fresh advertisement, without exhausting the panel, should not be allowed. There is an intervention application as well. There is counter



affidavit of the State also. Having heard the parties, with their consent, the writ petition is being disposed of at this stage itself.

This matter has engaged the attention of this Court on more than one issue. Consistently, this Court has held that a panel once prepared pursuant to an advertisement cannot be continued normally beyond one year nor can it be subsequently revived. This is so because, to be consistent with Articles 14 and 16 of Constitution of India, the panel once prepared must exhaust during period of one year because thereafter, there may be people who had failed to get appointment pursuant to earlier panel who would like to reapply and there may be new persons who become eligible to apply. It is because of this reason, Courts have settled the matter that unless in the advertisement itself, it is so specifically provided, a panel would lose its validity after one year. This is Government's instructions also. This Court fails to appreciate that why this simple position in law cannot be appreciated by the authorities and they keep creating confusion leading to unnecessary litigation.

*In relation to Gaya itself, this Court, in the case of **Vijay Kumar – Versus- State of Bihar & Others** being **CWJC No 2964 of 2009** disposed of on 18.01.2010, specifically held that the panels prepared earlier had outlived its utility. If vacancies exist, the district administration was obliged to issue a fresh notification and pursuant to that, a*



fresh panel has to be prepared. From Annexure 1, which is an order issued for recruitment once again being dated 20.02.2010, it is apparent that the authorities are once again trying to revalidate an old panel. That is totally impermissible and in teeth of the High Court's order aforesaid. The authorities must keep themselves apprised orders of the High Court which have binding force and they cannot act in ignorance thereof.

I have, therefore, no option but to set aside the notification and the order, as contained in Annexure 1, and no steps would be taken in furtherance thereof. Any appointment made pursuant to the said advertisement/order would be void ab initio. Authorities must now issue a fresh public advertisement ignoring all previous panels and draw up a fresh panel to fill up all existing vacancies as on the date of advertisement from such freshly prepared panel.

Any breach of this direction would be taken seriously by this Court because it has been brought to the notice of this Court that orders of this Court are not being implemented. It is for the district administration to look into this aspect of the matter and take appropriate actions in that regard.

With this observation and direction, the writ petition stands disposed of.

8. I need not refer to any of the letters/ communications which have been mentioned in the advertisement for the reason



that statutory rules have been framed by the State of Bihar which came into effect from the date of its publication in the official gazette on 29.03.2010. Rule 16 of the said Rules is the repeal clause and declares repeal of all circulars/ directions in relation to appointments and promotions in the cadre in question. Once Rules have been framed repealing all previous letters/ circulars/ decisions of the department/ State Government, no method other than what has been prescribed under the Rules can be adopted for filling up the posts, in my considered view.

9. The petitioners of the present writ applications claim that they had remained engaged for more than 240 days and were empaneled in the select list of candidates prepared for appointment against Class-IV posts in Gaya Collectorate in the previous panels in 2004 and 2010 and they are applicants against the advertisement No. 01/2013. They have questioned the provisional panel list prepared pursuant to the said advertisement said to have been issued on 08.07.2019 under the signature of the Divisional Commissioner, Magadh Division, Gaya and other members of the Selection Committee constituted for the said purpose. It is their allegation that the panel has been prepared without following the criteria laid down in the advertisement, ignoring the cases of the petitioners who had remained engaged for



more than 240 days as daily wagers and were empanelled in 2004 and subsequently in 2009-10.

10. In the counter affidavit filed on behalf of respondents no. 4 to 6, while denying the claim of the petitioners on the ground that they were not eligible in terms of the advertisement and have, therefore, not been placed in the present panel, it has been mentioned in paragraph 11 of the counter affidavit as follows :-

“11. That in presence of the above mentioned direction of this Hon’ble Court a meeting of selection committee was held on 18.07.2019 and all applications received, as per the advertisement, totaling 21139 were considered headed by the respondent No. 4 the D.M. Gaya (wrongly described as respondent no. 3 in writ application) and other competent authorities and unanimous decision was taken that provisional panel approved should be uploaded on District website, i.e. www.gaya.nic.in on 08.07.2019 and invite objection within 10 days i.e. 18.07.19 by 5 P.M. by registered post/ speed post.”

11. There is apparent typographical error in forth line of paragraph 11 of the said counter affidavit, in which the date of the meeting of the Selection Committee has been described as 18.07.2019 in place of 08.07.2019, as can be seen from Annexure-



E to the counter affidavit, which has been referred to in the said paragraph. There is statement made in paragraph 12 of the writ application that before preparation of panel, objections were invited.

12. It is evident, thus, from the affidavit filed on behalf of respondents no. 4 to 6 that no process of selection of any nature was adopted. It is appropriate to notice, at this stage, a crucial stipulation in the advertisement no. 01/2013 which, in my opinion, goes to the root of the matter. Clause 7 of the advertisement deals with work experience of the aspirants. Sub-clause (1) of Clause 7 provides that the work experience of only such daily wage employees shall be taken into account who have been paid their wages from the State Government fund and against such posts in respect of which the District Magistrate, Gaya is the selecting authority. Sub-clause (2) of Clause 7 mentions that minimum of 240 days of work experience shall be treated to be eligibility condition for work experience and they shall be placed in the panel/ merit-list by giving them first preference. Sub-clause (3) of Clause 7 mentions that if the vacancies remained unfilled, those working as daily wage employees in the collectorate or directly connected offices, namely, Sub-Divisional Office/ Block Office/ Circle Office etc. shall be given second preference, according to



the number of days of their work. Sub-clause (4) of Clause 7 states that in addition to the daily wage employees working in collectorate and the connected offices, the daily wage employees working in 'line department' shall be placed in the panel by giving them third preference. Sub-clause (6) provides that such persons, who do not have any work experience, shall be given fourth preference (last) and their merit shall be decided on the basis of their age, meaning thereby that a person born earlier shall be placed above in the merit-list in respect of such aspirants who do not have any work experience. There is no other criteria prescribed for preparation of panel. Relevant part of the advertisement is being quoted hereinbelow :-

“7. कार्यानुभव :-

- (1) जिन पदों के लिए जिला पदाधिकारी, गया चयन पदाधिकारी हैं तथा जिनके पारिश्रमिक का भुगतान बिहार सरकार के राशि से होता है, उन्हीं रिक्त पदों के विरुद्ध कार्य करने वाले दैनिक पारिश्रमिक के कार्यानुभव को वैद्य कार्यानुभव माना जाएगा।
- (2) चतुर्थ वर्गीय कर्मचारियों के रिक्त पदों पर नियुक्ति के लिए आवेदकों का वैद्य कार्यानुभव/ मानव दिवसों की गणना के आधार पर न्यूनतम 240 दिन को अर्हता मानते हुए मेघा सूची में प्रथम प्राथमिकता पर रखा जाएगा।
- (3) रिक्त पदों के अवशेष रहने पर समाहरणालय एवं उससे सीधे रूप से सम्बद्ध कार्यालयों यथा अनुमण्डल/प्रखण्ड/अंचल कार्यालयों इत्यादि में दैनिक पारिश्रमिक के तहत कार्य करने वाले कर्मियों के कार्यानुभव एवं मानस दिवसों की गणना कर मेघा सूची में द्वितीय प्राथमिकता पर रखा जाएगा।
- (4) समाहरणालय एवं उससे सीधे रूप से सम्बद्ध कार्यालयों के अतिरिक्त Line Department में कार्य करने वाले दैनिक पारिश्रमिक के तहत कार्य करने वाले कर्मियों के कार्यानुभव/मानव दिवसों की गणना कर मेघा सूची में तृतीय प्राथमिकता पर रखा जाएगा।



- (5) उपर्युक्त बिन्दुओं में कार्यानुभव/मानव दिवसों के गणना समान रहने पर आवेदक को अधिक उम्र के आधार पर मेघा सूची में प्राथमिकता पर रखा जाएगा।
- (6) बिना किसी कार्यानुभव वाले आवेदकों को अधिक उम्र के आधार पर मेघा सूची में चतुर्थ प्राथमिकता के आधार पर रखा जाएगा।

13. It is evident on close reading of the terms of advertisement that it contemplates preparation of a panel of daily wage employees only by giving them first, second and third preference and those who did not have the opportunity to work as daily wage employee are to be placed at the bottom of the panel, whose merit will depend on respective dates of their birth. The appointments against Class-IV posts, in terms of the aforesaid scheme, is to be made on the basis of such panel, the advertisement discloses.

14. This is to be kept in mind that there is nothing to suggest that the persons were engaged on daily wage basis after following any fair procedure by giving equal and fair opportunity to others, equally willing to serve as daily wage employees, more in need of employment/ engagement. Such engagements, I do not have much hesitation to hold, are more often back door, than not, as can be easily deciphered from the pleadings on record.

15. This is also to be noted that in the counter affidavit filed on behalf of respondents, plea of lack of qualification of these petitioners have been asserted. I need not go into those aspects of



the matter because the claim of the petitioners, as raised in the present writ application is also based on their assertion that by virtue of they having worked as daily wage employees had gained work experience and, therefore, their names should have been included in the panel; for the reason that I find the very process of selection as adopted by the respondents through the advertisement in question to be wholly illegal, arbitrary and patently in breach of Articles 14 and 16 of the Constitution of India.

16. Whether the Court exercising extraordinary power of judicial review under Article 226 of the Constitution, ignoring patent illegality in the process of selection after having noticed the same, can allow the respondents to proceed with making of appointment on the basis of such selection process, accepting the plea of the respondents that the petitioners do not possess the eligibility conditions? My answer would be in negative, in no uncertain terms. Once a Court, exercising extraordinary inherent power of judicial review, notices patent breach of constitutional guarantees under Articles 14 and 16 of the Constitution, it has a constitutional obligation to intervene, interfere and issue necessary directions to correct the manifest illegalities.

17. In case of *Renu and others vs. District and Sessions Judge, Tis Hazari Courts, Delhi and another* reported in



(2014)14 SCC 50, the Supreme Court observed that no authority is above law and no man is above law. Referring to the purport of Article 13(2) of the Constitution, the Supreme Court remarked that the object of such a provision is to ensure that instructions emanating from any source of law, permanent or temporary, legislative or judicial or any other source, 'pay homage' to constitutional provisions relating to fundamental rights.

18. Article 14 of the Constitution has been considered to be forming the corner stone of our Constitution, which mandates the equality of opportunity. It is an integral part of our system. Any selection process or any appointment made to a public post is to be tested on the touchstone of equality and equal opportunity guaranteed under Articles 14 and 16 of the Constitution. It is mandatory on the part of an employer, which is State within the meaning of Article 12 of the Constitution, to allow all eligible candidates from the open market to participate in the process of selection. An appointment made in violation of the mandate of Articles 14 and 16 of the Constitution is intolerable as it offends one of the most fundamental pillars on which our Constitution rests.

19. Will it not amount to giving premium to the persons who managed to obtain back door engagements as daily wage



employees by allowing them first, second and third preferences in the matter of selection, leaving out those who did not have such opportunity, by placing them at the bottom in the merit-list, for all times to come? Does this process not exclude a large number of competent persons, who if given an opportunity, would have applied for their engagement on daily wage basis? These are the questions, which are required to be kept in mind while considering the procedure which has been adopted for preparation of panel, through the advertisement in question.

20. Further, it is clear from rival pleadings on record that no process of selection has at all been adopted which can be said to be fair and impartial, through written examination or interview or some other rational criteria for judging *inter se* merit of the candidates. It can be beneficial to note, in this regard, the observations made by Supreme Court in case of ***UPSC vs. Girish Jayanti Lal Vaghela*** reported in ***(2006)2 SCC 482***, relevant portion of paragraph 12 of which reads thus :-

“12....The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a written examination or interview or some other rational criteria



for judging the inter se merit of candidates who have applied in response to the advertisement made.... Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."
(Underlined for emphasis)

21. In case of Renu (supra), the Supreme Court stressed upon the need of disclosing the number of posts available for selection and recruitment. Here is a case where the advertisement does not disclose the number of vacancies/ posts in question and it has just been issued to prepare a panel for filling up the posts. Such exercise renders the statutory rules framed for appointment against such posts under proviso to Article 309 of the Constitution, meaningless. The Supreme Court's decision in case of ***M.P. State Coop. Bank Ltd. vs. Nanuram Yadav*** reported in ***(2007) 8 SCC 264*** has lucidly laid down the principles to be adopted in the matter of public appointments. The principles enunciated in case of ***M.P. State Coop. Bank Ltd.*** (supra) which have been taken note of with approval by the Supreme Court in case of ***Renu*** (supra) are as under :



“(1) The appointments made without following the appropriate procedure under the rules/ government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only



way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.”

22. In case of **Renu** (supra), the Supreme Court had the occasion to consider power of appointment granted to the Chief Justice of a High Court under Article 229(1) of the Constitution and in no uncertain terms has held that even the said power granted to the Chief Justice is subject to Article 16(1) which guarantees equality of opportunity to all citizens in matters relating to employment. The expression ‘opportunity’ has been explained in case of **Renu** (supra) as ‘a chance of employment’ and held that what is guaranteed under Article 16(1) is this opportunity of employment ‘equally available to all’. The observations made in case of **Renu** (supra) in paragraph 27 are significant and is a reminder for all authorities exercising their power and jurisdiction to make appointment against a public post, which is being reproduced hereinbelow :-

“27. To say that the Chief Justice can appoint a person without following the procedure provided under Articles 14 and 16 would lead to an indefinite conclusion that the Chief Justice can dismiss him also without holding any



inquiry or following the principles of natural justice/ Rules, etc. for as per Section 16 of the General Clauses Act, 1897, power to appoint includes power to remove/ suspend/ dismiss. (Vide Pradyat Kumar Bose v. High Court of Calcutta and Chief Justice of A.P. vs. L.V.A. Dixitulu) But as no employee can be removed without following the procedure prescribed by law or in violation of the terms of his appointment, such a course would not be available to the Chief Justice. Therefore, the natural corollary of this is that the Chief Justice cannot make any appointment in contravention of the statutory rules, which have to be in consonance with the scheme of our Constitution.”

23. Every action of the executive Government must be informed with reason and should be free from arbitrariness which is the very essence of Rule of Law and bare minimal requirement, the Supreme Court remarked in oftquoted decision in **Ramana Dayaram Shetty** (supra). The Court noted with approval following observation of Kerala High Court in case of **V. Punnann Thomas vs. State of Kerala**, reported in **AIR 1969 Ker 81** :-

“The Government, is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic



Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.”

24. It would be apt to notice at this stage the exposition of law made by Supreme court in case of ***Kasturi Lal Lakshmi Reddy vs. State of Jammu & Kashmir & Anr.*** reported in (1980) 4 SCC 1 that interaction of Articles 14, 16 and 19 shows that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and where any Government action, whether it be under the authority of law or in exercise of executive power without making law, fails to satisfy the test of reasonableness in public interest, it would be liable to be struck down as invalid.

25. It is significant to note here that in case of ***Secy. State of Karnataka vs. Uma Devi(3)*** a plea, taken on behalf of the daily-wage employees claiming regularisation of their service, that right to life under Article 21 of the Constitution would include right to employment has been rejected by Supreme Court and it has been held that acceptance of such plea at their instance would lead to consequence of depriving large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, as a part of life, would stand denuded by preferring those who have got in casually or those who have come



through backdoor, the Supreme Court remarked. It is an obligation cast on the State under Article 39(a) of the Constitution to ensure that all citizens 'equally' have the right to livelihood, the Supreme Court has ruled in case of *Uma Devi (3)* (supra).

26. Fundamental rights occupy a unique place in the lives of civilized society and has been described as "transcendentally" "inalienable" and "primordial". (See *I.R. Coelho vs. State of Tamil Nadu (2007) 2 SCC 1*).

27. The right to livelihood has been held to be a fundamental right under Article 21 of Constitution of India in no uncertain terms, in *Olga Tellis vs. Bombay Municipal Corporation* reported in *(1985) 3 SCC 545*. Equal opportunity to every citizen in seeking public employment has been guaranteed as fundamental right under Articles 14 and 16 of the Constitution of India. Article 39(a), which though falls under 'Directive Principles of State Policy' requires the State to frame policy in a manner that citizens equally have right to an adequate means of livelihood. All these parameters taken together, I am of the view that equal right to seek employment for livelihood is guaranteed by Article 21 of Constitution too.

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 wager 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 Vaghela*** (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.

30. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.12.2019
Transmission Date	NA

