

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9622 of 2018

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Anand Kumar Sinha S/o Late Umashankar Prasad Sinha, R/o Mohalla-
Bagmali Gachhi, P.O.- Hajipur, P.S.- Town, Hajipur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Vaishali at Hajipur.
4. The Additional Collector, Vaishali at Hajipur.
5. The Deputy Development Commissioner, Vaishali at Hajipur.
6. The District Nazarat, Deputy Collector, Hajipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Niraj Kumar
For the Respondent/s : Mr.Md. Nadeem Seraj- Gp5

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CORAM: HONOURABLE MR. JUSTICE KUMAR MANISH
CAV JUDGMENT

Date : 04-08-2026

1. Heard learned counsel for the petitioner and learned counsel
appearing on behalf of the State-respondents.

2. The present writ application under Article 226 of the
Constitution of India has been filed by the petitioner seeking the following
reliefs:

*(i) To quash the interim panel prepared by respondent
nos. 4 and 5 for appointment of Group D (4th grade post) in the
district of Vaishali pursuant to Advertisement No. 01/2016 on the
ground that the name of the Petitioner has been placed at serial no.
282 and the same comprises of some anomalies in the column
containing the details of experience and number of total working
days;*

*(ii) To direct respondent nos. 4 and 5 to publish a fresh
panel after making necessary corrections by including the
experience of the Petitioner in the appropriate column;*



(iii) To direct the respondents to regularize the Petitioner against class IV post since the Petitioner has been working since 15.01.1995 till date; and

(iv) Any other relief or reliefs to which the Petitioner is entitled to in the facts and circumstances of the case.

3. The petitioner submits that he had discharged his duty from 15.01.1995 till January 1999 in the Sub-Divisional Office, Hajipur and other offices, with regards to which experience as well as character certificates were issued to him. It is further submitted on behalf of the petitioner that pursuant to Advertisement No. 01/2010, he made an application dated 13.08.2010, to the District Nazarat, Additional Collector, Hajipur for his appointment to Group D (Class 4 post) stating that he had been working as an attendant for many years under the orders given by the District Magistrate, Nazarat as well as the other officials of the Collectorate, the copy of such application dated 13.08.2010, has been marked as Annexure 1 to the writ application. The petitioner further submits that pursuant to Advertisement No. 01/2010, a revised panel was published in the year 2010, wherein the name of the Petitioner was placed at serial no. 216/1999, reflecting that he had discharged duty on daily wages as typist for 845 days.

4. It is further the case of petitioner that by way of a representation dated 09.02.2017, he urged the respondents to publish a fresh panel by enclosing his experience certificate, which representation has been marked as Annexure 2 to the writ application. The petitioner



further submits that by way of another representation dated 25.09.2017, addressed to the District Officer, Hajipur, Vaishali, he brought to notice, that for appointment of Group D (Class IV post), an interim panel was prepared and uploaded on the website of District Nazarat which contained anomalies, and he further requested the authorities to rectify the same, which has been marked as Annexure 3 to the writ application. It is further submitted by the petitioner that the respondent authorities have failed to take steps against the grievance raised by him, and therefore, the action of the respondent authorities is arbitrary and violative of Articles 14, 16, and 21 of the Constitution of India.

5. Per contra, the counsel for the respondents submits that the relief sought in the instant writ petition has become irrelevant since the answering respondents have been directed to determine the vacancy made till 2010, in compliance to the order dated 18.09.2017 passed in **Mahesh Prasad Singh vs. State of Bihar** having MJC No. 4718/2013.

It is further submitted that in the order dated 01.10.2018, it has been categorically stated in the last paragraph that the contempt application is disposed off in the terms that :-

"the contempt application is fit to be disposed off reminding the authorities to proceed with the matter on the basis of Annexure C and shall not unnecessarily delay the follow up act so that the ultimate fruit of the empanelment may pass on to the beneficiaries".



6. The learned counsel for the respondents further submits that Annexure C to the show cause filed in the contempt application happens to be the same lastly prepared panel, and the order dated 01.10.2018, passed in MJC No. 4718/2013 is annexed as Annexure B to the Counter Affidavit. The learned counsel for the respondents further submits that as for the relief for quashing the interim panel prepared against the vacancies of Group D post pursuant to Advertisement No. 01/2016, the District Selection Committee, Vaishali has already cancelled the vacancies against Group D posts published vide advertisement no. 01/2016 in light of letter no. 299 dated 07.02.2018 issued by the Chief Secretary.

7. It is further submitted on behalf of the respondents that by way of the said letter dated 07.02.2018, the details of vacancies available for Group D posts of District Vaishali till 31.12.2017, as per the Council of Ministers bearing Sankalp Sankhya – 945 dated 27.04.2017 was sought for, in compliance of the order passed by the Hon'ble Supreme Court in SLP No. 32079/2015 and the orders passed by the Hon'ble Patna High Court in LPA No. 1489/2011 and CWJC No. 2139/2011. The learned counsel for the respondents further submits that in lieu of the instructions of the government and orders passed by the Hon'ble Supreme Court and High Court of Patna, the District Selection Committee, Vaishali, decided to cancel the vacancies advertised by the



Vaishali Collectorate in its meeting held on 09.05.2018. The learned counsel for the respondents further submits that the decision taken on 09.05.2018 stated that issuing a separate advertisement against the same vacancies would defeat the orders of the Hon'ble Supreme Court and High Court, inasmuch as, the order of the Hon'ble Supreme Court in SLP 32079/2015 was passed on 26.02.2018, and Advertisement No. 01/2016 was published on 03.05.2018, which decision cancelling Advertisement No. 01/2016 is annexed as Annexure C to the counter affidavit.

8. Having heard learned counsel for the parties and perused the materials on record, this Court is of the view that since Advertisement No. 01/2016 has already been cancelled by the meeting of the Vaishali Collectorate held on 09.05.2018, the first prayer of the petitioner with regards to setting aside of Advertisement No. 01/2016 becomes infructuous.

9. Coming to the other prayers of the petitioner with regards to the regularization / absorption of the petitioner on the basis of him working since 1995 till date, it is expedient to propound the following judicial decisions:

“In the case of **Ramana Dayaram Shetty vs. International Airport Authority of India & 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 sweet will 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. 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.”

10. Further, in the 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.

11. This court further relies on the judgement of **UPSC vs. Girish Jayanti Lal Vaghela***, reported in **(2006) 2 SCC 482 (Para 16)**, wherein, the Supreme Court held that 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.

12. Moreover, in the case of **V. Punnan Thomas vs. State of Kerala, reported in AIR 1969 Ker 81**, the Court held that 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.

13. In the case of **Kasturi Lal Lakshmi Reddy vs. State of Jammu & Kashmir & Anr., reported in (1980) 4 SCC 1**, the Supreme Court held 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.



14. This court also relies on the principles laid down in **M.P. State Coop. Bank Ltd. vs. Nanuram Yadav***, reported in (2007) 8 SCC 264, where the Supreme Court laid down principles to be adopted in the matter of public appointments, which are as follows:

- a. “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.
- b. Regularisation cannot be a mode of appointment.
- c. 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.
- d. Those who come by back door should go through that door.
- e. 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.



f. The court should not exercise its jurisdiction on misplaced sympathy.

g. 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.

h. 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.”

15. Further, in the case of **Secy. State of Karnataka vs. Uma Devi, reported in (2006) 4 SCC 1**, 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.



16. This court also takes into consideration the view taken by the apex court in the case of **Bedanga Talukdar v. Saifudaullah Khan, reported in (2011) 12 SCC 85**, the Supreme Court ruled that all appointment to public office have to be made in conformity with Article 14 of the Constitution of India, there must be no arbitrariness resulting from any undue favour being shown to any candidate.

17. This court also relies on the view taken by the court in the case of **Kapil Kumar vs. State of Bihar & Other, CWJC No. 18612 of 2019**, the writ application was disposed off by directing the respondents to ensure that the process of selection through the advertisement in question is completed by adopting a fair procedure. The Hon'ble Court opined that, 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. The respondents were 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.



18. In the light of the submission made by the petitioner and the respondents and the judicial precedents in this regard this court is of the view that, Public appointments made without following a transparent, prescribed procedure in strict compliance with Articles 14 and 16 of the Constitution of India are illegal, arbitrary and bad in the eyes of law. Therefore, 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.

19. Having regard to the nature of contract appointment/ daily wage employment, it is a tenure appointment. For the purpose of regularization against permanent post, the employer has to adhere to Articles 14 and 16 of the Constitution read with Rules of recruitment and Article 309 of the Constitution. If there are Rules of recruitment governing the post under Article 309 of the Constitution, in that event, the employer has to take note of relevant rules or executive instructions or executive orders issued under Article 166 of the Constitution. 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.

20. 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. Therefore, Article 21 also comes into play, right to livelihood being a part of it. There is nothing to suggest that the Petitioner was 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 are more often back door.

21. Keeping in view the basic structure as enshrined under Article 14, 16, and 21 of the Constitution, as well as the above propositions of law, the Petitioner is not entitled for regularization.

22. Accordingly, the writ petition stands **dismissed**. There shall be no order as to the costs.

(Kumar Manish, J)

sanjeev/-

AFR/NAFR	AFR
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