

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1807 of 2016

IN

Civil Writ Jurisdiction Case No. 22385 of 2014

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1. Manish Kumar Singh, son of Shyamanand Singh, resident of Shakti Nagar, Behind Bright Career School, P.S. K. Hat, District - Purnea.
 2. Md. Sakil Anwar, son of Md. Hasibur Rahman, resident of village - Kohbara, P.O. - Talbari, P.S. - Amaur, District - Purnea.
 3. Md. Ahrar Alam, son of S.K. Ahmad Hussain, resident of village - Simalbari, P.O. - Talbari, P.S. - Amaur, District - Purnea.
 4. Chandra Shekhar Singh, son of Sacchu Singh, resident of village - Pathak Bigtha, P.O. - Murgaon, P.S. - Hulashganj, District - Purnea.
 5. Sudhir Kumar Trivedi, son of late Mihir Kumar Trivedi, resident of New Sipahi Tola Maranga, P.S. - K. Hat, District - Purnea.
 6. Mithilesh Kumar, son of Kapildeo Mahto, resident of Shivdham Nagar Madhubani, P.S. - K. Hat, District - Purnea.
 7. Kishore Bharti, son of Balram Prasad Das, resident of Manjahli Chowk, Near Bihar Press, P.S. - K. Hat, District - Purnea.
 8. Md. Najid Alam, son of Md. Sarif, resident of village - Kukurba Basti, Ward No. 29, District - Araria.
 9. Niraj Kumar Mishra, son of Rudra Narayan Mishra, resident of village - Raghunathpur, P.O. - Sarshi, District - Purnea.
 10. Shyam Kumar Khan, son of Jai Narayan Singh, resident of village - Kukraun No. 1, P.S. - Dhamdaha, District - Purnea.
 11. Shamshed Alam Mohanbi, son of Md. Ibrahim, resident of village & P.O. - Dhamdaha, District - Purnea.
 12. Amit Anand, son of Shri Shyam Chandra Singh, resident of village - Araut, P.S. - Rosera, District - Samastipur.
 13. Sahjanand Singh, son of Late Ramjee Singh, resident of Saryug Devi Colony, Naya Tola, P.S. & District - Katihar.
 14. Rajesh Kumar Sharma, son of Nand Kishore Sharma, resident of Teja Tola, P.S. & District Katihar.
 15. Md. Kaiser Soheb, son of Late Md. Soheb, resident of MG Road Fakartakiya, P.S. & District - Katihar.
 16. Amit Kumar Das, son of Hemchandra Das, resident of Haflaganj, P.O. - Sirniya, P.S. - Muffasil, District - Katihar.
 17. Santosh Kumar Malakar, son of Nageshwar Malakar, resident of Sarifganj, Ward No. 41, P.O. - Deharia, P.S. & District - Katihar.
 18. Chanchal Kumar Jha, son of Saligram Jha, resident of village - Raghunathpur, P.O. & P.S. - Barsoi, District - Katihar.
 19. Smritikant Pathak, son of Shayamakant Pathak, resident of Narayan Mandal Nagar, Tingachia, Naya Tola, District - Katihar.
 20. Md. Naiyer Ajam, son of Md. Harun Rashid, resident of village -



- Raghunathpur, P.O. & P.S. - Barsoi, District - Katihar.
21. Subodh Kumar Yadav, son of Jagdish Rai, resident of village - Raghunathpur, P.O. & P.S. - Barsoi, District - Katihar.
 22. Mukesh Kumar Pal, son of Bhola Prasad Pal, resident of Mofarganj, Gareri Tola, Ward No. 36, District - Katihar.
 23. Rajiv Ranjan Kumar, son of Vimal Singh, resident of village - Raghunathpur, P.O. & P.S. - Barsoi, District - Katihar.
 24. Satyendra Kumar, son of Prameshwar Chaudhary, resident of village - Vidhipur, P.O. - Karauta, P.S. - Salimpur, District - Patna.
 25. Sanjay Kumar, son of Bhuneshwar Prasad, resident of Bhaswara, P.O. - Hansadih, P.S. - Masaurhi, District - Patna.
 26. Manish Kumar, son of Naresh Prasad Singh, resident of Shankarwar Tola, Ward No. 15, Malia Hat, Mokama, District - Patna.
 27. Sanjeev Kumar, son of Ram Lochan Prasad, resident of Chitragupt Nagar, District - Khagaria.
 28. Satrudhan Kumar, son of Late Ramanand Prasad, resident of village - Jinedhpur, P.O. - Rajaura, District - Rajaura.
 29. Sandeep Sinha, son of Laxmi Prasad Sinha, resident of North Hajipur, Ward No. 13, P.S. - Chitragupta Nagar, District - Khagaria.
 30. Amar Kumar, son of Madan Mohan Prasad Singh, resident of East Karya Nand Nagar, Ward No. 7, P.S. & District - Lakhisarai.
 31. Praveen Kumar, son of Binod Prasad Sao, resident of village - Garhi Bishanpur, P.S. & District - Lakhisarai.
 32. Anand Bharti, son of Anil Kumar Singh, resident of Dharauni Tola, Ward No. 17, Sidhnath Mandir, Mokama, District - Patna.
 33. Rakesh Kumar Raushan, son of Balmiki Prasad, resident of village & P.O. & P.S. - Ashthawa, District - Nalanda.
 34. Rajesh Kumar, son of Sahdeo Prasad, resident of village & P.O. - Tatarhat, P.S. - Halsi, District - Lakhisarai.
 35. Gunjan Kumar, son of Kishori Yadav, resident of village & P.O. - Bilauri, P.S. & District - Lakhisarai.
 36. Binod Kumar Rajak, son of Prabhu Prasad Rajak resident of Lalbagh, P.O. & District - Sheikhpura.

.... Appellants

Versus

1. The State of Bihar through the Principal Secretary, Registration Department, Government of Bihar, Vikash Bhawan, Patna.
2. The Principal Secretary, Registration Department, Government of Bihar, Vikash Bhawan, Patna.
3. The Principal Secretary-cum-Chairman, Bihar Society for Computerization of the Registration Office, Bihar, Patna.
4. The Inspector General of Registration, Registration Department, Government of Bihar, Patna.



5. The Assistant Inspector General of Registration, Registration Department, Government of Bihar, Patna.
6. The Secretary-cum-Inspector General, Bihar Society for Computerization of the Registration Office, Bihar, Patna.
7. The Bihar Staff Selection Commission through its Secretary, P.O. - Veterinary College, Patna.
8. The Secretary, Bihar Staff Selection Commission, P.O. - Veterinary College, Patna.

.... Respondents

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Appearance :

For the Appellants : Mr. Y.V. Giri, Senior Advocate, M/S. Ashish Giri and Nikhil Kumar Agrawal, Advocates.

For the State : Mr. Anirudh Kundu, S.C. 24 and Mr. Sudhanshu Shekhar, A.C. to S.C. 24.

For the S.S.C. : Mr. K.K. Upadhyay, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-04-2017

The appellants herein, were working as Computer Operators and they have worked for more than 10 years but their services were not being regularized instead an advertisement was issued for filling-up the posts on the regular basis. They invoked the jurisdiction of the learned Writ Court and sought for their appointment/regularization or at least consideration in the ongoing process of recruitment after granting them some age relaxation and weightage for the service rendered. Be that as it may, in the proceeding of the Writ Court, some of the interim orders passed by the learned Writ Court goes to show that the initial stage considering the grievance of the petitioners, the Court sought for counter affidavit



to find out as to whether any regularization or benefit is being granted in the ongoing recruitment process to the petitioners or can be granted. It seems that when the matter was taken up before the learned Writ Court on 09.08.2016, the learned Writ Court took note of the counter affidavit filed by the respondents and recorded the following findings and disposed of the matter:

“The writ application now stands disposed of in view of the categorical stand taken in the counter affidavit that all these computer operators shall be given an opening coupled with weightage as well as concession in age while considering filling up the posts on a regular basis. Let the respondents do the needful in this regard in terms of the stand taken in the counter affidavit.”

This was apparently done in view of the averments made by the respondents in paragraph nos. 6 and 7 of their counter affidavit.

The petitioners filed this Letters Patent Appeal on account of the fact that in other Departments, like the Transport Department, the benefit of regularization has been extended to similarly situated employees and 35% of the vacancy has been



reserved in the recruitment process for persons like the petitioners, however, in view of the benefit granted in the Transport Department, the petitioners were instigated to file this Letters Patent Appeal. Be that as it may, when this matter was taken up for consideration on 09.11.2016, this Court after taking note various aspects of the matter, sought clarification from the respondents on two issues which are as under:

- (i) Whether the State is contemplating a fresh advertisement by granting age relaxation to the Computer Operators presently working and by giving suitable weightage for their work experience; or
- (ii) Why the Computer Operators are not entitled to regular pay scale at par with the regular employees in view of the judgment of the Supreme Court in **State of Punjab & Ors. Vs. Jagjit Singh & Ors. (Civil Appeal No. 213 of 2013)** decided on 26th October, 2016.

In response to the same, a counter affidavit has been



filed by the respondents which goes to show that now they have taken u-turn from what was said on the counter affidavit filed before the learned Writ Court. In paragraph no. 6 of the counter affidavit filed in this appeal, the respondents say that an advertisement has been issued by the Bihar Staff Selection Commission and the Commission is of the opinion that contrary to the recruitment rules, no exemption and benefit can be granted. Meaning thereby, the learned Writ Court had disposed of the matter in the manner as detailed hereinabove based on the averment made in the counter affidavit from which now the Government has withdrawn or retracted, that being so it is a case where the writ petition has been disposed of on consideration which was not at all adhered to and statement made was not being complied as is evident from the counter affidavit now filed by the respondents in this appeal. Accordingly, it is a fit case where the order passed by the learned Writ Court should be set aside, this writ appeal, the petition should be restored to its original file and the matter should be remanded back for fresh consideration, including considering the question of equal work for equal wages as per the judgment in the case Jagjit Singh (Supra) after hearing all concern. After filing of this Letters Patent Appeal, the petitioners have been transferred and shifted to various offices and for the same, I.A. No. 7391 of 2016 has been filed. This issue is also now to be considered by the learned Writ



Court and it would be for the learned Writ Court to hear the petitioners and pass appropriate order as permissible under the law.

So far as, this Letters Patent Appeal is concerned, we are of the opinion that the writ petition was disposed of on the basis of certain statement made by the respondents which is now no more their stand or being implemented that being so the order passed by the Writ Court on 09.08.2016 in C.W.J.C.No. 22385 of 2014 is quashed, the writ petition is restored to its original file and we direct for listing the writ petition before the appropriate Bench in the next week for consideration. We may observe that any appointment made shall be subject to final outcome of the writ petition and direction as may be issued by the learned Writ Court after hearing all concern.

The appeal is, accordingly, disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

U.K./-

AFR/NAFR	NAFR
CAV DATE	N/A.
Uploading Date	17.04.2017.
Transmission Date	

