

Patna High Court - Orders

Arun Kumar & Ors vs The State Of Bihar & Ors on 29 June, 2010

IN THE MATTER OF APPLCIATION UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA

CWJC No.4942 of 1999

1. SYED NEYAZ AHMAD S/O LATE SYED MOHAMMAD WASIM, MOHALLA SATTAR MISTRY LANE, KARIMGANJ, PS- CIVIL LINES, GAYA DISTT- GAYA

2. MOHAMMAD RASHID S/O SAMSUL HODA MOHALLA ABBAS LANE, KARIMGANJ, PS- CIVIL LINES, GAYA, DISTT- GAYA- PETITIONERS Versus

1. THE STATE OF BIHAR

2. THE SECY. DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS. GOVT. OF BIHAR, PATNA

3. THE SECY. ROAD CONSTRUCTION DEPARTMENT, GOVT. OF BIHAR VISHWARAIYA BHAWAN, BAILEY ROAD, PATNA

4. THE SECY WATER RESOURCES DEPARTMENT, GOVT. OF BIHAR, SACHAI BHAWAN OLD SECRETARIAT, PATNA

5. THE BIHAR PUBLIC SERVICE COMMISSION, 15 JAWAHAR LAL NEHRU MARG, PATNA THROUGH ITS SECY.

6. THE CHAIRMAN BPSC. , PATNA

7. THE OFFICE-ON-SPECIAL DUTY BPSC., PATNA---RESPONDENTS with CWJC No.1390 of 1998

1. ARUN KUMAR S/O SRI SHEO SHARAN SINGH R/O VILL- ASOPUR PS- DANAPUR DISTRICT PATNA

2. AMRENDRA KUMAR S/O SRI SURENDRA SINGH R/O VILL- MUHAMMADPUR PS- PHULWARISHARIF, DISTT- PATNA

3. MANOJ KUMAR S/O SRI INDRA MOHAN PD SINHA, R/O MOHALLA EAST PATEL NAGAR PS- SHASTRI NAGAR, DISTT- PATNA

4. SANJIW NAYAN S/O SRI LALESHWAR PD SINGH R/O VILL BHAIKH PS- MAKHDUMPUR DISTT- JEHANABAD

5. BAIDEHI SHARAN SINGH S/O GANESH SINGH R/O VILL-NAWADIH PS- BANKE BAZAR DISTT- GAYA
6. DEVENDRA PRATAP SINGH S/O RAM ACHCHHE SINGH R/O VILL- MURLICHAK PS- GARDANIBAGH DISTT- PATNA
7. JITENDRA PD. S/O GUPTESHWAR PD. R/O QR. NO. C/2 NEW IRRIGATION COLONY, PS- DEHRI-ON-SONE DISTT-ROHTAS
8. RAN VIJAY PATHAK S/O GARAKH NATH PATHAK R/O VILL- SAISAR PS-SAISAR DISTT- ROHTAS
9. ANUP KUMAR S/O ARJUN PD. R/O F/188 PC.COLONY PS- KANKARBAGH, DISTT- PATNA
10. SUDHIR KUMAR S/O DEVENDRA SHARMA R/O B/181 BIRLA COLONY, PS- PHULWARISHARIF DISTT- PATNA
11. CHANDRA BILAS PD. YADAV S/O DEVLAGAN PD. R/O MOHALLA ANISHBAD(PAHARPUR MORE) PS- GARDANIBAGH, DISTT- PATNA
12. NAGENDRA NATH PATHAK S/O LALAN PATHAK R/O QR. 690, LBS NAGAR PS- SHASTRI NAGAR, DISTT- PATNA
13. GOPAL PANDEY S/O RAMJEE PANDEY R/O A/58 HOUSING COLONY LOHIA NAGAR PS- KANKARBAGH, DISTT- PATNA
14. SIDHESHWAR PD. SINGH S/O BRAHMDEO SINGH R/O VILL- ITWAN PS- KARAKAT DISTT- ROHTAS.
15. NIRMAL KUMAR SINHA S/O LATE K.K.SHRIVASTAVA R/O QR. NO. E/4 INDRAPURI PS- DEHRI-ON-SONE DISTT-ROHTAS---

-----PETITIONERS Versus THE STATE OF BIHAR & ORS(THE RESPONDENTS ARE THE SAME AS IN CWJC No. 4942/99) with CWJC No.3704 of 1998

1. SHASHI BHUSHAN KUMAR S/O RAMESHWAR SINGH R/O VILL- DILLU BIGHA PS- SILAO DISTT- NALANDA PRESENTLY RESIDING AT MOHALLA KAMARUDDINGANJ C/O CHANDRA SHEKHAR PD, NEAR OLD POST OFFICE PO/PS-BIHARSHARIF DISTT- NALANDA
2. JITENDRA KUMAR SINGH S/O RAM NARESH PD. SINGH R/O MOHALLA UDANI PURI (KILAPAR) PO & PS-BIHARSHARIF, DISTT- NALANDA-----PETITIONERS Versus THE STATE OF BIHAR & ORS(RESPONDENTS ARE THE SAME AS IN CWJC. NO. 4942/99) with CWJC No.4495 of 1998 JAGDISH SINGH S/O HRIDAYA NARAIN SINGH R/O BAZARKONA PO & PS-KUDRA, DISTT- KAIMUR AT BHABUA----PETITIONER Versus THE STATE OF BIHAR & ORS

(RESPONDENTS ARE THE SAME AS IN CWJC NO.4942/99) with CWJC No.6253 of 1999

1. MD. KAZMI ALAM S/O LATE ALI HUSSAIN, QUADRI MANZIL, MOHALLA KARIMGANJ PS-CIVIL LINES, GAYA, DISTT- GAYA

2. TRISHUL KUMAR SINHA S/O MUNDRIKA PD. SINHA, JAI PRAKASH NAGAR GAWALBIGHA PS- CIVIL LINES, GAYA, DISTT- GAYA

3. MOHD. ADIL HASSAN S/O MOHD. NAZIMUDDIN R/O VILL- CHHATARGHAT, PO- LUXMI NAGAR, PS- CHANDAUTI DISTT- GAYA AT PRESENT SHARIF MANZIL, DR. HARIDAS CHATTERJEE LANE PS- CIVIL LINES, GAYA DISTT- GAYA

4. MD. SHAFI AKHTAR S/O LATE MOJIBUR RAHMAN C/O SAMI AKHTAR, HASAN LANE, KARIMGANJ, PS- CIVIL LANE, GAYA, DISTT- GAYA-----PETITIONERS Versus THE STATE OF BIHAR & ORS(RESPONDENTS ARE THE SAME AS IN CWJC. NO. 4942 OF 99) with CWJC No.4798 of 1998

1. SHREE RAVI PRAKASH S/O MADAN PD. SRIVASTAVA R/O QR. NO. 5/381 LOHIA NAGAR PS-KANKARBAGH, MOHALLA KANKARBAGH, DISTT- PATNA.

2. ANJANI KUMAR SINHA S/O AWADH MUNI PD. R/O 110, DEFENCE COLONY KANKARBAGH PS- KANKARBAGH DISTT- PATNA

3. SANTOSH KUMAR S/O DADAN PRASAD R/O BRIGHT CAREER SCHOOL, MOHALLA-GAURAKAHANI (GAJRAR) PS- SASRRAM DISTT- ROHTAS

4. BIRENDRA KUMAR SINGH S/O BANSHDHARI SINGH VERMA R/O SEAM, GHANCHANI BUNGLOW PO- BERMO DISTT-GIRIDIH

5. RAMAKANT SINGH S/O RAMA NATH SINGH R/O VILL- MOHADDIGANJ (RAILWAY MAL GODOWN) PO- SASARAM,DISTT-ROHTAS

6. AJAY KUMAR SINGH S/O KAPILDEO SINGH R/O BERMA, SEAM CHANCHANI BUNGLOW PO- BERMO, DISTT. BOKARO

7. ANIL KUMAR SINGH S/O DAROGA ROY, R/O AT & PO- AKORHI BAZAR VAI DALMIA NAGAR SASARAM DISTT- ROHTAS

8. SUDHIR KUMAR SINGH S/O JAGDEEP SINGH R/O FLAT NO. 219, RAJBANSHI NAGAR PS-SHASHTRI NAGAR, DISTT-PATNA

9. PRADHAN SHYAM SUNDAR PD. S/O PRADHAN CHANDRAMA PD. R/O MOHALL GAJRAR (GOURAKSHANI) PO- SASARAM DISTT- ROHTAS

10. ARVIND KUMAR S/O J.B. SHARMA ROY (DGM) R/O BTPS COLONY QR. NO.B/5
BEGUSARAI DISTT- BEGUSARAI

11. ANIL KUMAR SINGH S/O JAGANNATH SINGH R/O FLAT NO. 5/56, WEAKER SECTION
KANKARBAGH PS- KANKARBAGH, DISTT- PATNA

12. MANOJ KUMAR KASHYAP S/O PREM RAM SARF, R/O CHOWK BAZAR, SASARAM
DISTT-ROHTAS

13. ARVIND KUMAR SINGH S/O RAJESHWAR PD. SINGH (RETD.S.E.) R/O GANDHI NAGAR
WEST BORING ROAD, DISTT- PATNA

14. ARZOO AKBAR USMANI S/O Z.A.USMANI, R/O SULTANGANJ, PO- MAHENDRU DISTT-
PATNA

15. ABHAY KUMAR DUTT VERMA S/O ANIRUDH KUMAR DUTT VERMA R/O ROAD NO. 1/D,
ASHOK NAGAR KANKARBAGH, PATNA

16. SUMAN KUMAR SINGH S/O RAM NARESH SINGH R/O VILL- BHUSAHULA PO- & PS
DARIHAT DISTT- ROHTAS

17. ARUN KUMAR SINGH S/O SURAJ DAYAL SINGH R/O CLUB ROAD, AURANGABAD DISTT-
AURANGABAD.

18. PRAMOD KUMAR SINGH S/O RAM BILAS SINGH VILL-SUHI PO- MALHARA PS- DEO,
DISTT- AURANGABAD

19. DHIRENDRA KUMAR SINGH S/O SARYU PD. SINGH R/O SARYU BHAWAN ,NEW AREA
MAHARAJGANJ ROAD, DISTT- AURANGABAD

20. MAHENDRA KUMAR PATHAK S/O SHAMBHU NATH PATHAK, JAGDISH BHAWAN CLUB
ROAD, AURANGABAD-----PETITIONERS Versus THE STATE OF BIHAR & ORS (THE
RESPONDENTS ARE THE SAME AS IN CWJC. NO. 4942/99) with CWJC No.5584 of 1998

1. PRAMOD KUMAR S/O LATE JUGESHWASR PD. SINHA C/O DR. VIJAY KUMAR, R/O
MOHALL MAUNA KATAHARIBAGH ROAD PO- CHAPRA PS- CHAPRAA TOWN, DISTT. SARAN

2. RAMESH KUMAR S/O VIDYADHAR MISHRA QR. NO. 274 ROAD NO.4 RAJBANSHI NAGAR
PATNA. PERMANENT ADDRESS C/O RAJ KANT MISHRA VILL- & PO- NARAITHA DISTT-
DARBHANGA

3. ANIL KUMAR S/O SIDH NATH SINGH KALAMUNCH BAKERGANJ BEHIND RUPAK
CINEMA, PATNA

4. REJEEV RANJAN KUMAR S/O LATE ARJUN PD. SHARMA, SHEIKHPURA (BRAHASTHAN) P.O.B.V. COLLEGE, PATNA

5. KUMAR ANIL PRAKASH S/O PARASHU RAM SHARMA MOHALL PRAKASH NIKETAN HORILGANJ, JEHANABAD COURT DISTT- JEHANABAD

6. SUNIL KUMAR SINGH S/O R.P.SINGH(RETD E.O) VIJAY NAGAR, RUKANPURA LANE NO.1 HOUSE OF SHRI S.P.SINGH(BANK MANAGER) P.O B.V. COLLEGE,PATNA-14

7. RABINDRA KUMAR S/O SHITAL PD. SINHA WEST LOHANIPUR PS- KADAMKUAN, PATNA-13-----PETITIONERS Versus THE STATE OF BIHAR & ORS (RESPONDENTS ARE THE SAME AS IN CWJC. NO.4942 OF 99)

For the Petitioners: Mr. Ganesh Pd. Singh, Sr. Advocate (In CWJC No.4942/99) Mr. Manish Kumar, Advocate For the Petitioner: Mr. Md. Fazal Rahman, Advocate (In CWJC No.6253/99) For the Petitioners: Mr. Rajendra Pd. Singh, Sr. Advocate (in CWJC No.1390/98) Mr. Rajeev kumar Singh, Advocate Mr. Navjot Yesu, Advocate For the State: Mr. S.K. Ghose, AAG-2 Mr. N.K.Sinha, Advocate For BPSC Mrs. Nilu Agrawal, Advocate (In all the cases)

P R E S E N T HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI ***** A.K.Tripathi, J All the writ applications have been heard together because they had been admitted and clubbed together for hearing as common bundle of facts and questions of law have emerged or were pressed by various counsels representing the petitioners at the relevant time. It is in this background all these matters have been heard together and are also being disposed of by this common judgment.

All these petitioners are claimants and desired appointment on the post of Assistant Engineer (Civil) in the Road Construction Department, Government of Bihar. They all claimed that they have the requisite experience by virtue of training they had undergone as apprentice in various recognized institutions. Their right for appointment to the post irrespective of the terms and conditions laid down in Advertisement No. 128 of 1996 flows from a decision which was rendered in the case of U.P State Road Construction & Another vrs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh & Others (1995) 2 SCC 1.

In the above decision of the Hon'ble Supreme Court while dealing with the provisions of Apprenticeship Act, the Apex Court was of the opinion that all such apprentices who had undergone training acquired skill as well as consumed public time and money ought to be engaged by the State authority on the basis of certain parameters laid down in paragraph-12 of the said decision.

The decision of the Apex Court was rendered in a case originating from the State of Uttar Pradesh and in relation to a Public Sector Undertaking, namely, the Road Transport Corporation Uttar

Pradesh.

Taking queue from the said decision the advertisement issued by the Bihar Public Service Commission, namely, Advertisement No. 128 of 1996 was sought to be challenged in all these writ applications filed in the years 1998 and 99.

According to the petitioners the advertisement did not provide for any kind of concession for the apprentice engineers and they were clubbed with the rest, for appointment, which would be in breach of the decision of the Apex Court. They desires that a fresh advertisement be issued making provision for them or corrigendum be issued accommodating the interest of these petitioners in the said recruitment drive. It is also recorded that majority of these petitioners did not even apply pursuant to the Advertisement No. 128 of 1996.

The primary submission made on behalf of most of these petitioners that the law having been settled with regard to the right of these apprentices by virtue of the decision of the Hon'ble Supreme Court, the State of Bihar had an obligation to accommodate these petitioners. The advertisement which was issued for recruitment, being contrary to the decision of the Hon'ble Supreme Court, ought to be quashed straightway. As it was not done the petitioners were compelled to move the High Court by filing several writ applications.

Another aspect which has been pointed out to Court is that after 1996 advertisement yet another advertisement which is Advertisement No. 25 of 1999 was issued and even that became a subject matter in some other writ applications. On the basis of the intervention of this Court the respondent authority issued a corrigendum indicating that the apprentices would be given preference and if age comes in their way a kind of waiver too will be extended.

The current position is that the appointments have already been made both with regard to 1996 advertisement as well as 1999 advertisement. These appointments have come to be made, as I am informed, sometime in the year 2002 and 2004 on the intervention of the Court.

But the question which is required to be answered in these writ applications is whether any kind of right subsists in favour of the petitioners at such a belated stage after more than 14 years when the advertisement was issued.

The stand of the respondent State authority is that no direction can be issued by the Court at this stage for making appointment since recruitments have already been carried out on the basis of the advertisement issued in the year 1996 and 1999. Giving any direction now to the respondent to quash the said advertisements, undo the appointments already made on the basis of the said advertisements would not only unsettle settled things where large number of persons have been appointed and have acquired a right. It would also amount to putting the clock back and turn the pages of history back by a decade and a half.

Yet another aspect which has been pointed out by learned Additional Advocate General-2 is that the appointments to the post came to be made in terms of the notification dated 31.7.2004 issued by the

State Government which is annexure-D to the counter affidavit filed in CWJC No. 4942 of 1999. This notification was based on a direction of the Division Bench which is annexure-C to the said counter affidavit. The people have already filled up the posts and are working for many years. Now it will not be in the interest of things to even remotely consider their cases on the basis of the decision of the Apex Court for the advertisement of 1996.

It is also pointed out that most of these petitioners want direction for appointment on the basis of relaxation given in the 1999 advertisement which was based on a judicial decision. Even otherwise all of them are more near the age of superannuation rather than fit for consideration for appointment.

In the totality therefore the facts being what they are, this Court is unable to grant any relief to these petitioners in the above stated circumstances, as the relief can accrue to a litigant only provided it does not unsettle the settled position. There has to be some co-relation between the time frame when a relief was prayed and it could be given or ought to be given. These writ applications are now more academic in nature and no substantive relief can accrue to them when the whole exercise was completed and issue put to rest.

These writ applications have not merit and they are dismissed but without any costs.

Patna High Court, Patna (Ajay Kumar Tripathi,J.) Dated the 29th June,2010 NAFR./RPS/Sr.Secy