

G.A-5
1-9-14

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C.No. _____/of 2014

In the matter of an application Under Article
226 of the Constitution of India

And

In the matter of

1. Ashok Kanti son of Achalal Kanti of village P.O-P.S. Ku
Kumarkhand District Madhepura.
2. Raju Kumar Sah son of Shibu Sah of village-P.O. Yadau
Patti P.S. Kumar Khand District Madhepura.
3. Manoj Kumar Pandit son of Bhwaneshwari Pandit of villa
P.O. Yadaupatti P.S. Kumarkhand District Madhepura.
4. Subhash Kumar son of Khushi Lal Yadav of village-P.O.
Yadaupatti P.S. Kumarkhand Dist Madhepura.

...Petitioners.

Vs.

1. The State of Bihar through the Chief Secretary Govt
of Bihar.
2. The Home Secretary, Government of Bihar, Patna
3. The D.G. cum Commandant General, Bihar Home Guard Patna
4. The D.I.G. of Police and Deputy Commandant General
Bihar Home Guard Patna.
5. The District Magistrate, Madhepura
6. The Incharge officer, General Section Madhepura
7. The S.F. Madhepura
8. The District Commandant, Home Guard, Madhepura.

...Respondents.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C.No. _____/of 2014

Ashok Kanti and others....Petitioners.

Vs.

The state of Bihar & others....Respondents.

sub: Police Service (Selection)

I N D E X

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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil writ Jurisdiction)

C.W.J.C.No. _____/of 2014

Ashok Kanti and othersPetitioners.

Vs.

The State of Bihar & others...Respondents.

S Y N O P S I S

Imp.Dates Important Events.

2006 There was advt.no.01/06 issued for selection of Home guard at Madhepura district .The petitioners applied.

June08 The Physical and other tests held the petitioners appeared and declared but final merit list not published.

2009 some candidates filed writ disposed with a direction to the D.M.Madhepura.The D.M. Rejected their claim.

2010 Some of petitioners and others filed writ petition which was dismissed on 10.1.11

II

2011 Filed LPA no.4.8.11 direction was issued.

3.11.11 The D.M. issued order cancelling earlier process.

- The petitioners did not know about it then went to meet the D.M. where copy of order was issued after 6 months.

- Thereafter they went to meet the incharge officer and the commandant, Home guard

They only gave assurances but nothing done.

- Filed representatoion before the D.M, Madhepura but only assurances were given nothing communicated filed reinder also nothing communicated so this writ petition.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil writ Jurisdiction)

C.W.J.C.No. _____/of 2014

Hirnelo Kanti

In the matter of an

application Under Article

226 of the Constitution of

India

And

In the matter of

1. Ashok Kanti son of Achelal Kanti of village -P.O-P.S

Kumarkhand District Madhepura.

2. Raju Kumar Sah son of shibu sah of village-P.O.Yadu.

Patti P.S.Kumar Khand District Madhepura.

3. Manoj Kumar pandit son of Bhwaneshwari Pandit of

village-P.O.Yaduapatti P.S.Kumarkhand Dist-Madhepura.

4. Subhash Kumar son of Khushi Lal Yadav of village-P.

Yaduapatti P.S.Kumarkhand Dist Madhepura.

...Petitioner.

2.

Vs.

1. The State of Bihar through the Chief
Secretary Government of Bihar.

2. The Home Secretary, Government of Bihar, Patna.

3. The D.G. cum Commandant General, Bihar, Home Guard
Patna.

4. The D.I.G. of Police and Deputy Commandant General
Bihar Home Guard Patna.

5. The District Magistrate, Madhepura

6. The Incharge officer, General section Madhepura

7. The S.P. Madhepura

8. The District Commandant, Home Guard, Madhepura

... Respondents.

To

The Hon'ble Ms. Justice ~~of the High~~ Rekha M. Doshit
the Chief Justice of the High Court of Judicature at
Patna and Her Companion Justices of the said Hon'ble

Court.

The humble petition on behalf
of the petitioners above named

Most Respectfully Sheweth

1. That this is an application for issuance of appropriate writ, order or direction to the respondents to issue and complete the fresh selection process of Home Guard issued in 2005 and for grant of all consequential benefits.

2. That in this case the following important questions of law of public importance are required to be decided for the just adjudication of the case.

I. Ignoring Hon'ble High court order the respondents not issuing re selection process : arbitrary illegal and malafide.

II Not deciding representation by the respondents
~~is~~ arbitrary illegal and malafide.

3. That the petitioners are poor citizen of India and resides in the territorial jurisdiction of Patna High-court.

4. That there was advertisement no.1/06 issued for the selection and appointment as Home Guard at Madhepura District.The petitioners applied and they were allotted roll no. as names roll nos.

I. Ashok Kamti 605

II.Raju Kumar sah 24

III.Manoj Kumar Pandit 969

IV.subhash Kumar. 239

5. That in June 2008 the physical and other tests held all these candidates were declared fit and pass .But the merit list was not published.Some candidates filed C.W.J.C.No.14794 of 2009 on 2.12.09 it was disposed with a direction to the D.M Madhepura to pass a reasoned and speaking order.The D.M. Madhepura rejected their claim on 23.2.10 .Some

of petitioners filed C.W.J.C.No.6779 of 2010 which was dismissed on 10.1.11. Some of petitioners filed L.P.A.no 656 of 2011 which was disposed on 4.8.11 with a direction to the D.M.Madhepura as "Then he must issue necessary directions for cancelling the selection process already initiated and for initiating a fresh selection process. This must be done without any delay, preferably within 3 months.

Copy of order of Hon'ble High Court passed in L.P.A.no. 656 of 2011 is annexed here with and marked as Annexure- to this petition.

6 That on 3.11.11 the D.M.Madhepura issued order cancelling earlier selection process and also issued instruction to Incharge officer, General section Madhepura and District Commandant Home Guard, Madhepura to start re-selection process.

7 That the petitioner went to office of the DM, Madhepura several times but nothing was communicate to them though they went their office, several times. later after 15-16 months the petitioner were given the order of D.M. Madhepura.

Copy of order of D.M.

Madhepura is annexed herewith and marked as Annexure-2 to this petition.

8. That the petitioners went to meet in charge officer General selection, Madhepura and District Commandant, Home guard, Madhepura Several times but only assurances were given but re-selection process not started.

9. That the petitioners filed representation before the D.M. Madhepura for holding re-selection process and met him several times but only assurance were given nothing has been done.

Affidavit.

I, Raju Kumar sah, aged about 25 years son of Shibu sah of village -P.O-Yadua Patti P.S.Kumarkhand Dist Madhepura do hereby solemnly affirm and say as follows

1. That I am petitioner in this case and as such am well acquainted with the facts and circumstances of the case.

2. That the contents of this affidavit have been read over and explained to me in Hindi which I understood.

3. That the statement made in paragraph no. 3, 4, 6, and 11 are true to my knowledge and those statement made in paragraph no. 5, 7, 8, 9, 10 are derived from the records and rest are by way of submission.

4. That the annexure is true copy of the original.

(11)

- Jivachpur, PS Gamharia, District Madhepura
25. Md. Sananwaz Alam Son of Md. Samiruddin, resident of Ward no.5 Madhepura, PS Madhepura, District Madhepura
 26. Dharmendra Kumar @ Dharmendra Sah Son of Upendra Sah, resident of village Lakshmipur, Ward No. 14. PS Madhepura District Madhepura
 27. Birendra Kumar Yadav Son of Banka Lal Yadav, resident of village Yadavpatti, PS Kumarkhand, District Madhepura
 28. Manoj Kumar Son of Bhuvaneshwari Pandit, resident of village Yadavpatti, PS Kumarkhand, District Madhepura
 29. Subhash Kumar Son of Sri Khusilal Yadav, resident of village Yadavpatti, PS Kumarkhand, District Madhepura
 30. Akhilesh Kr. Roy Son of Ramdev Pd. Roy, resident of village Fulout, PS Alamnagar, District Madhepura
 31. Chitranjan Kr. Mandal Son of Laddu Mandal, resident of village - Fulout, P.S. Chousa, District- MadhepuraAppellants

Versus

1. The State Of Bihar through Home Secretary, Government of Bihar, Patna
2. Director General Super General Commandant Home Guard, Government of Bihar, Patna
3. District Magistrate, Madhepura
4. Superintendent of Police, Madhepura
5. District Commandant Home Guard, Madhepura
6. District Welfare Officer, Madhepura
7. Subdivisional Police Officer, MadhepuraRespondents

For the appellants: Mr. Y. V. Giri, Sr. advocate
Mr. Ashok Kumar, advocate
Mr. Rajendra Pd. Advocate

For the State: Mr. Shailendra Kumar Jha, AC to SC 14

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04-08-2011

Heard the parties.

We agree with the views of learned Single Judge that mere inclusion in a selection list does not create a right to get appointment. However, the prayer of the writ petitioners/ appellants was not for appointment as such but mainly for a direction that the

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process of selection which had taken place in the year 2005 should be completed in accordance with law without any delay. The matter of appointment would arise only thereafter depending upon the views of the concerned competent authority.

Under the statutory provisions, the District Magistrate, Madhepura is the competent authority and he has expressed his views in the reasoned order contained in annexure-4 to the writ petition that it is not possible to give a final shape to the process of selection because of the signature on some relevant papers by the Subdivisional Police Officer who was then Incharge Superintendent of Police and not by the regular Superintendent of Police, the Member of the Committee.

We find no good reasons to interfere with the order passed by learned Single Judge because obviously no direction can be issued for the appointment of the petitioners/ appellants at this stage. However, the appeal is disposed of with a direction to the District Magistrate, Madhepura to apply his mind.

अनेक्सचर-2

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समाहरणालय मधोपुरा

§सामान्य शाखा§

आदेश

एल.पी.एस.सं. 656/2011 मो.रेहान अंसारी एवं अन्य बनाम राज्य एवं अन्य में पारित आदेश दिनांक 4.8.2011 में माननीय उच्च न्यायालय पटना द्वारा आदेश दिया गया कि आदेश की प्रतीति प्राप्त के तीन माह के अन्दर समाहरण मधोपुरा गृह रक्षक चयन प्रक्रिया के संदर्भ में चयन समिति के द्वारा अबतक की कार्यवाही के प्रासंगिक दस्तावेज का आवलोकन करने के अपकारा नियमानुकूल अग्रेसर कार्यवाही करने में कठिनाई होती है तो अबतक की हुई कार्यवाही को रद्द कर शीघ्र ही पुनः गृह रक्षक चयन प्रक्रिया प्रारंभ किया जाए

आवेदक मो.अंसारी एवं अन्य में माननीय उच्च न्यायालय पटना द्वारा पारित आदेश की प्रतीति के साथ कुल 63 आवेदकों का हस्ताक्षरित आवेदन पत्र दिनांक 16.6.2011 को अधोहस्ताक्षरी के सदाखिल कर गृह रक्षकों के स्तर में नामांकन हेतु अपना पक्ष रखा। मामला गृह रक्षक के स्तर में नामांकन से संबंधित है। गृह विधोषा विभाग बिहार पटना के पत्रांक 2250 दिनांक 4.3.2006 के द्वारा गृह रक्षकों के नामांकन हेतु जिला दंडाधिकारी की अध्यक्षता को

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पुलिस अधीक्षक का हस्ताक्षर होना अनिवार्य है ।

स्पष्ट है कि उक्त सूची पर केवल समिति के मात्र दो सदस्यों का हस्त हस्ताक्षर रहने एवं चयन समिति द्वारा स्वच्छ नामांकन हेतु कोई अनु अनुशंसा तत्कालिन जिला दण्डीधिकारी को नहीं किए जाने के कारण सूची की विश्वसनीयता को स्वीकार करने का कोई प्र स्वरूप प्र मासिक आधार नहीं बनता है अतः उक्त सूची की प्रमाणिकता पर कोई वैधिक आधार नहीं बनता है जिससे चयन की प्र कि या अपनाई जा सके । कार्यालय तत्संबन्धी सुना के अनुसार नामांकन पर अंतिम स्तर से निर्णय लिया जाना संभव नहीं है

वर्णित जारी में गृह रक्षा के स्तर में नामांकन के संबंध में आवेदक गण के दावे को अस्वीकृत करते हुए सूची को रद्द किया जाता है

प्र भारी पदाधिकारी सामान्य शाखा मधोपुरा जिला समादेशा गृह रक्षा वाहिनी मधोपुरा को निर्देश दिया जाता है कि पूर्व में संग्रहित आवेदकों के आधार पर पुनः चयन की प्र कि प्र रक्षा करने हेतु विधायक एवं नियमानुसार कारवाई प्र रक्षा की जाय ।

आदेश की प्रति सभी संबंधितों को दी जाए तथा उक्त अनुपात से विभाग एवं माननीय उच्च न्यायालय को भी अवगत कराया जाए

आदेश की प्रतीति सभ्यी संबोधितो को दी जाय तथा उक्त अनुपालन से विभाग सब माननीय उच्च न्यायालय को भी अवगत कराया जाय

ह0 अस्पष्ट

जिला दण्डाधिकारी

मधोपुरा

ज्ञापक 14102 सी.मधोपुरा दिनांक 3.11.11

प्रतिलिपि सभ्यी वादीगण प्र भारी पदाधिकारी सामान्य शाखा

मधोपुरा/जिला समादेष्टा गृह रक्षा वाहिनी मधोपुरा को सूचना

सूचनार्थ सब आवश्यक कार्या धर प्रेषित ।

प्रतिलिपि महाधिवक्ता स्टेडिंग काउंसिल सं014 माननीय उच्च न्यायालय

पटना को सूचनार्थ प्रेषित । अनुरोध है कि अपने धार से

माननीय उच्च न्यायालय को अवगत कराने की कृपा की जाय

प्रतिलिपि समादेष्टासमादेष्टा बिहार गृह रक्षा वाहिनी पटना को

सूचनार्थ प्रेषित ।

ह0 अस्पष्ट

जिला दण्डाधिकारी

मधोपुरा ।

अनेकस्वर-३।

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सेवा में

श्रीमान जिला पदाधिकारी
मधोपुरा

प्रसंग- वि.सं. 1/2006 के आलोक में पूर्ण घयन प्रक्रिया करने का अनुरोध

महोदय

सादर नम्र निवेदन है कि हमलोग वि.सं. 1/08 के आलोक में होम गार्ड के पद पर बहाली हेतु आवेदन न दिया 2008 में घयन प्रक्रिया हुई परन्तु श्रीमान द्वारा ज्ञा. 1410-2/साठ दिनांक 3.11.11 द्वारा निरस्त कर दिया गया तथा पूर्ण घयन प्रक्रिया कराने का निर्देश इनचार्ज ऑफिसर सामा शाखा समादेष्टा होम गार्ड को दिया । अभी तक नहीं किया गया है

2. हमलोग जब भी उनसे मिलते है सिर्फ आश्वासन दिया जाता है

3. श्रीमान से भी मिले परन्तु अभी तक घयन प्रक्रिया शुरू नहीं किया गया है ।

4. हमलोग अत्यंत गरीब है तथा अब ओभरसेज होते जा रहे है

अतः करबद्ध प्रार्थना है कि वि.सं. 1/06 के आलोक में सृष्ट

रहाक पद के लिए पूर्ण घयन प्रक्रिया करने की कृपा की जाय

आपका विश्वासभाजन
अशोक कामती राजू कुमार साह
रोल नं. 606 रोल नं. 24

सुभाषा कुमार रोल नं. 231 मनोज कुमार पीडित रोल नं. 969

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to all the relevant facts and if he finds that the selection process cannot be taken further then he must issue necessary directions for cancelling the selection process already initiated and for initiating a fresh selection process. This must be done without any delay, preferably, within three months.

Spl
(Shiva Kirti Singh, J.)

Spl
(Shivaji Paundey, J.)

BKS/-

CERTIFIED TO BE TRUE PHOTO COPY

[Signature] 11/5/11
For Joint Registrar (J)

Patna High Court

Authorized U/S 76 of Act of 1878

[Signature]
[Signature]
11/5/11
[Signature]

अनेक्सचर-2

14

समाहरणालय मधोपुरा

॥सामान्य शाखा॥

आदेश

एल.पी.एस.सं.656/2011 मो.रेहान अंसारी एवं अन्य बनाम राज्य एवं अन्य में पारित आदेशा दिनांक 4.8.2011 में माननीय उच्च न्यायालय पटना द्वारा आदेशा दिया गया कि आदेशा की प्रती प्रती के तीन माह के अन्दर समाहरण मधोपुरा गृह रक्षाक चयन प्रक्रिया के संदर्भ में चयन समिति के द्वारा अबतक की कार्यवाही के प्रासंगिक दस्तावेज का आवलोकन करने के उपकारा नियमानुकूल अग्रेसर कार्यवाही करने में कठिनाई होती है तो अबतक की हुई कार्यवाही को रद्द कर शीघ्र ही पुनः गृह रक्षाक चयन प्रक्रिया प्रारंभ किया जाए

आवेदक मो.अंसारी एवं अन्य में माननीय उच्च न्यायालय पटना द्वारा पारित आदेशा की प्रती के साथ कुल 63 आवेदकों का हस्ताक्षरित आवेदन पत्र दिनांक 16.6.2011 को अधोहस्ताक्षरी के समक्ष दाखिल कर गृह रक्षाको के समक्ष में नामांकन हेतु अपना पक्ष रखा। मामला गृह रक्षाक के समक्ष में नामांकन से संबंधित है। गृह विभाग विभाग बिहार पटना के पत्रांक 2250 दिनांक 4.3.2006 के द्वारा गृह रक्षाको के नामांकन हेतु जिला दंडाधिकारी की अध्यक्षता को

विभाग बिहार पटना के पत्रांक 2250 दिनांक 4.3.2006 के द्वारा गृह रक्षाको के नामांकन हेतु जिला दंडाधिकारी की अध्यक्षता को

में चयन समिति गठित की गई थी जिसमें पुलिस अधीक्षक मधोपुरा तथा जिला कल्याण पदाधिकारी मधोपुरा समिति के सदस्य एवं जिला समादेष्टा गृह रक्षा बाहिनी मधोपुरा समिति के सदस्य सचिव श्री होक्कार्डी बुद्धिनियम 1958 नियम 4 के अनुसार समिति को अपनी अनु-1 जिला दंडाधिकारी को देनी थी जिसने आलोक में वाद कराने की कारवाई की जानी थी ।

माननीय उच्च न्यायालय द्वारा पारित आदेश दि कि 4-8-11

एवं आवेदकणा से प्राप्त आवेदन में अंकित तथ्यों के आलोक में कार्यलय में उपलब्ध सीचकाओ तथा कागजातो का अवलोकन करने से स्पष्ट होता है कि गृह रक्षाको के चयन से संबन्धित तैयार सूची पर जिल समादेष्टा गृह रक्षा बाहिनी मधोपुरा एवं जिला कल्याण पदाधिकारी मधोपुरा जो समिति के सदस्य है का हस्ताक्षर अंकित है लेकिन तत्कालिन पुलिस अधीक्षक मधोपुरा द्वारा सूची हस्ताक्षरित नहीं है । उक्त सूची पर अनुमंडल पुलिस पदाधिकारी मधोपुरा का हस्ताक्षर दर्ज है जिन्होंने पुलिस अधीक्षक की हस्तक्षर से हस्ताक्षर दर्ज नहीं किया गया है अनुमंडल पुलिस पदाधिकारी उक्त समिति के पदेन सदस्य नहीं होते है उक्त सूची पर पुलिस अधीक्षक का हस्ताक्षर अंकित है । स्पष्ट है कि उक्त सूची पर केवल स

7 That the petitioner went to office of the DM, Madhepura several times but nothing was communicate to them though they went their office, several times. later after 15-16 months the petitioner were given the order of D.M. Madhepura.

Copy of order of D.M.

Madhepura is annexed herewith

and marked as Annexure-2 to

this petition.

8. That the petitioners went to meet in charge officer general selection, Madhepura and District Commandant, Home guard, Madhepura several times but only assurances were given but re-selection process not started.

9. That the petitioners filed representation before the D.M. Madhapura for holding re-selection process and met him several times but only assurance were given nothing has been done.

para 1 of the writ petition
be not allowed and on return
of the rule your Lordships may
be pleased to make the rule
absolute/and/or your Lordships
may be pleased to pass such
order or orders as your
Lordships may deem fit and
proper in the circumstances
of this case.

And for this the petitioner shall ever pray.

Affidavit.

I, Raju Kumar Sah, aged about 25 years son of Shibu Sah of village -P.O-Yadua Patti P.S.Kumarkhand Dist Madhepura do hereby solemnly affirm and say as follows

1. That I am petitioner in this case and as such am well acquainted with the facts and circumstances of the case.

2. That the contents of this affidavit have been read over and explained to me in Hindi which I understood.

3. That the Statement made in paragraph no. 3, 4, 6, and 11 are true to my knowledge and those statement made in paragraph no. 5, 7, 8, 9, 10 are derived from the records and rest are by way of submission.

4. That the annexure is true copy of the original.

Copy of representation is
annexed herewith and marked
as Annexure-3 to this
writ petition.

10. That the petitioner has no other
efficacious remedy than filing this writ petition for
redressal of his grievances.

11. That the petitioner has not filed any other
writ petition earlier in the matter before this
Hon'ble court except C.W.J.C.No.6779 of 2010,L.P.A.no
657/11 disposed on 10.1.11 and 4.8.11 respectively.

It is therefore prayed that
your Lordships may gracious
be pleased to admit this
petition and call upon the
respondents to show cause
as to why prayer made in