

IN THE HIGH COURT OF JUDICATURE AT PATNA

Prem Nath Paswan & ors.

vs.

The State of Bihar & ors.

Civil Review No. 369 of 2019

09 November 2022

(Hon'ble The Chief Justice & Hon'ble Mr. Justice Ashutosh Kumar)

Issue for Consideration

Whether the petitioners, who were earlier included in the 1994 panel of daily-wage Class-IV workers, could claim regularisation or appointment based on such inclusion in later years (2001, 2006), and whether their claim could be reconsidered in a review petition when the same issue had been conclusively adjudicated by the Division Bench.

Headnotes

The petitioners seek to agitate the same grounds, on the same set of facts which has been outrightly rejected by the Appellate Court. The petitioners again, relying on a fact situation that persons who were included in the panel of 1994, later found employment in the years 2011, 2012 and 2017, contends that this is a definite ground for presuming that the petitioners had also applied, but their non-inclusion in such lists was either inadvertent or deliberate. This plea is absolutely not worthy of acceptance as court does not know whether those persons who were included in the 1994 list and were ultimately given employment in the years 2011, 2012 or 2017 had or had not applied for being included in the list of later years. (Page 5, 6)

It is too late in the day to declare that notwithstanding that the power to review is a creature of Statute, but it also inheres in every Court of plenary jurisdiction, to prevent any miscarriage of justice or to correct grave or palpable errors, there are definite limits to the exercise of such power. (Page 6)

Petition is dismissed. (Page 7)

Case Law Cited

Aribam Tuleswar Sharma v. Aribam Pishak Sharma & Ors., **(1979) 4 SCC 389**; Shri Ram Sahu (Dead) through Lrs & Ors. v. Vinod Kumar Rawat & Ors., **2020 SCC Online SC 896**

List of Acts

None cited.

List of Keywords

Review Petition; Class-IV Employees; Empanelment; Regularisation; Power of Review; Discovery of New Evidence

Case Arising From

Judgment dated 20.08.2019 passed in Letters Patent Appeal No. 372 of 2018, arising out of C.W.J.C. No. 10679 of 2012.

Appearances for Parties

For the Petitioner/s : Mr. Kumar Madhurendu, Advocate; Mr. Sanjay Kumar Ghosarvey, Advocate

For the Opposite Party/s : Mr. Md. Khurshid Alam, AAG-12

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.369 of 2019

In
Letters Patent Appeal No.372 of 2018

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1. Prem Nath Paswan S/o Sri Gaya Paswan Resident of Village- Gobarsahi, P.S.- Sadar, District- Muzaffarpur
 2. Jitendra Kumar Chaudhary S/o Sri Sone Lal Choudhary, Resident of Village- Mornisaf, P.S.- Maniari, District- Muzaffarpur
 3. Anil Kumar Chaudhary, S/o Mukhi Lal Chaudhary, Resident of Village and P.O.- Karma, P.S.- Kurhani, District- Muzaffarpur
 4. Sanjay Kumar Paswan, S/o Late Chulhai Paswan, Resident of Village- Sakra Mansurpur, P.S.- Sakra, District- Muzaffarpur
 5. Sunil Kumar Rajak S/o Late Gorakh Rajak, Resident of Village- Jogiamath Serajganj, P.S.- Nagar, District- Muzaffarpur
 6. Bishundeyal Paswan, S/o Sri Basudeo Paswan, Resident of Village- Bochaha, P.S.- Bochaha, District- Muzaffarpur
 7. Deepak Kumar Rajak, S/o Sri Sitaram Rajak Resident of Village- Purani Bazar (Siyanarain Mandir), P.s.- Mithanpura, District- Muzaffarpur
 8. Kapildeo Paswan S/o Yadunandan Paswan Resident of Village- Bobarsahi, P.s.- Sadar, District- Muzaffarpur
 9. Sanjit Kumar Chaudhary S/o Krishna Kumar Chaudhary Resident of Village and P.O.- Susta Madhopur, P.S.- Sadar, District- Muzaffarpur
 10. Bishwanath Ram, S/o Ramdeo Ram, Resident of Village- Patiasa Jalal, P.S.- Ahiyapur, District- Muzaffarpur
 11. Meghu Rajak S/o Sri Yogendra Rajak, Resident of Village- Nayagaon, P.S.- Mizahri, District- Muzaffarpur
 12. Daulath Kumar S/o Late Doman Ram, Resident of Village- Selahpur, P.S.- Aarju, District- Muzaffarpur
 13. Kameshwar Ram, S/o Bhikhu Ram Resident of Village- Srirampur, P.s.- Kathaina, District- Muzaffarpur
 14. Mahendra Ram S/o Jageshwar Ram Resident of Village and P.o.- Dumari, P.s.- Musahari, District- Muzaffarpur
 15. Sushil Paswan, S/o Yogendra Chaudhary @ Jay Kisun Paswan Resident of Village- Morisaf, P.s.- Maniari, District- Muzaffarpur
 16. Jailal Chaudhary @ Jiyalal Chaudhary S/o Yogendra Chaudhary Resident of Village- Morisaf, P.s.- Maniari, District- Muzaffarpur
 17. Satrugan Paswan S/o Sri Ramswaroop Paswan Resident of Village and P.o.- Kolhua, P.S. Ahiapur, District- Muzaffarpur
 18. Rajkishore Ram, S/o Ram Sundar Ram, Resident of Village- Khalilpur, P.S.- Karja, District- Muzaffarpur
 19. Mahendra Ram No. 2, S/o late Bisheshwar Ram Resident of Village and P.o.- Pakohi, P.s.- Karja, District- Muzaffarpur
 20. Radhe Paswan, S/o Gena Paswan Resident of Village- Sundwara, P.S.-



Kurhani, District- Muzaffarpur

21. Kishun Paswan, S/o Shyam Nr. Paswan, Resident of Village and P.O.- Karma, P.S.- Kurhani, District- Muzaffarpur
22. Sanjay Paswan, S/o Baleshwar Paswan, Resident of Village and P.O.- Karma, P.S.- Kurhani, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna
2. The Commissioner and Secretary, Personnel and Administrative Reforms Department, Govt. of Bihar, Old Secretariat, Patna
3. The Board of Revenue, through the Secretary, Board of Revenue, Govt. of Bihar, Patna
4. The Commissioner, Tirhut Division, Muzaffarpur
5. The District Magistrate, Muzaffarpur
6. The Director, Science and Technology Department, Govt. of Bihar, New Secretariat, Patna
7. The Deputy Collector, In-Charge, Nazarat, Muzaffarpur
8. Rajesh Khanna, Son of Hira Rajak, R/o Vill-Antraulia, P.S. Sarai, Distt. Muzaffarpur.
9. Dilip Kumar Son of Ganaur Baitha, R/o Vill- Sundar Sarai, P.S.Motipur, District- Muzaffarpur.
10. Umesh Kumar Rajak, Son of Ganaur Baitha, R/o Vill- Sundar Sarai, P.S. Motipur, Distt. Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kumar Madhurendu, Advocate
Mr. Sanjay Kumar Ghosarvey, Advocate
For the Opposite Party/s : Mr. Md. Khurshid Alam, AAG-12

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 09-11-2022

Heard Mr. Sanjay Kumar Ghosarvey, the learned
Advocate for the Revisionist/petitioners and Md. Khurshid



Alam, the learned Additional Advocate General No. 12.

The petitioners seek review of the judgment dated 20.08.2019 passed in L.P.A. No. 372 of 2018 by which, the order of the learned Single Judge in CWJC No. 10679 of 2012, rejecting the claim of the petitioners that they ought to have been empanelled in the later years, especially in 2001 and 2006, when in the empanelment of 1994, they were included, was endorsed and affirmed.

The petitioners had approached this Court against the order dated 17.08.2011 of the District Magistrate, Muzaffarpur, whereby he had declared that the panel of 1994 was cancelled; and had further sought directions from the Court that a fresh panel be prepared; they be included in that panel and be given appointment.

Be it noted that the petitioners at that time were daily-wagers on Class-IV post. For the regularization of such persons, under the orders of this Court in a writ petition and a contempt petition thereafter, a panel was prepared in the year 1994, which included the name of the petitioners along with others. However, in the year 2000, the Empanelment Committee found the list of 1994 to be bad as it contained the names of only one class of persons and that the list was of persons who were ten



times more than the vacancy and, therefore, found such list to be invalid. In the year 2000, as it appears from the records of this case, candidates of all the categories were appointed and such appointments were never challenged by either the petitioners or anybody whose name was not included in the later panel of 2000. In later years, i.e., 2001 and 2006, the petitioners were not found to have applied for being included in the list, which list could have been acted upon for giving appointment to persons working on Class-IV post. This claim of the State is sought to be repudiated on the ground that facts on the record reveal otherwise. The petitioners had applied in the years, 2000, 2001 and 2006, which fact was stated by the petitioners in the writ petition, but the same was not taken into account by the learned Single Judge.

It further appears that the learned Single Judge was of the view that the petitioners could not demonstrate that they had applied for being included in the list of different years for it to be acted upon for the purposes of appointment.

The LPA Court, based on the averment that such a statement was made in the writ petition but was not appropriately adverted to by the learned Single Judge, examined the entire records in detail and found that there was enough



justification for the learned Single Judge to have relied upon the findings of the Empanelment Committee that the petitioners had not applied in the later years, resulting in discontinuance of their candidature. The Appellate Court further appears to have found that the list which was produced before the Division Bench, which presumably was being maintained in the office of the District Magistrate, was not a genuine document as there was no authenticated version of the same and there was no explanation forthcoming as to why the same was not brought to the notice of the learned Single Judge.

For these reasons, the Appellate Court did not attach any probative value to the list which was produced in appeal by the petitioners showing that they had applied in later years and that the discontinuance of their right to be considered for employment was unjustified.

The petitioners seek to agitate the same grounds, on the same set of facts which has been outrightly rejected by the Appellate Court. The petitioners again, relying on a fact situation that persons who were included in the panel of 1994, later found employment in the years 2011, 2012 and 2017, contends that this is a definite ground for presuming that the petitioners had also applied, but their non-inclusion in such lists



was either inadvertent or deliberate.

This plea is absolutely not worthy of acceptance as we do not know whether those persons who were included in the 1994 list and were ultimately given employment in the years 2011, 2012 or 2017 had or had not applied for being included in the list of later years.

We find it too late in the day to declare that notwithstanding that the power to review is a creature of Statute, but it also inheres in every Court of plenary jurisdiction, to prevent any miscarriage of justice or to correct grave or palpable errors, there are definite limits to the exercise of such power. The order could be given a re-look in such review petition only if there is discovery of a new fact regarding an important matter of evidence, which was not within the knowledge of the petitioner at the time when the matter was finally adjudicated, even by exercise of due diligence.

[Refer to *Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma & Ors.*, (1979) 4 SCC 389; *Shri Ram Sahu (Dead) through Lrs & Ors. Vs. Vinod Kumar Rawat & Ors.*, 2020 SCC Online SC 896.]

The Appellate Court had no reasons for relying upon such materials (lists) in the absence of any authentic version of



the same and of any plausible reason for not presenting it before the learned Single Judge.

We, therefore, are of the view that the petitioners in the instant case are expecting a re-appraisal of the same set of facts which is essentially in the province of an Appellate Court.

For the reason of the same grounds being agitated in the present proceedings, which was rejected in appeal, we dismiss the Review Petition, but we choose to make it cost easy for the reason that the petitioners were Class-IV daily-wage employees.

Interlocutory Application(s), if any, also stands disposed off.

(Sanjay Karol, CJ)

(Ashutosh Kumar, J)

Amrendra/PKP

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

