

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.294 of 2013

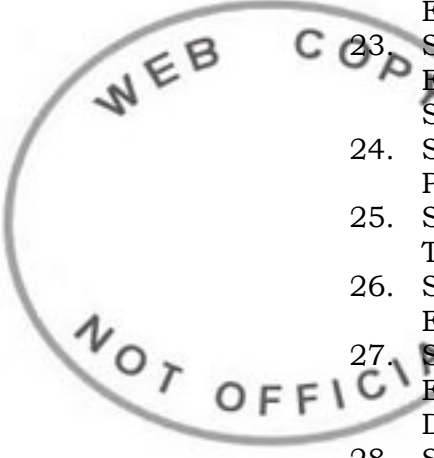
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The Subordinate Engineers Association, Bihar, Amarnath Path,
Adalatganj, P.O.- G.P.O., P.S.- Kotwali, District Patna, thorough its General
Secretary, Sri Shyam Bihari Singh.

.... Appellant

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna
2. Commissioner and Secretary, Road Construction Department, Government of Bihar, Vishwashwaraiya Bhawan, Patna
3. Commissioner and Secretary, Water Resources Department, Government of Bihar, Sinchai Bhavan, Patna
4. Commissioner and Secretary, P.H.E.D., Government of Bihar, Bailey Road, Patna
5. Chairman, Bihar Public Service Commission, Patna
6. Secretary, Law Department, Bihar, Patna
7. Joint Secretary, Road Construction Department, Government of Bihar, Patna
8. Special Officer-Cum-Deputy Secretary, Road Construction Department, Government of Bihar, Patna
9. The Bihar Engineering Services Association, Abhiyanta Bhawan, Jai Prakash Path, Boring Road, Patna Through Its General Secretary
10. Rajeshwar Mishra Son Of Late Kapil Deo Mishra Abhiyanta Bhawan, Jai Prakash Path, Boring Road, Patna And General Secretary Of Bihar Engineering Services Association
11. Nawal Kishore Prasad Son of Late Muneshwar Prasad Resident of Mahnar, P.S. Mahnar, District- Vaishali
12. Birendra Kumar Son Of Sri Sidheshwari Prasad Resident Of Juran Chapra Road No. 3, P.S. Brahmpura, District- Muzaffarpur
13. Jagar Bihari Prasad Son Of Phanidhar Prasad Resident Of Village- Makwa, P.S. Tarapur, District- Munger
14. Janardan Prasad Sinha Son Of Sri Sachida Nand Prasad Resident Of P.C. Colony, A/227, P.S. Kankarbagh, District- Patna
15. Shri Yogendra Harizan Son of Not Known Presently Posted As Technical Advisor (Executive Engineer) In Central Road Circle, Patna
16. Shri Bhikhari Ram Son of Not Known Presently Posted As Executive Engineer in Building Design Circle, Patna
17. Shri Hiralal Ram Son Of Not Known Presently Posted As District Engineer, District Board, Purnea Holding Additional Charge Of Superintending Engineer, R.E.O. Works Circle, Saharsa
18. Shri Chandradeo Ram Son Of Not Known Presently Posted As District Engineer, District Board, Purnea Holding Additional Charge Of Superintending Engineer, R.E.O. Works Circle, Saharsa
19. Shri Ram Prasad Son Of Not Known Presently Posted As Technical Advisor, (Executive Engineer) National Highway Circle, Purnea Holding Additional Charge Of Superintending Engineer Of Road, Road Construction Department, Purnea
20. Shri Anup Prasad Razak Son Of Not Known Presently Posted As Technical Advisor, (Executive Engineer) Building Construction Circle, Purnea Holding Additional Charge Of Superintending Engineer, Building Construction Circle, Chapra

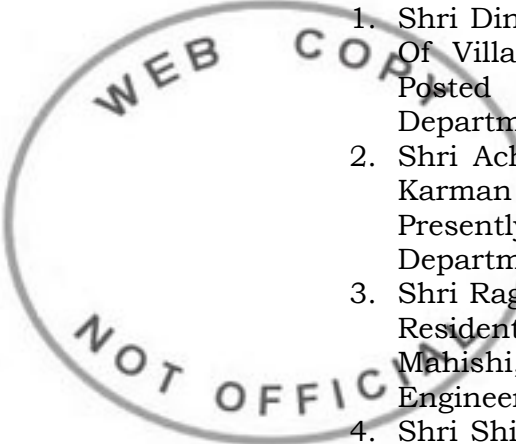
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21. Shri Mahesh Choudhary Son of Not Known Presently Posted As Executive Engineer, Building Construction Division, Supaul
 22. Shri Sheo Janma Ram Son of Not Known Presently Posted As Executive Engineer, Building Construction Division, Araria
 23. Shri Om Prakash Prasad Son Of Not Known Presently Suspended As Executive Engineer in Road Construction Department, Through Secretary, Road Construction Department
 24. Shri Radhe Baitha Son of Not Known Presently Posted As Advance Planning Building Division, Patna
 25. Sri Dinanath Choudhary, son of not known, presently posted as Technical Advisor (Executive Engineer) Magadh Road Circle, Gaya
 26. Sri Achche Lal Ram, son of not known, presently posted as Executive Engineer in REO Works Division, Kisanganj.
 27. Sri Raghunandan Choudhary, son of not known presently posted as Executive Engineer in Road Division No.1, Road Construction Department, Gaya
 28. Sri Amawash Ram, son of not known, presently posted as Executive Engineer Road Construction Department, Road Division Aurangabad.
 29. Sri Shivendra Pasi, son of not know, presently posted as Executive Engineer Road Construction Department , Road division, Katihar.
 30. Sri Bechan Ram, son of not know, presently posted as Executive Engineer Monitoring in Bhagalpur Road Circle, Ara.
 31. Sri Vishnu Ram, son of not known, Presently posted as Executive Engineer in REO work Division, Ara.
 32. Sri Mokhtar Nath Ram, son of not known, presently posted as Executive Engineer in REO work Division, Bhabhua, Kaimur.
 33. Sri Awadhesh Prasad, son of not known, presently posted as Executive Engineer Road Division, Bihar Shariff.
 34. Sri Ramakant Prasad, son of not known, presently posted as District Engineer , District Board, Gaya.
 35. Sri Ramashray Ram, son of not known, presently posted as Executive Engineer Field Investigation division, Advance Planning, Road Construction Department, Ara and holding additional charge of Superintending Engineer, Bhojpur Road Circle, RCD, Ara.
 36. Sri Bhupati Harizan, son of not known, presently posted as Executive Engineer, National Highway Division, Motihari.
 37. Sri Ram Sagar Choudhary, son of not known, presently posted as Executive Engineer, Road Construction Department, Road Division, Nawada.
 38. Sri Yodhan Choudhary, son of not known, presently posted as Technical Advisor (Executive Engineer) in National highway Circle , R.C Department, Muzaffarpur.
 39. Sri Satya Narayan Mahto, son of not known, Presently posted as Executive Engineer, Road division, Road Construction department, Banka.
 40. Sri Ramayan Ram, son of not known, presently posted as Executive Engineer, REO Works Division, Supaul.

With

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Letters Patent Appeal No. 395 of 2013

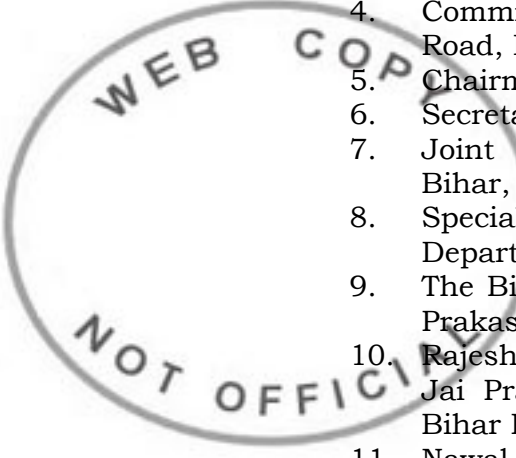
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1. Shri Dinanath Chaudhary Son Of Late Budhram Chaudhary Resident Of Village- Umairabad, P.O. Baidrabad, District- Arwal. Presently Posted As Chief Engineer Design, Hq. Building Construction Department, Patna
 2. Shri Achchelal Ram, Son of Late Gaya Prasad, Resident of Mohalla-Karman Tola, P.O. And P.S. Nawada, District- Bhojpur, (Arrah) Presently Posted As Incharge Chief Engineer- 2, Rural Works Department, Patna
 3. Shri Raghunandan Chaudhary Son Of Late Jagat Narayan Chaudhary Resident Of Village- Mahpura Punarvas, P.O. Mainagram, P.S. Mahishi, District- Saharsa Presently Posted As Superintending Engineer, Magadh, Road Circle, Gaya
 4. Shri Shivendra Pasi Son Of Late Swarup Lal Pasi Resident Of Village-Hatiya Gachhi, P.S. Saharsa, District- Saharsa Presently Posted As Superintending Engineer, N.H. Circle, Dehri-On-Sone
 5. Shri Vishnu Ram Son Of Late Ram Barai Ram Resident Of Village-Sewaraha, P.O. Charahia, P.S. Harsidhi, District- East Champaran Presently Posted As Superintending Engineer, Road Construction Department, Headquarter, Patna
 6. Shri Mokhtar Nath Ram Son Of Late Horil Ram Resident Of Village-Saidpur, P.O. Parsa, P.S. Dariyapur, District- Saran Presently Posted As Superintending Engineer, N.H. Circle, Muzaffarpur
 7. Shri Awadhesh Prasad Son Of Late Ram Bilas Prasad Resident Of Village- Mani, P.S. Vikramganj, District- Rohtas Presently Posted As Superintending Engineer, Building Construction Department, Circle Motihari
 8. Shri Ramakant Prasad Son Of Sri Jhingur Prasad Resident Of Village-Pakri, P.O. Piuli, P.S. Mirganj, District- Gopalganj Presently Posted As T.S. To Chief Engineer, N.H. Wing, Road Construction Department, Patna
 9. Shri Ram Sagar Choudhary Son Of Late Sri Lal Mandal Resident Of Village- Majhaul Tola Sangat, P.O. And P.S. Majhaul, District- Begusarai Presently Posted As Superintending Engineer, Rural Work Department, Works Circle, Gaya
 10. Shri Yodhan Choudhary Son Of Late Beyadar Choudhary Resident Of Village- Rohai, P.O. Baranothu, P.S. Karpi, District- Arwal Presently Posted As Superintending Engineer, Rural Works Department, Works Circle, Darbhanga
 11. Shri Satya Narayan Mahto Son Of Late Babu Lal Mahto Resident Of Village Bherokhra, P.O. Bherokhra, P.S. Tajpur, District- Samastipur Presently Posted As Superintending Engineer, Building Construction Department, South Bihar Circle, Patna
 12. Shri Ramayan Ram Son Of Late Sugreev Ram Resident Of Village-Sheobahar, P.S. Suryapura, District- Rohtas Presently Posted As Executive Engineer, Local Area Engineering Organization, Works Division, Jehanabad

.... Appellant/s

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna
2. Commissioner and Secretary, Road Construction Department,

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- Government of Bihar, Vishwashwaraiya Bhawan, Patna
 3. Commissioner and Secretary, Water Resources Department, Government of Bihar, Sinchai Bhavan, Patna
 4. Commissioner and Secretary, P.H.E.D., Government of Bihar, Bailey Road, Patna
 5. Chairman, Bihar Public Service Commission, Patna
 6. Secretary, Law Department, Bihar, Patna
 7. Joint Secretary, Road Construction Department, Government of Bihar, Patna
 8. Special Officer-Cum-Deputy Secretary, Road Construction Department, Government of Bihar, Patna
 9. The Bihar Engineering Services Association, Abhiyanta Bhawan, Jai Prakash Path, Boring Road, Patna Through Its General Secretary
 10. Rajeshwar Mishra Son Of Late Kapil Deo Mishra Abhiyanta Bhawan, Jai Prakash Path, Boring Road, Patna And General Secretary Of Bihar Engineering Services Association
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 14. Janardan Prasad Sinha Son Of Sri Sachida Nand Prasad Resident Of P.C. Colony, A/227, P.S. Kankarbagh, District- Patna
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 25. Shri Amawash Ram Son of Not Known Presently Posted As Executive Engineer, Road Construction Department, Road Division, Aurangabad
 26. Shri Bechan Ram Son of Not Known Presently Posted As Executive Engineer, Monitoring In Bhojpur Road Circle, Arrah

27. Shri Ramashray Ram Son Of Not Known Presently Posted As Executive Engineer, Field Investigation Division, Advance Planning, Road Construction Department, Arrah And Holding Additional Charge of Superintending Engineer, Bhojpur Road Circle (R.C.D.) Arrah
28. Shri Bhupati Harizan Son of Not Known Presently Posted As Executive Engineer, National Highway Division, Motihari

.... Respondent/s

Appearance :
(In LPA No. 294 of 2013)

For the Appellant/s	:	Mr. Purushottam Kumar Jha with Mr. Avanindra Kumar Jha, Adv
For the Respondent/s	:	Mr. Ram Naresh Shukla, Mr. Rajesh Kumar & Mr. Sanjay Pandey, Advocates

(In LPA No. 395 of 2013)

For the Appellant/s	:	Mr. Raju Giri, Advocate
For the Respondent/s	:	Mr. Lalit Kishor, Pr.A.A.G. & Mr. Sanjay Pandey, Advocates

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 30-06-2015

Respondent no. 35 in CWJC No. 11788 of 2006 filed this Letters Patent Appeal, feeling aggrieved by the judgment dated 05.12.2012, rendered by the learned single Judge in that writ petition.

The relevant facts are that; the writ petition was filed challenging the letter dated 26.08.2006, issued by the Bihar Road Construction Department to the Bihar Public Service Commission (for short 'the Commission') clarifying



that a person holding a Diploma is eligible to be promoted to the post covered by Bihar Engineering Services Class I Rules, 1939. Here it is relevant to mention that initially the Engineering Service Rules were framed in 1930s and the stipulated qualification was only a degree in engineering. Thereafter it was noticed that Thomason College, Roorkee, which has since become I.I.T., Roorkee, was issuing Diploma to students who studied 4 years course of Civil Engineering, and having regard to the quality of education in that institution, it is essential that the rules must be amended to include the word “Diploma” in its restricted sense in Rule 8 of the qualifications. Accordingly, the Rule was amended in 1939. This was slightly amended in the year 1969 and thereafter in the year 1971 to the effect that the holder of any Diploma awarded by any institute whatever shall be eligible for promotion to Class I. The Rules were amended in the year 2006 restoring the Rule 8 as it stood in the year 1939.

When a clarification was sought in this behalf, initially the department informed the Board that since the Rule is restored to 1939 position; any person who holds Diploma from institutions other than the one at Roorkee, would not be eligible to be promoted to Class I service from



Class II. Shortly thereafter, a totally different view was taken in their communication dated 26.08.2006. The officers who hold degrees and were in Engineering Service of Bihar challenged the said communication. They placed reliance upon the judgment rendered by the Division Bench of this Court in **Sk. Md. Amir Ansari v. The State of Bihar and Ors.** (1973 BLJR 223). The writ petition was opposed by the State, as well as various private individuals who figured as respondent nos. 9 to 34. The appellant herein, an Association of Subordinate Engineers, got itself impleaded as party in the writ petition. Learned single Judge allowed the writ petition through the judgment dated 05.12.2012.

Sri Purushottam Kuma Jha, learned counsel appearing for the appellant submits that the view taken by the learned single Judge that the word 'Diploma', occurring in rule 8 of the Rules has a restricted meaning, taking in its fold, only those Diploma which are awarded on completion of 4 years study; cannot be supported either on facts, or in law. He submits that this Court, in *Sk. Md. Amir Ansari* (Supra) dealt with a totally different aspect altogether, and still it was treated as binding precedent on the subject. He submits that once the rule making authority has used the

word Degree as well as Diploma, there is no reason why the Diploma should be treated as one equal to Degree.

Sri Ram Naresh Shukla, learned counsel for the respondents, on the other hand, submits that the appeal is not maintainable since the appellant cannot be said to be an aggrieved party. He contends that when several individual employees who were adversely affected by the judgment did not choose to prefer appeal, there is absolutely no basis for the Association, to file the appeal. It is also pleaded that State has taken conscious decision to restore Rule 8 as it stood in the year 1939, and if the contention of the appellant is to be accepted, the very amendment becomes redundant.

The issue pertaining to the eligibility or otherwise of the Diploma holders to be promoted to Class I Engineering Service was subject matter of voluminous litigation. There is no denial of the fact that initially Rule provided for promotion only to those candidates who possesses Degree in Engineering, and thereafter the word "Diploma" was included, taking into account, the fact that the institution at Roorkee has been awarding Diploma to students who studies 4 years engineering course almost with the same syllabus. The effort was to enable the candidates of such

high learning to become part of Bihar Engineering Service.

Questions did crop up, over the decades as to whether persons holding Diploma awarded by other institutions are eligible to be promoted. The change of stand in this behalf was through amendment of the Rule in the year 1969 and thereafter in 1971; and subsequently through administrative interpretations. The amendment of the year 1971 paved the way for holders of Diploma awarded by any institution whatever, to be promoted. The very fact that the Rule was restored to 1939 stage through amendment in the year 2006 discloses the firm determination of the Government to ensure that the position obtaining in the year 1939 was restored. Otherwise there was no necessity to amend the Rule at all.

The question as to whether the word "Diploma" occurring in rule 8 of the Rules is wide enough to take in its fold, the Diplomas awarded by other institutions, fell for consideration before this Court in Sk. Md. Amir Ansari (Supra) case, may be in a slightly different context. The Court referred in detail to the preparatory work that preceded the inclusion of the word "Diploma" in Rule 8. The Bench held that the word "Diploma", occurring in Rule 8 is only with reference to the course imparted at Roorkee

institute and not other institutes. In the present case, the learned single Judge took note of the same and we too have gone through the judgment in detail, and we are in agreement with the view expressed therein.

Once the legislature (here, the subordinate legislature) has taken the decision to amend the Rules with an objective to restoring the earlier state of affairs, the interpretation placed on the provision so restored would continue to hold good. The principle laid down by the Supreme Court in ***Bengal Immunity Co. Ltd. V. State of Bihar*** (AIR 1955 SC 661), supports this.

Learned single Judge discussed the issue from all possible angles and in our view has arrived at the correct conclusion. We are not convinced to take a different view. Added to that, no individual officer has come forward to challenge the judgment in Court. Though the appellant Association has a right to espouse the cause of its members, it cannot wear the mantle of an aggrieved party in a purely adversarial litigation.

We, therefore, dismiss the appeal. However, we leave it open to the appellant to take a representation in this behalf either seeking clarification as to Rule 8 or

making a request for amending the same. As and when such representation is made, the Government shall dispose of the same within three months duly taking into account the views of other Associations as well as the purport of the judgments on the issue.

(L. Narasimha Reddy, CJ)

(Sudhir Singh, J)

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