

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 334 of 2010

IN

Civil Writ Jurisdiction Case No 10134 of 2003

- =====
1. Sudhir Prasad Sinha S/O Late Gajendra Prasad At Present Posted As Correspondence Clerk, Electric Works Division, Patna
 2. Sri Uma Shankar Pandey S/O Late Ram Janam Pandey At Present Posted As Accounts Clerk, Electric Works Division, Patna
 3. Sri Ganesh Prasad Singh S/O Late Balram At Present Posted As Correspondence Clerk, Electric Works Division, Patna
 4. Sri Sajjan Patel S/O Late Radhe Mahto At Present Posted As Correspondence Clerk At Electrical Inspectorate Office, South Baily Road, Patna

.... Appellant/s

Versus

1. The State Of Bihar Through The Secretary, Department Of Energy Government Of Bihar, Sichai Bhawan, Old Secretariat Campus, Patna
2. The Electrical Chief Engineer, Department Of Energy Govt. Of Bihar, Sichai Bhawan, Patna
3. The Electrical Superintending Engineer, Electric Works Division Patna
4. The Electrical Executive Engineer, Electric Works Circle Patna
5. Sri Dhaneshwar Prasad Singh S/O Late Basudeo Mahto At Present Posted As Work Saarkar, At Eleetric Works Section Sabour Under Electric Works Division, Bhagalpur
6. Bipin Kumar Sinha S/O Latr Raj Narayan Sinha R/O Arya Kumar Road, Machua Toli, P.S. Kadam Kuan, Distt & Town- Patna
7. Baban Pathak S/O Sudeshwar Pathak R/O Shekhpura, P.S. Nawatpur, Distt- Patna
8. Ajay Kumar Singh S/O Late Zamadar Singh R/O Phenloatar, P.S. Makhdumpur, Distt- Jehanabad
9. Krishna Deo Singh S/O Sri Ramdeo Singh R/O Madarpur, Biju Bigha, P.S. Mufasil, Distt- Gaya
10. Prashant Kumar Sinha S/O Late Hirdayanarayan Sinha R/O Moh Mahendru, Near Tal Bandi Electric Works, P.S. Pirbahore Town & Distt- Patna
11. Pramod Kumar Verma S/O Sri Harish Chandra Prasad R/O Rajendra Nagar, Motihari, P.S. Chitauni, Distt- East Champaran
12. Pramod Kumar Singh S/O Late Ram Narayan Singh R/O Chatar, P.S. Barahara, Distt- Bhojpur
13. Subodh Kumar S/O Late Shiv Chandra Prasad Verma R/O Vill Mirzapur, P.S. Patahi, Distt- Motihari
14. Aditya Kumar Verma S/O Late Vishundeo Prasad R/O Jamalabad, P.S. Ahiyapur, Distt- Muzaffarpur
15. Phani Shankar Singh S/O Late Sadanand Singh R/O Vill Barahara, P.S. Haveli Kharagpur, Distt- Munger

.... Respondent/s

=====

For the Appellant/s : Mr Rajendra Prasad Singh, Sr Advocate with
M/s Rajeev Kr Singh & Navjot Yesu, Advocates

For the State : Mr Ajay, GA 12 & Mr A K Lal, Advocate

For private respondents M/s Dinu Kr, Rajesh Kr Singh & Arvind
Kr Sharma, Advocates

=====

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 30-10-2015

This intra-Court appeal arises from the judgment and order dated 12.01.2010 passed in CWJC No 10134 of 2003. It has been preferred by the private respondents to the said writ petition who were respondents No 5 to 9. They are the appellants now and the 10 writ petitioners are now respondents in this appeal.

2 Heard Shri Rajendra Prasad Singh, learned Senior Counsel in support of the appeal and Shri Dinu Kumar who appears for the private contesting respondents in this appeal as well as Shri Ajay for the State. Having heard learned counsels, in our view, the appeal has to be allowed.

3 The writ petition was filed in the year, 2003 making a grievance that the appellants, who were private respondents, had wrongly been granted promotion in the year, 1990 from Class IV to Class III ignoring the right of the writ petitioners. The learned Single



Judge held that the writ petition was not belated. We are of the considered opinion that the learned Single Judge is not correct. It is not disputed by the private contesting respondents in this appeal that for the first time, the alleged promotions granted to the appellants ignoring the right of the writ petitioners, which promotion was granted in 1991, was challenged for the first time in the year, 2003. The writ petitioners had come to this Court twice before, seeking their promotion but on no occasion, they had challenged the alleged promotion granted to the appellants. We are, therefore, of the view that non-explained delay and laches on part of the writ petitioners was sufficient to dismiss the writ petition. We, accordingly, hold so while allowing this appeal and setting aside the judgment and order under appeal.

4 However, we are of the considered opinion that the writ petitioners, who are contesting private respondents in this appeal, have a legitimate grievance in a manner. They were regularized in the cadre of Mazdoor in the year, 1980 and till date, even though quota is fixed for promotion to Class III post, they have not been considered for last 35 years. Though they have due qualification for Class III post, they are still stagnating in Class IV post. In such a situation, we would direct the authorities concerned to immediately take up the case of the writ petitioners who are the contesting respondents herein and

ensure that in the quota, reserved for filling up post of Class III by promotion from Class IV, writ petitioners should be considered at the earliest and necessary orders passed within six months from today.

5 Let it be noted that the case of the writ petitioners and the present appellants are different and distinct. The writ petitioners were direct recruits as daily wagers and then regularized on the post of Mazdoor whereas the appellants were compassionate appointee though they had qualification of Class III post in absence thereof they were accommodated in Class IV post and upon availability of Class III post, they were so recruited. Their initial appointment, pending such adjustment, was kept as daily wager.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

U			
---	--	--	--