

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17152 of 2015

- =====
1. Uzwal Kumar, Son of Sidheswar Prasad, R/o- A/34 Ashokpuri Colony, Khajipura, PO- Bihar Veterinary College, PS- Shastri Nagar, District- Patna, at present posted as Junior Engineer, National Highway, Sub-Division Patna South, Patna.
 2. Devendra Nath, S/o Sri Ravindra Nath R/o Maharana Pratap Colony, Station Road, Hajipur, PO- Hajipur, PS- Hajipur Sadar Distt- Vaishali, 844101, at present posted as Junior Engineer, Section Paliganj, Rural Works Department, Works Division, Paliganj (Patna).

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Secretary, Road Construction Department, Government of Bihar, Vishwasaraiya Bhawan, Patna.
3. The Engineer in Chief cum Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Visheshwaraiya Bhawan, Patna.
4. The Deputy Secretary, (Management Cell), Road Construction Department, Government of Bihar, Vishwasaraiya Bhawan, Patna.
5. The Joint Secretary (Management Cell), Road Construction Department, Government of Bihar, Visheshwaraiya Bhawan, Patna.
6. The Under Secretary (Management Cell), Road Construction Department, Government of Bihar, Visheshwaraiya Bhawan, Patna.
7. The Chairman, Bihar Public Service Commission, Jawahar Lal Nehru Merg, Patna.
8. The Secretary, Bihar Public Service Commission, Jawahar Lal Nehru Merg, Patna.

.... Respondents

=====

Appearance :

For the Petitioners	:	Mr. R.S. Ganguly, Advocate
		Mr. Dharmesh Kr. Shrivastava, Advocate
For the State	:	Mr. Amit Bhushan, A.C. to G.P.17
For the B.P.S.C.	:	Mr. Sanjay Pandey, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 10-08-2016

There are two petitioners who are working as Junior Engineers, one in the National Highway Division and the other in Rural Works Department. They have filed the writ application for a direction upon the respondents the State authorities to prepare a fresh gradation



list keeping in mind Letter No.2475, dated 21.02.2008 and ignoring the previous Circular No.5008, dated 22.07.1998 keeping in mind that certain amendments have been brought about by the State themselves by indicating that the seniority is not going to be decided on the basis of date of passing of A.M.I.E. Examination.

2. The Junior Engineers have avenues of promotion as Assistant Engineers. There are direct appointees and there are also promotees. Those who are degree holders have been given certain stature in the service but those who acquired qualification subsequently which may also be an equivalent one which in the present case is A.M.I.E., they too are considered for promotion to the next higher post but such promotions are only considered after they acquire the eligibility of five years of service and passing of the said examination. There is no dispute with regard to these two petitioners that they have passed the A.M.I.E. Examination on 15.09.2009 and 14.03.2009 respectively. However, the petitioners' date of joining as Junior Engineer is 29.09.1995.

3. These petitioners are not demanding and cannot demand promotion as a matter of right based on the seniority as such for the reason that they did not have or had the requisite qualification for such promotion. They can demand and beget promotion only after they acquire a degree or an equivalent which is A.M.I.E. These two petitioners have acquired such a qualification as noted above in the year 2009.



4. The State Government has further laid down a policy that the number of vacancies which shall be available under the quota for persons who have acquired A.M.I.E. degree will be limited to 10%. Therefore, consideration for promotion cannot be made across the board but has to be confined to the window of opening emerging from the quota of 10%. Naturally since this quota is rather narrow, anybody and everybody who has qualified over a period of time is not given the benefit of promotion automatically. It has created a queue and a rather long queue as that. Keeping in mind the date of joining of service by such candidates and the year of passing the A.M.I.E. Examination, opportunity of promotion by consideration is granted if the vacancies are there it accrues, if it is not, it gets carried over. In other words the seniority of such person or the date of joining of their service do not have much of a significance so far as consideration of grant of promotion after passing of A.M.I.E. Examination is concerned. It also depends upon how many people are standing in the queue ahead of such claimants and how many of them have passed that examination years ago.

5. It is available from the pleadings that since the petitioners have passed out in the year 2009, there are many many persons above him who have passed the examination much much earlier than them and since the number of posts and vacancies are limited, therefore, the impatience shown by these petitioners in their anxiety to

earn promotion will not help. What could have helped them was if they had passed the examination much earlier, specially since they had joined the service in the year 1995. There is no explanation as to why they had to wait till 2009 to clear the examination.

6. So far seniority issue is concerned, the stand of the State is that the petitioners will earn their seniority from the date of their initial joining but it will come only when they earn their promotions under the 10% quota when the turn of 2009 candidates comes.

7. If that is the position and the modality which is holding the field in matter of grant of promotion to candidates, who did not have higher qualification and are still being given an opportunity by acquiring higher qualification, they cannot demand and beget parity or seniority in promotion over and above those who have passed the said examination many many years before the petitioners. In fact that is the reason why the petitioners have decided to attack the gradation or seniority list to upset the said chain and to steal a march over others.

8. Writ application has no merit and it is dismissed.

(Ajay Kumar Tripathi, J.)

S.Kumar/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	11.08.2016
Transmission Date	