

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7603 of 2016

- =====
1. Sunil Kumar Son of Sri Shyamnandan Singh resident of Mohalla - 205/Secular Heritage, Gola Road, P.S. - Rukanpura, Dist - Patna.
 2. Shankardayal Son of Raghuveer Dayal resident of Mohalla - Ranjan Path, Lane No. - 9 near Gyan Niketan School, P.C. Colony, Kankarbagh, P.S. - Kankarbagh, Dist - Patna.
 3. Dr. Nityanand Singh Son of Late Ramashis Singh resident of Mohalla - Hanumannagar, near S.B.I. Rajbansinagar Branch, New Punaichak, P.S. - Shastrinagar, Dist - Patna.
 4. Ashutosh Kumar Son of Sri Jitendra Prasad Sinha resident of Mohalla - C/60, Indrapati Colony Post B.V. College, P.S. - Shastrinagar, Dist - Patna.
 5. Padmanand Kumar Son of Late Vidyanand Yadav resident of Mohalla - House No. 14, Manju Bhawan, New Punaichak, Boring Canal Road, P.S. - Shastrinagar, Dist - Patna.
 6. Arvind Kumar Jha Son of Late Ghuran Jha resident of Mohalla - Girja Garden Apartment, Near Punaichak, P.S. - Shastrinagar, Dist - Patna.
 7. Brajesh Kumar Dangi Son of Sri Siddheshwar Prasad resident of Village - Pakri Aara, P.S. - Nawada, Dist - Aara.
 8. Balram Prasad Son of Late Kailash Prasad Sinha resident of Mohalla - House of Sri Harekrishna Yadav, Priyadarshinagar, D.P.S. Mor, Danapur, P.S. - Rupaspur, Dist - Patna.
 9. Sanjay Kumar Singh Son of Late N.K. Singh resident of Mohalla - Sarvodaya Nagar, CDA Colony, P.S. - Shastrinagar, Dist - Patna.
 10. Arun Kumar Srivastava Son of Late Kailashpati Srivastava resident of Mohalla - Nehru Nagar, P.S. - Nehru Nagar, Dist - Patna.
 11. Indubhushan Singh Son of Sri Lalit Mohan Singh resident of Mohalla - Ranjan Path, Lane No. - 9 near Gyan Niketan School, P.C. Colony, Kankarbagh, P.S. - Nehru Nagar, Dist - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Additional Secretary, Department of General Administration, Government of Bihar, Patna.
4. The Deputy Secretary, Department of General Administration, Government of Bihar, Patna.
5. The Under Secretary, Department of General Administration, Government of Bihar, Patna.
6. Binod Sharma Presently Posted as Under Secretary of the Cabinet Secretariat, earlier posted as Section Officer of the same department.
7. MadanLal, Presently Posted as Under Secretary of the Minority Welfare Department, earlier posted as Section Officer of the Finance Department.
8. Radhanandan Prasad Presently Posted as Under Secretary of the Home Department, earlier posted as Section Officer of the Bihar State Human Rights Commission.
9. Raj Kumar, Presently Posted as Under Secretary of the Finance Department, earlier posted as Section Officer of the Bihar State Human Rights Commission.



10. Shivtosh Suman presently posted as Under Secretary of the Finance Department, earlier posted as Section Officer of the Public Health Engineering Department.
11. Vijyendra Prasad presently posted as Under Secretary of the Panchayati Raj Department, earlier posted as Section Officer of the Road Construction Department.
12. Prem Kumar Gupta 'Prem' presently posted as Under Secretary of the Home Department, earlier posted as Section Officer of the Art, Culture & Youth Department.
13. Vidyabhushan Singh presently posted as Under Secretary of the Rural Works Department, earlier posted as Section Officer of the Planning & Development Department.
14. Arun Kumar presently posted as Under Secretary of the Education Department, earlier posted as Section Officer of the Cooperative Department.
15. Shailendra Narayan Mallick presently posted as Under Secretary of the Road Construction Department, earlier posted as Section Officer of the Food & Consumer Protection Department.
16. Udaykant Choudhary presently posted as Under Secretary of the Rural Works Department, earlier posted as Section Officer of the Law Department.
17. Vinay Kumar presently posted as Under Secretary of the Cooperative Department, earlier posted as Section Officer of the Building Construction Department.
18. Brijnandan Prasad, presently posted as Under Secretary of the Cooperative Department, earlier posted as Section Officer of the Finance Department.
19. Murari Mohan Ojha, presently posted as Under Secretary of the Cooperative Department, earlier posted as Section Officer of the Industry Department.
20. Anjani Kumar Sinha, presently posted as Under Secretary of the Health Department, earlier posted as Section Officer of the Commissioner Office, Patna.
21. Umesh Kumar Singh, presently posted as Under Secretary of the Urban Development and Housing Department, earlier posted as Section Officer of the Public Health Engineering Department.
22. Ram Sevak Prasad, presently posted as Under Secretary of the Urban Development and Housing Department, earlier posted as Section Officer of the DGP Office.
23. Shiv Mahadev Prasad, presently posted as Under Secretary of the Road Construction Department, earlier posted as Section Officer in the Advocate General Office, Bihar.
24. Dinesh Kumar Chandresh, presently posted as Under Secretary of the Cooperative Department, earlier posted as Section Officer of the Revenue & Land Reform Department.
25. Vijay Kumar Tiwari, presently posted as Under Secretary of the Cooperative Department, earlier posted as Section Officer of the Commercial Tax Department.
26. Ramvilas Prasad, presently posted as Under Secretary of the Finance Department, earlier posted as Section Officer of the Environment & Forest Department.
27. Arun Kumar, presently posted as Under Secretary of the Urban Development & Housing Department, earlier posted as Section Officer of the Rural Development Department.
28. Baban Kumar Rai, presently posted as Under Secretary of the Road Construction Department, earlier posted as Section Officer of the Sugarcane Industry Department.
29. Sirajuddin Ansari, presently posted as Under Secretary of the General Administration Department, earlier posted as Section Officer of the General



Administration Department.

30. Ajay Kumar Sinha, presently posted as Under Secretary of the Animal & Fishery Resources Department, earlier posted as Section Officer of the Information Technology Department.

31. Virendra Kumar Sinha, presently posted as Under Secretary of the Animal & Fishery Resources Department, earlier posted as Section Officer of the Science Technology Department.

32. Laxmi Narayan Sahu, presently posted as Under Secretary of the Industry Department, earlier posted as Section Officer of the Education Department.

33. Anil Kumar Upadhyay, presently posted as Under Secretary of the Disaster Management Tribunal, earlier posted as Section Officer of the Health Department.

34. Premchandra Jha, presently posted as Under Secretary of the Industry Department, earlier posted as Section Officer of the Social Welfare Department.

35. Shambhunath Upadhyay, presently posted as Under Secretary of the Revenue & Land Reforms Department, earlier posted as Section Officer of the BC & OBC Welfare Department.

36. Indubhushan Prasad, presently posted as Under Secretary of the Public Health Engineering Department, earlier posted as Section Officer of the SC & ST Welfare Department.

37. Chandra Bhushan Prasad, presently posted as Under Secretary of the Chief Minister Secretariat, earlier posted as Section Officer of the Urban Development and Housing Department.

38. Kamlesh Sharma, presently posted as Under Secretary of the Revenue & Land Reforms Department, earlier posted as Section Officer of the Planning & Development Department.

39. Amrendra Kumar, presently posted as Under Secretary of the Chief Minister Secretariat, earlier posted as Section Officer of the Planning & Development Department.

40. Krishna Kumar Verma, presently posted as Under Secretary of the Registration, Production & Prohibition Department, earlier posted as Section Officer of the Registration, Production & Prohibition Department (Production).

41. Surendra Prasad Gupta, presently posted as Under Secretary of the Finance Department, earlier posted as Section Officer of the Registration, Production & Prohibition Department (Registration).

42. Shiv Vachan Singh, presently posted as Under Secretary of the Cooperative Department, earlier posted as Section Officer of the Commercial Taxes Department.

43. Vipin Bihari Pandey, presently posted as Under Secretary of the Education Department, earlier posted as Section Officer of the Cooperative Department.

44. Surya Kishore Prasad, Presently Posted as Under Secretary of the Finance Department, earlier posted as Section Officer of Home(Special) Department.

45. Narayan Saw, Presently Posted as Under Secretary of the Rural Development Department, earlier posted as Section Officer of the Election Department(Advertised for Rural Development Department).

46. MurariNandan Prasad, Presently Posted as Under Secretary of the Food & Consumer Protection Department, earlier posted as Section Officer of the Revenue Council.

47. Pratul Chandra Suman, Presently Posted as Under Secretary of the Revenue & Land Land Reforms Department, earlier posted as Section Officer of the Bihar Staff Selection Commission.

48. Satan Sharma, Presently Posted as Secretary of the Information & Public Relation Department, earlier posted as Section Officer of the Public Health



Engineering Department.

49. Sitaram Mishra, Presently Posted as Under Secretary of the SC & ST Welfare Department, earlier Posted as Section Officer of the Building Construction Department.
50. Balram Mandal, Presently Posted as Under Secretary of the Chief Ministry Secretariat, earlier posted as Section Officer of the Chief Minister Secretariat.
51. Surendra Thakur, Presently Posted as Under Secretary of the Finance Department, earlier posted as Section officer of the Crime Beuro Department.
52. Shyam Balak Ram, Presently posted as Under Secretary of the SC & ST Welfare Department, earlier posted as Section Officer of the Labour Resources Department.
53. Suman Sinha, Presently Posted as Under Secretary of the BC & OBC Welfare Department, earlier posted as Section Officer of the labour Resources Department.
54. Mohan Lal, Presently Posted as Under Secretary of the Social Welfare Department, earlier posted as Section Officer of the Animal & Fishery Resources Department (Gabya Directorate).
55. Birendra Kumar Singh, Presently Posted as Under Secretary of the Agriculture Department, earlier posted as Section Officer of the Cooperative Department.
56. Rasool Miyan, Presently Posted as Under Secretary of the Water Resources Department, earlier posted as Section officer of the Agriculture Department.
57. Uttam Kumar, Presently Posted as Under Secretary of the Water Resources Department, earlier posted as Section Officer of the Sugarcane Industry Department.
58. Chandra Prasad, Presently Posted as Under Secretary of the Water Resources Department, earlier posted as Section Officer of the Education Department.
59. Ranjana Singh, Presently Posted as Under Secretary of the Finance Department, earlier posted as Section Officer of the Building Construction Department.
60. Madhubala Sinha, Presently Posted as Under Secretary of the Water Resources Department, earlier posted as Section officer of the Finance Department.
61. Santosh Kumar, Presently Posted as Under Secretary of the Minor Water Resources Department, earlier posted as Section Officer of the Urban Development & Housing Department.
62. Girish Mohan Thakur, Presently Posted as Under Secretary of the Home Department, earlier posted as Section Officer of the General Administration Department.
63. Vipin Kumar Singh, Presently Posted as Under Secretary of the State Commission for Backward Castes, earlier posted as Section Officer of the Agriculture Department.
64. Meera Sinha, presently posted as Under Secretary of the Bihar State ST Commission Department, earlier posted as Section Officer of the Health Department.
65. Mahendra Pratap Singh, Presently posted as Under Secretary of the Information & Public Relation Department, earlier posted as Section Officer of the Cooperative Department.
66. Rajiv Kumar, Presently Posted as Under Secretary of the Agriculture Department, earlier posted as Section Officer of the BC & OBC Welfare Department.
67. Niranjan Kumar Sinha, Presently posted as Under Secretary of the Industry Department, earlier posted as Section officer of the Water Resources Department.
68. Ravindra Yadav, Presently Posted as Under Secretary of the Health Department, earlier posted as Section Officer of the Planning & Development Department.
69. Gopal Prasad Singh, Presently Posted as Under Secretary of the Revenue &



Land Reforms Department, earlier posted as Section Officer of the Revenue & Land Reforms Department.

70. Kishor Kumar Kishor, Presently posted as Under Secretary of the Road Construction Department, earlier posted as Section Officer of the Labour Resources Department.

71. Vijay Shankar Rai, Presently Posted as Under Secretary of the Cooperative Department, earlier posted as Section officer of the SC & ST Welfare Department.

72. Devendra Choudhary, Presently posted as Under Secretary of the Rural Works Department, earlier posted as Section Officer of the Commission Office, Patna.

73. Anjani Kumar Sinha, Presently Posted as Under Secretary of the Health Department, earlier posted as Section Officer of the Health Department.

74. RabindraNath Upadhyay, Presently Posted as Under Secretary of the Health Department, earlier posted as Section Officer of the Health Department.

75. Brajesh Kumar Rai, Presently Posted as Under Secretary of the Building Construction Department, earlier posted as Section Officer of the Home(Special) Department.

76. Saday Kumar Sinha, Presently Posted as Under Secretary of the Rural Development Department, earlier posted as Section Officer of the Water Resources Department.

77. Satish Kumar Shahi, Presently Posted as Under Secretary of the Labour Resources Department, earlier posted as Section Officer of the Intelligence Department.

78. Mithilesh Kumar Sinha, Presently Posted as Under Secretary of the Home Department, earlier posted as Section Officer of the DGP.

79. Anand Kumar Sinha, Presently Posted as Under Secretary of the Cooperative Department, earlier posted as Section Officer of the Labour Resources Department.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 16014 of 2016

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1. Vinod Kumar Pathak son of Sri Uma Nath Pathak resident of Quarter No. 224/800 Shastri Nagar, Police Station - Shastri Nagar, District - Patna.

2. Mukesh Kumar Suman son of Sri Mathura Ram resident of Slum Quarter No. 66 Kankarbagh Colony Police Station - Kankarbagh, Patna, District - Patna.

3. Sanjay Kumar Sinha son of Late Bal Krishna Prasad resident of Ekta Path, Shivpuri, Police Station - Patliputra, Patna, District - Patna.

4. Rajiv Ranjan Tiwari Son of Sri Ramchandra Sharma resident of Village and Post Office - Madhopur, Police Station - Mushari, District - Muzaffarpur.

5. Aditya Prakash Son of Sri Bashistdev Prasad resident of P - 28 Vijay Nagar, Road No. 3, Post Office - Lohianagar, Police Station - Rupaspur, Patna, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, General Administration Department, Government of Bihar, Patna.

2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.

3. The Under Secretary, General Administration Department, Government of Bihar,



Patna.

.... Respondent/s

Appearance :

(In CWJC No.7603 of 2016)

For the Petitioner/s : Mr. Kumar Kaushik, Adv.
For the Respondent/s : Mr. P.K.Verma, GA 3
Mr. Ashok Kumar Singh, Adv.
Mr.Siya Ram Shahi, Adv.
Mr. Navendu Kumar, Adv.

(In CWJC No.16014 of 2016)

For the Petitioner/s : Mr. Anand Kumar Ojha, Adv.
For the Respondent/s : Mr. P.K.Verma, GA 3
Mr. Ashok Kumar Singh, Adv.
Mr.Siya Ram Shahi, Adv.
Mr. Navendu Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 13-11-2017

The petitioners in C.W.J.C.No.7603 of 2016 pray for the following reliefs:

- “ i. For issuance of order, direction or writ of *Certiorari* or any other appropriate writ for quashing/setting aside Paragraph no. 11 of the Memo No. 4800 dated 01.04.16 issued under the signature of the respondent no.3. whereby and where under it has been stipulated that all the promotions on the higher posts in the government of Bihar shall be granted on the basis of the seniority in the basic cadre till further orders in as much as the aforesaid stipulation is in teeth of the statutory provisions relating to promotion and seniority which cannot be superseded by way of an executive instructions.
- ii. For issuance of order, direction or writ of *Certiorari* or any other appropriate writ for quashing/setting aside the letter no. 5173, dated 07.04.16 issued under the signature of respondent no. 4 whereby and where under various departments have been requested for Performance Appraisal report of Section Officers for promotion to the post of Under Secretary on the basis of the seniority list of the basic cadre which is directly in teeth of Bihar Secretariat Service Act, 2007.



- iii. For issuance of order, direction or writ of *Mandamus* or any other appropriate writ for directing the respondents to prepare the seniority list of Section Officers in pursuance of Section 18 (ii) of the Bihar Secretariat Service Act, 2007 and then consider the Section Officers for promotion to the post of Under Secretary.
- iv. For issuance of order, direction or writ of *Mandamus* or any other appropriate writ for directing the respondents to place the petitioners above all such Section Officers who have been promoted after 2008 in the 80% quota fixed for promotion on the basis of their length of service in the gradation list in as much as the petitioners were appointed on vacancies calculated up to 01.04.2008 by way of a limited competitive examination, especially in view of Section 18(ii) (c) of the Bihar Secretariat Service Act, 2007 which provides that the officers appointed through limited competitive examination shall rank senior to the officers appointed by a promotion against vacancies in a particular year. The petitioners consequently also pray for a direction upon the respondents to grant promotion to them from the date persons junior to them, have been promoted to the post of Section Officers.
- v. For issuance of order, direction or any appropriate writ for staying the further proceedings of Promotion in pursuance of the aforesaid letter no. 5173 dated 07.04.16 issued under the signature of the respondent no. 4.
- vi. For any other order or direction which Your Lordships may deem fit and appropriate in the interest of justice, equity and good conscience.”

The petitioners in C.W.J.C.No.16014 of 2016 pray for the following reliefs:

- “ i. Issuance of writ in the nature of mandamus directing the Respondents authorities to prepare gradation list of the Section Officers under Joint Cadre of Secretariat Assistant strictly in the light of the mandate and for effective execution of the object



under section 18(3)(ii)(c) of the Bihar Secretariat Services Act, 2007 (in short Act, 2007). After quashing the Letter No. 11500 dated 24.08.2016 (Annexure-5) arbitrarily rejecting the prayer for determining seniority as per law and after recalling/revising any promotion granted without such inter se seniority determined as per the Act and Rules.

- ii. Issuance of direction for restraining and interdicting the Respondents from granting any promotion to the post of Under Secretary as far as the candidates promoted to the post of section officers under the DPC mode after annulling/withdrawing all the promotions granted without gradation list for want of sanction of law.
- iii. Issuance of declaration that seniority is an incidence of service and the authorities are duty bound to take into account the service rules squarely governing the principles of inter se seniority between the employees allowed promotion from two different channels.
- iv. Issuance of further declaration that the seniority determination at the level of section Officer is critical for all further promotion to the post of Under Secretary, Deputy Secretary etc. wherein the criteria for such promotion in accordance with the Rule, 15 and 16 of the Secretariat Services Rules, 2010 would be seniority.
- v. Issuance of further declaration that the failure on the part of Respondents in finalizing the Gradation List amounts to creating adverse circumstances to deprive the genuine promotion based on the seniority.
- vi. Issuance of further declaration that seniority as a facet of fundamental right enshrined under Article 14 and 16 of the Constitution of India is not open to any violation.”

Since the reliefs prayed by the petitioners in the two writ petitions are similar, the two writ petitions were heard analogous and with the consent of the parties are being disposed of at the stage of



admission.

For the sake of convenience, I shall be referring to the pleadings made in C.W.J.C.No.7603 of 2016 unless clarified with specific reference to the other writ petition.

The petitioners in the two writ petitions are aggrieved by the order of the General Administration Department bearing Memo No.4800 dated 01.04.2016 issued under the signature of the Additional Secretary whereby in deference to the statutory prescriptions present in the Bihar Secretariat Service Act, 2007 and the Rules and Regulations framed thereunder as regarding determination of inter se seniority in between those who have been promoted in the normal chain of promotion under 80% posts quota and those promoted after succeeding in limited competitive examination held for the remaining 20% posts, a decision has been taken to grant promotion on the basis of inter se seniority in the basic cadre until further orders.

A prayer is also made for preparation of gradation list of Section Officers in terms of the statutory provisions and for taking steps for promotion of the petitioners to the post of Under Secretary on the basis of such seniority list and until such time this exercise is completed, to refrain from making any promotion on the basis of inter se seniority.



The petitioners in C.W.J.C.No.16014 of 2016 have also questioned the order passed by the General Administration Department dated 24.8.2016 whereby their representation for determination of seniority in terms of the provisions underlying Section 18 of 'the Act', has been rejected, which is impugned at Annexure-5 to the said writ petition.

The short facts leading to the writ petition in question is that the writ petitioners were appointed on the post of Assistant in pursuance of selection process conducted by the Bihar Public Service Commission (hereinafter referred to as the 'Commission'). On 04.01.2008, the Bihar Secretariat Service Act, 2007 (hereinafter referred to as 'the Act') was enforced and in exercise of powers vested under Section 19 of 'the Act' that the Bihar Secretariat Service Rules, 2010 (hereinafter referred to as the 'Rules') was framed. The Government of Bihar has also framed the Bihar Secretariat Service (Appointment through Limited Competitive Examination to the Grade of Section Officer) Regulation, 2009 vide notification dated 18.9.2009.

Section 14 of 'the Act' provides for appointment in the grade of Section Officer to be made in the following manner:

- (a) 80% of the posts in the grade of Section Officer shall be filled by promotion from the grade of Assistants on the



recommendation of Departmental Promotion Committee;
and

- (b) The remaining 20% of posts shall be filled through a limited competitive examination conducted by the Bihar Public Service Commission from amongst the Assistants who are confirmed in service and have rendered continuous service of more than 5 years in the grade of Assistants.

Accordingly, on a requisition made by the State Government for filling up of 114 posts of Section Officers through limited competitive examination under 20% quota that an advertisement was issued by the Bihar Public Service Commission bearing No. 12 of 2010, a copy of which is placed at Annexure-4. The advertisement was in tune with the stipulations present in Section 14(b) requiring the applicants to possess a service experience of not less than 5 years. The applications were to be received by 11.6.2010 in the office of the Commission. The break up of the 114 posts was in the following manner:

- | | |
|------------------------------|-----------|
| (1) Unreserved | 57 posts. |
| (2) Scheduled Castes | 18 posts. |
| (3) Scheduled Tribes | 1 post. |
| (4) Extremely Backward Class | 21 posts. |
| (5) Backward Class | 14 posts |



(6) Backward Class Women 3 posts.
Total 114 posts

In disposal of the objections received on the advertisement that the Joint Secretary, General Administration Department vide his letter dated 04.11.2011 placed at Annexure-3 clarified that the 114 vacancies are of the date 01.04.2008, to be filled up through limited competitive examination and thus the calculation of the work experience period of 5 years is to be made on the basis of cut of date of 1.8.2008. The modified requisition was accordingly placed before the Commission and which was accordingly notified through corrigendum dated 16.2.2012 at Annexure 5. The corrigendum notification issued by the Commission also modified the break up of the vacancies in the following manner:

- | | |
|----------------------|-----------|
| (1) Scheduled Castes | 18 posts. |
| (2) Scheduled Tribes | 1 post |
| (3) Unreserved | 95 posts. |

A second corrigendum notification was issued by the Commission on 14.7.2012 whereby the cut of date was extended from 01.08.2008 to 11.6.2010 i.e. the last date fixed for receipt of applications vide the original advertisement placed at Annexure-4. Feeling aggrieved some of the Assistants who fulfilled the stipulations of work experience as on 01.08.2008 moved this Court in



C.W.J.C.No.18870 of 2012. Some other writ petitions were filed assailing the extension of cut of date from 1.8.2008 to 11.6.2010. Under the interim order passed in those writ petitions, the Commission was retrained from making recommendations until disposal of the writ petition. The writ petitions were disposed of vide judgment and order dated 5.6.2014 upholding the extension of cut of date of 11.6.2010 as well upholding the application of the roster meant for promotion. The result of the examination was published on 24.6.2014 and the petitioners in the two writ petitions were declared successful in the examination.

Some of the Assistants as well as the State feeling aggrieved by the judgment and order of the Single Judge filed intra Court Appeal giving rise to L.P.A. No. 863 of 2014, L.P.A. No. 1267 of 2014 and L.P.A. No. 1013 of 2014 which were heard analogous and vide judgment and order passed on 8.4.2015 the appeals were dismissed upholding the judgment of the Single Judge. A copy of the judgment is placed at Annexure-8 to the writ petition.

Since the respondents yet did not choose to grant the benefit of success to the petitioners despite the result of the competitive examination that contempt applications were filed and when vide notification No. 15528 dated 27.10.2015 the petitioners were promoted to the Grade of Section Officer, a copy of which



notification is placed at Annexure-9 to the writ petition.

In between the State moved the Supreme Court by filing Special Leave Petition(s) and it is undisputed that while one of the Special Leave Petition preferred against the judgment and order of this Court bearing S.L.P.No.17285 of 2015 referred to above has been dismissed another one is yet pending consideration.

The grievance of the petitioners in the two writ petitions is that the petitioners having successfully competed for grant of promotion to the post of Section Officer, the respondents State without preparing a seniority list in the grade of Section Officers was granting promotion to the post of Under Secretary on the basis of the inter se seniority in the basic cadre of Assistant and even though these promotions were provisional in nature but it yet was prejudicial to the petitioners. According to learned counsel on failure of the respondents to prepare a gradation list of Section Officers, the promotions granted, were in the teeth of the stipulations present in Section 18 of 'the Act'. It is the case of the petitioners that feeling aggrieved they filed a representation on 22.1.2016 before the Principal Secretary, General Administration Department, a copy of which is placed at Annexure-16 to the writ petition but the same is not being disposed of and on the other hand promotions on the post of Under Secretary continue to happen albeit provisionally on the basis of inter se seniority in the



grade of Assistants.

The representations filed by the petitioners was answered by the Department by issuing advisory bearing no. 4800 dated 1.4.016 whereby a decision was taken to grant cadre promotion on higher posts on the basis of inter se seniority in the basic grade and which promotions would be subject to the final outcome of the proceedings in **S.L.P.(Civil) No. 29770 of 2015 (State of Bihar Vs. Sushil Kumar Singh)**, a copy of the advisory is impugned at Annexure-10 to the writ petition.

On the other hand, the representation of the petitioners in C.W.J.C. No. 16014 of 2016 has been dismissed by the General Administration Department and communicated vide letter dated 24.8.2016 of the Under Secretary, General Administration Department, a copy of which is placed at Annexure-5 to the said writ petition. Feeling aggrieved the petitioners are before this Court.

Vide order passed on 24.5.2016 in C.W.J.C.No. 7603 of 2016, the promotions were made subject to outcome of this proceedings. Since yet the promotions were granted to 74 Section Officers vide notification bearing No. 9000 dated 24.6.2016 to the post of Under Secretary that the petitioners in C.W.J.C.No.7603 of 2016 filed I.A. No.5779 of 2016 for impleading them as parties as well as to question the promotion order and which prayer was allowed vide order passed on



11.8.2016 and notices were issued to the Section Officers who had been promoted as Under Secretary. The Court by the same order retrained the State authorities from making any further promotion, until further order of the Court.

Mr. Kumar Kaushik has advanced the argument on behalf of the petitioners in C.W.J.C.No.7603 of 2016, Mr. Anand Kumar Ojha has argued for the petitioners in the other writ petition, the State has advanced arguments through Mr. P.K. Verma, AAG 3 and the private respondents/intervenors have contested the writ petition through Mr. Ashok Kumar Singh learned Senior counsel, Mr. Siya Ram Shahi and Mr. Navendu Kumar.

The argument advanced on behalf of the petitioners to question the policy decision dated 01.04.2016 impugned at Annexure-10 to the writ petition and in rejecting the representation vide Annexure-5 to the second writ petition is that it is de hors the statutory prescriptions present in 'the Act', the Rules and the Regulations framed to determine inter se seniority in the grade of Section Officer for the purpose of promotion to the post of Under Secretary. It is the argument of learned counsel for the petitioners that the State in the garb of policy decision is in fact not only trying to overreach the statutory prescriptions but is also trying to overreach the judgment and order of this Court passed in **L.P.A.No.1066 of 2015 (State of**



Bihar Vs. Sushil Kumar Singh and Ors.) simply on account of pendency of their Special Leave Petition filed to question the judgment of this Court bearing **S.L.P.(Civil) No. 29770 of 2015 (State of Bihar Vs. Sushil Kumar Singh & Ors.)** even when they have failed to secure any stay order on the judgment of this Court which continues to hold the field. It is also the argument of learned counsel for the petitioners that the State is trying to mix up the issues because while the process for grant of promotion was initiated in the present case by issuance of the advertisement on 12.5.2010 vide Annexure-4 with corrigendum issued on 16.2.2012 and 14.7.2012 and since the process so initiated was to fill up the vacancies as existing on 1.4.2008, the conduct of the respondents in seeking refuge to the pendency of the matter in the case of **Sushil Kumar Singh** (supra) before the Supreme Court would have nothing to do with the contest in hand because it is the veracity of a resolution No. 11635 dated 21.8.2012 of the General Administration Department which was put to test before this Court in the case of **Sushil Kumar Singh** (supra) and was quashed and now is pending before the Supreme Court, which notification issued subsequent to the advertisement issued in the present case on 12.5.2010, would have nothing to do with the process so initiated which would have to be governed by the stipulations present in the advertisements issued prior thereto.



According to learned counsel since the stipulations present in Section 18(3)(ii)(c) of 'the Act' clearly provides for determination of inter se seniority in the grade of Section Officer, the promotions in the grade of Under Secretary is to be made on the basis of determination of inter se seniority as prescribed under Section 18(3)(ii)(c) read alongside rule 15 of 'the Act' for the purpose of promotion to the post of Under Secretary. According to the learned counsel even if the general principles of seniority is based on length of service but since the relevant statutory provisions puts the persons who have been granted promotion on succeeding in the limited competitive examination on a higher position in the gradation list, the seniority list would have to be accordingly prepared. Learned counsel for the petitioners have relied upon a judgment of this court rendered in the case of **Mahesh Prasad Mishra and Anrs. Vs. State of Bihar** arising from **C.W.J.C.No.2321 of 2007** to submit that similar issue was earlier deliberated before this Court and when it was held that the inter se seniority has to be determined on the basis of service rules which judgment of the Single Judge was confirmed by the Division Bench when the Letters Patent Appeal No. 1875 of 2011 filed by the State was dismissed.

The arguments of learned counsel has been contested by Mr. Verma who has taken this court through the counter affidavit and the



supplementary counter affidavit filed in the present proceedings to present the stand of the respondents.

The substance of arguments advanced on behalf of the State is that since the State Government had in the light of the judgment and order of the Supreme Court passed in the case of **M. Nagaraj and Ors. Vs. Union of India and Ors.** since reported in (2006) 8SCC 2012 had decided to extend the benefit of reservation with consequential seniority to the reserved category candidates in the matter of promotion also vide resolution No.11635 dated 21.8.2012 and which resolution though been quashed by this Court in C.W.J.C.No.19114 of 2012 and confirmed by the Division Bench in L.P.A.No.1066 of 2015 preferred by the State which was dismissed but since the matter is sub judice before the Supreme Court in S.L.P.(Civil) No. 29770 of 2015 hence it is on the legal advice tendered by the Advocate General that the policy decision in question has been taken through letter No. 4800 dated 01.04.2016 for grant of cadre promotions on the basis of inter se seniority in the basic grade which promotions would be guided by the outcome of the Special Leave Petitions. The State in paragraphs 20 and 21 of the counter affidavit has discussed the consequences of the favourable outcome of the proceedings pending before the Supreme Court. According to the State respondents, the outcome of the decisions in the pending



Special Leave Petitions may have a bearing on the promotions of the petitioners in the grade of Section Officers. Learned counsel for the private respondents/intervenors have practically adopted the arguments advanced by the learned State counsel to submit that in view of the pendency of the dispute before the Supreme Court, the promotions effected in the light of the policy decision dated 1.4.2016 would prejudice none as it is on the basis of the inter se seniority of the Section Officers in the basic grade.

I have heard learned counsel for the parties and I have perused the records.

The gist of the argument advanced on behalf of the petitioners in the two writ petitions is that the respondents cannot bypass the statutory prescriptions underlying 'the Act', and 'the Rules' and 'Regulations' framed thereunder for the purpose of promotion of Section Officers to the post of Under Secretary by issuing Executive instructions like the one under challenge bearing No.4800 dated 1.4.2016. According to learned counsel for the petitioners once the legislature has prescribed the mode and manner for determination of inter se seniority as well as for cadre promotion of Section Officer to the grade of Under Secretary, the same cannot be bypassed nor be overreached by issuance of executive instructions. On the other hand, the arguments advanced by Mr. Verma learned A.A.G.3 as supported



by learned counsel for the private respondent and intervenors is that where the issue of fixation of cut of date as well as reservation is pending before the Supreme Court, the exercise of jurisdiction by the State in issuing the policy guidelines dated 1.4.2016 is in tune with the statutory prescriptions underlying Sections 20 and 23 of 'the Act' and requires no indulgence.

Although exhaustive arguments have been advanced by either side but the core issue which requires consideration is, whether in view of the stipulations present under Section 18(3)(ii)(c) read alongside Section 15 of 'the Act' and the stipulations present in the advertisement dated 12.5.2010 at Annexure-4 as it stood modified vide corrigendum dated 16.2.2012 and 14.7.2012 at Annexures-5 and 6 respectively, which by itself provides for the break up of the vacancies so notified as well as the roster to be followed and was never put to challenge before any forum, and in view of the position clarified by the writ Court in the judgment rendered in **C.W.J.C. No. 6805 of 2012 (Dharamvir Prasad Vs. State)** and analogous cases which was affirmed by the Division Bench vide judgment at Annexure- 8, there was any occasion for the respondents to delay the preparation of the gradation list of Section Officers simply because its notification issued subsequent to the selection process in question bearing No. 11635 dated 21.08.2012 prescribing for benefit of



reservation in promotion, which was quashed by the writ Court and affirmed by the Division Bench, was pending before the Supreme Court even though the respondents had failed to obtain stay.

There are some major aspects of the matter which I need to reiterate even though discussed hereinabove, which would bear relevance to the issue under consideration.

Vide Annexure-4 an advertisement issued by the Bihar Public Service Commission bearing No. 12 of 2010 on 12.05.2010 inviting applications from Assistants having confirmed service of more than 5 years for promotion to the post of Section Officer through limited competitive examination for 114 posts with the break up as follows:

(a) Unreserved	57
(b) Scheduled Cast	18
(c) Scheduled Tribes	1
(d) Extremely Backward Class	21
(e) Backward Class	14
(f) Backward Class Women	<u>3</u>
Total	114

It is vide letter dated 4.11.2011 that the State Government in its General Administration Department informed the Bihar Public Service Commission that the vacancies were of 1.4.2008 and thus the cut of date was fixed as 01.08.2008. The letter also confirmed that the



roster points had been fixed in consultation with the Law Department and the Advocate General in accordance with the promotional roster. Accordingly, a corrigendum was issued by the Commission on 16.02.2012 vide Annexure 5 with the cut of date of 01.08.2008 and with the following vacancies break up.

(1) Scheduled Castes 18

(2) Scheduled Tribes 1

(3) Unreserved 95

It was further provided that the promotional roster would be applicable and the advertisement dated 12.5.2010 stood modified to that extent. Now neither reservation provided in the break up nor the roster intended to be followed, was questioned by any person.

In fact it is feeling aggrieved by the cut of date of 1.8.2008 that a writ petition was filed arising from C.W.J.C.No.6805 of 2012 by such Assistants who could not complete 5 years of confirmed service on the post of Assistant as laid down in the eligibility qualification prescribed in the corrigendum dated 16.2.2012. The bench of this Court vide interim order passed on 30.4.2012 in the said writ petition permitted them to appear and it is in view of the interim order so passed in the said writ petition that the second corrigendum was issued on 14.7.2012 extending the cut of date from 1.8.2008 to 11.6.2010. It is feeling aggrieved by this extension in the cut of date



from 1.8.2008 to 11.6.2010 which led to filing of some more writ petitions arising from C.W.J.C.No.18870 of 2012 and other analogous cases.

C.W.J.C. No. 6805 of 2012 which was filed to question the 1st corrigendum dated 16.2.2012 fixing the cut of date on 1.8.2008 was heard along with C.W.J.C. No. 18870 of 2012 which was filed to question the extension of cut of date from 1.8.2008 to 11.6.2010 and other analogous cases and vide common judgment and order passed on 5.6.2014 the bench concluded as follows:

“56. As with regard to the reservation and the Government taking a firm stand that the reservation meant for direct recruitment will be made applicable for filling up 114 posts, it has to be essentially held that even that decision is bad. It has already been indicated above that 20% posts of Section Officer is not to be filled up by way of direct recruitment. Therefore, the reservation for direct recruitment cannot be applied in the case of filling up the post of promotion. The Government decision also is on record to show that filling up of 20% post of Section Officer by way of Limited Competitive Examination is only by way of promotion. The Rules also in fact indicate to the same effect, inasmuch as 80% post of Section Officer is to be filled up from the Assistant on the basis of seniority cum fitness and the remaining 20% had to be filled up by way of accelerated promotion. Thus, this Court would find difficulty even to uphold the latest Government decision dated 27.6.2013 that the reservation meant for direct recruitment shall be filled up for filling up 114 posts of Section Officer. To that extent the earlier Government decision dated 4.11.2011 and the consequential corrigendum dated 16.2.2012 is correct and of 114 posts 95 have to be given to the candidates of unreserved category, whereas 18 have to be only reserved for Scheduled Caste and one for Scheduled Tribe.



57. Thus, for the reasons indicated above, this Court would hold that the Government decision dated 4.11.2011, the corrigendum of the Commission dated 16.2.2012 fixing the cut-off-date of eligibility as 1.8.2008 in the advertisement dated 13.5.2010 for filling up of 114 posts of Section Officers is bad both on fact and in law and are accordingly quashed in part to that extent. It is hereby declared that the cut-off date for eligibility of filling up 114 posts shall be 11.6.2010 i.e. the last date of filing of the application in terms of the advertisement dated 13.5.2010 as incorporated in the government decision dated 29.6.2012 and 2nd corrigendum of the Commission dated 14.7.2012.

58. It is also held that 114 posts shall be filled up by way of promotion by making only the roster of promotion applicable as incorporated in the government decision dated 4.11.2011 and the corrigendum of Commission dated 16.2.2012. Consequently that portion of advertisement dated 13.5.2010 making the reservation and roster of direct appointment applicable for filling up 114 posts of Section Officer is held to be bad and is accordingly set aside.

59. In the light of the aforesaid findings and conclusion this court will also have no hesitation in quashing the government decision dated 27.6.2013 (Annexure-B to the supplementary counter affidavit) as a whole either with regard to fixing 1.8.2008 as the cut-off-date or making the reservation of roster of direct appointment applicable for filling up 114 posts of Section Officers as per advertisement dated 13.5.2010 .

60. In the result, C.W.J.C. No. 6805/2012 is hereby allowed and consequently C.W.J.C. No. 18870/2012, C.W.J.C. No. 21906/2012 and C.W.J.C. No. 7159/2013 are hereby dismissed.

61. There would be, however, no order as to costs.”

(Emphasis is supplied by me).

It is a matter of record that the intra Court appeal filed by the State and those filed by the writ petitioners in C.W.J.C. No. 7159 of 2013 and C.W.J.C. No. 18870 of 2012 was heard analogous and the



Division Bench vide its judgment and order passed in L.P.A. No. 863/ 2014, L.P.A. No. 1267 of 2014 and L.P.A. No. 1013 of 2014 dated 8.4.2015 affirmed the opinion of the Single Judge in following terms:

“Learned Single Judge has analyzed the relevant provisions of law and, in our view has arrived to the correct conclusion.

Accordingly, these appeals are dismissed.”

Although in obedience of the judgment of the writ Court, the commission announced the result of the limited competitive examination vide Annexure-7 to the writ petition on 24.6.2014 but the process was not completed as the results were not being given effect to by the respondent State. This forced the aggrieved petitioners to move this Court in contempt jurisdiction and when a notification was issued bearing No. 15528 dated 27.10.2015 promoting 99 Assistants inclusive of the petitioners to the post of Section Officers which promotion was made subject to the pending Special Leave Petition arising from **S.L.P.(Civil)No. 25699-25701/2015 (State of Bihar Vs. Dharambir Prasad and Ors.)** and **S.L.P. (Civil) No. 29770 of 2015 (State of Bihar Vs. Sushil Kumar Singh and Ors.)**.

The position as it stands is that the judgment and order of the writ Court as affirmed by the Division Bench in L.P.A. No. 863 of 2014 and analogous cases has been implemented by the respondents and although the promotions so granted to the petitioners have been



made subject to the pending Special Leave Petitions so filed by the State but it is not this part of contest which has aggrieved the petitioners rather it is the failure of the respondents to discharge their statutory obligation cast under 'the Act', the rules and the Regulations framed thereunder of preparation of common gradation list of Section Officers for the purpose of initiating the exercise for further promotion to the grade of Under Secretary which has pained them to move this Court.

It is uncontested that without discharging this obligation of preparation of a gradation list of Section Officers as mandated under Section 18 (3)(ii) read with Section 15 that the respondents State has adventurously promoted not less than 74 Section Officers to the grade of Under Secretary on the basis of inter se seniority in the basic cadre of Assistants by exercising jurisdiction under the impugned advisory dated 1.4.2016 at Annexure-10. The justification given by the respondents for issuance of the impugned advisory at Annexure-10 as found in the counter affidavit is preposterous because according to the respondents in case of a favourable result in the pending Special Leave Petitions, the entire exercise of drawing a gradation list would have to be redone and it is thus to avoid such situation that they have decided to promote the Section Officers to the post of Under Secretary on the basis of inter se seniority in the grade of Assistant dehors 'the



Act’.

In my opinion, there cannot be a better demonstration of abdication of statutory responsibility as well as overreach other than the one carried out under the cover of the advisory dated 01.04.2016. Apart from the fact that a legislative Act regulates the promotion of a Section Officer to the post of Under Secretary even the reasons assigned by the respondents to issue the impugned advisory dated 1.4.2016 lacks foundation.

I have consciously given the break up of the vacancies which has been upheld by the writ Court and the Division Bench and which secures the claim of the reserved category candidates.

Despite repetition I would record that the break up of the vacancies reserving 18 posts for Scheduled Castes Candidate, one post for Scheduled Tribe candidate and 95 posts for unreserved category was neither questioned by any candidates nor was interfered with by the Court. In fact, the writ Court at paragraph 56 of the judgment has taken note of the reservation aspect of the matter to uphold the break up as well as the application of the promotional roster provided in the corrigendum dated 16.2.2012 which was issued much before the issuance of the notification bearing No. 11635 dated 21.08.2012 prescribing for reservation in promotions. In other words, the vacancies notified for being filled up by promotion through



Annexures-4 and 5 in so far as it prescribed for reservations as well as the roster to be followed, was upheld by the writ Court and thus the notification bearing No. 11635 dated 21.8.2012 issued much after the initiation of the selection process in question could neither be applied retrospectively to this process nor can be taken as a shield to delay the preparation of the gradation list of Section Officers.

Apart from the fact that the Resolution No. 11635 dated 21.8.2012 issued by the General Administration Department prescribing for reservation in promotion stands quashed by this Court and though Special Leave of the State is pending but in absence of stay granted by the Supreme Court, a mere pendency cannot be relied upon by the respondents to delay the preparation of a gradation list of Section Officers but even otherwise the said resolution neither had a retrospectivity nor could be made applicable to a process which had been initiated prior thereto.

It surprises me as to how a pendency of a Special Leave Petition on an issue which even if draws in favour of the State Government, would not effect the promotional process initiated prior thereto, could be made a reason to delay a statutory duty, It surprises me even more when the high officials of the State proceed to give absurd reasons as found in the counter affidavit filed on their behalf and reiterated at paragraph 23 of the supplementary counter affidavit



to justify the advisory dated 1.4.2016. I am even more surprised at the statement made at paragraph 31 of the counter affidavit in which it is stated that, “Section 18(ii) of the Bihar Secretariat Services Act, 2007 has got no relevance at this juncture.”

Since the issue of retrospectivity of the resolution no. 11635 dated 21.8.2012 and whether it could be applied to process already initiated was not addressed upon that this matter was listed by this Court to enable the parties to view their opinion and although the petitioners have argued against such application but the respondents have though filed affidavit but have evaded to answer the poser.

Section 8 of ‘the Act’ inter alia provides that the provision of reservation determined by the State Government from time to time shall remain in force in the recruitment/promotion in this service. It is bearing in mind this stipulation and the relevant orders of the State Government on reservation in force that the advertisement at Annexure-4 was issued on 12.5.2010 which itself stipulated for reservation as manifest from the break up given and which stood modified by the corrigendum dated 16.2.2012 at Annexure-5. In fact the communication of the Joint Secretary, General Administration Department dated 4.11.2011 very clearly mentions that the vacancies were to be filled up by promotion by applying the promotional roster and which had the sanction of the Law Department and the Advocate



General. In other words, the reservation order in force was applied and it was also decided to apply the promotional roster for filling up the post by promotion and which decision of the State Government aggrieved none nor was questioned before this Court rather the decision to apply the promotional roster together with the break up of the vacancies was approved by the writ Court as confirmed from of the opinion at paragraphs 56 and 57 of the judgment.

In my opinion where the issue of reservation was taken care of in the process so initiated vide Annexure-4 to 6 of the writ petition, a subsequent resolution dated 21.8.2012 of the State Government issued much later to the initiation of the process in question, could neither be a reason for delay in the determination of the inter se seniority in the grade of the Section Officer nor could be lawfully applied retrospectively. In fact in view of the positive stand of the respondents more particularly the General Administration Department on the break up of vacancies, reservation and application of promotional roster as found at Annexures 3 to 6 which was upheld by the writ Court and the Division Bench, there was no occasion for the respondents to delay the preparation of the gradation list which had to be under taken in terms of Section 18(3)(ii) of 'the Act' and in the circumstances, discussed there was no occasion for issuance of the advisory dated 1.4.2016, which conformingly is an attempt by the State to



overreach a legislative Act.

Law is well settled and a delegate, in the process of issuing orders for the purpose of carrying on the provisions of 'the Act' cannot be permitted to either surpass or supplant a statutory procedure which results in overreaching the statutory procedure. Reference in this regard is made to the judgment to the Supreme Court reported in **(2015) 9 SCC 209 (Petroleum and Natural Gas Regulatory Board Vs. Indraprastha Gas Limited & Ors.)** more particularly paragraphs 44 to 53 of the judgment.

The process initiated vide Annexures 4 to 6 to fill up the post through limited competitive examination having been completed by the issuance of the notification dated 27.10.2015 at Annexure-9, it is the bounden duty of the Cadre Controlling Authority to undertake the duty of preparation of a gradation list of officers in the grade of Section Officer strictly in tune with the provisions underlying Section 18(3)(ii) of 'the Act' before they embark upon any exercise to promote these Section Officers to the grade of Under Secretary in obedience with the provisions of Section 15 of the Act read along side the stipulations present under 'the Rules' and 'the Regulations' framed thereunder. Conformingly, the advisory bearing No. 4800 dated 1.4.2016 issued by the General Administration Department is de hors the statutory procedure to grant promotions to Section Officers



on the basis of their inter se seniority in the grade of Assistant and is an attempt to deprive the genuine claim of a Section Officer for promotion to the grade of Under Secretary on the basis of his seniority in the gradation list of Section Officer. The reasons assigned for issuance of the advisory dated 1.4.2016 is palpably illegal and in the teeth of the provisions of 'the Act', 'the Rules' and the Regulations framed for a pendency of a Special Leave Petition gives no justifiable explanation for the avoidance of a statutory duty by the respondents.

For the reasons and discussions made, the instructions issued by the General Administration Department bearing Memo No. 4800 dated 1.4.2016 impugned at Annexure-10 to C.W.J.C.No.7603 of 2016 cannot be upheld and is accordingly quashed and set aside and as a consequence the rejection of the claim of the petitioner in C.W.J.C. No. 16014 of 2016 vide Annexure 5 to the said writ petition is also quashed and set aside.

The respondent State in its General Administration is directed to draw a gradation list of Section Officers in accordance with law within a period of 3 months from today and only whereafter issue orders of promotion to the grade of Under Secretary in accordance with law but until such time that a gradation list of Section Officers is drawn, the respondents State in its General Administration Department is restrained from issuing any further promotions on the



basis of inter se seniority in the grade of Assistants.

The writ petitions are accordingly allowed but in the peculiar circumstances existing I am not persuaded to interfere with the order of promotion granted to the Section Officers during the pendency of the writ petitions which would be governed by the exercise to be undertaken by the General Administration Department in drawing the gradation list of Section Officers followed by issuance of orders of promotion to the eligible Section Officers to the post of Under Secretary in accordance with law.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.11.2017
Transmission Date	NA

