

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.275 of 2016
IN
Civil Writ Jurisdiction Case No. 4452 of 2012**

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1. Atul Kumar Singh, son of Sri Krishna Deo Singh, presently posted as junior Electrical engineer, Electric works division-1, B.C.D., Bihar, Patna.
 2. Ranjeet Pratap Raushan, son of late Ram Pravesh Singh, presently posted as Junior Electrical Engineer, Electric Works Division- 1, B.C.D., Bihar, Patna.
 3. Swarnalata Kumari, W/o Rajesh Ranjan, presently posted as Estimator, Electric Works Circle, B.C.D., Bihar, Patna,
 4. Kamlesh Ram, son of late Rajendra Ram, presently posted as Junior Electrical Engineer, Electric Works Division-1, B.C.D., Bihar, Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Agriculture Production Commissioner, Department of Agriculture, New Secretariats, Bihar, Patna.
2. The Agriculture Production Commissioner, Department of Agriculture, new Secretariats, Bihar, Patna.
3. The Principal Secretary, Finance, Old Secretariats, Government of Bihar, Patna.
4. The Principal Secretary, Sammanya Prashashar Department, Old Secretariat, Government of Bihar, Patna.
5. The Principal Secretary, Road Construction Department, Bishesraiya Bhawan, Bailey Road, Patna.
6. The Principal Secretary, Rural works Department, Bisheswaraiya Bhawan, Bailey Road, Patna.
7. The Secretary, Department of Agriculture, New Secretariat, Bihar, Patna.
8. The Deputy Secretary Road Construction Department, Bisheshwariya Bhawan, Bailey Road, Patna.
9. The Deputy Secretary, Sammanya Prashashar Department, Old Secretariat, Government of Bihar, Patna.
10. The Authorised Officer, Finance (P.C.F.C.), Department, Old Secretariat, Government of Bihar, Patna.

... .. Respondents 1st Set.

11. Ram Surat Singh, son of Late Shankar Singh, R/O village- Chhitratand, P.S.- Chenari, District- Rohtas, at present posted as Assistant Engineer, in the office of Executive Engineer, Rural Works Department, Works Division no 2, Rosara (Samstipur).
12. Suresh Prasad Singh, S/o late Uchit Narayan Yadav, R/O village- Keshuli, P.S.- Benipatti, Distt- Madhubani at present posted as Assistant Engineer, in the office of Executive Engineer, Rural Works Department Works Division No. 3, Gaya.
13. Sudama Sharma, son of late Birla Sharma, R/o at + P.O.- Thakuri, P.S.- Paliganj, Distt- Patna at present posted as Assistant Engineer, in the office of Executive Engineer, Rural Works Department, Works Division, No. 2, Begusarai.
14. Niranakar Malviya, son of late Hargauri Tiwary, R/O At + P.O- Mahdeo Simaria, P.S.- Sikandara, Distt.- Jamui at present posted as Assistant Engineer in the office of Executive Engineer, Yogana and Vikash Vibhgm Works



Division No-1 Chapra (SARAN).

15. Bijendra Prasad Singh Yadav, S/o Late Mangal Prasad Singh Yadav, R/O at + P.O- Amari, P.S.- Dharhara, Distt- Munger, at present Posted as Assistant Engineer in the office of Executive Engineer, Rural works Departments, works division no 3, Gaya.
16. Anand Gopal, S/o late Ram Bahadur Mishra, R/o village- Pachamb P.S. + Dist- Begusarai at present posted as Assistant Engineer, Rural Works department, Sub division, Araria.
17. Kramchand Sah, son of late Dwadashi Sah, R/O Village- Tekniwash, P.O- Kachnar, P.S.- Revilgang, District- Chapra (Saran) at present posted as Estimating officer in the office of superintending Engineer, Rural Works department, circle-2, Saharsa.

.... Respondents 2nd Set.

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Appearance :

For the Appellant/s : Mr. P. K. Shahi, Senior Advocate
Mr. Arun Kumar, Advocate
Mr. Swapnil Kumar Singh, Advocate

For the State : Mr. Sanjay Kr. Giri, G.P.-9

For the Respondent 2nd Set : Mr. Ashok Kumar Singh, Senior Advocate
Mr. Jai Prakash Verma, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 24-07-2017

Even though the matter is pending since 2016 and a detailed order passed by the learned Writ Court is under challenge in this appeal which pertains to determination of the *inter se* seniority of the Departmental candidates, who were absorbed in the Government service after the Bihar State Agriculture Marketing Board stood dissolved by virtue of the Bihar Agriculture Produce Market (Repeal) Act, 2006, the question canvassed in the writ petition was with regard to preparation of the *inter se* seniority, their placement in the seniority



list and it was the contention of the petitioners that the seniority list has not been prepared properly considering the past service rendered in the Bihar State Agriculture Marketing Board. Be that as it may be, the learned Writ Court based on the submissions made went into various aspects of the matter and decided the issue on merit. However, while hearing the matter on 18.04.2017, a submission was made on behalf of the 2nd Set respondents that even if the order passed by the Writ Court is implemented, the seniority of the appellants will not be adversely affected and seniority will be reckoned as existing prior to filing of the writ petition. The 2nd Set respondents, who were directed to file an affidavit explaining this position, even though an affidavit has been filed, according to the appellants, it is not in accordance to the direction issued by this Court on 18.04.2017.

Leave apart the aforesaid issue, we are informed today at the time of hearing by all concerned that the seniority list published is a provisional seniority list and the State Government is yet to finalize the seniority list. Be that as it may, it is not known as to why the writ court was compelled to go into various questions even before the seniority list was finalized by the State Government. Today, learned counsel appearing for the State Government points out that objections have been raised with regard to the provisional gradation list, objections are still coming and the State Government has not finalized the seniority



list. If the seniority list has not been finalized, the cause of action for challenging the seniority would never accrue and it seems that the Writ Court has gone into various aspects without taking note of the fact that the seniority so prepared was a provisional seniority list and the State Government was to still address the question of finalization of the objections and thereafter issue the final gradation list.

That being so, so far as the relief claimed for grant of seniority is concerned; it was premature as the seniority list itself was not finalized. Accordingly, we dispose of the appeal granting each and every employee to file their objections to the seniority, if not already done, within a period of 30 days and thereafter the State Government to consider the objections and publish the final gradation list within three months thereafter. We expect the State Government to publish the seniority list as per the Rules governing the grant of seniority and in publication of the seniority list the order passed by the learned Writ Court impugned in this appeal so far as it relates to any observation with regard to drawing of seniority shall not be taken note of, it shall not be considered by the State Government and the State Government independent of the order passed by the Writ Court with regard to issue of seniority shall decide the objections and thereafter liberty shall be available to any aggrieved person to challenge the final gradation list in accordance with law and the observations and the findings recorded in



the writ petition in this regard shall not come in their way.

With the aforesaid observations and directions, the appeal stands disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.07.2017
Transmission Date	

