

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1179 of 2013

In

Civil Writ Jurisdiction Case No.141 of 2008

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Hem Kant Roy, aged about 50 years, son of Late Sri Krishna Kumar Roy, resident of Mohalla- East Ashok Nagar, Road No.14, P.O. & P.S. Kankarbagh, District Patna, presently posted as Forest Working Plan Officer, Forest Working Plan Division, Patna

... .. Appellant/s

Versus

1. The Government Of Bihar Through The Chief Secretary
2. The Secretary, Environment And Forests Department, Govt. Of Bihar
3. The Additional Secretary, Environment And Forests Department, Govt. Of Bihar
4. The Chairman, Bihar Public Service Commission At Bailey Road, Patna
5. Sri Lallan Prasad Singh, Divisional Forest Officer, Nawada Forest Division, Nawada
6. Sri Sanjay Kumar Sinha-1, Divisional Forest Officer, Saran Forest Division, Chhapra
7. Sri Abhay Kumar Dwiwedi, Divisional Forest Officer, Through The Secretary, Environment And Forest Department, Govt. Of Bihar, Sinchai Bhawan, Patna-15
8. Sri Kundan Kumar, Divisional Forest Officer, Araria Forest Division, Araria
9. Sri Manoj Kumar Singh, Development Department, Bihar, Patna Divisional Forest Officer, Mungher Forest Division, Mungher
10. Sri Lachhendra Pandit, Divisional Forest Officer, Research And Extension Forest Division, 4th Floor, Science & Technology Bhawan, Off Baily Road, Patna
11. Sri Prabhat Kumar Jaiswal, Divisional Forest Officer, Aurangabad Forest Division, Aurangabad
12. Sri Kaushalendra Kumar Akela, Divisional Forest Officer, Saharsa Forest Division, Saharsa
13. Sri Ram Kishore Ram, Divisional Forest Officer, Bihar State Forest Department Corporation Ltd. 13, Patliputra Colony, Patna-13
14. Dr. Suresh Prasad, Divisional Forest Officer Through The Secretary, Environment And Forests Department, Govt. Of Bihar, Sinchai Bhawan, Patna-15
15. Sri Radha Kant Kumar, Through The Principal Secretary, Rural Development Department, Govt. Of Bihar, Old Secretariat, Patna-15

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Deepak Kumar
For the Respondent/s : Mr. Ravi Ranjan, AC to SC 22

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)



Date : 30-08-2017

Heard learned counsel for the appellant and learned counsel for the State.

2. The appellant happened to be the writ petitioner in CWJC No.141 of 2008 and CWJC No.880 of 2008. By the impugned judgment dated 06.11.2012, the learned Single Judge refused to interfere with the final gradation list, which was challenged by the present petitioner contesting his placement at serial No.212 in the said gradation list. The learned Single Judge took note of the grievance of the petitioner as appearing from the records and concluded that so far as the petitioner is concerned in the case of *Shyam Bihari Prasad and others Versus Union of India and others and analogous cases since reported in 1996 (1) All PLJR 425* in which the petitioner was himself a party, it has been, inter alia, held that this petitioner, who fulfills the requirements of the Rule 3 (aa) of the relevant Service Rules could only be granted substantive promotion to the post of Assistant Conservator of Forest (ACF) in the cadre of Bihar Forest Service not before 26.12.1989. The learned Single Judge has also noticed that this position has been reiterated in the writ petition filed by this petitioner in the case of *Hem Kant Roy and others Versus the State of Bihar and others since reported in 2002 (2) PLJR 162*. Thus, the learned Single Judge reached to a conclusion that it is



because of these judicial pronouncements that the State notified and changed the date of substantive appointment of this petitioner with effect from 26.12.1989, he has been shown as promotee instead of direct recruit as envisaged in Rules 3 (aa) of the Service Rules.

3. Learned counsel appearing on behalf of the petitioner- appellant attempted to argue that by virtue of retrospective operation of the Service Rule which the learned Single Judge has failed to notice, the claim of the petitioner to be placed above the direct recruits could not be considered. The submission is that although the date of substantive appointment being 26.12.1989 is not disputed by the appellant still he would rank senior to the direct recruits.

4. On the other hand, learned counsel representing the State submits that final gradation list has been published by the State Government only after the decision of the Hon'ble Supreme Court in the case of *Sanjay K. Sinha and others Versus State of Bihar and others, reported in 2004 (10) SCC 734*. In the said case the Hon'ble Supreme Court has settled the dispute holding that the direct recruits in Bihar Forest Service would rank senior to the promotees. Since the petitioner has been treated as a fresh appointee with effect from 26.12.1989 which position is apparent even on perusal of the judgment in his own case reported in *2002*



(2) *PLJR 162*, he has been rightly placed at serial 212, below the direct recruits. According to the learned counsel, there is no illegality or infirmity in the order passed by the learned Single Judge.

5. We have considered the submission made at the bar. The argument of the learned counsel for the appellant that even if his substantive appointment on the post of ACF is taken as 26.12.1989, he would rank senior to the direct recruits, has no substance. Rather, the submission is contrary to the settled position as appearing from the earlier round of litigations, which went up to the Hon’ble Supreme Court. The interpretation sought to be made at this stage by the learned counsel for the appellant is not open to him as all such pleas which were available to the petitioner have been or should have been taken in the earlier round of litigation where the matters were argued at length. The judgments in all such cases have already attained finality which will bind the present appellant.

We, therefore, find no merit in the appeal. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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