

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.819 of 2016
IN
Civil Writ Jurisdiction Case No. 3883 of 1998**

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1. The State of Bihar
2. The District Magistrate/Collector, Gaya
3. The Deputy Collector (Establishment), Gaya
4. Sri Ramashray Singh, Assistant Establishment Section, Collectorate, Gaya
..... Respondents / Appellants

Versus

1. Kamta Prasad Son of Sri Heman Prasad
2. Kanhaiya Lal Bari Son of Late Suraj Ram Bari
3. Mohan Kumar Sharma Son of Sri Abhimanyu Sharma
4. Bharat Prasad Son of Late Ram Briksha Prasad
5. Ajay Kumar Son of Sri Hira Lal Jaiswal
6. Siya Ram Singh Son of Sri Ram Bujhawan Singh
7. Asha Ojha Widow of Late Mithilesh Ojha
8. Pratap Prasad Son of SRi Bishu Mahto
..... Petitioners / Respondents

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Appearance:

For the Appellant/s : Mr. Lalit Kishore, Advocate General.
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 15-11-2017

Heard learned Advocate General representing the State
and learned counsel for the private respondents.

2. The order dated 13.02.2015 passed in CWJC No.



3883/1998 is being assailed on behalf of the State. The Writ Application of the private respondents has been allowed. A direction was given by the learned single Judge to the District Magistrate, Gaya to consider appointment of the private respondents strictly on merit against the posts for which the private respondents had applied within a period of three months.

3. Instead of honouring the order, the State wants to assail the order.

4. Submission of the learned Advocate General is that the promotion which was required to be granted from Class IV post to Class III post to the extent of 50% reserved for such openings was not a promotion but a fresh appointment because 50% of the recruitment is to be done directly and window of opportunities is given to Class IV employees to improve their status under 50% quota; therefore, in such a situation, since it was a case of appointment, principle of reservation was followed and appointments came to be made on that basis.

5. The learned single Judge, however, has found that there is no constitutional scheme of things especially after the judgment of the Hon'ble Supreme Court rendered in the case of **M. Nagraj Vs. Union of India & Ors.**, reported in **(2006) 8 SCC 212**, that the benefit of reservation is to be granted in matter of promotion.



6. There is no confusion whether it is a case of fresh appointment or promotion. The benefit which has been given to Class IV employees to the extent of 50% is a channel of promotion and it is not that after they get appointed on Class III post they lose their right or the entitlements which they have earned in the past service which includes the length of service rendered in Class IV posts. If that be so, the argument made by the learned Advocate General is an innovation not supported by facts.

7. In totality, therefore, since it is a case of promotion and not a case of appointment to Class III posts, the learned single Judge keeping in view the law, as it stands, has rightly given a direction to appoint the petitioners on the merit position of their performance and merely because they have been ousted from the zone of consideration because of filling up such posts by giving openings to certain category of reservation, the right of the private respondents do not die. The order of the learned single Judge does not require any interference. In fact, it is high time the District Magistrate, Gaya implements the order of the learned single Judge without further delay because I am told that some of the private respondents have retired and the rest are on the way. They must beget what they rightly deserve even now.

8. The issue adjudicated by the learned single Judge and by us will confine itself to the parties to the dispute, i.e., the private



respondents who were petitioners before the court below.

9. Appeal stands dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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