

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9987 of 2016

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1. Raj Kumar Sharma son of Lakhan Sharma Resident of Village -Mohanpur, P.S. Amarpur,Dist-Banka
 2. Nivash Kumar son of Sri aniklal Singh Resident of Village Mohanpur, P.S. Amarpur,Dist.Banka
 3. Siddharth son of jairam Prasad Resident of Mohalla - Hanuman Nagar vivek Vihar Kankarbagh,P.S. -Patrakar Nagar,Dist- Patna

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Agricultural Production Commission, Government of Bihar, Patna.
3. The Director (Administration) Directorate of Agriculture, Govt. of Bihar, Patna
4. The Addl. Secretary, Department of Agriculture, Govt. of Bihar, Patna
5. The Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna
6. The Home Secretary, Govt. of Bihar, Patna.
7. The Deputy Secretary, Home (Special) Department of Bihar, Patna
8. The State of Jharkhand through its Chief Secretary Govt. of Jharkhand, Ranchi
9. The Secretary, Department of Agriculture and Sugarcane Development, Govt. of Jharkhand Ranchi.
10. The Under Secretary, Department of Agriculture and Sugarcane Development, Govt. of Jharkhand, Ranchi.
11. The Secretary Department of Personnel and Administrative Reforms, Govt. of Jharkhand, Ranchi
12. The Union of India through the Director (S.R.) Department of Personnel and Training, Govt. of india, Lok Nayak Bhawan 3rd floor, Khan Market, New Delhi.
13. The Secretary, Ministry of Personnel Public Grievances and Pensions, Govt. of India New Delhi

.... Respondents

with

Civil Writ Jurisdiction Case No. 6153 of 2017

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- Suryakant, son of Sheo Prasad Dubey, resident of Village- Pipraasli, P.S.- Sahebganj, Dist- Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna.
3. The Home Secretary, Govt. of Bihar, Patna.
4. The Deputy Secretary, Home (Special) Department, Govt. of Bihar, Patna.
5. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
6. The Addl. Secretary, Road Construction Department, Govt. of Bihar, Patna.
7. The Dy. Secretary, Road Construction Department, Govt. of Bihar, Patna.
8. The State of Jharkhand through its Chief Secretary, Govt. of Jharkhand, Ranchi.
9. The Secretary, Road Construction Department, Govt. of Jharkhand, Ranchi.
10. The Secretary, Department of Personnel and Administrative Reform, Govt. of



Jharkhand, Ranchi.

11. The Union of India through the Director (S.R.) Department of Personnel and training, Govt. of India Lok Nayak Bhawan, 3rd Floor, Khan Market, New Delhi.

12. The Secretary, Ministry of Personnel Public Grievances and pensions, Govt. of India, New Delhi.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 6210 of 2017

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Chhavi Shankar Verma son of Sri Dinanath Prasad Verma resident of mohalla - Nala Road Kadamkuan, P.S. - Kadamkuan, Dist - Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna.
3. The Home Secretary, Govt. of Bihar, Patna.
4. The Deputy Secretary, Home (Special) Department Govt. of Bihar, Patna.
5. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
6. The Addl. Secretary, Road Construction Department, Govt. of Bihar, Patna.
7. The Dy. Secretary, Road Construction Department, Govt. of Bihar, Patna.
8. The State of Jharkhand through its Chief Secretary, Govt. of Jharkhand, Ranchi.
9. The Secretary Road Construction Department Govt. of Jharkhand, Ranchi.
10. The Secretary Department of Personnel and Administrative Reform Govt. of Jharkhand, Ranchi.
11. The Union of India through the Director (S.R.) Department of personnel and training, Govt. of India Lok Nayak Bhawan 3rd Floor, Khan Market, New Delhi.
12. The Secretary, Ministry of personnel public grievance and pensions, Govt. of India, New Delhi.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 6466 of 2017

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Purendra Prasad Singh, Son of Hari Narayan Singh, resident of Village-Ghordihan, P.S.- Kargahar, Dist.- Rohtas.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna.
3. The Home Secretary, Govt. of Bihar, Patna.
4. The Deputy Secretary, Home (Special) Department Govt. of Bihar Patna.
5. The Principal Secretary, Road Construction Department Govt. of Bihar, Patna.
6. The Secretary, Rural works Department, Govt. of Bihar, Patna
7. Special Secretary, Rural Works Department, Govt. of Bihar, Patna.
8. The State of Jharkhand through its Chief Secretary, Govt. of Jharkhand, Ranchi.
9. The Secretary Road Construction Department Govt. of Jharkhand, Ranchi.
10. The Secretary Department of Personnel and Administrative reform govt. of



Jharkhand, Ranchi.

11. The Union of India through the Director (S.R.) Department of personnel and training govt. of India Lok Nayak Bhawan 3rd floor, Khan Market, New Delhi.

12. The Secretary Ministry of Personnel Public grievances and pensions, govt. of India, New Delhi.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 8672 of 2017

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1. Ashok Kumar Jha, son of late Gulab Jha, resident of Flat No. 203, Friends Siddhi Apartment, Hari Shankar Verma Lane, Boring Patliputra Road, Patna-800013

2. Deepak Kumar Singh, son of late Shyama Nand Singh, resident of Flat No. 102, Saryu Apartment, Buddha Colony, Patna- 800001

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna.

2. The Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna.

3. The Principal Secretary, Home Department, Govt. of Bihar, Patna.

4. The Deputy Secretary, Home (Special) Department Govt. of Bihar Patna.

5. The Principal Secretary, Road Construction Department Govt. of Bihar, Patna.

6. The Addl. Secretary, Road Construction Department, Govt. of Bihar, Patna.

7. The Dy. Secretary, Road Construction Department, Govt. of Bihar, Patna.

8. The State of Jharkhand through its Chief Secretary, Govt. of Jharkhand, Ranchi.

9. The Secretary Road Construction Department Govt. of Jharkhand, Ranchi.

10. The Secretary Department of Personnel and Administrative Reform Govt. of Jharkhand, Ranchi.

11. The Union of India through the Director (S.R.) Department of personnel and training, Govt. of India Lok Nayak Bhawan 3rd Floor, Khan Market, New Delhi.

12. The Secretary, Ministry of personnel public grievances and pensions, Govt. of India, New Delhi.

... Respondents

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Appearance :

(In CWJC No.9987 of 2016)

For the Petitioner/s : Mr. Y.V.Giri, Sr. Adv.

Mr. Rajendra Prasad, Adv.

For the Respondent/s : Mr. S.Raza Ahmad, AAG-5

Mr. Vishwambhar Pd., AC to AAG-5

For Union of India : Ms. Nivedita Nirvikar, CGC

(In CWJC No.6153 of 2017)

For the Petitioner/s : Mr. Y.V.Giri, Sr. Adv.

Mr. Ashok Kumar, Adv.

For the Respondent/s : Mr. Manish Kumar, GP4

Mr. Manoj Kumar, AC to GP4

For Union of India : Mr. Abhay Shankar Jha, CGC

(In CWJC No.6210 of 2017)

For the Petitioner/s : Mr. Y.V.Giri, Sr. Adv.

Mr. Ashok Kumar, Adv.



For the Respondent/s : Mr. Md. N.H. Khan, SC1
Mr. Naushaduzzoha, AC to SC-1
For the State of Jharkhand: Mr. Arup Kr. Chongdar, Adv.
(In CWJC No.6466 of 2017)
For the Petitioner/s : Mr. Y.V.Giri, Sr. Adv.
Mr. Ashok Kumar, Adv.
For the Respondent/s : Mr. MD. Nadeem Seraj, GP5
For Union of India : Ms. Kanak Verma, CGC
(In CWJC No.8672 of 2017)
For the Petitioner/s : Mr. Y.V.Giri, Sr. Adv.
Mr. Pranav Kumar, Adv.
For the Respondent/s : Mr. S.Raza Ahmad, AAG-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 18-09-2017

Heard Mr. Y.V.Giri, learned Senior Counsel for the petitioners in all the writ petitions and Mr. S.Raza Ahmad, learned AAG-5, Mr. Manoj Kumar, learned GP-4 and other State Counsel appearing in the respective writ petitions.

A rather innocuous prayer was made by the petitioners in this batch of writ petitions and which is to grant them the relief in terms of the order passed by a Division Bench of this Court in C.W.J.C.No. 4756/2009 (**Aditya Narayan Roy & ors. v. the State of Bihar & ors.**) whereby the petitioners have been allowed to carry their seniority on mutual transfer from the State of Jharkhand to the State of Bihar on the enforcement of Bihar Reorganization Act.

The Division Bench while upholding the claim of **Aditya Narayan Roy** (supra) has while allowing the writ petition held as follows:

“ We, accordingly, do not approve of the decision of the



State Government as contained in Annexure-17 as also we do not approve the action of the State Government in downgrading the petitioner, as is evident from memo No. 2836 dated 24.6.2016 (Annexure-26). We accordingly, hold that the petitioner has to be restored to his original seniority, as prior to the bifurcation of his cadre and further he would continue to be in the Bihar State cadre.

With these observations, the writ petition is allowed.”

The State respondents have moved in S.L.P. against the Division Bench judgment giving rise to S.L.P.(Civil) No. 3216/2017 but it is undisputed that no interim order has yet been passed staying the operation of the Division Bench judgment. It is taking note of the development that this Court vide order passed on 28.6.2017 required the respondents to place on record their stand as to why in view of the Division Bench judgment of this Court in the case of **Aditya Narayan Roy** (supra) the petitioners herein should be not allowed the same reliefs as flowing to the petitioners in the case of **Aditya Narayan Roy** (supra) which relief obviously would be subject to final outcome of the Special Leave Petition pending before the Supreme Court. It is not in dispute that the respondents have implemented the judgment of this Court passed in the case of **Aditya Narayan Roy** (supra) and extended the benefit of counting of seniority to the petitioners in the said case. Obviously the respondents cannot be allowed to have a



different yardstick within the same class of transferees and the petitioners herein are equally entitled to the benefit extended to the petitioners in C.W.J.C.No. 4756/2009. The law in this regard is well settled and reference is made to the judgment of the Supreme Court since reported in (2015)1 SCC 347 (**State of U.P. & ors. vs. Arvind Kumar Srivastava & ors.**) wherein at paragraph 22 the Supreme Court has reiterated the principle which is quoted hereinbelow for ready reference:

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not



challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma v. Union of India, reported in (1997)6 SCC 721). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”



In fact in view of the Division Bench judgment passed by this Court in the case of **Aditya Narayan Roy** (supra) the respondents ought to have granted the same relief to all such persons whose cases were identical to that of **Aditya Narayan Roy** (supra) and were entitled to the same relief without forcing them to come before this Court, more particularly when they had decided to implement the judgment of the Division Bench.

As I have observed above, it is not in dispute that on the failure of the respondents to obtain an interim order in their pending appeal before the Supreme Court, they have implemented the judgment in so far as the petitioners in **Aditya Narayan Roy** (supra) is concerned but have denied the relief to these petitioners whose case stands on identical footing. It is a different matter that the relief granted to the petitioners in the case of **Aditya Narayan Roy** (supra) in terms of the Division Bench judgment of this Court has been made subject to the outcome of the Special Leave Petition as manifest from the letter bearing Memo No. 519 dated 3.2.2017 of the Director (Administration) cum Addl. Secretary, Agriculture Department addressed to the other officials of the Agriculture Department, placed at Annexure 21 to C.W.J.C.No. 6153/2017 but the same situation would govern the case of others as well. In fact it is noting all these aspects of the matter that this Court gave an opportunity to the State



respondents to resolve the matter but they have failed to come up with the stand.

In the circumstances so discussed above, these writ petitions are allowed in terms of the judgment and order of this Court passed in the case of **Aditya Narayan Roy** (supra) and accordingly, the petitioners in the batch of the writ petitions are restored to their own original seniority as existed prior to the bifurcation of the cadre which they would continue to hold on their mutual transfer to the State of Bihar.

Let accordingly appropriate order be issued by the respondents no. 2 and 5, i.e. the Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna and the Principal Secretary, Road Construction Department, Govt. of Bihar, Patna within a period of four weeks from the date of receipt/production of a copy of this order.

It goes without saying that the directions so issued are subject to the final out come of the pending appeal before the Supreme Court.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.10.2017
Transmission Date	NA

