

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.193 of 2017

IN

Civil Writ Jurisdiction Case No. 16049 of 2016

- =====
1. Ajay Prakash, Son of late K.K. Singh, Resident of Mohalla- Mohanpur, Punaichak, Near Devi Mandir, P.S. Shastri Nagar, District- Patna.
 2. Om Prakash, Son of Sri Krishnanand, Resident of Mohalla- Mahesh Nagar, Road No. 4, P.S. Patliputra, District- Patna.
 3. Deepesh Kumar, Son of Sri Devendra Prasad Verma, Resident of 12- B , Phase-1, Ashiana Nagar, P.S. Rajiv Nagar, District-Patna.
 4. Manoj Kumar, Son of Sri Ram Anugrah Singh, Resident of House No. 58, Road No. 8, East Patel Nagar, P.S. – Shashtri Nagar, District- Patna,
 5. Ram Mohan Singh, Son of late Sukhdeo Singh, Resident of Village- Saidpur Ganesh, P.S. -Bidupur, District- Vaishali.
 6. Ram Bilas Yadav, Son of Sri Lakhan Yadav, Resident of Village- Aura, P.S. Rosera, District- Samastipur.
 7. Ram Kumar Yadav, Son of late Bachcha Yadav, Resident of Mohalla- Shiv Palace, Flat No. 104, Lohiya Path, Garbhuchak, Jagdeo Path, P.S.- Airport, District- Patna.
 8. Mridula Narayan Sinha, Daughter of Deonarayan Sinha, Resident of Mohalla- Puranderpur, P.S. Jakkanpur, District- Patna.
 9. Bibhuti Chandra, Son of Sheopujan Ram, Resident of Mohalla- Moulabagh, P.S.- Town Thana, Ara, District- Bhojpur.
 10. Anil Kumar Yadav, Son of late Yogendra Prasad Yadav, Resident of Village- Dighi, Bhelahi, P.S. -Murliganj, District- Madhepura.
 11. Dev Kant Kumar, Resident of Flat No. 36, Jagat Kranti Apartment, Near Boring Road Crossing, P.S. Budha Colony, District- Patna.
 12. Ruby Rani, Daughter of late Ganesh Prasad Prawasi, C/o Smt. Krishna Gupta, Resident of Mohalla- Makhaniyan Kuan, Ganesh Kunj, Purvi Gali, P.S.- Peerbahor, District- Patna.
 13. Rajnish Raman, Son of late Raj Kishore Prasad, Resident of Mohalla- Sumit Chandra Griham Apartment, Flat No. 104, East Block, Ramnagri Road, P.S.- Rajiv Nagar, District- Patna.
 14. Sanjeev Kumar Sinha, Son of late Hari Shankar Prasad Sinha, Resident of Flat No. 104, Vidya Kunj Apartment, Saguna More, P.S.- Rupaspur, District- Patna.
 15. Alok Kumar Thakur, Son of Govind Narain Thakur, Resident of Mohalla- Janakpuri, Lane No. 2, Near St. Karen's High School, Gola Road, P.S. - Rupaspur, District- Patna.
 16. Arvind Prasad Gupta, Son of Sri Sheopujan Prasad, Resident of Brahmasthani Road, Shekhpura, P.S. Shastri Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, the Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
2. The State of Bihar through the Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Deputy Secretary, Road Construction Department, Govt. of Bihar, Patna.
4. The Engineer-in-Chief -Cum- Additional Commissioner -cum- Special Secretary, Road Construction Department, Govt. of Bihar, Patna.
5. Arwind Kumar, son of Late Deodhari Singh At Flat No. B-102, Sapna



- Apartment, Ramnagri Road, P.O.- Ashiana Nagar, P.S.- Rajivnagar, District- Patna- 800025.
6. Dhananjay Kumar, son of Sri Surya Dev Singh, resident of Village+P.O.- Ramnagar, P.S.- Khudwan, District- Aurangabad, presently residing at Narayan Sadan, Kharanja Road, Saguna More, Dnaapur Cantt.
 7. Nawal Kishore Singh, Son of Late Ramjee Prasad Singh, resident of Village +P.O.- Daudpur, P.S.- Shahpur, District- Patna.
 8. Pramod Kumar Rai, son of Sri Taluk Raj Rai, resident of Village + P.O.- Pipra (Mardanrai), P.S.- Kargahar, District- Rohtas at Sasaram.
 9. Manoj Kumar, son of Late Bangali Chaudhary, resident of Village +P.O.- Aat, P.S.+ District- Nalanda at Biharsharif, Pin- 803114.
 10. Bhupendra Kumar Srivastava, son of Late Tarkeshwar Prasad, resident of Village +P.O.- Auarai, P.S.- Dawat, District- Rohtas (Sasaram).
 11. Sanjiv Kumar son of Sri Dasrath Rajak, At Vikasnagar, P.O.- Government Polytechnic, Purnea, District- Purnea- 854303.
 12. Binod Bihari, son of Late Ishwar Nath Sah, At Azad Gali, Boulia Road, Nooranganj, Sasaram, District- Rohtas at Sasaram.
 13. Munindra Thakur, son of Sri Ram Bahadur Thakur, resident of Village- Jhitaki, P.O.- Bhangama, P.S.- Narhiya, District- Madhubani- 848108.
 14. Karunesh Kumar Singh, son of Sri Ambika Prasad Singh, resident of Village +P.O.- Sugia, P.S.- Sheohar, District- Sheohar- 843329.
 15. Alok Kumar, son of Sri Ganauri Prasad Mandal At New Sheopuri Colony, Near Airport, Tilkamanjhi, P.S.- Kotwali, District- Bhagalpur- 812001.
 16. Krishnanand Singh, son of Late Ram Sevak Singh, Village +P.O.- Eghara, P.S.- Meyari Bazar, District- Rohtas at Sasaram, Pin-802217.
 17. Nawal Kishore Pandit, son of Sri Ram Prakash Pandit, resident of Village- Hathauri, P.S.- Narma, District- Muzaffarpur- 843129.
 18. Narayan Das, son of Late Krishna Deo Prasad Gupta, resident of Village +P.O.- Ratani Bazar, P.S.- Ratani Bazar, District- Jehanabad- 804421.
 19. Sanjay Kumar Gupta, son of Late Laxmi Prasad, resident of village +P.O.- Mathiya, P.S.- Lauria, District- West Champaran- 845453.
 20. Saket Kumar Raushan, son of Sri Potan Ram, resident of Village- Harnichak, Near IOC- Pipeline, P.S.- Anisabad, District- Patna- 800002.
 21. Tulsi Prasad, son of Sri Sheomurat Ram, resident of Village- Dhanihan, P.O.- Durgawah, District- Kaimur at Bhabhua.
 22. Shiv Shankar Prasad, son of Sri Laxmi Sahu, resident of Village +P.O.- Kotiya, P.S.- Jhanjharpur, District- Madhubani- 847404.
 23. Rajesh Kumar, son of Sri Ram Padarath Singh, resident of Village +P.O.- Meghaul, District- Begusarai- 848202.
 24. Arbind Kumar Sinha, son of Late Gaya Ram, resident of Village- P.O.- Gundi, P.S.- Krishnagarh Saraiya, District- Bhojpur at Ara, Pincode- 802313.
 25. Ranjay Kumar, son of Sri Rajendra Singh, resident of Village- Sabalpur, P.O.+P.S.- Rajgir, District- Nalanda- 803116.
 26. Vijay Kumar, son of Sri B.P. Singh, resident of Village- Veena Bhawan, Son of - 3/19, Purnendu Nagar, Phulwarisharif, District- Patna- 801505.
 27. Birendra Kumar Singh, son of Bindeshwari Singh, resident of Village +P.O.- Indrar, Disrict- Aurangabad.
 28. Surendra Narayan, son of Late G.N. Singh, resident of Village +P.O.- Sikrahta, District- Bhojpur at Ara.
 29. Ramashankar Prasad, son of Late Radha Kishun Prasad, resident of Village- Meghwar, P.O.- Sarari, P.S.- Jamo Bazar, District- Siwan- 841434.

.... Respondent/s



respondents are represented by Mr. Y.V. Giri, learned senior counsel assisted by Mr. Pranav Kumar, the Advocate of record.

While praying for review of the judgment and order passed on the writ petition, it is the submission of Mr. Kanth, learned senior counsel that the writ petitioners are admittedly junior to the review petitioners which is also demonstrated by the chart given under paragraph 4 of the supplementary affidavit filed on behalf of the review petitioners. It is his submission that while the names of the review petitioners appear in between from serial nos.108 to 168 of the gradation list dated 23.6.2015 circulated vide Notification No.5575(S), a copy of which is placed at Annexure 5 to the supplementary affidavit, the writ petitioners appear at serial no.372 or at subsequent places as manifest from the chart given under paragraph 4 and thus any order of this Court directing the respondents to consider the claim of the writ petitioners for promotion from retrospective date is likely to affect the seniority of these review petitioners and thus they were necessary party to the writ proceedings.

In support of his submission that the review petitioners were necessary party to the writ proceedings Mr. Kanth has relied upon a Constitution Bench judgment of the Supreme Court reported in **AIR 1963 SC 1909 (Shivdeo Singh vs. State of Punjab)**. For the



same purpose learned counsel has also referred to the judgment of the Supreme Court reported in **(2003) 8 SCC 319 (Ram Chandra Singh Vs. Savitri Devi)**, paragraphs 34 and 35. Mr. Kanth has also referred to a judgment of the Supreme Court reported in **(2005) 4 SCC 741 (BCCI vs. Netaji Cricket Club)** and with reference to paragraphs 18 and 19 he submits that the power of review can be exercised for any 'sufficient reason' and the aspect so put forth by the review petitioners, indeed come within the ambit.

As regarding the claim of the writ petitioners for consideration of their cases for retrospective promotion learned counsel has referred to a judgment of the Supreme Court reported in **1991 Supp. (1) SCC 334 (State of Bihar vs. Akhoura Sachindra Nath)** and in reference to paragraphs 8 and 12 of the judgment he submits that the legal position is well settled and no one can be promoted with retrospective effect from the date when he was not even borne in the cadre so as to adversely affect the right of others.

He next turns to the order passed by this Court on the writ petition to submit that since this Court while discussing the matter in contest has found the writ petitioners entitled to the relief so prayed, it is a command to the respondents for grant of such relief so prayed in the writ petition and since any order passed in favour of the writ petitioners would affect the seniority position of the review



petitioners as also the gradation list of 23.6.2015, the review petitioners as well as all others who are senior to writ petitioners were necessary parties as their seniority is likely to be affected by such command.

While Mr. Raj Ballabh Prasad Yadav, learned Additional Advocate General 11 has questioned the locus of the review petitioners to file the review application, while informing that the claim of the writ petitioners is being examined against the stipulations present in the circular dated 22.7.1998 under which they seek relief, the main thrust has come from Mr. Giri, learned senior counsel appearing for the writ petitioners standing in opposition of the review petitioners.

It is submitted by Mr. Giri that while the review petitioners are direct recruits having been appointed on the post as Assistant Engineer directly, the petitioners owe their position in the gradation list of Assistant Engineer by virtue of their promotion in the light of the stipulations present in the circular dated 22.7.1998 and thus there is no clash of interest. He submits that neither the review petitioners were necessary party to the relief claimed by the writ petitioners for consideration of their claim for promotion in the grade of Assistant Engineer in terms of the stipulation present in the circular dated 22.7.1998 nor there is any clash of interest because while the review



petitioners are direct recruits the writ petitioners are promotees and thus while the date of appointment of the review petitioners has attained finality on its acceptance by them, the grievance raised by the writ petitioners arises from the circular dated 22.7.1998 itself which casts certain obligation on the respondents in the matter of grant of promotion under 10% quota reserved for 'AMIE' degree acquired by the junior engineers and which, according to the writ petitioners, the respondents have failed to discharge.

In reference to the pleading of the review petition he submits that although the review petitioners were appointed following the selection process initiated through Advertisement No.128/96 published in 'Hindustan Times' on 2.9.1996 for filling up the vacancies of the year 1996 but the appointments were made vide Notification No.5308(S) dated 31.7.2004 as admitted by the review petitioners and yet they claimed no notional benefit since 1996. He submits that on the waiver of their claim, they cannot object to similar claim being raised by the writ petitioners because the circular dated 22.7.1998 entitles them to seek such benefit which is in the nature of rectification of error.

In support of his submission learned counsel has relied upon a judgment of the Supreme Court reported in **1980 (Supp) SCC 562 (Col. Avtar Singh Sekhon vs. Union of India)** and in



reference to paragraph 12 of the judgment he submits that the Supreme Court has held that the review is not a routine procedure and unless material error manifest on the face of the order undermines its soundness or results in miscarriage of justice, it would not call for a review. Learned counsel has also referred to a judgment of the Supreme Court reported in **(2000)6 SCC 224 (Lily Thomas Vs. Union of India)** and with reference to paragraphs 52 and 53 he submits that the principle on the exercise of power of review stands discussed therein.

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

The writ petition was filed praying for issuance of a writ in the nature of mandamus commanding the respondents to shift back the date of promotion of the writ petitioners to the post of Assistant Engineer from the due date of eligibility acquired by the writ petitioners for such promotion, taking note of the eligibility list published by the Engineer-in-Chief –cum- Additional Commissioner –cum- Special Secretary, road Construction Department vide letter bearing Memo No.3675 (E) dated 24.9.2009. A prayer was also made for providing consequential benefits.

Undisputedly the writ petitioners were promoted in the cadre of Assistant Engineer vide Memo No.4853(S) dated 1.4.2010.



This Court after taking note of the stipulation present in the circular dated 22.8.1998 and the case laws relied upon by the writ petitioners, while upholding their grievance and finding them entitled for relief, directed the respondents to consider their claim and dispose it in accordance with law.

The grievance raised by the review petitioners through Mr. Kanth, learned senior counsel is that although they stand senior to the private respondents/writ petitioners in the gradation list dated 23.6.2015 at Annexure-5 to the supplementary affidavit but they were deliberately not impleaded as respondents in the writ petition even though any order passed on the writ petition to the benefit of the writ petitioners would necessarily affect the seniority of the review petitioners as also disturb the gradation list.

The second issue raised by Mr. Kanth, learned senior counsel is that since this Court while allowing the writ petition has found the writ petitioners entitled to the reliefs prayed, i.e. the shifting of date of their promotion, such direction would lead to disturbance in the gradation list.

While the arguments advanced by Mr. Kanth, learned senior counsel appearing for the review petitioners with the aid of judicial pronouncement, is sound on principle but I am afraid that neither the principle nor the case laws relied upon does apply to the



facts present in the contest herein. The claim of the writ petitioners for consideration of their respective case for shifting their date of promotion is entirely resting on the stipulation present in the resolution dated 22.7.1998, a copy of which was enclosed at Annexure 1 to the writ petition and has also been enclosed at Annexure 7 to the supplementary affidavit filed in the review petition. There is no inter party contest raised even if, allowing the relief, may or may not disturb the seniority existing. Clause 4 of the resolution deals with the manner in which the posts available in the cadre of Assistant Engineer is to be filled up and earmarks 62% for direct recruits which includes the review petitioners while 10% is to be filled up by promotion from the Junior Engineers possessed with 'AMIE' qualification and remaining 28% is to be filled up by regular promotion from rest including the diploma holders.

The manner of determination of vacancies against 10% quota reserved for Junior Engineers with 'AMIE' qualification as well as their eligibility to such promotion stands discussed at paragraph 4(क) to 4(ड.) of the resolution. As according to the writ petitioners, who claim to fall in this category, the official respondents failed to discharge the obligation of determination of vacancy, year wise, as also the assessment of eligibility of Junior Engineers with 'AMIE' qualification while passing the promotional



order bearing Memo No.4853(S) dated 1.4.2010 that they came before this Court for a direction to the respondents to consider their claims of shifting back the date of their promotion in tune with the resolution dated 22.7.1998 and this Court finding substance in the grievance so raised by the writ petitioners while allowing them relief as prayed, issued direction to the official respondents for consideration of their claim in the backdrop of the stipulations present in the resolution dated 22.7.1998 and for its disposal in accordance with law.

Now the resolution dated 22.7.1998 under which the writ petitioners claim relief, while prescribing that 62% vacancy in the cadre of Assistant Engineer is to be filled up from direct recruits, recognizes the right of the Junior Engineers with prescribed experience and 'AMIE' qualification for consideration of their case for promotion as Assistant Engineer to the extent of 10% vacancies in the cadre of Assistant Engineer to be determined each calendar year. Where the writ petitioners claim their reliefs within the quota earmarked for them in the resolution dated 22.7.1998, whether or not their claim is covered under the stipulations present in the resolution is a matter which lies pending for determination before the official respondents vide the order passed on the writ petition.

The other aspect is that it is only in the circumstances



where the claim of the writ petitioners is upheld by the respondents that the review petitioners can have any reason for raising a grievance but a remand by this Court of the claim so raised by the writ petitioners for shifting back the date of their promotion in the light of the stipulation present in the resolution dated 22.7.1998, ipso facto gives no cause of action for the review petitioners because even if this Court has upheld the grievance raised by the writ petitioners in the light of the stipulation present in the resolution dated 22.7.1998, their claim is yet to be tested by the official respondents in the backdrop of the stipulations present and until such time the review petitioners have no cause of action.

The Constitution Bench judgment relied upon by Mr. Kanth rendered in the case of **Shivdeo Singh** (supra) in support of his contention, in fact disentitles the review petitioners to any relief because the conclusion at paragraph 8 recognizes a right of review only where a judgment of a Court affects the interest of persons who were not made parties. The grievance raised by the review petitioners herein lies on the foundation that the purported exercise to be carried out by the respondents under the order passed by this Court, if drawn in favour of the writ petitioners, is likely to affect the interest of the review petitioners. There is a vast distinction in between a situation where an order of a Court affects the right of any



party not added as a party qua an order which is likely to affect a person who is not made a party. An eventuality or a likelihood of being affected by any action purportedly undertaken by the respondents in compliance of the judgment and order of this Court gives no cause of action to any person to maintain a review and the reason is plain and simple. There was no adjudication of inter-party rights in the order of remand.

I am tempted to reproduce paragraph 8 of the Constitution Bench judgment rendered in the case of **Shivdeo Singh** (supra) which in fact supports the argument advanced by Mr. Giri, learned senior counsel opposing the review petitioners and runs as under:

“8. The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which in effect, reviews his prior order. Learned counsel contends that Art. 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J. entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J.”

(Emphasis is mine)



The Constitution Bench judgment recognizes the power of review under Article 226 of the Constitution in the High Court where an order affects the interest of persons not added as parties. Such is not the situation in the case in hand. Merely because the exercise to be carried out by the respondents may or may not affect the inter-party seniority in between the writ petitioners and the review petitioners, is no ground for review of the judgment and order passed by this Court on the writ petition.

In my opinion, even the judgment on the issue of retrospective promotion relied upon by Mr. Kanth does not apply to the issue in contest because the right of the writ petitioners to claim promotion from a particular date arises under the resolution dated 22.7.1998 itself, which vests a right in the Junior Engineers possessed with required work experience as well as the qualification of 'AMIE', to seek promotion against the 10% quota earmarked for them, to be determined in each calendar year. It is thus not a case of grant of retrospective promotion rather it is a case of determination of due date of promotion which two situations are vastly distinct and should not be confused.

The review petitioners coming under the direct recruit quota they owe their position in the gradation list from the date of their appointment which they do admit is 31.7.2004 and which at the



present juncture cannot be disturbed while the grievance raised by the writ petitioners to seek promotion in the cadre of Assistant Engineer is in tune with the stipulations present in the resolution dated 22.7.1998 and which may or may not give them a benefit of promotion from a date earlier to the notification of promotion issued i.e. 1.4.2010.

As I have observed, since the matter lies pending before the official respondents for taking a final decision in this regard which is yet to come, the review petitioners cannot be permitted to maintain an apprehensive litigation.

For the reasons discussed above the review application lacks merit and is dismissed accordingly.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14-12-2017
Transmission Date	NA

