

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6293 of 2008

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Krishna Murari Prasad, son of late Mung Lall Roy, permanent resident of Mohalla Shivpuri (Beur Road), Anishabad, P.S. Gardanibagh, District Patna at present working as Superintending Engineer, Mechanical and Design Circle, Ganga Bridge Project, Road Construction Department, Government of Bihar, Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
3. The Secretary to the Government, Road Constructions Department, Bihar, Patna
4. The Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna
5. The Joint Secretary Public Work Department now Road Construction Department, Government of Bihar, Patna
6. The Additional Secretary to Government, Road Construction Department, Bihar, Patna
7. The Deputy Secretary, Road Constructions Department, Bihar, Patna.

.....Respondent Ist Set

8. Narendra Prasad, son of not known, working as Incharge Chief Engineer, Ganga Bridge Project, Road Constructions Department, Government of Bihar, Patna
9. Sri Janak Ram, son of not known, Incharge Chief Engineer, Rural Work Department, Bihar, Patna
10. Sri Rajendra Pd. Choudhary, son of not known, Incharge Chief Engineer Central Design Organization, Road Constructions Department, Bihar, Patna
11. Sri Dharmdev Chaudhary, son of not known, Incharge Chief Engineer Rural Work Department, Bihar, Patna
12. Sri Jai Ram Rajak, son of not known, Superintending Engineer & Incharge Chief Engineer Building Constructions Department, Bihar, Patna
13. Sri Gopal Krishna, son of not known Incharge Chief Engineer, Rural Work Department, Bihar, Patna.
14. Sri Anup Pd. Rajak, son of not known, Incharge Chief Engineer, Advance Planning Sub-Division and Ganga Bridge Project, Road Construction Department
15. Sri Chandradev Ram, son of not known, Incharge Chief Engineer, South Bihar Wing, Road Construction, Department, Bihar, Patna
16. Sri Ram Prasad, son of not known Incharge Chief Engineer R.E.O.(Rural Engineering Organization) Bihar, Patna
17. Sri Baban Ram, son of not known Incharge Chief Engineer, North Bihar Wing, Road Construction Departments, Darbhanga
18. Deo Narayan Pd., son of not known Incharge Chief Engineer, Building Constructions Department, Bihar, Patna

.... Respondent/s 2nd Set

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Sinha, Sr. Advocate
Mr. Amrendra Kumar Sinha No.1
Mr. Shambhu Saran.
For the State : Mr. P.K. Verma, Sr Advocate.
Mr. Mankeshwar Jiwan, Ac to AAG 3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 19-02-2018

Learned counsel for the petitioner and State have drawn the attention of this Court to letter no.7933(S) dated 5.9.2017 wherein it has been stated that seniority and notional promotion of the petitioner to the post of the Chief Engineer was sent to the Finance Department which is still pending there and no final opinion has been given by the Finance Department. The issue of granting of notional promotion to the post of Chief Engineer has not been taken by the Finance Department and still pending for consideration.

In such view of the matter, looking to the facts of this case that petitioner is claiming that his juniors have been granted the benefit of promotion to the post of Chief Engineer as he has superannuated from service he has not been given the actual benefit of promotion to the post of Chief Engineer. Hence the department should give the benefit of notional promotion to the petitioner to the post of Chief Engineer.

From the record it appears that claim has been made by the petitioner that certain persons who were from reserve category have wrongly been made senior though they have entered into service much after entry of the petitioner but they have wrongly been given accelerated seniority though they made by entitled to accelerated promotion on the basis of



constitutional amendment made in Article 16 of the Constitution of India from time to time which cannot be given effect to retrospectively but prospectively. The constitutional amendment has been tested in the case of M Nagraj and others v. Union of India and others, reported in (2006)8 SCC 212 and Hon’ble Supreme Court did not find any error in constitutional amendment and approved the same. Later on this Court has dealt with issue in different judgments and as such the department has to decide the issue taking holistic view of spectrum and arrive to a final decision. This order is limited for consideration of the case of petitioner with respect to entitlement of notional promotion to the post of Chief Engineer.

Accordingly the department is directed to take decision in accordance with law within a period of two months from the date of receipt/production of a copy of this order.

With the aforesaid observation and direction this writ petition is disposed of.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.2.2018
Transmission Date	NA

