

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3343 of 2015

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1. Banke Paswan S/o Late Harihar Paswan Resident of Village Sheikhpura (Panchdevta), P.O. & P.S. Tekari, District Gaya.
 2. Brajendra Kumar S/o Baleshwar Pandey Resident of Village Dehri, P.O. Dehri, P.S. Hashpura, District Aurangabad.
 3. Ram Pravesh Singh S/o Mundrika Singh Resident of Village Tarowa, P.O. & P.S. Guruwa, District Gaya.
 4. Raj Kumar Paswan S/o Raghunandan Paswan Resident of Village Mahadev Ashtan, P.O. Phulwaria, Baheri, P.S. Guruwa, District Gaya.
 5. Ram Narayan Das S/o Ramdev Das Resident of Village Choriya, P.O. & P.S. Barahatti, District Gaya.
 6. Ram Pravesh Ram S/o Late Maigar Gorait Resident of Village Alamdigha, P.O. Raina, P.S. Belaganj, District Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Environment and Forest Department, Government of Bihar, Sinchai Bhawan, Patna.
2. The Additional Secretary, Environment and Forest Department, Government of Bihar, Sinchai Bhawan, Patna.
3. The Principal Chief Conservator of Forest, Government of Bihar, Patna.
4. Uma Nath Dubey Son of late Kedar Nath Dubey R/o Mohalla- Kayasth Toli Ram Nagar Road, Chiryantand, P.S.- Jakanpur, District- Patna, At Present Posted as forester, Purnea Forest Division Purnea.
5. Surendra Prasad Son of late Mahavir Prasad Resident of Mohalla- East Ashok Nagar, Road No. 14, Kankarbagh, P.S.- Patrakar Nagar, District- Patna, At Present Posted as Forester Begusarai Division, Begusarai.
6. Hem Chand Mishra Son of- late Vishwanath Mishra Resident of Village- Dhamaura, P.S.- Sathi District- West Champaran, at Present Posted as Forester, Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Ashish Giri, Advocate Mr. Sumit Kr. Jha, Advocate
For the Respondent/s	:	Mr. Amit Prakash, Advocate Mr. Ravi Bhardwaj, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

Date : 06-10-2018

Heard the parties.

2. The writ petitioners have prayed that their seniority may be determined by reckoning their continuous service since the dates on which they were earlier appointed under the Social



Forestry Scheme funded by the Central Government under the VI, 5 years plan. They had been appointed as Forest Extension Supervisors (FES) and Forest Extension Workers (FEWs) under the scheme. All the petitioners were appointed between 03.10.1987 to 30.11.1987.

3. Petitioner no. 1 was appointed on 06.11.1987, petitioner no. 2 on 26.10.1987, petitioner no. 3 on 03.10.1987, petitioner no. 4 on 30.11.1987, petitioner no. 5 on 06.11.1987 and petitioner no. 6 on 27.10.1987.

4. The scheme was closed with effect from 01.04.1989. Petitioners however, were made to continue. On 22.02.2001 the Department of Forest and Environment, Government of Bihar terminated all the petitioners. Termination was challenged in C.W.J.Cs No. 3608 of 2001, 4176 of 2001 and 7601 of 2001 by the petitioners. By order dated 04.10.2001 the writ petitions were disposed off upholding the termination of the petitioners.

5. The petitioners preferred intra Court appeal and vide order dated 28.06.2002 a Division Bench of this Court in LPA No. 142 of 2002 and analogous cases found the termination of the petitioners to be bad in law. The Division Bench considered the fact that the Divisional Forest Officers, Assistant Conservator of Forest, Range Officer, Statistical Assistant,



Accounts Assistant etc., who had been appointed and were working under the scheme had been retained in service and made permanent whereas the petitioners who were working on the two posts on FES and FEWs had been singled out and denied permanency in service. The termination of the petitioners was set aside and they were allowed to continue in service as before, but subject to final decision with respect to their regularization/absorption by the State Government.

6. On 07.01.2006 the Environment and Forest Department of the State of Bihar resolved to absorb the services of the petitioners working as FES against the vacant posts of Foresters. Services of the petitioners/FEWs was absorbed against the vacant posts of Forest Guard. The absorption was however, with a condition that petitioners shall be entitled to seniority with effect from the date of their absorption against the regular posts in the Department. The resolution of the State Government dated 07.01.2006 bearing no. 51 is Annexure 3 to the writ petition. Petitioners accepted the said absorption with the aforesaid condition with open eyes.

7. Thereafter, accordingly, the Principal Chief Conservator of Forest, Government of Bihar issued the order dated 06.07.2006 bearing no. 54 whereby the petitioners were



dully absorbed in the vacant posts of Forester and Forest Guard in the Department of Forest and Environment. Once again the order dated 06.07.2006 reiterated this condition that the petitioners' absorption was subject to the condition that their seniority in the Department would be considered with effect from the date of their absorption. This decision dated 06.07.2006 (Annexure 4) has also been accepted by the petitioner with open eyes.

8. Petitioners have availed the benefit of absorption with the aforesaid stipulation in the resolution dated 07.01.2006 (Annexure 3) and order 06.07.2006 (Annexure 4) with open eyes. The said condition of counting their seniority with effect from their date of absorption was never challenged by the petitioners prior to filing of the instant writ petition more than 9 years after having availed the benefit of conditional absorption under the resolution dated 07.01.2006 (Annexure 3) and order 06.07.2006 (Annexure 4).

9. Learned senior counsel for the petitioner has submitted that the persons who had been engaged/appointed on other posts under the Social Forestry Scheme have been allowed their seniority with effect from the date of their initial appointment under the said scheme. He submits that treating the petitioners,



who also had been appointed under the scheme, differently amounts to a hostile discrimination against the petitioners. It is also submitted that they cannot be deprived of benefit of past service under the Social Forestry Scheme and that they are entitled to reckoning of their seniority taking into consideration the length of service as temporary employees under the Scheme.

10. He submits that the authorities were conscious of this position. Therefore, the Forest Conservator and the Divisional Forest Officer under whom the petitioners were serving, subsequent upon their absorption had recommended for reckoning of their services with effect from the date of their initial appointment under the scheme for the purposes of seniority. Learned counsel in support of his claim for seniority has relied upon the decisions of the Hon'ble Apex Court in the case of **Direct Recruit Class II Engg. Officers' Asscn. v. State of Maharashtra** reported in **AIR 1990 SC 1607**, **Union of India v. Parul Debnath** reported in **(2009) 14 SCC 173** as also a decision in the case of **S. Sivaguru v. State of T.N.** reported in **2013 (7) SCC 335**.

11. The judgments relied upon by the senior counsel for the petitioner does not support the claim of the petitioners. In the celebrated case of the **Direct Recruit** (Supra), the Apex



Court in paragraph 44 (A) and (B) has clearly held that where the initial appointment is only ad-hoc and not according to Rules officiation in such posts cannot be taken into account for considering the seniority. However, the Apex Court has decided that upon regularization the period of officiating service will be counted. The same has been done in the instant case. Though the period is being counted for other purposes, but petitioners cannot be permitted to claim seniority with effect from their initial appointment under the Social Forestry Scheme. Judgment in the case of **Direct Recruit** (supra) in fact supports decision of the Principal Chief Conservator of Forest dated 30.05.2012(Annexure 10). The other case relied upon by learned senior counsel for the petitioner is also not in support of the petitioners' claim. The facts in the case of **Union of India v. Parul Debnath** (Supra) are different. There is a clear distinction in the claim decided by the Apex Court in the said case with that of the claim made by the petitioners in the instant case. In the case of **Union of India v. Parul Debnath** (Supra) the respondents were claiming equal pay for equal work and for regularization of their services i.e., not the position in the instant case. In the case of **Union of India v. Parul Debnath** (Supra) the respondents were performing works of permanent nature but



were being treated differently from the regular employees doing same work of the same organization and also under the operational control and supervision of the Andaman and Nicobar Police, under over all control of Andaman and Nicobar Administration. that is not the case here. In the instant case prior to absorption, petitioners were working as FES and FEW under Social Forestry Scheme and not performing the work of the Department on the post of Foresters or Forest Guards. Thus, this Court is of the opinion that the petitioners cannot claim parity with the Foresters or Forest Guards prior to their absorption in the regular service on the post of Forester or Forest Guard with effect from 06.07.2006.

12. The learned senior counsel for the petitioner has also placed reliance on paragraphs 59 and 60 of the judgment in the case of **S. Sivaguru (Supra)**.

13. Having considered the same, this Court would notice that in **S. Sivaguru (Supra)** the issue was whether the State was justified in denying the erstwhile Health Inspector Grade IB. The same treatment as was given to Health Inspector Grade IA. Both the said posts had merged and been re-designated as Health Inspector Grade I. Both the Health Inspectors Grade IA and IB were therefore, at par with each other since 1997 till



their merger in the year 2007. There was no distinction in the services rendered by both the Health Inspectors and therefore, the Apex Court was of the opinion that the provisions of the GOMs No. 382 of 2007 not to grant Health Inspectors Grade IB/erstwhile leprosy Inspectors the benefits of service from 1997 for determination of their seniority for promotion to the post of Block Health Supervisor, was completely unjustified. This was in the background that the Health Inspectors Grade-IA were placed at an advantage and given the benefit of service on the post of Health Inspector Grade-I from the date of initial integration. However, the Health Inspectors Grade-IB who were not in anyway different from Health Inspectors Grade-IA were deprived of such benefits.

14. It is trite law that a judgment is a precedent for what it decides. The facts of the case, and issues decided in the case of **S. Sivaguru** (Supra) and **Parul Debnath** (Supra) is totally different from the instant case. The said two decisions therefore, cannot come in support of the petitioners' claim. As noticed above the decision in the case of **Direct Recruit** (Supra) in fact supports the action of the State Government.

15. Per contra counsel for the State has submitted that for the first time petitioners were born in the cadre of the



government service by virtue of the resolution dated 07.01.2006 (Annexure 3). It is also submitted that petitioners have accepted their absorption subject to the condition that the period of service rendered by them under the Social Forestry Scheme shall not be counted for the purposes of seniority. During pendency of the writ petition final seniority list of foresters in the Department of Forest and Environment has been published on 26.12.2016 wherein petitioners seniority has been reckoned with effect from 06.07.2006. Same has been challenged by filing an Interlocutory Application No. 559 of 2017. The intervenor respondents namely respondent nos. 4, 5 and 6 have also opposed the prayer of the petitioner on very much the same grounds as have been urged by the counsel for the State. The interveners are opposing the relief claimed by the petitioner by harping on the distinction of their own permanent appointment as forester vis-a-vis the appointment of the petitioners which prior to the year 2006 was temporary in nature under the Social Forestry Scheme.

16. Having considered the rival submissions, this Court is of the opinion that petitioners cannot be permitted to approbate and reprobate at the same time. About 9 years after accepting their conditional absorption in government service, petitioners



cannot be permitted to turn around and challenge the conditions with which they had been absorbed. The petitioners cannot be allowed to claim parity with those who were working on the other posts under the scheme for the purposes of determination of their seniority. The persons who were working on the other posts under the Social Forestry Scheme had been dully appointed by the State Service Commission on posts which were already in existence in the Department, such as the posts of Divisional Forest Officers and Range Officers. No separate procedure was defined or no separate committee was constituted for their appointment. The said posts under the scheme were filled up by the regularly appointed officers of the Forest Department who were appointed on the basis of selection procedure by the State Public Service Commission. Their case stands on a totally different footing. They were already regularly appointed officers of the Department and their absorption and fixation of their seniority from the date of initial appointment, cannot be relied upon by the petitioners who unlike the others, prior to their absorption were not regularly appointed in the services of the Department.

17. The appointees on other posts, with whom the petitioners are claiming parity were different for yet another



reason. Prior to their absorption in the Department, they had been regularly appointed in government service in the department but were posted under the scheme. Thus, there was no difficulty in fixation of their inter-se seniority with others in the Department. In the case of the petitioners however, the situation is totally different. Petitioners prior to their absorption on 06.07.2006 had never worked as Foresters or Forest Guards, on which post they were later absorbed. Prior to 06.07.2006 they were never in the government service. Now they are claiming seniority with effect from a date prior to 06.07.2006 when they were not even born in the cadre.

18. If such claim is to be allowed by this Court, the same would amount to upsetting the settled issues of seniority in the Department of other foresters and forest guards. Such a situation cannot be countenanced, more so in view of the fact that petitioners with open eyes have accepted their absorption subject to the condition that their seniority in the Department would be reckoned from the date of their absorption in the Department. Apart from that this Court would also observe that the petitioners have not impleaded the other foresters, forest guards, in these proceedings whose settled seniority is likely to be disturbed in the event the claim of the petitioners are



allowed.

19. Counsel for the State has rightly relied upon the decision of the Hon'ble Apex Court in the case of **Kishore Kumar Rai vs. State of Bihar** reported in **2017 (1) PLJR 351**. The claim of the petitioners is squarely covered by the decision in the case of **Kishore Kumar Rai (Supra)** wherein Division Bench of this Court under similar circumstances as in the instant case has taken note of the fact that the petitioners therein had never challenged the terms of their regularization. The condition contained in the decision of regularization regarding their seniority was never challenged by them. The Division Bench has clearly held that they cannot claim any benefit beyond the terms of their regularization. This Court would also observe that once the petitioners have accepted the decision of the State Government to absorb them under the Resolution dated 07.01.2006 and order dated 06.07.2006 Annexure 3 and 4 respectively, along with the stipulation regarding counting of their seniority with effect from the date of their absorption, they cannot be permitted to turn around and claim for anything more than what has been accepted by them.

20. In view of the foregoing considered opinion of this Court, the claim of the writ petitioners is devoid of merit and the



writ petition stands dismissed.

(Madhuresh Prasad, J)

Prakash

AFR/NAFR	AFR
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