

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1042 of 2015

In
Civil Writ Jurisdiction Case No.17484 of 2008

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1. Satrugghan Prasad Sinha, S/o- Late Sri Mathura Prasad Sharma, at present posted and working as Acting General Manager at District Industries Centre, Madhubani.
 2. Satyendra Kumar, S/o- Late Gopal Sharan Gupta, at present posted and working as Acting General Manager at District Industries Centre Mungher.
 3. Damodar Tiwari, S/o- Sudama Tiwari, at present posted as Project Manager at District Industries Centre, Begusarai.
 4. Barun Kumar, S/o- Sri Kameshwar Sao, at present posted and working as Project Manager at District Industries Centre, Banka.
 5. Ram Kishore Kumar, S/o- Shiv Lakhan Sharma, at present posted as Project Manager at District Industries Centre, Gaya.
 6. Ram Prappan Chaudhary, S/o- Sri Kishori Sharan Chaudhary, at present posted as Project Manager at District Industries Centre, Begusarai.
 7. Ashok Kumar, S/o- Sri Upendra Prasad Sharma, at present posted as Project Manager at District Industries Centre, Darbhanga, Additional charge of Assistant Director, Handloom and Sericulture Directorate, Deptt. Of Industries, Bihar, Patna.
 8. Anand Mohan Singh, S/o- Late Bal Mukund Singh, posted at the Directorate of Handloom and Sericulture, Department of Industries, Vikas Bhawan, Bihar, Patna
 9. Ashutosh Vinay Kumar S/o- Late Uma Shankar Singh, at present deputed as Directorate of Handloom & Sericulture, Department of Industries, Vikas Bhawan, Patna.
 10. Ram Briksha Ravidas, S/o- Dukhan Ravidas, at present deputed at Directorate of Handloom & Sericulture, Deptt. of Industries, Vikash Bhawan, New Secretariat, Patna.
 11. Hemant Kumar, S/o- Shiv Nandan Prasad Yadav at present posted as Bunai Visheshgya at Kendriya Design Kendra, Rajendra Nagar, Patna.
 12. Om Prakash Singh S/o- Sri Brajnandan Singh, at present posted as Project Manager at District Industries Centre, Muzaffarpur.
 13. Lalan Kumar S/o Sri Brij Kishore Sharma at present posted as Project Manager, District Industries Centre, Muzaffarpur.

... .. Respondents-Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industry, Bihar, Patna.
2. The Principal Secretary Department of Industries, Bihar, Patna.
3. The Director Handloom and Sericulture Directorate, Department of Industries, Govt. of Bihar, Patna.
4. The Secretary Personnel and Administrative Reforms Department, Govt. of Bihar, Patna.
5. The Secretary and Commissioner, Department of Finance, Govt. of Bihar, Patna.



6. The Law Secretary, Govt. of Bihar, Patna.
7. The Joint Director, Directorate of Handloom and Sericulture, Bihar, Patna
8. The Union of India through Department Commissioner for Handloom, Ministry of Textile, New Delhi.
9. The Department Commissioner, Handloom, Ministry of Textile, New Delhi.
10. The Director, Indian Institute of Handloom Technology, Varanasi, Ministry of textile, Govt. of India, New Delhi.
11. The Secretary, All India Council for Technical Education, New Delhi.
12. Ashok Kumar Deo, S/o- Upendra Prasad Deo posted at Weaver's Training Centre Biharsharif, Nalanda, at present posted as Technical Supervisor at Hast Kargha Sudridhikaran Yojna, Patna, deputed at DIC, Banka.
13. Upendra Kumar Verma, S/o- Ram Nath Pal, posted at hast Kargha Saghan Vikash Yojna, Bhagalpur, at present posted as....
14. Krishnadeo Rajak S/o- Chotta Baitha posted at the Bihar Institute of Silk and Textile, Nath Nagar Bhagalpur at present posted as....
15. Md. Abdul Manna S/o- Julfikar Ali, at present posted as Supervisor at Weaver's Training Centre, Jhingnagar, Bihar Shariff, Nalanda.
16. Md. Istihq Ahmad, S/o- Md. Habibullah Ansari, at present deputed at Directorate of Handloom & Sericulture, Dept. of Industries, Vikash Bhawan, New Secretariat, Patna.
17. Dharmendra Kumar Godh, S/o- Lamalpati Sao, posted at Weaver's Training Centre, Amarapur, Banka, Dist.- Banka, at present posted as
...Respondents-Respondents-Respondents 1st set
18. Rajani Kant Ranjan, S/o- Sri Ram Das Sharma, at present posted & working as technical supervisor, Hast Kargha Sagham Vikash Yojna, O/o Dy. Development Officer (textile), Biads Building, Opp. R.K. Ashram, Bela, Muzaffarpur.
19. Mahesh Kumar, S/o- RajVansh Singh, at present posted and working as technical supervisor, Hast Kargha Sudrihikaran Yojna, O/o Dy. Development Officer (Textile), DIC, Karimganj, Gaya.
20. Manoj Pathak, S/o- Sri Bhola Pathak, at present posted as Supervisor, Weaver's Training Centre, Chakand, Gaya.
21. Ganesh Prasad, S/o- Sri Yadunandan Prasad, at present posted & working as Marketing Officer, O/o Assistant Registrar, Co-operative Societies (Handloom), Rajendra Nagar, Patna deputed at Deptt. of Industries, New Secretariat, Patna.
22. Sri Ram Singh, S/o- Late Bishnudeo Singh At present posted as Superior Weaver's Training Centre, Kako, Jehanabad.
23. Narendra Kumar, S/o- Shri Vishwanath Prasad Singh, at present deputed in Department of Industries, Govt. of Bihar, Vikash Bhawan, Patna.

... Petitioners-Respondents-Respondents 2nd set

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with

Letters Patent Appeal No. 2050 of 2015

In

Civil Writ Jurisdiction Case No.17484 of 2008

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1. The State of Bihar through the Principal Secretary, Department of Industry, Bihar, Patna.
2. The Principal Secretary, Department of Industries, Bihar, Patna.



3. The Director Handloom and Sericulture Directorate, Department of Industries, Govt. of Bihar, Patna.
4. The Secretary, Personnel and Administrative Reforms Department, Govt. of Bihar, Patna.
5. The Secretary and Commissioner, Department of Finance, Govt. of Bihar, Patna.
6. The Law Secretary, Govt. of Bihar, Patna.
7. The Joint Director, Directorate of Handloom and Sericulture, Bihar, Patna.

... Respondents- Appellants

Versus

1. Rajani Kant Ranjan Son of Sri Ram Das Sharma, Technical Supervisor (Lab Assistant), Bihar Institute of Silk and Textile, Nath Nagar, Bhagalpur, District - Bhagalpur, at present posted & working as Technical Supervisor, hast Kargha Sagham Vikash Yogna, O/o Development Officer (Textile), BIADA Building, Opp. R.K. Ashrama, Bela, Muzaffarpur.
2. Mahesh Kumar son of Sri Rajvansh Singh, Technical Supervisor in the office of the Deputy Development Officer (Textile) Darbhanga, District Darbhanga at present posted and working as technical supervisor, Hast Kargha Sudrihikaran Yojna, o/O Dy Development Officer (Textile), DIC, Karimganj, Gaya.
3. Manoj Pathak, Son of Sri Bhola Pathk, Technical Supervisor (Lab Assistant), Bihar Institute of Silk & Textile, Nath Nagar, bhagalpur, at present posted as Supervisor, Weavers Training Centre, Chakand, Gaya.
4. Ganesh Prasad, Son of Sri Yadunandan Prasad, Technical Supervisor (Investigator) in the Deputy Development Officer (Textile) Bhagalpur at present posted & working as Marketing Officer, O/o Assistant Registrar, Co-operative Societies (Handloom), Rajendra Nagar, Patna deputed at Dept. of Industries, New Secretariat, Patna.
5. Sri Ram Singh, Son of Late Bishnudeo Singh, at present posted and working as Marketing Inspector (Technical Supervisor) in the office of the Asstt. Registrar Co-operative Societies (Handloom), Rajendra Nagar, Patna, at present posted as Superior Weavers Training Centre, Kako, Jehanabad.
6. Narendra Kumar, Son of Shri Vishwanath Prasad Singh, at present posted and working as Technical Supervisor (Marketing Inspector) in the officer of the Asst. Registrar (Handloom) Rajendra Nagar, Patna, Deputed at Department of Industries, Govt. of Bihar, Vikash Bhawan, Patna.

Petitioners-Respondent 1st set

7. Satrugan Prasad Sinha, Son of Late Sri Mathura Prasad Shamra, PO at Kendriya Design Kendra, Rajendra Nagar, P.S. Kadamkuan, District - Patna, at present posted as Acting General Manager at District Industries Centre, Madhubani.
8. Satyendra Kumar, Son of Late Gopal Sharan Gupta, posted at District Industries Centre, Biharsharif, Nalanda, at present posted as Acting General Manager at District Industries Centre, Munger.
9. Damodar Tiwari, Son of Sudama Tiwari, posted at Office of Assistant Registrar (Handloom), Rajendra Nagar, Patna, at present posted as Project Manager at District Industries Centre, Darbhanga, additional charge of Assistant Director, Handloom and Sericulture Directorate, Deptt. of Industries, Bihar, Patna.



10. Ashok Kumar, Son of Sri Upendra Prasad Sharma, posted at office of Assistant Registrar (Handloom), Rajendra Nagar, Patna, at present posted as Project Manager at District Industries Centre, Begusarai.
11. Ram Prappan Choudhary, Son of Sri Kishori Sharan Chaudhary, posted at Hast Kargha Sudridhikaran Yojna, N.K. ghosia Lane, Jakkanpura, Patna, at present posted as Project Manager at District Industries Centre, Begusarai.
12. Lalan Kumar, s/o Sri Brij Kishore Sharma, posted at Hast Kargha Sudridhikaran Yojna, Sitamarhi Registrat, at present posted as Project Manager at District Industries Centre, Muzaffarpur.
13. Ram Kishore Kumar, Son of Shiv Lakhana Sharma, posted at Weaver's Training Centre, Aurangabad, at present posted as Project Manager, at District Industries Centre, Gaya.
14. Varun Kumar, Son of Sri Kameshwar Sao, Posted at Hast Kargha Sudridhikaran Yojna, Purnea P.S. & town - Purnea, at present posted as Project Manager at District Industries Centre, Banka.
15. Sri Om Prakash Singh, S/o Sri Brajnandan Singh, posted at Hast Kargha Sudridhikaran Yojna, Gaya, P.S. & town + District - Gaya, at present posted as Technical Supervisor, at Hast Kargha Sudridhikaran Yojna, DIC, Aurangabad.
16. Ashutosh Vinay Son of Late Uma Shankar Singh posted at the Bihar Institute of Silk and Textiles, Nath Nagar, Bhagalpur, at present posted as Technical Supervisor, Hast Kargha Sudridhikaran Yojna, DIC, Darbhanga at present deputed as Directorate of Handloom & Sericulture, Department of Industries, Vikas Bhawan, Patna
17. Ashok Kumar Deo Son of Upendra Prasad Deo Posted at Weaver's Training Centre Bihar Sharif, Nalanda at present posted as Technical Supervisor, at Hast Kargha Sudridhikaran Yojna, Patna deputed at DIC, Banka
18. Anand Mohan Singh Son of Late Bal Mukun Singh posted at the Directorate of Handloom and Sericulture, Department of Industries, Vikash Bhawan, Bihar, Patna
19. Hemant Kumar Son of Shiv Nandan Prasad Yadav posted at Hast Kargha Sudridhikaran Yojna, Siwan, P.S., Town & District - Siwan, at present posted as Bunai Visheshgya at Kendriya Design Kendra, Rajendra Nagar, Patna
20. Upendra Kumar Verma Son of Ram Nath Pal presently posted as Hast Kargha Sagahan Vikash Yojna, Bhagalpur, P.S., Town & District - Bhagalpur
21. Krishnadeo Rajak Son of Chhotu Baitha presently posted as the Bihar Institute of Silk and Technology, Nath Nagar, Bhagalpur
22. Md. Abdul Manna Son of Julfikar Ali posted at Kendriya design kendra Rajendra Nagar, P.S. - Kadamkuan, Town & Dist - Patna at present posted as Supervisor at Weaver's Training Centre, Jhingnagar, Bihar Sharif, Nalanda
23. Ram Briksha Ravidas Son of Dukha Ravidas posted at Weaver's Training Centre, Puraini, Bhagalpur at present deputed at Directorate of Handloom & Sericulture, Deptt. Of Industries, Vikash Bhawan, New Secretariat, Patna
24. Md. Istihaq Ahmad, Son of Md. Habibullah Ansari posted at the office of Assistant Registrar (Handloom), Rajendra Nagar, P.S. - Kadamkuan, District - Patna, at present deputed at Directorate of Handloom & Sericulture, Dept. of Industries, Vikash Bhawan, New Secretariat, Patna
25. Dharmendra Kumar Godh, Son of Kamalpati Sao at present posted as Weaver's Training Course, Amarpur, Banka, Dist. - Banka
26. The Union of India through Development Commissioner for Handloom, Ministry of Textile, New Delhi
27. The Development Commissioner, Handloom, Ministry of Textile, Government of India, New Delhi



28. The Director, Indian Institute of Handloom Technology, Varanasi, Ministry of Textile, Government of India, New Delhi

... Intervener- Respondents-Respondents 2nd set

Appearance :

(In Letters Patent Appeal No. 1042 of 2015)

For the Appellant/s : Mr. Y. V.Giri, Sr. Advocate

Miss Prakritita Sharma

For the Respondent nos. 18-23 Mr. Siya Ram Shahi

Mr. Suraj Narain Yadav

Mr Upendra Kumar Choudhary

For respondent no.8 Mr. Sujeet Kumar

For the State Mr. Raghwanand, G.A.11

Mr. Prabhat Kumar, AC to G.A.11

Mr. Kamal Deo Sharma, AC to G.A.11

(In Letters Patent Appeal No. 2050 of 2015)

For the Appellants Mr. Raghwanand, G.A.11

Mr. Prabhat Kumar, AC to G.A.11

Mr. Kamal Deo Sharma, AC to G.A.11

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date :19 -03-2018

The private respondents as well as the official respondents in the writ petition are independently before this Court in the intra court appeal(s) arising from a judgment and order dated 06.04.2015, passed by a learned Single Judge of this Court in CWJC No. 17484 of 2008, whereby the learned Single Judge has held that until the regularization of the writ petitioners with effect from their respective dates of appointment in the year 1986 is not interfered with, the length of service would be the basis for reckoning the inter se seniority qua the private respondents. It is with such direction that the writ petition was



disposed of for re-arrangement of the seniority list in between the writ petitioners and the private respondents.

2. Feeling aggrieved by the judgment and order so passed by the learned Single Judge, while the private respondents have preferred LPA No. 1042 of 2015, LPA No. 2050 of 2015, is preferred by the State-respondents. While LPA No. 1042 of 2015 was admitted for hearing on 22.05.2015, LPA No. 2050 of 2015 was admitted after condonation of delay vide order passed on 31.01.2017 with direction of its hearing analogous with LPA No. 1042 of 2015. The admission order dated 22.05.2015 passed in LPA No.1042 of 2015 also contains an interim order of stay of reversion of the private respondents until further orders of this Court while allowing other direction so contained in judgment to be in force.

3. An interlocutory application bearing I.A. No. 5399 of 2015 was filed for vacating such direction and which has been refused vide order passed on 24.09.2015. The matter has thereafter been listed before this Bench when the two appeals have been heard analogous and the parties have addressed on merits.

4. Before we would proceed to discuss the issues arising in the present appeal, we find it necessary to refer to



some of the dates which would be relevant for adjudication of the dispute so raised.

5. Vide order(s) present at Annexure-25 series, issued on different dates in the month of September, 1986, that the writ petitioners were appointed on ad hoc basis for a period of six months against the posts of Technical Supervisor, and Textile Designer etc. It is not in dispute, rather admitted that the appointments, though ad hoc, was extended from time to time until the claim of these petitioners was taken up for regularization by the Directorate Handloom and Sericulture on 26.10.1991. The proceeding placed on record by the respondent-writ petitioners through a supplementary affidavit filed in the present appeal on behalf of respondent nos. 18 to 23, is at Annexure-R/2 and which shows that of the 36 sanctioned posts of Dyeing Jobber, Senior Instructor and Technical Assistant, 6 were occupied by the Indian Institute of Handloom Technology (IIHT) trained writ petitioners who had completed a three years diploma from IIHT, Benaras and were appointed in the year 1986. Such is the noting present at paragraph 2 of the minutes of meeting held by the Directorate on 26.10.1991. The names of the six petitioners herein finds mention. Insofar as the remaining 30 of the 36 sanctioned posts is concerned, a decision was taken



to send a requisition to the Staff Selection Commission for appointment against the same. The minutes further confirm that these six posts which were held by the petitioners were kept secure for their regular appointment. Since the decision so taken by the Establishment Committee of the Directorate for regularization of the writ petitioners consumed some time that the petitioners came before this Court in CWJC No. 2488 of 1995 and CWJC No. 9871 of 1995. A learned Single Judge of this Court, vide judgment and order passed on 08.01.1997 and 24.01.1997 enclosed at Annexure-3 and 4 respectively to the writ petition, after taking note of the recommendation of the Establishment Committee as well as the fact that the petitioners were continuing against sanctioned post(s), directed the respondents concerned to pass appropriate order in terms of the recommendation of the Committee within a period of six weeks from the date of the judgment and order. Such was the direction issued in two writ petitions. The direction so issued by the learned Single Judge was not questioned either by the State respondents or any other party aggrieved before any superior forum.

6. The petitioners by virtue of their appointment on ad hoc basis have continued as per the extension granted by the



Department from time to time until the writ petitioner no.1 was regularized vide memo no. 2186 dated 14.08.1997 and by another order bearing memo no. 2185 passed on the same date, the writ petitioner nos. 2 to 6 were also regularized. The order of regularization was made effective from the date of initial appointment of the writ petitioners. Copies of regularization orders have been enclosed at Annexure-5 series to the writ petition. Insofar as the issue of seniority, which is the contest put forth herein is concerned, the order of regularization stipulated that it would be decided later on.

7. In between this process, the Staff Selection Commission alongside, also proceeded on the requisition placed by the respondents in the light of the decision of the Establishment Committee dated 26.10.1991 for appointment against the remaining 30 posts and issued advertisement for appointment of Sizing Jobbers, Technical Assistant and other equivalent posts. The appellants herein who were the private respondents in the writ proceedings, applied against the advertisement. Vide letter no. 183 dated 07.11.1994 present at running page 333 of the writ proceeding, a merit list was prepared and was forwarded by the Bihar Public Service Commission (BPSC) because according to learned counsel, at



the relevant time the duty lay with the BPSC for such selection. Being successful in selection that the private respondents were appointed on different posts of Sizing Jobber and Technical Assistant etc. vide appointment orders dated 20.02.1996/07.08.1996, copies of which have been placed on record vide Annexure-F and G of the counter affidavit filed on behalf of respondents nos. 3 and 7.

8. A relevant aspect of the contest is that the advertisement for appointment was limited to the 30 of the 36 sanctioned posts, as per the decision of the Establishment Committee dated 26.10.1991. Meaning thereby the six sanctioned posts held by the writ petitioners were not advertised. The process of determination of inter se seniority between the writ petitioners and the appellant-respondents was initiated on 04.05.2005 when a tentative gradation list was published inviting objection vide Annexure-9 to the writ petition placing the respondents-writ petitioners above the appellants. According to the appellants, it is taking note of the objection so raised that the final gradation list was prepared and published through memo no.2914 dated 21.02.2008 at Annexure-12 to the writ petition, whereby the appellants-private respondents were placed above the writ petitioners and it is feeling aggrieved that they moved



this Court through CWJC No. 17484 of 2008 which prayer has been allowed by the judgment and order impugned and hence these appeals.

9. Mr. Y.V. Giri, learned Senior Counsel has appeared for the appellants and broadly has supported the seniority list on the following grounds:-

A. The initial appointment of the writ petitioners was contrary to the advisory issued by the Stage Government as contained in the circular dated 11.06.1986, a copy of which is enclosed at Annexure-E to the counter affidavit at running page 138 of the writ petition.

B. Where the initial appointment of the writ petitioners itself was illegal, no right would accrue to them either to claim retrospective regularization or continuation for the purpose of seniority.

C. In view of apparent illegality, the regularization order on a higher scale than the scale held by the petitioners was not legal.

D. The legal position as regarding the status of an ad hoc employee is well-settled and even if the period rendered is counted for the purpose of continuity, it cannot be a foundation for grant of seniority.

10. In support of his submission as to the illegality in



initial appointment of these petitioners against the ad hoc post vide appointment order present at Annexure-25 series, learned counsel has referred to an advisory of the Department of Personnel and Administrative Reforms dated 11.06.1986 to submit that even though clear instruction had been issued by the Department restraining other Departments from making ad hoc appointments, yet within a few months thereafter, the writ petitioners were appointed on 09.09.1986 vide Annexure-25 series. According to Mr. Giri where the appointment itself was contrary to the advisory issued by the State Government no right can be claimed by the writ petitioners for it is founded on illegality. It is next argued that where the initial appointment itself was illegal, the regularization order present at Annexure-5 series to the writ petition is a perpetuation of illegality for an illegal appointment could not have been validated. In short, Mr. Giri attacked the very appointment of the writ petitioners on ad hoc basis.

11. It is next contended by Mr. Giri that if these petitioners had been appointed de hors the guidelines, the regularization order passed on 14.08.1997 could not be applied retrospectively for it is contrary to the legal position settled by the Court. Mr. Giri has referred to a judgment of the Supreme



Court rendered in case of **Bhupendra Nath Hazarika & Anr. vs. State of Assam & Ors.** reported in **(2013) 2 SCC 516** and placing reliance on the opinion expressed in paragraphs 41,43,46,51,56 and 60, he submits that it is after taking note of the various judgments rendered on the issue, that it was held that even if the services of an employee who has been appointed de hors the statutory rules, is regularized, the ad hoc period cannot be counted for the purpose of seniority. For the same proposition, learned counsel has referred to paragraphs 7 and 8 of the judgment of the Supreme Court rendered in the case of **S.K.Saha Vs. Prem Prakash Agarwal & Ors.**, reported in **(1994) 1 SCC 431**.

12. In support of his submission that an illegal appointment does not bestow any right on the appointee, learned counsel has referred to a judgment rendered by the Supreme Court in the case of **State of Bihar vs. Upendra Narayan Singh & Ors.** reported in **(2009) 5 SCC 65** (para 43,44,53 and 54). According to Mr. Giri even if the State had decided to regularize the service of the writ petitioners it could best have done it prospectively, but a retrospective regularization is contrary to the settled legal position. In support of his submission, he made reference to a judgment of the Supreme



Court rendered in case of **Union of India & Ors. vs. Sheela Rani** reported in (2007) 15 SCC 230. Learned counsel has referred to a judgment of this Court in case of **Digambar Thakur vs. State of Bihar** reported in 2015 (1) PLJR 918 (para 15,23 & 29), and a judgment of the Supreme Court reported in (1998) 8 SCC 690 (**Registrar General of India & Anr. vs. Thippa Setty & Ors.**) in support of his submission that retrospective regularization should be avoided as it disturbs the settled seniority position.

13. While being critical of the judgment impugned, he submits that the learned Single Judge got diverted from the main issue and rather concentrated on the non-challenge to the regularization order which order was not interfering with the status of the petitioners rather it is only when such regularization was made the foundation for determination of inter se seniority and got confirmed on the publication of the provisional seniority list on 04.05.2005 that a cause of action arose for the appellant-respondents to question the seniority. He submits that a plain look of the regularization order placed at Annexure-5 series it would confirm that the issue of inter se seniority was kept open and thus at the stage of regularization of the writ petitioners in the year 1997, there lay no occasion for the appellants to agitate



any issue.

Concluding his arguments, it is submitted that a non-challenge by the appellants to the regularization order cannot be held a reason for unsuiting them on their challenge to the inter se seniority, which was an independent cause of action and in view of the law so well-settled by the Court(s) the benefit of continuity could not be granted to the writ petitioners for purpose of seniority.

14. Mr. Siya Ram Shahi has led the argument for the respondent writ petitioners, duly assisted by Mr. S.N.Yadav. Mr. Shahi, responding to the charge of Mr. Giri on the nature of appointment of the writ petitioners, has invited the attention of this Court to a resolution of the Establishment Committee of the Directorate of Handloom and Sericulture dated 26.10.1991 to submit that any doubt as regarding the validity of the appointment stands clear by the stipulation present therein. With particular reference to the resolution at paragraph 2, he submits that the appointment was made in the year 1986 on ad hoc basis as against 06 out of 36 sanctioned posts of Dyeing Jobber, Senior Instructor, Technical Assistant and equivalent posts, which were available in the Department. In reference to the resolution, he submits that these petitioners are diploma holders from the



Institute of Handloom Technology at Benaras and it is by virtue of their qualification and under a bond so signed that they had been appointed on ad hoc basis in the year 1986. He submits that the Establishment Committee, taking note of the situation where, of the 36 sanctioned posts available in the Directorate, 06 were held by these petitioners, took a decision to send a requisition before the Subordinate Selection Commission for appointment against the remaining 30 posts, the details of which category-wise are also mentioned in the said paragraph. He submits that the Directorate while sending requisition for filling up the vacant 30 posts also resolved to keep the 06 posts on which these petitioners had been appointed on ad hoc basis secured, until their regularization against those posts.

15. He submits that although the appointment of these petitioners have been questioned by Mr. Giri, but the resolution itself explains that these petitioners, under a bond, were permitted to get/obtain diploma from the Indian Institute of Handloom Technology subject to the condition that they shall serve the government for not less than three years.

It is submitted that it is taking note of the entire matter that the Establishment Committee recommended for the regularization of the petitioners with effect from the date of their



initial appointment. He submits that since the relief of regularization was not forthcoming that the writ petitioners came before this Court in CWJC No. 2488 of 1995 and CWJC No. 9871 of 1995 and vide judgment and order dated 08.01.1997 and 24.01.1997, respectively, present at Annexure 3 and 4 to the writ petition that the learned Single Judge taking note of the decision of the Establishment Committee dated 26.10.1991, issued direction to the respondent authorities to issue appropriate notification in terms of the recommendation of the Committee positively within six weeks from the date of judgment.

16. In reference to the stand of the Government before the writ Court in CWJC No. 2488 of 1995 present in the counter affidavit and enclosed at Annexure-R-3 to the supplementary affidavit as well as the request made by the Additional Secretary, Industries Department to the BPSC seeking approval to the regularization of the petitioners as contained in letter dated 26.02.1996 at Annexure-R/4, he submits that it is during the pendency of the matter that the State Government decided to proceed for regularization of the services of the petitioners and after the orders were passed by the learned Single Judge at Annexures-3 & 4, there was no other option left with them but to issue regularization order, copies of which are present at



Annexure-5 series.

17. It is submitted by Mr. Shahi that whereas petitioner no.1 was regularized vide order bearing memo no.2186 dated 14.08.1991 against the post of Textile Designer in the revised pay scale with effect from the date of his initial appointment, petitioner no.2 to 6 were regularized in a similar manner against the posts of Supervisor/Technical Supervisor, vide memo no. 2185 dated 14.08.1997 which orders are present at Annexures- 5 and 5/A respectively. It is in reference to the order bearing memo no. 922 dated 31.03.1999 at Annexure-5/D and order bearing memo no. 2725 dated 14.10.1999 at Annexure-5/B submitted that the services of these petitioners were confirmed after regularization. It is the argument of Mr. Shahi that the sequence of event discussed would confirm that it is in the light of the resolution of the Establishment Committee dated 26.10.1991 followed by the orders passed by this Court on the writ petitions, referred to above, that the regularization was granted to the respondent-writ petitioners from the date of their initial appointment with no objections raised by any.

18. Supporting the claim of the respondent-writ petitioners for counting of period of ad hoc service for seniority, learned counsel next turns to the Constitution Bench judgment of the



Supreme Court rendered in case of **Direct Recruit Class-II Engineering Officers' Association & Ors. vs. State of Maharashtra & Ors.** reported in **AIR 1990 S.C. 1607**. With particular reference to the conclusion drawn in paragraph 44 of the judgment, he submits that even if the argument of Mr. Giri that the initial appointment of these petitioners was not in accordance with the procedure, is accepted on the face value, yet, since these petitioners have continued on their respective posts uninterruptedly till their regularization, in view of legal position settled at paragraph 44 (B), the period of officiating service has to be counted for the purpose of seniority. It is submitted that the case of these petitioners is not covered by the situation present at paragraph 44(A), rather it would be guided by the legal position settled at paragraph 44(B).

19. For the same proposition, learned counsel has referred to a judgment of the Supreme Court reported in **AIR 2014 SC 1716 (Amarendra Kumar Mahapatra & Ors. Vs. State of Orissa & Ors.)** and in reference to the opinion expressed in paragraphs 62 to 68, he submits that a similar situation arising in the said case that the Supreme Court taking note of the judgment rendered by the Constitution Bench in **Direct Recruit** case (supra) as also the judgment rendered thereafter has upheld the



claim for counting the ad hoc service rendered prior to regularization.

20. The third judgment relied upon by Mr. Shahi is rendered by the Supreme Court in case of **G.P.Dowal & Ors. vs. Chief Secretary, Govt. of U.P. & Ors.**, reported in **AIR 1984 SC 1527** and in reference to paragraph 15 of the judgment, he submits that the dispute is put to rest by the opinion expressed by the Supreme Court to hold that where officiating appointment is followed by confirmation, unless a contrary rule is shown, continuous officiation cannot be ignored for determining seniority.

21. He submits that the posts in question were included in the Bihar Industries Service Cadre Rule, 1987, vide amendment in 2005, a copy of which is at Annexure-8 to the writ petition. In reference thereto he submits that the posts of Technical Supervisor/Supervisor/Sizing Jobber/Technical Assistant were included in Schedule-4 attached to the Rule by the 2005 amendment. He thus submits that where these posts itself were included in the Cadre Rule in the year 2005, the argument of Mr. Giri that the appointment was contrary to Rules, is not sustainable. Responding to the reliance placed by Mr. Giri to the judgment rendered in case of **Bhupendra Nath Hazarika**,



he refers to paragraph 46 of the judgment to submit that the case is distinguishable because in that case the appointment had been made in excess of the quota provided under the Rule and in this background that opinion was expressed, which is not the case in hand. Referring again to the resolution of the Establishment Committee dated 26.10.1991 placed on record by way of a supplementary counter affidavit filed in appeal, he submits that it is not in dispute that of the 36 sanctioned posts, 06 were held by the petitioners while the appellants/private respondents were appointed against the remaining 30 posts. It is his argument that it is in tune with the resolution dated 26.10.1991 that the Department had advertised only 30 posts securing 06 posts held by these petitioners because it had already been recommended for regularization. Turning again to Rule 21 of the Cadre Rule, a copy of which is enclosed at Annexure-B/1 of the counter affidavit of respondent no.21, he submits that all orders issued and appointments made earlier have been held valid as made under the Cadre Rule. It is thus the submission of Mr. Shahi that in these undisputed circumstances, it is too late in the day for the appellants to question either the initial appointment of the writ petitioners or their regularization in the process of defending the seniority list. Concluding his arguments, Mr. Shahi has referred



to a judgment of the Supreme Court rendered in case of **S. Sumnyan & Ors. vs. Limi Niri & Ors.**, reported in **AIR 2010 SC 2159** and in reference to the opinion expressed at paragraph 29, he submits that the view expressed by the Supreme Court in the case of **G.P. Dowal** (supra) has been reiterated as regarding the benefit of continuous officiation where ad hoc appointment is followed by regularization.

22. Mr. Raghwanand, learned G.A. 11, appearing for the appellants in LPA No. 2050 of 2015, while defending the regularization order, submits that the issue of inter se seniority was kept open and it is taking note of the legal position that after inviting objection, the final gradation list was published, declaring the appellants senior. For the purpose, Mr. Raghwanand has shown the letter bearing memo no.1575 dated 28.08.2009 of the Directorate present at running page 152 of the writ proceeding to submit that exercise of preparation of the final gradation list was in the light of the legal opinion received from the Department of Personnel and Administrative Reforms, the Law Department as well as the Finance Department.

23. Mr. Raghwanand has also made reference to the circular of the State Government in the Department of Personal and Administrative Reforms dated 26.08.1972 enclosed at



Annexure-C to the counter affidavit of respondent nos. 3 and 7 filed in the writ proceeding, to submit that it clearly stipulates that while determining the inter se seniority between the direct recruit and the promotee, the ad hoc service rendered would not be counted for the purpose of seniority as stipulated in paragraph 3 (ga) of the circular.

24. We have heard the learned counsel for the parties and perused the record.

25. Certain undisputed facts, as discussed, need to be reiterated because they go to the root of the matter.

26. The writ petitioners were appointed on ad hoc basis on 09.09.1986 vide Annexure-25 series to the writ petition. The appointment, though on ad hoc basis, was against the vacant sanctioned posts available in the Directorate of Handloom and Sericulture which is confirmed from the minutes of the meeting of the Establishment Committee of the Directorate dated 26.10.1991, more particularly paragraph 2, a copy of which is enclosed at Annexure R/2 to supplementary counter affidavit filed in appeal by the respondents writ petitioners.

The minutes at paragraph 2 of the meeting confirms that the appointment was on 06 posts against 36 sanctioned posts available in the Directorate, of Dyeing Jobber, Senior Supervisor,



Technical Assistant etc.

The minutes confirms that these 06 writ petitioners were made to execute a bond of serving the government for three years after obtaining Diploma from the Indian Institute of Handloom Technology, Benaras.

The minutes confirms that even though the requisitions were made to the Sub-ordinate Selection Commission for filling up the 30 of the 36 sanctioned posts, 06 posts held by the writ petitioners were kept reserved for their regularization against those posts.

It is not in dispute that right since the appointment of these writ petitioners against the sanctioned posts albeit on ad hoc basis, they were allowed to continue uninterruptedly until a decision was taken by the Establishment Committee on 26.10.1991 for their regularization against those sanctioned post on which they had been appointed and were continuing.

When the relief was not forthcoming, writ petitioner no.1 moved this Court through CWJC No. 2488 of 1995 while writ petitioner nos 2 to 6 moved through CWJC No. 9871 of 1995 and vide judgment and order present at Annexures-3 and 4, respectively, to the writ proceeding, a learned Single Judge, taking note of the recommendation of the Establishment



Committee dated 26.10.1991, directed the respondents to issue appropriate notification in terms of their recommendations of regularization of these petitioners against the 06 reserved sanctioned posts.

The orders dated 08.01.1997 and 24.01.1997 passed by this Court on the two writ petitions respectively, were not questioned before the superior forum and have not only attained finality rather were acted upon by the respondents themselves in issuing orders of regularization bearing memo no. 2186 dated 14.08.1997, insofar as the writ petitioner no.1 is concerned and order bearing memo no. 2185 dated 14.08.1997 insofar as writ petitioner nos. 2 to 6 are concerned, copies of which are at Annexures-5 and 5/A respectively.

A cursory glance of the order(s) of regularization would confirm two relevant aspects of the matter:

- (i) It was in compliance of the order passed by this Court in CWJC No. 2488 of 1995; and
- (ii) the regularization was granted from the date of initial appointment.

27. The services of these 06 writ petitioners, on regularization, were confirmed vide order bearing memo no. 2725 dated 14.10.1999, insofar as petitioner no.1 is concerned



and vide memo no.922 dated 31.03.1999 insofar as other petitioners are concerned.

28. The ad hoc nature of the appointment of the writ petitioners thus assumed the character of a regular appointment by virtue of its uninterrupted continuity followed by the resolution of the Establishment Committee dated 26.10.1991 and the direction issued by this Court in earlier round of proceeding to culminate in the regularization order which regularizes their services with effect from their initial appointment and was against the sanctioned posts in the Directorate.

29. Now, in the admitted circumstances discussed above, where the State neither questioned the decision of the Establishment Committee dated 26.10.1991 of granting regularization to the writ petitioners from the date of their initial appointment nor questioned the judgment and order of the Writ Court in issuing a mandamus to implement the decision of the Establishment Committee dated 26.10.1991, rather having proceeded to regularize the services of the writ petitioners with effect from the date of their initial appointment, the confusion whatsoever as regarding the nature of post held by these petitioners stood resolved in the regularization order. The adhocism in the nature of appointment lost its effect and was



replaced by the order of regularization which was held in continuity of the service of the writ petitioners. There may be reasons reserved for the respondents in keeping the issue of inter se seniority open for discussion later, but in our opinion, once the State had proceeded to grant regularization to the writ petitioners from the date of initial appointment, coupled with the fact that the appointment of the writ petitioners was against the vacant sanctioned post in the Directorate, there was no confusion remaining that they had a right to claim continuity in service.

30. The other aspects of the matter is that while the Establishment Committee of the Directorate advertised 30 out of 36 sanctioned posts, it kept 06 posts reserved for the writ petitioners because their regularization was under consideration. Meaning thereby these writ petitioners were not allowed to participate in the selection process initiated for direct recruitment in which the appellants herein did succeed and in our opinion rightly so, because even though these writ petitioners had been appointed on ad hoc basis, it was against the regular sanctioned posts under a bond which these writ petitioners were made to execute. In our opinion, until the publication of the gradation list showing the writ petitioners senior to the private respondents, who are appellants before this Court and



who were borne in the cadre of the Directorate in the year 1997 i.e. after these writ petitioners had spent 11 years of their services, the Directorate had rightly shown the writ petitioners seniors to the private respondents.

31. Mr. Raghwanand has relied upon two documents as referred above, in support of the final gradation list but just as the departmental head even learned counsel appearing on their behalf has shut himself from the legal position i.e. that there was no adhocism remaining after the issuance of regularization order which was made effective from the date of initial appointment. Had it been a case where the writ petitioners were regularized with prospective effect perhaps the circular relied upon by Mr. Raghwanand as well as the reasons assigned by the Directorate at running page 152 may have warranted attention but it is rather surprising that even after the government has taken a conscious decision to abide by the recommendation of the Establishment Committee acting under the orders of this Court, to grant regularization to the writ petitioners from the date of their initial appointment which was questioned by none yet it is under the cover of ad hoc appointment which had paled into insignificance after the regularization order that they wrested the right of continuity from these petitioners to publish the final



gradation list showing the appellants senior. The arguments, advanced by Mr. Giri, learned Senior Counsel, appearing for the appellants, is sound on principles that ad hoc service followed by regularization, cannot provide the benefit of continuity, but the case in hand is distinctly distinguishable as in the present case the regularization has taken effect from the date of initial appointment and rightly so because the appointments were made against vacant sanctioned posts available in the Directorate.

32. The learned Single Judge has rightly observed in paragraph 15 of the judgment that though the order of regularization gives a retrospective benefit to the writ petitioners, yet was never appealed against by the private respondents, who had joined service by then. Obviously, the State, acting under the mandamus of this Court passed on the writ petition, could not have assailed its own decision.

33. Interestingly, LPA No. 2050 of 2015 is filed by the Department and this Court is yet trying to figure out the ground raised because having taken a conscious decision to grant regularization to the writ petitioners from the date of initial appointment and having expressed its tentative opinion on the inter se seniority between the writ petitioners and the private respondents by publication of the provisional gradation list



where the writ petitioners were shown senior yet without disposing of the objection so received against the provisional gradation list by a speaking order that the appellant-State has reversed the seniority by putting the writ petitioners below the private respondents and the reasons are missing for such decision.

34. In our opinion, on the circumstances noted, an unwarranted delay by the respondents in determining the inter se seniority even where the stage was already set, has given a food for thought for the appellants to question the very existence of the respondent-writ petitioners. In fact, initially the respondents had proceeded in the right direction and the provisional seniority list was correctly drawn by the respondents appreciating the factual position existing but they got swayed by the circulars on treatment of ad hoc period, which had no bearing on the writ petitioners whose service had already partaken the character of regular appointment. The judgments relied upon by Mr. Giri in case of **Bhupendra Nath Hazarika** as well as other judgments, referred to above, are judgments on the issue where the service of an ad hoc appointee is regularized prospectively and yet the appointee seeks the benefit of period of ad hoc service. In the present case, the regularization has



taken place with effect from the date of initial appointment and thus those judgments would not be applicable in the nature of contest raised.

35. Insofar as the circular dated 11.06.1986 relied upon by Mr. Giri is concerned, in our opinion, it is too late in the day for the appellants to question the very appointment of these writ petitioners and even if there be any form of irregularity by the respondents in not following the advisory present in the circular dated 11.06.1986, the decision of the Establishment Committee dated 26.10.1991 which has been affirmed by the Writ Court vide judgment and order placed at Annexures-3 and 4 to the writ proceeding and has been acted upon by the respondents to issue the regularization order, the dispute as to the nature of appointment, is set at rest.

36. Before recording our conclusion on the contest, we feel persuaded to reproduce paragraph 15 of the judgment in the case of **G.P. Doval** (supra) which puts a quietus to the challenge:-

“15. Now if there was no binding rule of seniority it is well-settled that length of continuous officiation prescribes a valid principle of seniority. The question is: from what date the service is to be reckoned? It was urged that any appointment of a stopgap nature or pending the selection by Public



Service Commission cannot be taken into account for reckoning seniority. In other words, it was urged that to be in the cadre and to enjoy place in the seniority list, the service rendered in a substantive capacity can alone be taken into consideration. We find it difficult to accept this bald and wide submission. Each case will depend upon its facts and circumstances. If a stopgap appointment is made and the appointee appears before the Public Service Commission when the latter proceeds to select the candidates and is selected, we see no justification for ignoring his past service.

... ..

In fact if once a person appointed in a stopgap arrangement is confirmed in his post by proper selection, his past service has to be given credit and he has to be assigned seniority accordingly unless a rule to the contrary is made. That has not been done in the case of all the petitioners.

... ..

In fact a fair rule of seniority should ordinarily taken into account the past service if the stopgap arrangement is followed by confirmation. This view which we are taking is borne out by the decision of this Court in *Baleshwar Dass v. State of U.P.* wherein this Court observed that the principle which has received the sanction of this Court's pronouncement is that "officiating service in a post for all practical purposes of seniority is as good as service on a regular basis. It may be permissible, within limits for



Government to ignore officiating service and count only regular service when claims of seniority come before it, provided the rules in that regard are clear and categorical and do not admit of any ambiguity and cruelly arbitrary cut-off of long years of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts'. It was said that service rules will have to be reasonable, fair and not grossly unjust if they are to survive the test of Articles 14 and 16. It is thus well-settled that where officiating appointment is followed by confirmation unless a contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in the seniority list. Admittedly, that has not been done and the seniority list is drawn up from the date on which the approval/selection was made by the Public Service Commission in respect of each member of the service, which is clearly violative of Article 16, and any seniority list drawn up on this invalid basis must be quashed."

37. For the reasons discussed above, we find no infirmity in the judgment and order passed by the learned Single Judge,



requiring interference. The appeals filed by the appellant-private respondents as well as the appellant-State lack in merit and are dismissed accordingly, but without any order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

HR/-

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CAV DATE	N/A
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