

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 704 of 2018

(Arising out of order dated 31.07.2018 passed in W.P.(S) No. 790 of 2013 passed by the learned Single Judge)

- Umeshwar Singh S/o Late Shyam Bahadur Singh Aged About 55 Years Occupation Service, Posted As Assistant Fisheries Officer In The Office of Assistant Director Fisheries, Baikunthpur, District Koriya, Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through The Principal Secretary Fisheries Department, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. The Director Fisheries Telibandha, Near Railway Crossing Raipur, Post Office Ravigram Police Station Telibandha, Raipur, District Raipur, Chhattisgarh.
3. Anil Kumar Tiwari S/o Ganga Prasad Tiwari Posted As Assistant Fisheries Officer In The Office Of Deputy Director Fisheries, Training Institute, Telibandha, Near Railway Crossing Raipur, Post Office Ravigram, Police Station Telibandha, Raipur, District Raipur, Chhattisgarh.
4. B. D. Patel S/o Mandhar Patel Posted As Assistant Fisheries Officer In The Office Of Deputy Director Fisheries Composite Building Collectorate, Police Station Civil Lines, Bilaspur, District Bilaspur, Chhattisgarh.
5. Koushlendra Mishra S/o Dineshwar Mishra Posted As Assistant Fisheries Officer In The Office Of Deputy Director Fisheries Kondagaon Police Station Kondagaon District Kanker, Chhattisgarh.
6. Damodar Prasad Bhargav S/o Hira Lal Bhargav Posted As Assistant Fisheries Officer In The Office Of Deputy Director Fisheries Kondagaon, Police Station Kondagaon, District Kanker, Chhattisgarh.
7. G. P. Agrawal S/o Kashiram Agrawal Posted As Assistant Fisheries Officer In The Office Of Director Fisheries Telibandha Near Railway Crossing Raipur, Post Office Ravigram, Police Station Telibandha, Raipur, Chhattisgarh.

---- Respondents

WA No. 719 of 2018

(Arising out of order dated 31.07.2018 passed in W.P.(S) No. 1511 of 2013 passed by the learned Single Judge)

1. Yagya Narayan Dwivedi S/o Ganga Prasad Dwivedi Aged About 49 Years Fisheries Inspector Posted At The Office of The Assistant Director Fisheries, PO, P.S. And District Korba, Chhattisgarh.
2. Anita Bhardwaj W/o Shri Lailun Kumar Bhardwaj Aged About 47 Years Fisheries Inspector Posted At The Office Of Assistant Director Fisheries, Raigarh, PO, Ps And District Raigarh, Chhattisgarh.

---- Appellants

Versus

1. State of Chhattisgarh Through The Secretary, Government Of Chhattisgarh, Department Of Agriculture (Fisheries Department) Mahanadi Bhawan, Raipur, P.S. PO and District Raipur, Chhattisgarh.
2. Director (Fisheries Department) Directorate Of Fisheries, Raipur, P. S. P. O. And District Raipur, Chhattisgarh

3. Deepak Shrivastava S/o Shri Saroj Kumar Shrivastava Aged About 53 Years Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raipur, P.S. P.O. And District Raipur, Chhattisgarh.
4. Saleem Ahmad Khan S/o M. W. Khan Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Deputy Director Fisheries, Durg, P. S. P. O. And District Durg, Chhattisgarh.
5. Dilip Kumar Shrivastava S/o Shri C. L. Shrivastava Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Rajnandgaon, P. S. P. O. And District Rajnandgaon, Chhattisgarh.
6. H. R. Devangan S/o Shri Ramji Devangan Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Jashpur, P. S. P. O. And District Jashpur, Chhattisgarh.
7. Nain Shah S/o Shri Mohan Lal Shah Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Deputy Director Fisheries, Ambikapur, P. S. P. O. And District Ambikapur, Chhattisgarh.
8. B. L. Choudhary S/o Shri Moti Ram Choudhary Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raigarh, P. S. P. O. And District Raigarh, Chhattisgarh.
9. G. P. Deshmukh S/o Shri B. S. Deshmukh Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Durg, P. S. P. O. And District Durg, Chhattisgarh.
10. Sharad Kumar Das S/o Nishamani Das Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Mahasamund, P. S. P. O. And District Mahasamund, Chhattisgarh.
11. Gulab Chand Bind S/o Shri Ramanand Bind Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Deputy Director Fisheries, Durg, P. S. P. O. And District Durg, Chhattisgarh.
12. Vidyapuri Goswami S/o Shri Balaram Puri Goswami Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raipur, P. S. P. O. And District Raipur, Chhattisgarh.
13. Yado Rao Patle S/o Shri Ramcharan Patle Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Rajnandgaon, P. S. P. O. And District Rajnandgaon, Chhattisgarh.
14. Bhagvat Prasad Tonde S/o Late Chinta Ram Tonde Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Deputy Director Fisheries, Bilaspur, P. S. P. O. And District Bilaspur, Chhattisgarh.

15. Sukul Singh Maravi S/o Lt. Bhoran Singh Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Bijapur, P. S. P. O. And District Bijapur, (Wrongly Mentioned As Bilaspur), Chhattisgarh.
16. Sumant Singh Parihar S/o Shri Ramgopal Singh Parihar Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raipur, P. S. P. O. And District Raipur, Chhattisgarh.
17. Girish Kumar Upadhyay S/o Gopal Krishna Upadhyay Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Director Fisheries, Raipur, P. S. P. O. And District Raipur, Chhattisgarh.
18. Vivek Kumar Vaidya S/o Shri Dinesh Chand Vaidya Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Deputy Director Fisheries, Durg, P. S. P. O. And District Durg, Chhattisgarh.
19. Rafique Md. Qureshi S/o Rasool Md. Qureshi Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Dhamtari, P. S. P. O. And District Dhamtari, Chhattisgarh.
20. A. L. Magariya S/o Bhareu Lal Magariya Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Bilaspur, P. S. P. O. And District Bilaspur, Chhattisgarh.
21. Arvind Kumar Sirothiya S/o Shri Caturbhuj Sirouthiya Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Deputy Director Fisheries, Bilaspur, P. S. P. O. And District Bilaspur, Chhattisgarh.
22. Hari Bhau Ahirwar S/o Shri Jagannath Prasad Ahirwar Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Deputy Director Fisheries, Bilaspur, P. S. P. O. And District Bilaspur, Chhattisgarh.
23. Bramh Prakash Bajpayee S/o Mahendra Dutta Bajpayee Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Deputy Director Fisheries, Bilaspur, P. S. P. O. And District Bilaspur, Chhattisgarh.
24. Sudhir Kumar Dubey S/o Shri Krishnakant Dubey Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raigarh, P. S. P. O. And District Raigarh, Chhattisgarh.
25. Ramnayaran Mishra S/o Shri Sriram Sanahi Mishra Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Deputy Director Fisheries, Bilaspur, P. S. P. O. And District Bilaspur, Chhattisgarh.
26. Bheemraj Meshram S/o Tijram Meshram Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Korba, P. S. P. O. And District Korba, Chhattisgarh.

27. Rajendra Singh Rajput S/o Shri Puran Singh Rajput Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Koriya, P. S. P. O. And District Koriya, Chhattisgarh.
28. A. K. Kaneriya S/o Shri B. R. Kaneriya Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Durg, P. S. P. O. And District Durg, Chhattisgarh.
29. Ulphati Pawan S/o Shri Kanchan Lal Pawan Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raipur, P. S. P. O. And District Raipur, Chhattisgarh.
30. Virendra Singh Jadon S/o Shri Ramsingh Jadon Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Bilaspur, P. S. P. O. And District Bilaspur, Chhattisgarh.
31. Himadri Shekhar Kar S/o Shri D. N. Kar Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raipur, P. S. P. O. And District Raipur, Chhattisgarh.
32. Barkat Ullah Kazi S/o Hasmat Ullah Kazi Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raigarh, P. S. P. O. And District Raigarh, Chhattisgarh.
33. Rajendra Kumar Soni S/o Shri Mohan Lal Soni Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raipur, P. S. P. O. And District Raipur, Chhattisgarh.
34. Suresh Babu Pachouri S/o Shri Bindravan Pachouri Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Ambikapur, P. S. P. O. And District Ambikapur, Chhattisgarh.
35. Jabi Ullah Khan S/o Lt. Habib Ullah Khan Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Bilaspur, P. S. P. O. And District Bilaspur, Chhattisgarh.
36. Anil Kumar Hazari S/o Shri Badri Prasad Hazari Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Rajnandgaon, P. S. P. O. And District Rajnandgaon, Chhattisgarh.
37. Subhash Chand Puloriya S/o Shri Babu Lal Puloriya Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Rajnandgaon, P. S. P. O. And District Rajnandgaon, Chhattisgarh.
38. Surendra Kumar Naveen S/o Shri Kishan Lal Naveen Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Kabirdham, P. S. P. O. And District Kabirdham, Chhattisgarh.

39. Puran Singh Patel S/o Shri Kanhaiya Lal Patel Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raipur, P. S. P. O. And District Raipur, Chhattisgarh.
40. Kishori Lal Jaiswal S/o Shri Sahas Ram Jaiswal Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raipur, P. S. P. O. And District Raipur, Chhattisgarh.
41. Ramgopal Bohre S/o Shri Jagdish Prasad Bohre Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Raipur, P. S. P. O. And District Raipur, Chhattisgarh.
42. Shrikant Chandrakar S/o Shri Siyaram Devangan Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Bijapur, P. S. P. O. And District Bijapur, Chhattisgarh.
43. Tripurari Singh S/o Shri Ramjanam Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Jashpur, P. S. P. O. And District Jashpur, Chhattisgarh.
44. Vinay Sharma S/o Shri Y. P. Sharma Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Janjgir, P. S. P. O. And District Janjgir, Chhattisgarh.
45. Sirish Singh Sengar S/o Shri Prahlad Singh Sengar Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Jangir, P. S. P. O. And District Janjgir, Chhattisgarh.
46. Naresh Mishra S/o Shri Kailash Narayan Mishra Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Bilaspur, P. S. P. O. And District Bilaspur, Chhattisgarh.
47. Prakash Chand Jain S/o Shri M. L. Jain Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Kawardha, P. S. P. O. And District Kawardha, Chhattisgarh.
48. Ajay Kumar Shukla S/o Shri Ramswarup Shukla Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Dhamtari, P. S. P. O. And District Dhamtari, Chhattisgarh.
49. Chandra Prakash Shrama S/o Bhagvan Lal Sharma Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Rajnandgaon, P. S. P. O. And District Rajnandgaon, Chhattisgarh.
50. Nigam Singh Bhadouriya S/o H. S. Bhadoriya Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Deputy Director Fisheries, Durg, P. S. P. O. And District Durg, Chhattisgarh.

51. Ajay Kumar Mandal S/o Shri Jodh Ram Mandal Aged About 44 Years Fisheries Inspector (Absorbed As Such By Virtue Of Absorption Dated 11-05-2006) Posted At The Office Of The Assistant Director Fisheries, Narayanpur, P. S. P. O. And District Narayanpur, Chhattisgarh.

---- Respondents

For Appellants	:	Shri Kishore Bhaduri, Shri Rakesh Pandey, Shri Sunny Agrawal and Ms. Swati Upadhyay, Advocates
For Respodnent/State	:	Shri Prasun Bhaduri, Government Advocate
For Private Respondents	:	Shri Upendra Nath Awasthi, Senior Advocate assisted by Shri Manoj Kumar Sinha and Ms. Nikita Patel, Advocates

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, Ajay Kumar Tripathi, Chief Justice

07.12.2018

1. The two writ appeals arise from a common order passed by a learned Single Judge on 31.07.2018. Both the writ applications came to be dismissed refusing to interfere with the seniority list of Assistant Fisheries Officer dated 28.07.2012 as also the seniority list of Fisheries Inspectors dated 28.07.2012 which were annexed as Annexures P/1 and P/2, respectively to the writ applications. These Appellants were Petitioners before the writ Court who got aggrieved by grant of seniority to the private Respondents from the date of their initial "appointment", since it is seriously contested that the private Respondents were not appointed by the State Government and were not Government servants, who required to be given benefit of seniority from the initial date of their engagement under what was known as Fish Farmer Development Agency (for short, 'FFDA') a society registered under the Societies Act and not a Government establishment.

2. Before coming to the arguments which have been raised on behalf of the Appellants and the private Respondents, the Court has to deal with the history to understand as to why there is clash of interest between the Appellants and the private Respondents and litigations have played out, if not fought, at various levels before the High Court and even the Hon'ble Apex Court.
3. We would be failing in our duty if we do not take notice of the previous litigations where an effort made by the private Respondents to declare themselves as Government servants failed before a learned Single Judge and then a Division Bench vide their orders dated 04.08.2008 and 08.10.2010, respectively in WPS No. 224 of 2005 and WA No. 196 of 2008 and it's analogous cases.
4. A dispute arose when seniority list was published on 16.05.2006 in which the Appellants were shown senior and the private Respondents figured down the list. Writ applications were filed challenging the 2006 gradation list.
5. Since the private Respondents were unhappy with the declaration made by the learned Single Judge and the Division Bench of the Chhattisgarh High Court that they were not government servants, they moved the Hon'ble Apex Court which matter got registered as Civil Appeal No.7250-7252 of 2012 alongwith Civil Appeal No.7253-7261 of 2012.
6. The Hon'ble Supreme Court took up those appeals and disposed them off vide order dated 19.04.2018 in the background that while the matters were pending consideration, the State Government chose to give the private Respondents seniority over the Appellants in the gradation list of 2012. The Hon'ble Supreme Court, however, was made aware that certain writ

applications were pending before the High Court where challenge to the gradation list of 2012 was still under consideration. Apex Court took notice of the fact that since the private Respondents seemed to be satisfied and happy with the 2012 gradation list giving them benefit of seniority over the Appellants, the dispute was not required to be decided on merits, but liberty was granted to the Appellants to urge all contentions which could be raised in relation to the validity of gradation list of 2012.

7. The Hon'ble Apex Court further observed that they were not inclined to go into the merits of the decisions rendered by the High Court *i.e.* the decisions rendered by the learned Single Judge and the Division Bench in Writ Petition No. 224 of 2005 and Writ Appeal No. 196 of 2008 and analogous matters.
8. In view of the direction and the observation of the Hon'ble Supreme Court, we consciously chose not to look into the orders of the learned Single Judge or the Division Bench which were decided against the private Respondents. However, we cannot resist from delving into the pleadings and materials which are now brought on either in the writ applications or the writ appeals which are under consideration before us.
9. It is essential to understand the birth and origin of the Agency *i.e.* FFDA where the private Respondents came to be appointed or engaged before we can appreciate the final submissions of the contesting parties.
10. A publication of 1991 issued under the Directorate of Fisheries, Government of Madhya Pradesh in relation to FFDA has been brought on record by the private Respondents. The booklet is a handbook which gives a complete picture as to the background, reason, object and purpose for creation of the Agency in question.

11. In the year 1979-80, Government of India entered into an agreement with the World Bank for development and encouragement to fish farming. The funding was totally by the World Bank and the object behind the said funding by the World Bank was to use fisheries as a mode and method to help people from weaker sections or those involved in fisheries for subsistence to bring them above the poverty line and to help their economic and social condition. The funding by the World Bank was to be implemented across the country under the guidelines of the Union of India and since the funding and resources were from the World Bank, therefore, the implementation of the object and purpose of such funding could not be left in the hands of any private agency. Still since it was money which was loaned to the Union of India, therefore, an Agency was contemplated and created by formation of a Society which was duly registered under the Societies Registration Act. We are not required to go into all the other details as to the functioning of the Society, the manner of their governance and the duties and obligations cast upon them since those aspects of the matter will not have a significant bearing on the dispute of seniority which is the bone of contention in these writ appeals. We do however notice that certain posts and positions would be filled up by FFDA but some positions especially of the Chief Executive Officer etc. were required to be manned only on deputation, to be made by the State Government from the Fisheries Department. Those details are part of the handbook.
12. Moving on, as part of the object to implement the objective of the World Bank, the erstwhile State of Madhya Pradesh decided to create a team of persons who could be trained and then recommended to work as Fisheries Extension Workers under the FFDA. Applications were invited from time to time

seeking response and requests from persons who had the requisite qualification and would like to be trained for 10 months to work as Fisheries Extension Workers. Training was carried out at Fisheries Industries Training Establishment, Nawgaon. Persons who responded to such advertisement and volunteered to undergo training for 10 months were put through training by the above Institution. They also held an examination on completion of the training and prepared a merit list. Based on the list of successful candidates furnished to the State Government of erstwhile State of Madhya Pradesh, directions were issued to the Collectors of the districts to engage persons from the list as Collectors were the Chairman of the FFDA. Such persons were required to be engaged or appointed by the Agency. This is how the private Respondents found employment, which they term as 'appointment' under the State.

13. There were different batches of trained candidates who came to be either hired by the FFDA or some even got appointed in the Fisheries Department as Assistant Fisheries Officers or as Fisheries Inspectors.
14. It is a clash between two kinds of engagement so made over seniority that the dispute has arisen and does not seem to end.
15. Stand of the counsel representing the Appellants is that chalk and cheese cannot be equated. The reason for such submission is that persons appointed or engaged by a registered Society cannot be treated to be government servants. They cannot be allowed to be placed on the head of government servants who had been appointed under the Fisheries Department on substantive posts such as Assistant Fisheries Officers or as Fisheries Inspectors. It is pin pointedly argued that the private Respondents

who were either appointed or engaged by FFDA have no appointment letter issued by the State of Madhya Pradesh when the initial hiring took place sometime in the year 1983. The best piece of document based on which the private Respondents have tried to make out a case that they were as much a government employee as the Appellants are the communications sent by the Director, Fisheries with a list of the trained candidates to the Collectors of different districts with a direction to engage them or appoint them in FFDA. However, in the case of the Appellants, they had been regularly appointed in the Fisheries department and they enjoyed all the status such as pay, pay revision etc. as any other government servant would.

16. It is also argued that the heart-burning basically started when the private respondents serving the FFDA came to know that their batchmates of training Institute or persons trained thereafter are drawing better perks, privilege including salaries. A clamour started thereafter to find some kind of common ground at par with those appointed under the State, specially in the Department of Fisheries.
17. The issue therefore before us now is whether those who were hired or appointed by the FFDA are required to be equated, if not given seniority, in service. When the gradation list was prepared of the appellants for the first time in the year 2006, they were rightly given seniority by virtue of them being a government servant, from the initial date of their appointment. The private Respondents were shown juniors to them since they were not part of the service or the cadre to which the Appellants belong before 11.05.2006.
18. We also record that under some kind of pressure, lobbying and litigation, the State Government decided to absorb the services of the respondents, especially the posts being held by them of Fisheries Extension Workers by a

notification dated 11.05.2006. This notification is Annexure P/3 to the writ application which is Writ Petition (S) No. 790 of 2013 (*Umeshwar Singh v. State of Chhattisgarh & Others*).

19. Building on the argument, learned counsel for the Appellants submits that merger of service is not permissible or ought not to have been allowed in the very first place by the State Government for the reason that the private Respondents were not government servants but were employees of an Agency or Society registered under the Societies Act.
20. Two unequals, therefore, cannot be allowed to be treated as equals, but somehow they do not want to build up on that argument so long as their seniority and status as a State Government employee was not at stake.
21. Reverting to the basic fact that the private Respondents were appointed or engaged by the FFDA, which is not a matter of argument now and that the Appellants were directly appointed under the Fisheries Department, the issue to be considered is whether the learned Single Judge was correct in dismissing the writ applications and holding that since certain amendments to Rule 12(2)(c) has been brought about by the State of Chhattisgarh under the Chhattisgarh Civil Services (General Condition Service) Rules, 1961 (for short, 'the Rules, 1961'), the private Respondents have acquired a right for grant of seniority.
22. Learned senior counsel representing the private Respondents very forcefully and vehemently argued that there was due selection, training, appointment done by the State Government of all the trainees and it was not within their hands to choose whether they would be sent to the FFDA or be appointed under the State Government. According to him, serious violation of Article 14

and 16 of the Constitution had taken place at that stage itself because there was no rationality, if not pick and choose was exercised in sending persons from the list of trained candidates either to the Agency or to the Department. The discrimination happened at the very threshold.

23. Such submission of learned senior counsel is required to be repelled for the simple reason that there was neither any exercise in selection or appointment by the State of the Respondents. The State was only a facilitator. We may further delve on the issue by shedding more clarity that since the money and the funding was that of the World Bank and there was an agreement between Union of India and the World Bank to utilize the money in a particular manner, therefore, the execution of the object and purpose of such funding was not left to individuals or in private hands. But neither could it be made as an scheme of the Union or State Government. Therefore, the Union of India and the State Governments provided lending hands to an independent Agency, the registered Society. To meet its commitment to the World Bank they also decided to keep an eye by providing certain hands from Fisheries Department on deputation to FFDA's like a CEO. Merely because the Fisheries Department became the nodal department to implement the object and purpose behind the funding or the loan granted by the World Bank, none of the appointees under FFDA or the FFDA by any interpretation of law can be termed to be a limb of the State. There was no allocation of fund or money made by any State Government or even Union of India. It was the World Bank money which was routed through the Central Government to the State Governments into the coffers of the FFDA's and there was an obligation and duty cast upon the governmental authorities to ensure proper utilization and compliance of the agreement with the World Bank.

24. In this background, we are constrained to observe that the learned Single Judge in the impugned order dated 31.07.2018 taking note of the fact as to the status of FFDA in paragraph 3 has erroneously held that it was a limb of the State or that there was no distinction between those employees who were hired or engaged by FFDA and the Appellants who were directly appointed in the Fisheries Department on the posts, which they held.
25. We also have to repel the finding given by the learned Single Judge in paragraph 7 of the impugned order that the employees of FFDA was also an establishment of the State Government even though it was a registered society. We have to also further hold and declare that the learned Single Judge has committed serious error not only in appreciation of facts, but also of law by relying on a judgment rendered in Writ Petition No. 3926 of 2005 i.e. case of **Dev Sharan Dilliwar and Others v. High Court of Chhattisgarh & Others**, because the said decision cannot be used to draw similar analogy to extend benefit to the private Respondents keeping in mind their status, in the very first place.
26. We have taken note of the fact that in the case of **Dev Sharan Dilliwar** (supra), the Court took note that the Petitioners of the said case were employees of the State Government who were sent on deputation to the High Court of Chhattisgarh, when it was created. When the issue of seniority came into play, they fought for recognition of their past service on the ground that they were holder of civil posts as well as substantive post in one Department or the other of the State and therefore, the earlier period of service rendered by them in the State cannot be overlooked when the question of seniority etc. arose.

27. In the present case, we hold that these private Respondents were not employees of the State, not even State under Article 12 of the Constitution of India, therefore, their assertion which has been accepted by the learned Single Judge that they were at par with the regularly appointed employees i.e. the Appellants was a serious error of fact as well as law. The private Respondents were not government servants till they came to be absorbed in service of the State of Chhattisgarh for the first time on 11.05.2006. The question of granting seniority to them, therefore, for the earlier period of work under the FFDA would be doing violence to the constitutional scheme especially under Article 14 and 16 of the Constitution of India. Two unequals cannot be treated as equals. Any seniority and benefit which the employees of the Agency are looking forward to will only accrue from the date of notification for absorption dated 11.05.2006. Therefore, the initial preparation of gradation list which was done in the year 2006 i.e. on 16.05.2006 giving seniority to the Appellants i.e. employees under the Fisheries Department was a correct view to take.
28. The submission which has been made by the learned Senior Counsel representing the private Respondents with regard to the discrimination at the threshold to which we can only respond that if a challenge was required to be made with regard to such assignment or distribution of the list of trainees, it should have been done at the time when they were sent to the FFDA in 1983 and not now after having rendered service after so many years under the Agency at this belated hours.
29. Even otherwise since we are not required to adjudicate with regard to their otherwise status under the State before the year 2006, the argument cannot be accepted that they be given seniority as if their training and the list

prepared by the institute on completion of training was the list prepared by the State Government for appointment under the State.

30. The other arguments made on behalf of the learned Senior Counsel that keeping in mind the order, which had been passed by the Hon'ble Supreme Court on 19.04.2018, it creates a bar in reopening of the issue of the gradation list issued in the year 2012, also cannot be accepted as a submission since the Hon'ble Supreme Court itself has left the issue of the validity of the gradation list of 2012 to be decided in the pending applications before the High Court.
31. Additional argument of learned Senior Counsel is that the Respondents cannot wave their fundamental right under Article 14 and 16 of the Constitution of India. How such a proposition has application to the bundle of facts is not understood or appreciated by us.
32. Similarly, the reliance placed on the decision of **Sarat Chandra Mishra and Ors. Vs. State of Orissa and Ors. (AIR 2006 SC 861)** has no application to the present case.
33. To sum up, therefore, we hold that the private Respondents were not selected, appointed under any process or procedure of hiring by the State Government, the list which was prepared on the basis of the training of those who were eligible and volunteered to be trained, found mentioned in the communication made to the Collectors and the engagement or their hiring was under the FFDA and they can never to be treated to be Government servants till they came to be absorbed by the State Government on 11.05.2006. It is also significant that the Respondents do not have any appointment letters issued by the State. They have failed to produce one at

any stage, including in these appeals despite indulgence and demand. Inference can be drawn from the same.

34. For the reasons so noticed, the impugned order dated 31.07.2018 passed in the writ petitions which are under challenge in the two writ appeals are set aside. The appeals succeed. The gradation list of 2012 dated 28.07.2012 (Annexure P/1) is quashed. The Respondents are directed to re-prepare the gradation list by omitting the period of service which had been rendered by the private Respondents under FFDA till the notification of their absorption came to be issued on 11.05.2006.
35. It is further clarified that the amendment which has been brought about in Rule 12(2)(c) of the Rules, 1961 will have to be understood and applied on the findings given in the earlier part of the order i.e. that the Respondents cannot be treated to be Government servants prior to 11.05.2006. The benefits which the State would like to extend to them will have to be reworked within the framework of the findings so recorded by us. To that extent, the amended Rule 12(2)(c) of the Rules, 1961 will be required to be read down which allows benefit of 'past service' even when they were not in the service of the State.
36. Both the writ appeals are allowed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge