

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.484 of 2018

In

Civil Writ Jurisdiction Case No.1617 of 2017

Sanjay Prakash, son of Late Shankar Narayan Verma, presently Posted and Working as Divisional Forest Officer, Saharsa, Forest Division, District Saharsa.

... Respondent-Appellant

Versus

1. The Union of India through the Secretary, Department of Personnel and Training Ministry of Personnel, Public Grievances and Pensions, Government of India, New Delhi.
2. The State of Bihar through the Chief Secretary, Bihar, Patna.
3. The Principal Secretary, Home Department, Bihar, Patna.
4. The Principal Secretary, Environment and Forest Department, Govt. of Bihar, Patna.
5. The Principal Chief Conservators of Forest Environment and Forest Department, Bihar, Patna.
6. Sri Sanjay Kumar Sinha, son of not Known to the Petitioner, presently Posted and Working as Divisional Forest Officer, Bhagalpur Forest Division, District Bhagalpur.
7. Sri Dipak Sinha, son of not known to the Petitioner, presently posted and working as Deputy Conservator of Forest, Officer of Principal Chief Conservator of Forest, Aranaya Bhawan Near Air Port, District Patna.
8. Mukhtarul Haque, son of Late Md. Bashir Asnsari, Resident of Village-Chिताुली Khurd, P.S.-Goriakhothi, District-Siwan.

.....Respondents/Respondents

... Petitioner/ Respondent

with

Letters Patent Appeal No. 262 of 2019

In

Civil Writ Jurisdiction Case No.1617 of 2017

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. Principal Secretary, Home Department, Bihar, Patna.
3. Principal Secretary, Environment and Forest Department, Bihar, Patna.
4. Principal Chief Conservators of Forest, Environment and Forest Department, Bihar, Patna.

... Respondent nos.2 to 5-Appellant/s

Versus

1. Mokhtarul Haque, S/o Late Md.Bashir Ansari, R/o Village Chिताुली Khurd, P.S Goriakhothi, District Siwan.



.....Petitioner-Respondent 1st Set.

2. The Union of India through the Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, New Delhi.
3. Shri Sanjay Kumar Sinha, son of not known to the petitioner, presently posted and working Divisional Forest Office, Bhagalpur Forest Division, District Bhagalpur.
4. Shri Dipak Sinha, son of not known to the petitioner, presently posted and working as Deputy Conservator of Forest, Office of Principal Chief Conservator of Forest, Aranya Bhawan, Near Airport, District Patna.
5. Shri Sanjay Prakash, son of not known to the petitioner, presently posted and working as Divisional Forest Officer, Supaul Forest Division, District Supaul.

... .. Respondent nos.1,6 to 8-Respondent/s

Appearance :

(In Letters Patent Appeal No. 484 of 2018)

For the Appellant/s : Mr. Jugal Kishore, Senior Advocate
Mr. Virendra Prasad, Advocate
Mr. Ugra Nath Malik, Advocate

For the State : Mr. Sarvesh Kumar Singh, AAG-13
Mr. Shakib Ayaz, AC to AAG-13

For the Respondent no.8 : Mr. Abhinav Srivastava, Advocate

(In Letters Patent Appeal No. 262 of 2019)

For the Appellant/s : Mr. Pushkar Narayan Shahi, Senior Advocate
AAG-6
Mr. Dharendra Kumar, AC to AAG-6

For the Respondent no.1 : Mr. Abhinav Srivastava, Advocate

For the Respondent no.5 : Mr. Jugal Kishore, Senior Advocate
Mr. Virendra Prasad, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-02-2019

Re: L.P.A. No. 262 of 2019

Heard Shri Pushkar Narayan Shahi, learned Additional
Advocate General-6 for the appellants, Shri Jugal Kishore, learned



Senior Counsel for the respondent no.5- Shri Sanjay Prakash, who has filed L.P.A. No.484 of 2018 challenging the very same impugned judgement. Shri Abhinav Shrivastava, learned counsel, has appeared for Mokhtarul Haque- Respondent no.1 in the present appeal.

Having heard them, we are satisfied that the delay has been sufficiently explained and, therefore, I.A. No.02 of 2019 is allowed and the appeal shall be treated to be within time.

Since we are finally disposing of this appeal along with L. P. A. No.484 of 2018 today, no further orders are required to be passed on I. A. No.01 of 2019 which also stands disposed of.

This appeal has also been heard along with L. P. A. No.484 of 2018 and the same also stands disposed of in the same terms.

Re: L.P.A. No. 484 of 2018

This appeal has been heard along with L.P.A. No.262 of 2019 filed by the State of Bihar and others.

The challenge raised in these two appeals is to the impugned judgement of the learned Single Judge dated 7th March, 2018 who has allowed the writ petition being Civil Writ Jurisdiction Case No.1617 of 2017 in terms of the judgement in the case of **Aditya Narayan Roy Versus The State of Bihar &**



Ors., (Civil Writ Jurisdiction Case No.4756 of 2009) decided on 29th of July, 2016.

The dispute, in short, is about the status of seniority claimed by the appellant on account of he being allocated the State of Bihar upon bifurcation in terms of the Bihar Reorganization Act, 2000.

The issue in the case of **Aditya Narayan Roy** (supra) had been raised on a similar footing when the petitioner proceeded to challenge the disturbance of seniority primarily on two grounds. The first was that the decision that was taken on 27th June, 2007 by the High Powered Committee in placing the person exercising an option in the gradation list at the bottom resulting in loss of seniority had ignored the communication and the decision of the Central Government dated 21st June, 2007. The second ground of challenge was that the Division Bench judgement of the Jharkhand High Court on the same issue in the case of **State of Bihar & Another Versus Ravindra Prasad Singh, L.P.A. No.511 of 2009** decided on 22nd April, 2014, also did not take notice of the correct position of law, particularly the proviso to Section 73(1) of the 2000 Act. The third ground taken by the petitioner therein was that he had made a conditional offer of



joining clearly stating therein that he would join the State of Bihar provided his seniority is not disturbed.

The case of **Aditya Narayan Roy** (supra) came to be decided by a Division Bench on 29th July, 2016 allowing the writ petition on all the three grounds. Against the said judgement, Petition(s) for Special Leave to Appeal (C) No.(s). 3216/2017 (The State of Bihar Versus Aditya Narayan Roy & Ors.) is pending consideration before the Apex Court in which notices have been issued on 24th January, 2018. A copy of the order has been placed before the Court.

The learned Single Judge in the present case has also subjected the benefit extended to the respondent-petitioner to the outcome to the said Special Leave Petition.

The appellant has come up contending that the decision of the High Powered Committee on 27th June, 2007 was not challenged by the respondent-petitioner and in the absence of any such challenge raised to it, the consequential action of re-adjusting the seniority and placing the respondent-petitioner down below cannot be successfully challenged. The learned Single Judge, according to learned counsel for the appellant, therefore, committed an error in disposing of the writ petition in terms of the



judgement dated 29th July, 2016 in the case of **Aditya Narayan Roy** (supra).

The bone of contention, therefore, appears to be as to whether the judgment in the case of **Aditya Narayan Roy** (supra) squarely covers the case of the respondent-petitioner or not as observed by the learned Single Judge.

The main thrust of the arguments of the learned counsel for the appellants in both the appeals is that once a decision has been taken by the High Powered Committee on 27th June, 2007 which has not been challenged, then in that event, the claim of the respondent-petitioner could not have been allowed ignoring the impact of the said decision of the High Powered Committee. It is additionally argued that the judgement in the case of **Aditya Narayan Roy** (supra) is still sub judice before the Hon'ble Apex Court in which notices have been issued and, therefore, there being likelihood of a reversal of the said decision, the impugned judgement should be set aside.

Shri Abhinva Shrivastava, learned counsel for the respondent-petitioner Mokhtarul Haque, on the other hand, has urged that the decision of the High Powered Committee dated 27th June, 2007 is *non-est* as it ignores the decision of the Central Government dated 21st June, 2007. Secondly, the said decision of



the High Powered Committee was under consideration in the case of **Aditya Narayan Roy** (supra) and for the aforesaid reason, the aforesaid decision of the High Powered Committee cannot be upheld. In this view of the matter, since the decision of the High Powered Committee has already been declared to be not in consonance with law, therefore, there was no necessity for the respondent-petitioner to raise any challenge to the same separately.

Shri Shrivastava further submits that the learned Single Judge disposed of the writ petition after counter affidavits had been filed on behalf of respondent Nos.2, 3 and 4 but without putting the private respondents to notice. However, the judgement cannot be faulted inasmuch as it has simply followed the Division Bench judgement in the case of **Aditya Narayan Roy** (supra) which was binding on the learned Single Judge. Shri Shrivastava, therefore, submits that in the light of what has been urged hereinabove and in view of the decision of the Central Government dated 21st June, 2007, the answering respondent was entitled to maintain his seniority and therefore, the writ petition has rightly been allowed restoring the correct position of seniority in accordance with law.



We have considered the submissions and we find that seniority being a matter of contest between the affected persons, the learned Single Judge ought to have issued notices to the appellant before having proceeded to determine the status of seniority which vitally affects him. The contention of the learned counsel for the writ petitioner that the disposal of the writ petition, without putting the private respondents to notice, is only an innocuous order based on the Division Bench judgement cannot be accepted, inasmuch as, even though the order may appear to be innocuous, it does affect the status of seniority. Apart from this, the learned Single Judge does not appear to have taken notice of the entire communication on the subject matter relating to maintaining or otherwise of the seniority which could have been done only after putting the private respondents to notice. In the absence of any notice to the private respondents, we are of the view that the learned Single Judge proceeded to determine an issue of seniority which was bi-lateral, in nature, and which could not have been unilaterally disposed of for the reasons aforesaid.

The question then arises as to whether the appellant's contention vis-a-vis the decision of the High Powered Committee dated 27th June, 2007 still holds good or not. As observed above, the status of the said decision was clearly dependent upon any



other decision having been taken by the Central Government. The High Powered Committee does not appear to have taken notice of the decision dated 21st June, 2007 which was in existence when the High Powered Committee came to the conclusion on 27th June, 2007 which may run counter to the decision of the Central Government, but that was a matter to be verified by the High Powered Committee through the State Government or the Central Government about the decision taken in this regard, more so, keeping in view the proviso to Section 73 (1) of the Bihar Re-organization Act, 2000. Thus, even the respondent-petitioner had been prejudiced by the passing of the order dated 13th January, 2017 impugned in the writ petition. In that view of the matter, we are of the considered opinion that the State Government has to take a decision in the light of the relevant orders/circulars and decisions of the Central Government as well as of the State Government in the light of what has been stated above.

Consequently, the appeal has to be allowed and so has the order dated 13th January, 2017 to be set aside.

We, accordingly, allow the appeal and set aside the impugned judgement of the learned Single Judge dated 7th March, 2018 passed in Civil Writ Jurisdiction Case No.1617 of 2017. We



also set aside the order dated 13th January, 2017 impugned in the writ petition.

Accordingly Civil Writ Jurisdiction Case No.1617 of 2017 and the appeal, therefore, stand disposed of with a direction to the Principal Secretary, Environment and Forest Department, Government of Bihar, Patna, for reconsidering the aforesaid issue after taking into account all decisions of the Central Government as well as the State Government as well as the law declared in this regard by passing a reasoned and speaking order as expeditiously as possible, preferably within eight weeks from the date of presentation of a certified copy of this order after putting all the stake holders/affected parties to notice.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.02.2019
Transmission Date	

