

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4281 of 2018

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1. Ranjeet Pratap Raushan, son of late Ram Pravesh Singh, presently Posted as Junior Electric Engineer, Electric Works Division-1, B.C.D., Bihar, Patna.
2. Atul Kumar Singh, son of Sri Krishna Deo Singh, presently Posted as Junior Electric Engineer, Electric Works Division-1, B.C.D., Bihar, Patna.
3. Kamlesh Ram, son of Late Rajendra Ram, presently posted as Junior Electric Engineer, Electric Works Division-1, B.C.D., Bihar, Patna.
4. Md. Hasmat Riyaz, son of late Md. Kalimul Haque, presently posted as Junior Electric Engineer, Electric Works Division-1, B.C.D., Bihar, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Building Construction, Bihar, Patna.
2. The Principal Secretary, Department of General Administration Department, Bihar, Patna.
3. The Principal Secretary, Department of Finance, Bihar at Patna.
4. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Department of Building Construction, Bihar, Patna.
5. The Chief Engineer, Department of Building Construction, Bihar, Patna.
6. Ramyash Sah, son of late Yogeshwar Sah, presently posted as Junior Electric Engineer, Electric Works Division-1, B.C.D., Bihar, Patna.



7. Mahesh Prasad Singh, son of Late Ramdeo Singh, presently posted as Junior Electric Engineer, Electric Works Division-1, B.C.D., Bihar, Patna.
8. Ashok Kumar, son of late Saryug Prasad Singh, presently Posted as Junior Electric Engineer, Electric Works Division-1, B.C.D., Bihar, Patna.
9. Swarnlata Kumari, daughter of Shree Bishwanath Prasad, wife of Shree Rajesh Ranjan, resident of Aakanksha Mishra Palace, Flat No. 101, Mundershah Path, Khajpura, Raza Bazar, Bailey Road, Patna-14
10. Rajni Kant Singh, son of Shri Jai Prakash Singh, resident of Pari Shanti Narayan Palace, Flat No. 302, East Patel Nagar, Road No. 2, Patna-23.
11. Sanjay Kumar, son of Late Pandey Gopal Prasad, resident of Balai Campus, Chhata Chowk, Muzaffarpur-842001
12. Anup Kumar Singh, son of Budhan Ram Singh, resident of C/73, Nandan Villa, Flat No. 201, A.G. Colony, Patna-800025
13. Chandeshwar Ram, son of Shri Deodhari Ram, resident of Village-Alisherpur, P.O.-Jihuli, District-East Champaran-845427
14. Alok Kumar, son of Sri Mahabir Sahu, resident of Sheikhpura Bagicha, P.O.-B.V. College, Patna-800014
15. Manoj Kumar, son of Bindeshwari Prasad Yadav, resident of Village-Baburahi, P.O.-Shaligrami, District-Begusarai-851217
16. Bharat Ram, son of Late Jhakas Ram, resident of Village & P.O.-Naugarh, District-Aurangabad-824102
17. Rajesh Kumar, son of Sri Krishna Prasad, resident of Block 2A/1, Godwari Apartment, Ashiana Road, Patna-800014
18. Md. Mosabbir Jamal, son of Late Md. Izahar Uddin, resident of Mohalla-Shekhana Khurd, P.O. & P.S.-Biharsharif, District-Nalanda-803101
19. Shekhar Kumar Yadav, son of Sri Nandlal Yadav, resident of Raj Smriti Sadan, Rajiv Nagar Road No. 16, P.S.-Rajiv Nagar, District-Patna

... .. Respondent/s



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Appearance :

For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate
Mr. Swapnil Kumar Singh, Advocate
For the State : Mr. Uday Shankar Sharan Singh-GP-19
Mr. Anand Kumar Ojha, Advocate
For the Resp. Nos. 6-7 : Mr. Ashok Kumar Singh, Sr. Advocate
Mr. Jai Prakash Verma, Advocate
For the Respondent No. 8: Ms. Nivedita Nirvikar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT**

Date : 12-04-2019

Heard the counsel for the parties.

2. The petitioners have challenged the final seniority list contained in Memo No. 970, dated 30.01.2018 issued under the signature of the Chief Engineer, Department of Building Construction, Bihar, Patna on the ground that petitioners have unauthorizedly and erroneously been put below the private respondents in the merit list.

3. The short contention on behalf of the petitioners is that despite their having entered the service in the Energy Department before being



transferred *en-masse* to the Building Construction Department prior to the private respondents, they have been ranked below them in the *inter se* seniority list.

4. The case of the petitioners is that they were recommended by the Bihar Public Service Commission (in short the B.P.S.C) and appointed as Junior Engineer (Electrical) in the Energy Department by order dated 17.05.2003 (*Annexure-1*). The private respondents, who were the erstwhile employees of Bihar Agriculture Produce Marketing Board were absorbed in the Energy Department as Junior Engineer (Electrical) vide resolution contained in Memo No. 4672 dated 23.06.2011(*Annexure-3*).

5. This Court has been further informed that in the event of the Department of Building Construction not having any separate cadre for Junior Engineers (Electrical), a policy decision with the approval of the Cabinet was taken for the merger of all the staff of the Electrical Works Division of the Energy Department in



the Building Construction Department vide Memo No. 6710 dated 27.06.2014 (*Annexure-4*).

6. It was therefore contended on behalf of the petitioners that they were appointed in the cadre of Junior Engineer (Electrical) in the Department of Energy in the year 2003 and were shifted to Building Construction Department *en masse* and therefore, they constituted a different class of employees than the private respondents, who had been adjusted in the Energy Department and thereafter in Building Construction Department after the repeal and dissolution of the Bihar State Agriculture Marketing Board.

7. It may be noted here that some of the employees of the Bihar State Agriculture Marketing Board including the private respondents had approached this Court vide C.W.J.C. No. 4452 of 2012 (Ram Surat Singh & Ors versus The State of Bihar & Ors) and other writ petitions, primarily challenging the stipulation that their absorption in government service would be treated



as fresh appointment and they would be amenable to the new pension scheme. The challenge, thus was that in the event of there being continuity of service, they could not have been subjected to a new pension scheme.

8. However, while canvassing their cases, such erstwhile employees of the Bihar State Agriculture Marketing Board also raised the issue of *inter se* seniority between Junior Engineers (Electrical) who along with the petitioners therein had come from the Energy Department to the Building Construction Department.

9. In the aforesaid writ petitions, a learned Single Judge of this Court, after referring to the decisions in Priya Ranjan Sharma versus State of Bihar and Others, 2010(2) PLJR 387, Dwijen Chandra Sarkar and Another versus Union of India and Others (1999) 2 SCC 119 and in Panchraj Tiwari versus M.P. State Electricity Board and Others (2014) 5 SCC 101, held that it was incumbent and obligatory upon the authorities concerned to lay down equitable principles



with regard to fixation of seniority in the merged cadre. Once a service gets merged with another service, the employees concerned have a right to get a position which is appropriate in the merged service. The Court, therefore directed the respondents/authorities to lay down equitable principles with regard to fixation of seniority of those persons who were the erstwhile employees of the Bihar State Agriculture Marketing Board in their respective merged cadres and a time limit of three months was fixed for the aforesaid.

10. When the direction, referred to above, by the learned Single Judge in C.W.J.C. No. 4452 of 2012 (Ram Surat Singh & Ors versus The State of Bihar & Ors) was not complied with within the stipulated time, a contempt petition bearing M.J.C. No. 3421 of 2015 was filed. The stand of the State in the aforesaid contempt petition was that a decision had been taken by a Three Men Committee constituted by the State for determining the seniority and the Committee so constituted resolved



that the *inter se* seniority shall be decided in accordance with the general principles of determination of seniority in tune with the accepted principles under the General Administration Department of the State. The Contempt Petition was thus disposed off on the aforesaid statement made on behalf of the State.

11. It would also be relevant here in this context to note that against the aforesaid order passed by the learned Single Judge in C.W.J.C. No. 4452 of 2012, the petitioners and others preferred an appeal before the Division Bench of this Court vide L.P.A. No. 275 of 2016 (Atul Kumar Singh & Ors versus The State of Bihar & Ors). The Division Bench, vide order dated 24.07.2017 did not approve of the learned Single Judge entering into the aspect of seniority, when the seniority list had not yet been finalized and only a provisional seniority list was issued and objections had been invited.

12. Thus, the relief with respect to fixation of *inter se* seniority as claimed by the writ petitioners of



C.W.J.C. No. 4452 of 2012 was held to be premature and each and every employee of the Building Construction Department, including the petitioners and private respondents were directed to file objections to the list which was required to be considered by the State Government and a final gradation list was directed to be prepared.

13. While giving the liberty aforesaid, the Division Bench expected the State Government to eschew from towing the line suggested by the learned Single Judge and only to apply such rules which are prevalent for fixation of *inter se* seniority in a merged cadre. It was also observed in the order passed by the Division Bench that every person shall have the liberty to challenge the final gradation list, should he feel aggrieved.

14. For the sake of brevity and avoiding any confusion in the matter, no reference is being made to the developments which took place in the interregnum



viz. publishing the second seniority list etc. which would serve no fruitful purpose in the disposal of this case. All that is required to be noted is that pursuant to the aforesaid liberty granted by the Division Bench, the petitioners and others filed their objections before the Department along with the case laws regarding the principles of determination of *inter se* seniority. The final gradation list contained in Memo No. 970 dated 30.01.2018 (Annexure-11) has thereafter been issued under the signature of the Principal Secretary, Department of Finance, is under challenge.

15. The learned counsel for the petitioners has submitted that neither objections of the petitioners nor the relevant case-law over the subject was taken into consideration and the gradation list has been prepared by completely jettisoning the basic/recognized concepts of determination of seniority; perhaps under the influence of the orders passed by the learned Single Judge in some of the cases, despite the observation of



the Division Bench to formulate the gradation list, independent of any such observations.

16. The aforesaid gradation list has also been challenged on the ground that the State Government has issued a resolution contained in Memo No. 796 dated 02.02.2018 (Annexure-13) declaring that the employees of Boards/Corporations who have been absorbed in government service shall be deemed to be in government service only from their date of absorption.

17. The petitioners are candid in expressing that since the aforementioned resolution came after the publication of the final gradation list, the petitioners have represented before the Principal Secretary, Building Construction Department and have requested for revision of the same.

18. In sum and substance, the challenge to the gradation list (contained in Annexure-11 to the writ petition) is on the ground that the petitioners are direct recruits of the year 2003 whereas the private



respondents are the erstwhile employees of a dissolved Board who have been adjusted in the Building Construction Department and even if their services are held to be continuous, such continuity is only for the purposes of providing other benefits like financial progression, pension etc. but definitely not for *inter se* seniority and that the impugned gradation list does not at all advert to the general and equitable principles of determination of *inter se* seniority nor any principle has been evolved before formulating such gradation list.

19. During the pendency of the present writ petition, sensing the move of the department to proceed for promotion on the basis of the impugned gradation list, I.A. No. 4562 of 2018 was filed by the petitioners, seeking stay of the process of promotion. This Court, vide order dated 17.07.2018 directed for maintenance of status-quo as on date.

20. As opposed to the aforesaid submissions, the learned counsel appearing for the respondent State



(respondent Nos. 1, 4 and 5) has submitted that initially, by virtue of resolution No. 5661 dated 02.09.2008 issued by the Personnel and Administrative Reforms Department, Government of Bihar, any adjustment of a personnel in other department was to be treated a new appointment. But the aforesaid resolve was revisited and vide Memo No. 2834 dated 17.05.2010, the government has provided pay protection to the employees of the dissolved Board with effect from 02.09.2008 and has also agreed for placing them on equivalent posts.

21. It was reiterated by the State that the constitution of Three Members Committee, which has been referred to by the petitioners, held that the services of the erstwhile employees of the Board shall be held to be continuous. Based on the aforesaid decision of the Three Members Committee, a provisional list of Junior Engineers (Electrical) of the Building Construction Department was issued in which the seniority of such erstwhile members of the Board was considered from



the date of their appointments.

22. It was also submitted on behalf of the State that the impugned final gradation list dated 30.01.2018 was published in obedience and deference to the order passed in L.P.A. No. 275 of 2016 and after taking into account the opinion received from the General Administration Department, Government of Bihar. It was also urged that the learned Single Judge in C.W.J.C. No. 4452 of 2012 (Ram Surat Singh & Ors versus The State of Bihar & Ors) has held that in absorption, the services of the employees of the erstwhile Board shall not be treated as a fresh appointment. In order to further defend the final gradation list, shelter has been taken of a notification of the Personnel Department, Government of Bihar dated 26.08.1972, which *inter alia* states that if an officer is transferred on his request and not in pursuance of any policy decision of the government, then the past service shall not be counted for the purposes of determining seniority, meaning thereby that



if any transfer/adjustment is made by virtue of a policy decision, the earlier service shall be counted.

23. The sum total of the submissions on behalf of the State therefore is that, in the event of the services of the private respondents being held to be continuous and their adjustment in Building Construction Department by virtue of a policy decision of the State Government, there was no reason why the seniority of such private respondents be not counted from the date of their initial appointment and not from the date of their absorption, even for the purposes of fixing *inter se* seniority with the petitioners, who are the direct recruits, serving the department of Energy since 2003 and having been transferred to the Building Construction Department in the year 2014.

24. The learned counsel appearing on behalf of respondent Nos. 6 and 7 has submitted that the petitioners as well as private respondent Nos. 6 and 7 and others came from different departments, such as



Energy Department, Animal Husbandry Department and from the dissolved Bihar Agriculture Marketing Board to the Building Construction Department in the light of the policy decision of the government. Thus, for all practical purposes, if the private respondents are not the original employees of the Building Construction Department, so are the petitioners. Thus, the source from where the petitioners or the private respondents have come to the Building Construction Department becomes insignificant and *inter se* seniority has rightly been fixed by taking into account the date of appointment of the respective employees.

25. It would also be worthwhile to state that some of the intervenors approached this Court, seeking their arraignment in the writ petition as intervenors/ respondents, which prayer was allowed by the order dated 07.01.2019 and they have been arraigned as respondent Nos. 9 to 19.

26. The learned advocate appearing for the



intervenors/respondent Nos. 9 to 19 have come up with similar arguments as advanced by the learned counsel for the State and it has been prayed on their behalf that the status-quo order dated 30.03.2018 be vacated and the process of promotion be started.

27. It has further been submitted that respondent No. 6 preferred a writ petition before this Court vide C.W.J.C. No. 23005 of 2011 challenging the resolutions dated 02.09.2008 contained in Memo No. 5661 and 23.06.2011 contained in Memo No. 4672 indicating that the adjustment/absorption would be treated as fresh appointment and such fresh appointees would be amenable to new pension scheme.

28. This writ petition was heard analogous with C.W.J.C. No. 4452 of 2012 (Ram Surat Singh & Ors versus The State of Bihar & Ors) and the clause of such resolutions treating the absorption of such employees in the Building Construction Department to be fresh appointment, was held to be unsustainable. It was also



pointed out to this Court that against the order passed in C.W.J.C. No. 4452 of 2012, the petitioners had preferred L.P.A. No. 275 of 2016, but no appeal was preferred against the order passed in C.W.J.C. No. 23005 of 2011. The rest of the arguments on behalf of the respondent Nos. 6 and 7 are similar to what has been advanced by the State as also the intervenors/respondent Nos. 9 to 19.

29. After having noticed the set of facts and arguments propounded by the parties, the issue which this Court is called upon to decide is whether, even if the services of the erstwhile employees of the Board is treated to be continuous, can such continuity be taken into account for fixing *inter se* seniority in the Building Construction Department by reckoning it from the respective date of appointment of the employees and counting the services rendered in the erstwhile Board since their employment in the Board.

30. Seniority is a concept in service



jurisprudence which has hitherto given rise to plenty of litigation as fixation of the seniority is dependent on a number of variables. Seniority, in usual parlance denotes preference or precedence in position over other "similarly situated" persons. Simply and pithily put, in the context of government service, it means length of service with an inference that if the length of service is longer, such corresponding seniority shall be attached with the service of the person concerned. Seniority or *inter se* seniority may not be a fundamental right but is a civil right without doubt and it could be emasculated or infringed only under the cover of any validly framed rules, which in turn has to receive the strictest of construction. If a civil right is destroyed arbitrarily, the fall out of such destruction can be felt in the domain of articles 14 and 16 of the Constitution of India also.

31. Though the length of service may be the generally accepted norm for determining seniority but it would be wrong to suggest that this principle does not



admit of any exception. There are other variables also which might have an interplay in determining seniority. One needs to be reminded that the object of assigning seniority is, by and large, grant of promotion or advancement in one's service.

32. For fixing/determining seniority, the source to look for is the statutory provisions/rules and in the absence of such provisions/rules, administrative instructions providing the factors to be taken into consideration and the manner to be adopted in fixation of seniority. However, such administrative instructions, in the absence of any statutory provisions/rules, can be relied upon only if such administrative instruction is constitutionally or otherwise valid. Primacy, but, is given to statutory provisions/rules.

33. There are certain general principles governing seniority as well which have been evolved by judicial precedents and in the absence of statutory provisions/ rules/administrative instructions, the general



principles can be taken help of. One such principle, which has general acceptance, is length of service which in the absence of anything to the contrary, is a widely accepted determinative factor. In determining *inter se* seniority of employees, the length of actual service rendered in the same cadre or grade is the most accepted criterion. In this general principle also, one has witnessed debate and courts have had to grapple with the factual situation and in the past, it has been held that if the initial appointment is *ad hoc* and not in accordance with the rules, seniority would be determined from the date of regularization and not from the date of initial entry. For the length of service to be treated as a criterion/factor, in determining seniority, it has to be ensured that the service has been rendered in the same cadre or grade. This is because seniority is a comparative concept between employees who are equally circumstanced.

34. While computing the length of service, it is



open for the employer to prescribe different points of time from which the service would be deemed to have commenced.

35. The date of appointment is, normally, the starting point of computation of length of service. However, this also is not and cannot be taken to be an absolute proposition because of the debatable issue of what would be the date of appointment; would it be from the date of substantive appointment or from the date of entry into the service.

36. It is here that I wish to lay greater emphasis for the issue at hand can be effectively decided by a proper appreciation of the aforesaid principles.

37. An employee cannot be granted seniority prior to his birth in a cadre which might adversely effect seniority of other employees appointed prior to him. In Amarjeet Singh & Ors versus Devi Ratan (2010) 1 SCC 417, it has been held that latecomers to regular stream cannot steal a march over earlier arrivals who are



already in regular queue.

38. When recruitment to a service/cadre/grade is from two or more sources e.g. direct recruits and promotees, the *inter se* seniority between the recruits will be governed by the rules of administrative instructions, if any, governing the field. In the absence of such instructions/rules, reasonable, just and fair principles shall be applied.

39. The most contentious issues are raised with respect to *inter se* seniority with the merger and integration of two or more establishments or cadres into one.

40. In the aforesaid instance i.e. merger and integration, the *inter se* seniority has to be determined on some rational principle. The issue of fixing *inter se* seniority in such integration/merger would become easier to adjudicate if rules or administrative orders by which integration/merger is effected itself contains the principles and the manner in which the *inter se* seniority



of the integrated employees are to be determined. Only in the absence thereof, general principles are to be applied.

41. Now the question would arise what would be a fair, just and rational principle. Any factor, passing through the rigours of the constitutionality has to be fact and circumstance specific. The historical background of the integration/merger has also to be taken into account. It has been the experience from the past that when courts are, in the absence of the rules, called upon to decide such issue, the aim of the courts is to strike a just balance between the rival claims.

42. While deciding such issues, the courts have also to constantly remind themselves that settled seniority ought not to be unsettled and there should be no insistence on looking at hair splitting inaccuracies in the fixation of seniority and no mathematical scale is required to be arrived at.

43. The consistent refrain of the courts,



therefore, is that unless the fixation is arbitrary/irrational or has taken into consideration extraneous materials, there shall be no interference.

44. In Kunj Bihari Lal versus Union of India AIR 1963-SC-518, a Five Judge Bench of the Supreme Court had an occasion to deal with the issue of determination of *inter se* seniority of two groups of employees who were amalgamated into a single cadre. To decide the issue, the Supreme Court delved into the historical background of amalgamation and noted that one set of employees were *ad hoc* and recruited on temporary basis and not against any sanctioned post whereas the other group was in regular employment against the sanctioned post. It was thus held by the Supreme Court that on the date of amalgamation of the services of both the groups of employees, the circumstance of the two groups were different and in the absence of any rules reflecting any mindset of the authority to grant equal weightage to the service of both the groups, it was the group of regular



employees, working against the sanctioned posts, who had to be given preference.

45. Thus, the Supreme Court, in the aforesaid case, took into account the different characteristics of service and historical background of integration and thereafter excluded the period of service actually rendered in the erstwhile service prior to integration.

46. However, in Reserve Bank of India versus N.C. Paliwal and Others, AIR 1976 SC 2345, which did not at all notice the judgment in Kunj Bihari Lal (supra), the Supreme Court was of the view that when an integrated service comes into existence by reason of initial recruitment through a defined process from two or more sources comprising different classes of employees already in service, then there was no difficulty in assigning seniority *inter se* on the basis of length of service rendered by the employees in the cadre to which they belonged at the time of their initial recruitment to the service. This proposition, however was with respect



to an integration through recruitment by a defined process in which employees from different groups were called for participating in the recruitment process.

47. In later cases, the Supreme Court has also clarified that in the backdrop of the historical background of the integration and looking at the practicality of the situation and functional importance of employees who were so merged/integrated in one cadre, the credit could be given by treating their services from the entrance point 'pre-integration'(refers to A.S. Iyer (col) versus V. Balasubramanayam, 1980 SCC (1) 634).

48. It was also observed in some of the cases by the Supreme Court that it would be unjust if the earlier service is completely ignored in cases of merger.

49. A practical solution was suggested in such cases by the Supreme Court of striking a just balance between the conflicting claims.

50. After the aforesaid espousal of law in general with regard to fixation of seniority in cases of



integrated/merged cadre, it is also necessary to point that for a gradation list to be upheld, it has to be judged with reference to the principles of fixing seniority or else, judging the validity of such gradation list/seniority would inhere in it the perils of inference of the principles pressed into use.

51. The learned Single Judge in C.W.J.C. No. 4452 of 2012, referred to above, took note of the background of the dissolution of the Board, the contents of the Repeal Act as well as the follow up resolution/notification and examined the validity of the decision of the State Government of treating the absorption of the respondents as fresh appointments and being amenable to the new pension scheme and found that the absorption ought not to be treated as fresh appointment as there was nothing in the scheme of dissolution which can justify any break in the service; rather the clauses of the Repeal Act ensured continuity of service.



52. The reasons ascribed by the learned Single Judge was that the provisions of the Repeal Act reflected the intention of the legislature in not leaving in lurch the employees who were to be absorbed under various services of the State Government. This was manifest from the provision made in the Repeal Act for retaining their employment on the same salary which was payable on the date of the repeal and further follow up resolution of pay protection.

53. With reference to various decided cases, the learned Single Judge in C.W.J.C. No. 4452 of 2012 (supra) reiterated the principles of absorption and clarified that integration/merger of services meant creation of homogeneous service amongst merged employees. It was also, but observed by the learned Single Judge that looking for a perfect coalescence of services on such merger, would be a chimera but the principles of equivalence is to be followed while absorbing the employees.



54. The logic for the aforesaid, it was held, was that once a service is merged with another service, it takes its birth in the integrated service and loses its original identity.

55. All the aforesaid reasons were formulated/ espoused for the purposes of holding the absorption as a fresh appointment to be untenable and antithetical to the essence of coalescence and fusion. However, with respect to seniority *inter se*, which also was one of the issues in the batch of writ petitions, the lead case being C.W.J.C. No. 4452 of 2012, the Bench, after referring to the decisions of this Court as well as the Supreme Court viz. Priya Ranjan Sharma versus State of Bihar and Others, 2010(2) PLJR 387, Dwijen Chandra Sarkar and Another versus Union of India and Others (1999) 2 SCC 119 and in Panchraj Tiwari versus M.P. State Electricity Board and Others (2014) 5 SCC 101 , directed the State Government to take a decision within a stipulated frame of time. It is worth noting that with respect to other



issues viz. treating the services of the erstwhile employees of the Board to be continuous and counting of the period that they had served in the Board/Corporation for other purposes, the order was imperative.

56. As noted in the preceding paragraphs, the challenge to the aforesaid judgment by the learned Single Judge was allowed to the extent that the Division Bench in L.P.A. No. 275 of 2016 found that the issue had not matured for the learned Single Judge to pass any order and a direction was given to the State authorities to dispose off the objection of the employees, remaining unbiased, notwithstanding the observations made by the learned Single Judge in the writ petition referred to above and frame the final gradation list in accordance with law, in a fair, just and equitable manner.

57. The upshot of the above decision is that the issue with respect to the parameters/principles to be used for fixing/determining the seniority *inter se* of the



employees was left completely open for the authorities to decide it on fair, just and equitable principles.

58. The gradation list appears to have been formulated by treating the services of the private respondents to be continuous and counting the service from the date of their appointment in their respective organization/Board/Corporation. The formulation of gradation list does not actually reflect that the historical background of the merger/integration was taken into account. The gradation list also does not indicate that the petitioners were direct recruits, recommended by the B.P.S.C and serving a department of the government since 2003, whereas the respondents were employees of a Board which stood dissolved by way of an act of repeal. It was only the policy decision of the government to adjust/absorb the private respondents and other similarly situated in government service, that they came into government service. Thus the background and the manner of merger/integration had to be taken into



account before fixing the gradation list. By no stretch of imagination, can the circumstances of the petitioners and respondents be said to be the same.

59. In Rajnikant Ojha versus The State of Bihar, 2016(1) PLJR SC 33, the Supreme Court ruled against giving the benefit of past service to such persons who were not appointed through common process of selection, had worked in different department/cadre and there was no connectivity of service between the two groups of employees.

60. In Tamilnadu Education Department Ministerial and General Subordinate Services Association and Others versus State of Tamil Nadu and others, (1980) 3 SCC 97, the Supreme Court again considered the ambit within which judicial review could be made and spelled out the limits of interference with respect to decision of the government on the advice of the expert committee. It was held by the Supreme Court that integration is a complicated administrative problem and



merely because some better formula could have been used for fixing seniority, that ought not to be a justification for interference by the courts unless the formula used is unreasonable, perverse and indifference.

61. Similar views were expressed by the Supreme Court in Gurmail Singh and Others versus State of Punjab and Others, (1991) 1 SCC 189.

62. In the aforesaid cases, though the benefit of past service was given to the employees but only after ensuring that a late entrant does not steal a march over the already serving employees.

63. After referring to the aforesaid decisions of the Supreme Court, a Single Judge of this Court in C.W.J.C. No. 9639 of 2008(Ajay Kumar Verma & Ors versus The State of Bihar & Ors) and C.W.J.C. No. 17414 of 2013(Bihar Intermediate Education Council Employees Association, Patna & Ors versus The State of Bihar & Ors) concluded that in case of absorption in new establishment or organization, past services could be



counted for grant of ACP and other pensionary benefits only but not for reckoning the date of seniority.

64. This Court has also noticed the two resolutions; one of which is of an older antiquity which stipulates non-counting of earlier service in case of transfer by request and; the other of a recent origin issued after the impugned gradation list was published indicating that employees of Boards/Corporations, who have been absorbed in government service, will be deemed to be government servants from the date of their absorption (Memo No. 796 dated 02.02.2018).

65. Tying the strings together, the petitioners are the direct recruits, recommended by the B.P.S.C and appointed in the year 2003 in the department of Energy on the post of Junior Engineer (Electrical). For the non-availability of the cadre of Junior Engineer (Electrical) in the Building Construction Department, a policy decision was taken by the government with the approval of the cabinet for transfer of the entire electrical wing *en*



masse from the Energy Department to the Building Construction Department. The petitioners being direct recruits, recommended by B.P.S.C., of the Energy Department of the government, on one hand and private respondents being erstwhile employees of the Agriculture Produce Marketing Board who were absorbed in the government service only on dissolution of the Board in the Energy Department and later inducted in the Building Construction Department cannot be equated together and be kept on the same platform.

66. In such a situation, counting the period of service from the date of appointment in the respective organization for fixing *inter se* seniority, therefore has not only bruised severely the career prospect of the petitioners but has also resulted in an anomaly, so far as seniority is concerned, which needs to be revisited and reformulated by the government/concerned department.

67. For the reasons aforesaid, the seniority list dated 30.01.2018 contained in Memo No. 970,



issued under the signature of the Chief Engineer, Department of Building Construction, Bihar, Patna is quashed/set aside.

68. The concerned Department is directed to redraw the seniority list after enunciating equitable and rational principle for fixing the same. It would be better to invite objections from the employees and only thereafter formulate the final gradation list which ought to reflect the principles of fixation of seniority. The exercise is required to be done within as short a time as possible, preferably within a period of three months from the date of production of a copy of this order before the Principal Secretary, Department of General Administration, Bihar, Patna (respondent No. 2).

69. Needless to state that any exercise of granting promotion will have to await the final publication of the gradation list within the stipulated period.

70. The petition is allowed with the observation



and direction aforesaid.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13/04/2019

