

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.258 of 2018
In
Civil Writ Jurisdiction Case No.7603 of 2016

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Yogeshwar Pandey and Ors

... .. Appellant/s

Versus

The State Of Bihar and Ors

... .. Respondent/s

=====

with
Letters Patent Appeal No. 1743 of 2017
In
Civil Writ Jurisdiction Case No.7603 of 2016

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Mithilesh Kumar Sinha and Anr

... .. Appellant/s

Versus

The State Of Bihar and Ors

... .. Respondent/s

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with
Letters Patent Appeal No. 173 of 2018
In
Civil Writ Jurisdiction Case No.7603 of 2016

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The State Of Bihar and Ors

... .. Appellant/s

Versus

Sunil Kumar and Ors

... .. Respondent/s

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Appearance :
(In Letters Patent Appeal No. 258 of 2018)
For the Appellant/s : Mr.Anita Kumari
For the Respondent/s : Mr.P.K. Verma- Aag3
(In Letters Patent Appeal No. 1743 of 2017)
For the Appellant/s : Mr.Navendu Kumar
For the Respondent/s : Mr.
(In Letters Patent Appeal No. 173 of 2018)
For the Appellant/s : Mr. Saroj Kumar Sharma, AC To AAG- 3
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY



ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

21 26-09-2022

L.P.A. 258 of 2018

Learned counsel for the appellant fairly submitted that in the light of decision rendered in the case of *Jarnail Singh & Other Vs. Lachmi Narain Gupta & Others* passed in *SLP (Civil) No. 30621 of 2011*, L.P.A. No. 258 of 2018 does not survive.

Accordingly, L.P.A. No. 258 of 2018 stands dismissed as withdrawn.

L.P.A. Nos. 1743 of 2017 and 173 of 2018

One of the question involved in the present litigations is respondent-State have filled up the post of Under Secretary by means of promotion in the absence of final seniority list of feeder cadre, namely, Section Officer. Section 15 of the Bihar Secretariat Service Act, 2007 issued under Bihart Act 3 of 2008 reads as under:-

“15. *Appointment to the grade of Under-Secretary* – (1) Vacancies in the grade of Under-Secretary shall be filled by promotion from the grade of Section officer.

(2) Persons appointed and working as Under-Secretary of the Joint Cadre of Assistants of the Secretariat and attached offices on the appointed day shall be deemed to be automatically included in this grade.”



Before giving effect to Section 15 of the Bihar Secretariat Service Act, 2007 it was bounden duty of the competent authority in the Secretariat to prepare seniority list of Section Officer in terms of Section 18(3)(ii)(c) of the Act. It seems that appointing authority to the Under-Secretary post ignoring the fact that Sections Officers' final seniority list was not notified and such list has not been prepared for the purpose of filling up of the post of Under-Secretary. The aforesaid position has not been disputed by Mr. B. Rajendra, Principal Secretary, G.A.D.

The Respondent-Secretariat have been provided eight weeks time to give effect of Rule 18(3)(iii)(c) in preparation of seniority list of Section Officer which is feeder cadre to the Under-Secretary. List shall be issued and objections/suggestions be obtained from such of those Sections Officers whose rights are likely to be affected by virtue of tentative seniority list. On receipt of suggestions/objections, if any, the same shall be considered and final seniority list shall be notified. Thereafter, the Secretariat shall undertake review of promotion to the post of Under-Secretary and re-adjust such of those persons who are eligible to be promoted to the post of Under-Secretary. If any ineligible to hold Under-Secretary post



with reference to seniority or qualification or eligibility criteria is not entitled to hold the post of Under-Secretary. In such of those matters, competent authority-Secretariat shall issue a show cause notice as to why such Under-Secretary shall not be reverted back to the post of Section Officer. On receipt of explanation from the concerned Under-Secretary, the competent Secretariat official is hereby directed to proceed to take appropriate decision as to whether such a person is entitled to continue to hold the post of Under-Secretary or he shall be reverted to the post of Section Officer or not? The above exercise shall be completed within a period of eight weeks.

At this stage, learned counsel for the appellant tried to defend order of promotion to the post of Under-Secretary. It is astonish to note that in the service jurisprudence in the absence of provisional/final seniority list of feeder cadre, filling up of higher post is impracticable. In other words, pick and choose method has been adopted by the Secretariat by promoting some of the Sections Officers to that of to the post of Under-Secretary. As long as feeder cadre to the post of Under-Secretary, namely, Section Officer's seniority list is not finalized, question of filling up of the post of Under-Secretary is not warranted. The same shall be taken note of by the



Secretariat/ competent authority.

At this stage, learned counsel for the appellant further submitted that later portion of the observation would be harmful to the interest of the appellants. The appellants have not made out a case that their ranking at particular place in the Section Officer's seniority list, he is unable to produce provisional/final seniority list of Section Officer so as to establish his statutory right to claim promotion to the post of Under-Secretary. Accordingly, aforesaid contention of the appellant stands rejected.

Learned counsel for the State on instruction submitted that due to pendency of various litigations before the Hon'ble Supreme Court, list of Section Officer has not been published. However, he has failed to point out any specific order prohibits the Secretariat to not to publish seniority list of Section Officers for promotion to the post of Under-Secretary.

Re-list this matter on 28.11.2022.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

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