

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.688 of 2018

In
Civil Writ Jurisdiction Case No.1945 of 2008

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Chandra Mani Baitha @ Chandra Mani Prasad Son of Late Chahatto Baitha,
Resident of Village-Kees Nizamat P.S.-Samastipur, District-Samastipur, at
Present the Appellant/Petitioner Executive Engineer, Sone Command Area
Development Agency, Khagaul, Patna.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Personnel and Administrative Reforms Department,
Govt. of Bihar, Patna.
3. The Commissioner-Cum-Secretary, Water Resources Department, Govt. of
Bihar, Patna.
4. The Addl. Secretary, Water Resources Department, Govt. of Bihar, Patna.
5. The Dy. Secretary, Water Resources Department, Govt. of Bihar, Patna.
6. The Joint Secretary, Water Resources Department, Govt. of Bihar, Patna.
7. Shri Hare Krishna Prasad , Executive Engineer, Municipal Corporation,
Gaya, Sr. no.-1
8. Smt. Seema Kumari, Executive Engineer-In-Charge Centre Cell, Water
Resources Department, Patna Sr.
9. Shri Shashi Kumar Choudhary, Executive Engineer, Municipal Corporation,
Bhagalpur, Sr no.5.
10. Shri Sudhir Kumar, Executive Engineer, Rural Works Department, Jamu Sr.
No. 9, Division No. 02
11. Shri Jai Prakash Paswan, Executive Engineer, Tube Well Division,
Madhepura Sr. no. 15
12. Shri Pawan Kumar Ram, Executive Engineer, Tube Well Division,
Madhepura, Sr. 20 null
13. Shri Jagannath Paswan, Executive Engineer, Tube Well Division, Khagaria,
Sr. No. 28.
14. Shri Chandra Shekhar Azad, Executive Engineer, Rural Works Division
no.2, Shekhpura, Sr. no. 36,
15. Shri Arvind Kumar, Executive Engineer, Tube Well Division, Bhagalpur, Sr.
no. 42
16. Shri Jageshwar Prasad, Executive Engineer, Tube Well Division, Jehanabad,
Sr. no.48
17. Shri Rajesh Kumar, Executive Engineer, Tube Well Division, Muzaffarpur,
Sr.no.54
18. Shri Arvind Kumar, Executive Engineer, State Laboratory, Rural Works



Department, Patna, Sr.no.58.

19. Shri Ashok Prasad Kumar, Executive Engineer, Tube Well Division, Saran at Chapra, Sr. No. 86
20. Shri Parmeshwar Baitha, Executive Engineer, Tube Well Division, Gaya, Sr. no. 72

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ram Chandra Prasad Bharti, Advocate
For the Respondent/s	:	Mr.Anjani Kumar -AAG-4
		Mr. Alok Kumar Rahi, AC to AAG-4
		Mr. Utkarsh Bhushan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-07-2023

The dispute raised is of *inter se* seniority between the direct recruits and the promotees. The appellant herein was the writ petitioner who claimed that he was entitled to be promoted in 1994 in which event he should have been given priority and preference over the direct recruits of 1994. The said prayer was made on the contention that the minimum Kalawadhi of 8 years for the purpose of promotion stands reduced for the reserved categories by one year. There was an alternate contention taken that even if the one year relaxation was not allowed, the petitioner would have been entitled to be promoted on 22.01.1995 from which date he should be assigned his seniority.

2. The learned Single Judge relied on **A.K.**



Subramaniam & Ors. v. The Union of India and others, (1975) 1 SCC 319, D.K. Mitra and others v. The Union of India and others, (1985) Supp. SCC 243, State of Bihar and others v. Sri Akhouri Sachindra Nath & others, AIR 1991 SC 1244 to find that the seniority runs only from the date of appointment to the promoted post and not from the date of occurrence of vacancies or creation of the vacancies. Finding that the petitioner was promoted after the direct recruits and that the State had granted seniority from the date of vacancy by mistake, which stood rectified, there was no cause to interfere with the seniority assigned to the petitioner from the date of his appointment.

3. The learned counsel appearing for the petitioner would contend that the appellant, though promoted on 24.11.1995, as per Annexure-3, by a later memo. of 28.07.2001 produced as Annexure-5, was given retrospective assignment of seniority from 22.01.1995. It is contended that the petitioner, who is a promotee, has to be assigned seniority from the year 1994 or at least from the year 1995.

4. Learned Additional Advocate General Shri Anjani Kumar, on the other hand, points out Annexure-6 by which the order, Annexure-5, was interfered with. The appellant,



in fact, has absolutely no case and the judgment of the learned Single Judge has to be upheld is his contention.

5. On the minimal facts required to be considered, the appellant was appointed as a Junior Engineer on 19.01.1987 as per Annexure-1, in which post he joined on 24.11.1995, evident from Annexure-2. Annexure-3 as we noticed hereinabove, indicates that he was promoted to the post of Assistant Engineer on 24.11.1999. It is indicated that the Government had issued Memo. No.288 Dated 10.05.1978 by which one year relaxation in Kalawadhi prescribed was permitted to the Scheduled Castes and Scheduled Tribes. A fresh order of assignment of seniority from the date of occurrence of vacancy was issued as per Annexure-5, thus, assigning the seniority of the appellant on 22.01.1995, when he is said to have completed the Kalawadhi of 8 years.

6. Insofar as the order dated 28.07.2001 shifting the appellant's seniority to the date on which he completed his Kalawadhi, the same was interfered with in C.W.J.C. No.5996 of 2002; which has attained finality. The order dated 28.07.2001 was challenged by the direct recruits in a writ petition, the judgment of which is produced by the petitioner himself as Annexure-6. It was found that the Annexure-2 cannot stand



scrutiny and the fixation of seniority has to be done after inviting objections from all concerned. An appeal filed by the appellant herein was first dismissed for default and after restoration again was dismissed on merits. It was later to this that by Annexure-10 dated 3.1.2008, it was found that the direct recruits entered into service between 16.05.1995 and 17.08.1995 whereas the promotees entered into service in between 24.11.1995 and 17.09.1997. Insofar as the appellant is concerned, he is said to have been appointed on the promoted post on 24.11.1995 as per Annexure-1 i.e. after all the direct recruits were appointed.

7. We agree with the learned Single Judge that there was absolutely no case for the appellant to seek for seniority assignment from a date prior to his appointment on the promoted post. The appellant's case that he should have been given relaxation or that he should have been given appointment from the date of his completion of Kalawadhi cannot be agitated after he accepted the promotion as on 24.11.1995, without any objection thereto. The relaxation of one year in the Kalawadhi should have been agitated by the appellant as soon as he completed the seven years period, which he did not do. Insofar as the regular Kalawadhi of eight years having been completed



on 22.01.1995, again he did not agitate the cause either at that time or immediately after the promotion was granted. The shifting of seniority granted by the Government was interfered with by this Court which was challenged by the appellant in an appeal, unsuccessfully.

8. We find no reason to assign a prior date to the appellant and give him a seniority over and above the direct recruits who were appointed in the higher post prior to his own appointment. The appeal stands rejected.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

K.C.Jha/-

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