

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.730 of 2018

In

Civil Writ Jurisdiction Case No.16240 of 2015

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1. Radha Pandey son of Late Baleshwar Pandey Resident of village- Dariapur, P.S.- Parasa Bazar, District- Patna.
 2. Nilambar Thakur son of Late Uttam Narayan Thakur Resident of Sisawa, P.S. Pandaul, District- Madhubani.
 3. Sugambar Prasad Son of Shri Bhagwan Harijan Resident of village- Pattar, P.S. Aswan, District- Siwan.
 4. Mohan Rajak Son of Shyam Lal Rajak Resident of village- Rasalpur, P.S. Jehanabad, District- Jehanabad.
 5. Dinesh Prasad Son of Mishri Raut Resident of village- Amanaur, P.S. Chapra, District- Saran at Chapra.
 6. Muzaffar Imam Khan son of Abdul Zafar Khan Resident of Village- Chilka Patti, P.S. Motihari, District- East Champaran.
 7. Vishwanath Tiwari Son of Sahdeo Tiwari Resident of village- Parwwan, P.S.- Sikarganj, District- East Champaran.
 8. Paras Nath Singh S/o Narayan Singh R/o Vill- Mahuari, P.S. Siwan, District- Siwan.

... .. Appellant/s

Versus

1. The State Of Bihar Bihar.
2. The Area Development Commissioner cum Chairman, Gandak Area Development Agency, Muzaffarpur, presently Superintending Engineer-I (Head Quarter).
3. The Secretary, Gandak Command Area Development Agency, Muzaffarpur.
4. The Secretary, Water Resources Department Bihar, Patna.
5. Water and Land Management Institute(WALMI), Patna, through the Director (Chief Engineer), WALMI.
6. The Director (Chief Engineer), Water and Land management Institute (WALMI), Patna.
7. The Superintending Engineer, Command Area Development Circle, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Kamala Kant Tiwary, Advocate
For the Respondent/s	:	Mr.Anjani Kumar, AAG-4
		Mr.Deepak Sahay Jamuar, Advocate
For the WALMI	:	Mr.Satish Chandra Jha, Advocate



CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 07-02-2023

Despite issuing orders from time to time respondents could not apprise this Court as to how many vacancies were notified or cadre strength of Class III post so as to take note of respective quotas for direct recruitment, in-service competitive examination and promotion. The present case is relating to promotion quota to the extent of 25% and method of recruitment to the post of Class III was notified on 11.02.1985. However, resolution dated 11.02.1985 is consisting only method of recruitment to the post of Class III to the extent of 50% direct recruitment, 25% in-service candidate through examination and 25% promotion and it is not supported by number of posts or cadre strength of the Class III post in order to ascertain how many posts were earmarked for promotion under 25% quota. From perusal of method of promotion it appears the source cadre is from Class IV employees. Class IV employees are consisting of four sources. One of these sources is Treasure Guard which carries higher pay-scale than the other three source cadre. Therefore, we are of the view that combined seniority list should have been prepared while placing the Treasure Guard on the top who are in the higher pay-



scale than the other three sources. We have perused the seniority list of Treasure Guard in which appellant-Shri Radhey Pandey name appears at Serial No. 9. It is also learnt that upto Serial No. 5 in Orderly/Chowkidar/Sweeper cadre have been granted promotion to Class III even though Orderly/Chowkidar/Sweeper cadre carries lesser pay-scale than the Treasure Guard, therefore, infirmity is evident that pick and choose method has been adopted while granting promotion. It is submitted that from the year 1990 onwards no promotion to Class III post has been effected by the department. On the other hand, there was no bar for effecting promotion, such bar came into existence by means of resolution dated 22.11.1995. In other words, method of recruitment to Class III post cited (supra) would be invoked up to 22.11.1995. Respondents could not apprise this Court between 11.02.1985 to 22.11.1995, how many vacancies accrued and how many vacancies were filled up under the 25% quota and other quotas also.

2. From perusal of resolution dated 22.11.1995 produced as Annexure-B, it is evident that all Class III post had been kept dormant (abolish), however, without amending the resolution dated 11.02.1985 which provides for filling up post of Class III. As long as, 11.02.1985 is not amended in the manner known to the



law, in other words necessary amendment should have been brought to the resolution dated 11.02.1985.

3. In fact, in the morning session there were no assistance and matter is taken up in the afternoon. Director-cum-Chief Engineer - Mr. Rajesh Ranjan is present in the Court even he could not lay his hands relating to number of posts available for Class III and further, how many posts were earmarked for promotion under 25% quota and how 25% quota has been operated for the purpose of promotion during the intervening period from 1985 to 22.11.1995.

4. On the other hand, pick and choose method has been resorted as is evident from the record that such of those persons who are in the lower scale in the Class IV employees like Orderly/Chowkidar/Sweeper have been picked up and promoted to Class III whereas Treasure Guard cadre has been totally ignored even though they are better footing than the other Class IV employees with reference to pay-scale attached to the respective post. The appellant is in the cadre of Treasure Guard and it is in higher pay-scale than the other cadres like Orderly/Chowkidar/Sweeper. Therefore, it is a clear case of discrimination and violation of Article 14 and 16 of the Constitution. At every stage, official respondents have failed to



follow the general principles with reference to number of post identified for the purpose of promotion to 25% quota, in not publishing combined seniority list while placing such of those persons who are in the higher pay-scale over and above the persons who are in the lower scale and there is no amendment to 1985 resolution/order creating method of recruitment to the post of Class III insofar as abolishing the same with effect from 22.11.1995 resolution. Perusal of resolution dated 22.11.1995 it is only a decision and it is not in the form under Article 166 of the Constitution so also there is not even a reference to 1985 resolution.

5. In view of these facts and circumstances the appellant has made out a *prima facie* case so as to interfere with the order of learned Single Judge dated 19.04.2018 passed in CWJC No. 16240 of 2015. Accordingly, it is set aside and CWJC No. 16240 of 2015 is allowed.

6. Concerned respondent is hereby directed to consider the appellants' name for promotion on par with last promoted candidate (it is stated to have been operated seniority list of Orderly/Chowkidar/Sweeper who are in lower pay-scale). That particular date is required to taken note of by the official respondents and to proceed to pass order of promotion in favour of



the appellants, grant increment from time to time in the promoted post, re-fix his pay and retiral benefits. The above exercise shall be completed within a period of four months from the date of receipt of this order.

7. Accordingly, the present Letters Patent Appeal No. 730 of 2018 stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
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