

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6773 of 2010

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1. DINESH PRATAP SINGH and ORS S/O Late Yogendra Singh R/O Vill P.O.Dubhar, Distt-Ballia U.P., At Present Junior Engineer Section Siwan, Rural Works Department Works Division, Siwan
 2. Dilip Kumar Sharma S/O Late Bhagwat Sharma R/O Vill P.O.Laheji, Distt-Siwan, At Present Junior Engineer, Patna West Pramandal, Road Construction Department, Patna
 3. Ratan Kumar S/O Late Vijay Bahadur Sah R/O Vill P.O.Gogri, Distt-Khagaria
 4. Raghunath Prasad Yadav S/O Shri Doma Prasad Yadav R/O Vill P.O.Daunaha, P.S.Danaha, Distt-West Champaran Bihar, At Present Junior Engineer, Bhoirey-Sectio-2, Road Division, Gopalganj
 5. Akhilesh Kumar S/O Late Surajdeo Prasad R/O Vill Horil Bigha, P.O.Daniyawar, Distt-Patna At Present Brpnn Ltd. Works Division, Sitamarhi
 6. Ujjwal Kumar S/O Late Bhulki Ram Srinagar Road No. 4, Near, A.G.Colony Maidan, P.S.Sastrinagar, Distt-Patna

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR and ORS
2. The Secretary Road Construction Department Visheshwaraiyah Bhawan, Patna, Distt-Patna
3. The Engineer In Chief Cum Special Secretary Public Road Construction Visheshwaraiyah Bhawan, Patna
4. The Chairman Bihar Public Service Commission Bailey Road, Patna
5. The Joint Secretary Public Road Construction Department Null Patna
6. Shri Arvind Kumar Sinha, Assistant Engineer, Assistant Engineer Through The Secretary Road Construc Govt. Of Bihar, Patna
7. Shri Nawal Kishore Pandit, Assistant Engineer, Assistant Engineer Through The Secretary Road Const Govt. Of Bihar, Patna
8. Shri Vinod Bihari, Assistant Engineer New Capital Division, R.C.D.Patna
9. Shri Bhupendra Kumar Srivastava, Assistant Engineer, Rural Works Department Work Division Bhagalpur
10. Shri Bhagwan Lal, Assistant Engineer, Central Circle Road Construction Department Chajjubagh, Patna
11. Shri Sanjay Kumar Gupta, Assistant Engineer, Assistant Engineer Through The Secretary Road Construc Govt. Of Bihar, Patna
12. Shri Karunesh Kumar Singh, Assistant Engineer, Bridge Construction Department Bihar Sharif Division, Distt-Nalanda
13. Shri Sanjeev Kumar, Assistant Engineer, Assistant Engineer Through The Secretary Road Constructio Govt. Of Bihar, Patna



14. Shri Arvind Kumar , Assistant Engineer , National Highway Division Bhabua, Distt-Kaimur
15. Shri Munindra Thakur, Assistant Engineer, Bridge Construction Department Saharsa Division, Distt-Saharsa
16. Shri Virendra Kumar Singh, Assistant Engineer , Assistant Engineer Through The Secretary Road Const Govt. Of Bihar, Patna
17. Shri Aalok Kumar , Assistant Engineer, Road Division Khagaria
18. Shri Pramaod Kumar Rai, Assistant Engineer , Bridge Construction Department Gaya Division, Distt-Gaya
19. Shri Krishnanand Singh, Assistant Engineer Through The Secretary Road Construction Department Govt.Of Bihar, Patna
20. Shri Vijay Kumar , Assistant Engineer Through The Secretary, Road Construction Department Govt. Of Bihar, Patna
21. Shri Nawal Kishore Singh, Assistant Engineer West Patna Road Division, Opposite Telephone Bhawan, Patna, Distt-Patna
22. Shri Manoj Kumar , Assistant Engineer, Rural Works Department , Work Division Aurangabad
23. Shri Ranjay Kumar , Assistant Engineer , C/O Chief Engineer, N.H.Division, Road Construction Depar Patna
24. Shri Anil Kumar , Assistant Engineer, N.H.Division Bhagalpur
25. Shri Dhananjay Kumar , Assistant Engineer Through The Secretary Road Construction Department Govt. Of Bihar, Patna
26. Shri Surendra Narayan , Assistant Engineer ,Road Construction Department Central Circle , Chajjubagh, Patna
27. Shri Rajesh Kumar , Assistant Engineer , Advance Planning Building Division, P.H.E.D. Main Building, Patna
28. Shri Vijay Kumar Yadav , Assistant Engineer Through The Secretary Road Construction Department Govt. Of Bihar, Patna
29. Shri Narayan Das , Assistant Engineer Through The Secretary Road Construction Department Govt. Of Bihar, Patna
30. Shri Shiv Shanker Prasad , Assistant Engineer Through The Secretary Road Construction Department Govt. Of Bihar, Patna
31. Shri Ramashanker Prasad , Assistant Engineer, P.R.O.C.D.O. Building Road Construction Department Patna
32. Shri Mithilesh Kumar , Assistant Engineer Through The Secretary Road Construction Department Govt. Of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nityanand Mishra, Advocate
		Mr. Alok Abhinav, Advocate
For the State	:	Mr. P.K. Verma, AAG 3
For BPSC	:	Mr. Amish Kumar, Advocate
For the Respondent No. 8:		Mr. Bajarangi Lal, Advocate



CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 10-04-2024

Heard learned counsels for the respective parties.

2. In the instant writ petition, petitioners have prayed for the following reliefs:

“1. That this application is being filed for issuance of an appropriate writ/order/direction quashing the order bearing memo No. 4853 (S) dated 1.4.2010 (Annexure – 6) vide which persons junior to the petitioners have been promoted to the post of Assistant Engineer against 10% quota.

“1/A That the petitioners further pray for issuance of an appropriate writ/order/direction commanding the Respondents to act as per their amended Resolution 2475(S) dated 21.2.08 and to promote the petitioners on the basis of seniority and qualification against the above said 10% quota in accordance with law.

1/B That the petitioners also pray for all the consequential benefits arising out of the above said promotion.

1/C That the petitioners further pray for issuance of an appropriate writ/order/direction for which they are found entitled to.”

3. On 03.05.2023 detailed order was passed and it reads as under:



“Registry is hereby directed to clarify as to whether respondent Nos. 6 to 32 have been served notice or not except respondent No. 8 who is represented by Mr. Bajarangi Lal. In the event of service of notice is completed on rest of the respondents, one more opportunity to the contesting respondents is given for their appearance.

Today learned counsel for the official respondents filed supplementary counter affidavit on behalf of the respondent No. 2. Perusal of the supplementary counter affidavit, it is evident that even though vacancies have been calculated from 2003 – 11 vacancies, 2004 – 05 vacancies, 2005- 01 vacancy, 2006 – 00 vacancy, 2007 – 04 vacancies, 2008 – 31 vacancies overall 52 vacancies. However, they have filled up 31 vacancies while promoting Junior Engineers to the post of Assistant Engineers on 01.04.2010 (prospectively). Further, the date of promotion has been modified from 01.04.2010 to that of 31.12.2008 on 22.10.2018.

In the light of these facts and circumstances, one has to draw inference that 31 vacancies of Assistant Engineers were filled up while promoting Junior Engineer is only on 01.04.2010. Even though, vacancies were occurred between the year 2003 to 2008. In other words, such of those persons who were eligible in the respective year between 2003 to 2008, they have not been promoted to the post of Assistant Engineers from retrospective



date with reference to occurrence of vacancies read with each of the Junior Engineers' eligibility to be promoted to the post of Assistant Engineers. Further, it is to be noted that retrospective promotion has been given to those 31 persons on 22.10.2018 while assigning the date of promotion to the post of Assistant Engineer as on 31.12.2008. In other words, irrespective of occurrence of vacancies during the period from the year 2003 to 2008, the second respondent has taken a decision to fill up 31 vacancies on 01.04.2010. As on 01.04.2010, whether the petitioners were eligible or not has not been examined by the second respondent before effecting promotions to 31 Junior Engineers. Further, when the second respondent promoted those 31 Assistant Engineers with retrospective effect from 31.12.2008 on 22.10.2018, in that event, eligibility of the petitioners and contesting respondent Nos. 6 to 32 was required to be assessed as to whether each of the senior persons has fulfilled the criteria for the purpose of promotion to the post of Assistant Engineer or not.

Learned counsel for the official respondents on instruction submitted that though vacancies were occurred between the year 2003 to 2008, it has been filled up w.e.f. 31.12.2008 and it is with reference to unamended Rules issued in the year 1998. It is submitted that vacancies occurred prior to 2008 is required to fill up with reference to Rules, 1998, the



*same cannot be accepted for the reasons that recently Apex Court in its decision in the case of **State of Himachal Pradesh & Ors. v. Raj Kumar & Ors.** reported in (2023) 3 SCC 773 it is held that vacancies occurred under the old Rules cannot be operated when the field is occupied by amended Rules.*

Re-list this matter on 17.05.2023.

Personal appearance of Mr. Sandeep Kumar R. Pudakalkatti, Secretary, Road Construction Department, Govt. of Bihar, Patna stands dispensed until further orders.”

4. Thereafter, matter was adjourned from time to time for one or the other technical issues relating to service of notice to the respondents is completed or not? As on this day, service of notice to contesting respondents is completed and they have already filed counter affidavit. None of the respondents, contesting respondents or State have apprised as to why the petitioners are not entitled to the reliefs sought with reference to the exhaustive order passed on 03.05.2023. Moreover juniors to petitioners have been promoted. In fact, as on the date of juniors promotion, petitioners were eligible to be promoted and ignoring their names is in violation of Article 14 and 16 of the Constitution read with Rules of recruitment governing the post of Assistant Engineers.



5. Accordingly, the present petition stands allowed. Impugned order dated 01.04.2010 (Annexure-6) bearing Memo No. 4853(S) stands set aside.

6. Concerned official respondent is hereby directed to proceed to consider the grievance of the petitioners with reference to service record of each of the petitioners like date of entry into service, date of passing requisite examination and date of occurrence of vacancies and date of filling up of such vacancies read with the relevant provisions for promotion to the post of Assistant Engineer from the date of their juniors were promoted. Extend all service and monetary benefits. If any third party right is likely to be affected in such an event, notice shall be issued and after due consideration of explanation, proceed to pass detailed speaking order and communicate the same to all such persons.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.04.2024
Transmission Date	NA

