

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19560 of 2011

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Puneshwar Rajak Son of Sri Rameshwar Rajak Resident of Village And P.O. Sasaur, P.S. Sarmera, District - Nalanda At Biharsharif, Presently Posted As Executive Engineer, Rural Works Department, Rural Works Division, Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
3. The Engineer-In-Chief-Cum-Additional Secretary-Cum-Special Secretary, Road Construction Department,
4. The Secretary, Building Construction Department, Government of Bihar, Patna
5. The Deputy Secretary (Management Cell), Road Construction Department, Government of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar -Manglam, Advocate
For the Respondent/s : Mr. GP 12

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 08-01-2024

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. The present writ petition has been filed for the
following reliefs :-

(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the order dated 30.04.2011 passed by the Respondent no.2 and contained in his memo no.5064 dated 30.04.2011 whereby and where under the Respondent no.2 was pleased to reject the representation filed by the petitioner and others claiming their seniority in the Gradation List of Junior Engineer Assistant Engineer and Executive



Engineer on the basis of that position in the merit list pursuant to which the petitioner and other similarly situated persons, applicant before the Respondent no.2 were appointed.

(II) For issuance of an appropriate writ in the nature of CERTIORARI for quashing of a part of the letter dated 14.08.2009 issued under the signature of the Respondent no.5 and contained in his memo no.8766 dated 14.08.2009 whereby and where under the Respondent no.5 has been pleased to issue corrigendum to the gradation list of Junior Engineer and the Assistant Engineer working in the Road Construction Department which has adversely affected the seniority of the petitioner in the Gradation List of Junior Engineers and Assistant Engineers earlier decided by the Department.

(III) For a declaration that if the department had already prepared and published the final gradation list of the Junior Engineers in the year 2003 pursuant to the order passed by this Hon'ble Court after consideration of objections raised against that the Respondent Department had no authority to change the said seniority by a provisional Gradation List or issuance of any corrigendum to that without calling upon the affected person to show-cause against the proposed corrigendum.

(IV) For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent Authorities not to interfere with the promotion of petitioner to the post of Executive Engineer which he was duly granted in the year 2008 on the basis of final gradation list of Assistant Engineer working in the department

(V) For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent Authorities for correction of seniority of petitioner in the final gradation list of Junior Engineer prepared by the Respondent Department in the year 2009 on the basis of position of the



petitioner in the final Gradation List of Junior Engineer published in the year 2003 and to correct the position of the petitioner in the Gradation List of 2009 accordingly.

(VI) For issuance of any other appropriate writ/writs order /orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.

3. Learned counsel for the petitioner submits that pursuant to an advertisement in the year 1983 issued for appointment of Junior Engineer in the Road Construction Department, the petitioner and several other similar situated persons submitted their application for appointment. After completing all necessary formalities, a list of selected Junior Engineer was prepared by the department for the purposes of appointment. Selection list was prepared category wise and therefore, there was a separate Gradation List in respect of applicants of Junior Engineer of Scheduled Caste. On the basis of the aforesaid, the selection list was prepared for appointment. The respondent authority issued a letter vide memo no. 3618 dated 05.10.1983, whereby and whereunder 53 Junior Engineers were selected and were provided their letter of appointment by the department. Due to minor deficiency in the submission of documents, the petitioner and other persons were appointed as a Junior Engineer in the year 1984 for which a notification was issued by the respondent authority under memo no. 2479 dated



20.01.1984. The Road Construction Department had prepared the provisional Gradation List of Junior Engineer working in Road Construction Department, his name was properly placed in the Gradation List. It is relevant to state that notwithstanding the appointment of the petitioner in the year 1984, pursuant to a common selection process, the seniority of petitioner vis-a-vis the other appointees of 1983, selection was decided in the Gradation List according to their position in the merit list. The name of the petitioner was mentioned at serial no. 2039 of the Gradation List according to his merit in the selection list of 1983. In view of the position of the petitioner in the Gradation List of the Junior Engineer prepared in the year 2003 and the promotion granted to the petitioner to the post of Assistant Engineer in the year 1996 w.e.f. 1991. A Gradation List of Assistant Engineer was prepared by the respondent in the year 2008 and the name of the petitioner was found placed at serial no. 825 of the Gradation List. In view of the inter-se-seniority of the petitioner in the grade of Assistant Engineer of the Road Construction Department, the petitioner was promoted to the post of Executive Engineer in the year 2008 for which a notification was issued in the year 2009.

4. The final gradation list of the Junior Engineer was



prepared by the Department in the year 2003 and the Road Construction Department again prepared the provisional Gradation List of Junior Engineer working in the Road Construction Department in the year 2007 in which the position of the petitioner in the Gradation List was altered and he was placed in the lower serial number of the said provisional Gradation List. The position and inter-se-seniority of the petitioner and other appointees of 1983 was set at rest, when the final Gradation List of Junior Engineer was prepared in the year 2003 in which the appointees of 1983 select list were placed in the Gradation List according to the merit notwithstanding the different date of appointment, the position was again changed and in 2007 Gradation List. He further submits that without disposal of the objection of the petitioner, the respondent no. 3 has published the final Gradation List of the Junior Engineer vide memo no. 1640 dated 14.05.2009 wherein no change was made pursuant to the objections of the writ petitioner and the final Gradation List was prepared with irregularity which was committed at the time of preparation of provisional Gradation List against which the petitioner already filed his objection. The petitioner had filed a detailed objection against the final Gradation List prepared by the Department on 29.12.2009 but



without considering the objection of the petitioner and other similarly situated Junior Engineers, the Respondent No. 5 issued the impugned Corrigendum vide memo no. 8766 dated 14.08.2009 whereby the position of the petitioner in the final Gradation List of Assistant Engineers prepared in the year 2003 was altered and the seniority position of the petitioner in the Gradation List of Assistant Engineers prepared in 2008 was brought to serial no. 1005 (XVIII) from original position of serial no. 825. He further submits that the petitioner has filed CWJC No. 497 of 2010 along with other similarly situated persons. The aforesaid writ petition was disposed of vide order dated 11.01.2011 directing the respondent no. 2 to disposed of the representation of the petitioner. This Hon'ble Court further observed that the interim relief order of this Hon'ble Court dated 30.06.2010 would continue till final decision is taken by the Respondent No. 2. Pursuant to the aforesaid observation, the petitioner has filed a detailed representation against the Respondent No. 2 annexing all the relevant documents and requested them to consider the case of the petitioner.

5. Learned counsel for the petitioner submits that on the date fixed for hearing of the representation, the petitioner had placed before the Respondent No. 2 the judgment of this



Hon'ble Court dated 11.08.2000 passed in CWJC No. 937 of 1992 (Sri Kapildeo Prasad and another Vs. State of Bihar and others) and it was submitted before the Respondent No. 2 that the issue under consideration has since been finally decided by this Hon'ble Court and the same should be applied to decide the case of the petitioner. But without considering the order dated 11.08.2000 passed in CWJC No. 937 of 1992, the Respondent No. 2 has rejected the representation of the petitioner by the impugned order dated 30.04.2011.

6. Learned counsel for the petitioner further submits that the case of Sri Kapildeo Prasad (*supra*) and another whose controversy of seniority was decided by this Hon'ble Court under the order dated 11.08.2010 was also appointed pursuant to the same seniority list prepared by the Respondents and in their case when there was fault in deciding their seniority, the matter travelled upto this Hon'ble Court and this Hon'ble Court by the said judgment was pleased to direct the respondents to finalize the Gradation List of Junior Engineers, showing the position of the persons as shown in the merit list and appointed on the basis of common advertisement. The case of the petitioner is squarely covered by the said judgment of the Hon'ble Court which has not been challenged or overruled till date. The Respondent No.



2 had decided the issue contrary to the ratio decided by this Hon'ble Court in CWJC No. 937 of 1992 and the impugned order deserves to be set aside.

7. Learned counsel appearing on behalf of the State has filed a counter affidavit and submits that the impugned order has been passed after taking into consideration the law settled by the Hon'ble Supreme Court. The impugned order is fully justified and cannot be interfered as the same has been in the light of the law settled by the Hon'ble Supreme Court. He further submits that the petitioner was appointed as Junior Engineer in the year 1984 under SC category and hence, his position in the seniority was below the persons appointed in the year 1983.

8. Having heard learned counsel for the parties, the impugned order dated 30.04.2011 is hereby set aside. The respondents cannot be justified to alter the settled position which was settled long back to recall the promotion of the petitioner already granted to him and the Respondent No. 2 is directed to take a fresh decision with respect to the seniority of the petitioner in the final Gradation List of Junior Engineer prepared in the year 2009 on the basis of the position of the petitioner in the final Gradation List of Junior Engineer which



was published in the year 2003 and also to correct the position of the petitioner in the Gradation List of 2009 accordingly in light of the order dated 11.08.2000 passed in CWJC No. 937 of 1992 within a period of six months from the date of production/receipt of copy of this order.

9. With the aforesaid direction, the writ petition stands allowed.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

