

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17960 of 2024

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1. Sumit Kumar son of Arvind Kumar, resident of Ramjichak, Near Yadav Gali, P.S.-Digha, District-Patna, presently posted as Junior Engineer, National Highway Division, Gaya
 2. Ritesh Kumar son of Sri Pradeep Kumar Singh resident of Chandrashekhar Nagar, East Gola Road, Danapur, P.S.-Danapur, District-Patna, presently posted as Junior Engineer, Road Construction Division, Vaishali, Hajipur
 3. Sudhir Kumar son of late Ram Charitra Tanti resident of village and P.O.- Manjhaul (Bicharbanna Tola), P.S.-Cheriya Bariyarpur, District- Begusarai, presently posted as Junior Engineer, ROad Division, Supaul.
 4. Sanjay Kumar son of Bishwanath Ram resident of Barah Pathar, Ward No. 35, P.O. and P.S.-Dehri, District-Rohtas, presently posted as Junior Engineer, Works Division, Ara, B.R.P.N.N.L..

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Additional Chief Secretary, Road Construction Department, Govt. of Bihar, Patna
3. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
4. The Engineer - in - Chief - Cum - Additional Commissioner- Cum - Special Secretary (Headquarters), Road Construction Department, Bihar, Patna
5. The Deputy Secretary (Management Cell), Road Construction Department, Bihar, Patna
6. Sri Vikas Kumar, newly promoted Assistant Engineer, presently working in Works Division, Champaran, Motihari, Bihar Rajya Pul Nirman Nigam Limited.
7. Md. Azaz Ansari, newly promoted Assistant Engineer presently posted in Works Division, Darbhanga, Bihar Rajya Pul Nirman Nigam Limited.
8. Sri Onkar Nath, newly promoted Assistant Engineer, presently posted in Works Division, Khagaria, Bihar Rajya Pul Nirman Nigam Limited.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Parshant Sinha, Adv.
For the State	:	Mr. Sunil Kr. Mandal, S.C.-3
	:	Mr. Arjun Prasad, AC to SC-3

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 27-11-2024

Heard Mr. Prashant Sinha, learned Advocate for the

petitioners and Mr. Arjun Prasad, learned Advocate for the State.

2. The petitioners are the Junior Engineers in the Road Construction Department have invoked the jurisdiction of this Court seeking quashing of the Memo No. 6720 (S) dated 07.11.2023 issued by the Deputy Secretary (Management Cell), Road Construction Department, Government of Bihar, Patna to the extent whereby the private respondents, despite being junior to the petitioners in the seniority list of Junior Engineers, have been accorded promotion to the post of Assistant Engineers under 10% quota meant for Junior Engineers having the qualification of AMIE or equivalent. The petitioners also seek a declaration that the respondent authorities have granted promotion to the private respondents in complete violation of the Memo No. 2475 (S) dated 21.02.2008 and also contrary to the ruling of the Hon'ble Supreme Court in the case of ***Pramod K. Pankaj Kumar Vs. The State of Bihar & Ors. [(2004) 3 SCC 723]*** and the decision dated 20.04.2024 passed by a Division Bench of this Court in L.P.A. No. 1761 of 2016.

3. The short facts, which led to the filing of the present writ petition, are that in terms of the Advertisement No. 1406 dated 14.08.2006 published by Bihar State Staff Selection Commission for appointment to the post of Junior Engineer

(Civil), the petitioner nos. 1 to 3 were applicant; while the petitioner no. 4 was an applicant against Advertisement No. 1906 of 2006.

4. On account of certain irregularities, the matter has been finally taken to the Hon'ble Supreme Court in Civil Appeal No. 2525-2516 of 2013 which came to be disposed of vide order dated 13.03.2013, inter alia, as follows:

“19. In the result, we allow these appeals, set aside the order passed by the High Court and direct that -

1) answer scripts of candidates appearing in 'A' series of competition examination held pursuant to advertisement No. 1406 of 2006 shall be got re-evaluated on the basis of a correct key prepared on the basis of the report of Dr. (Prof.) CN Sinha and Prof. KSP Singh and the observations made in the body of this order and a fresh merit list drawn up on that basis.

2) Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever.

3) In case writ petitioners-respondent nos. 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.

4) Such of the appellants as do not make the grade after re- evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of advertisement No.1406 of 2006 and the second selection held pursuant to advertisement No.1906 of 2006.

5) Needful shall be done by the respondents – State and the Staff Selection Commission expeditiously but not later than three months from the date a copy of this order is made available to them.”

5. In terms of the mandate of the Hon’ble Supreme Court, as noted hereinabove, the petitioner nos. 1 to 3 submitted their joining in the year 2014, while the petitioner no. 4 joined in the year 2012. After completion of the process of the joining of the candidates, the Water Resources Department prepared a

combined seniority list vide Memo No. 3474 dated 24.06.2016. The petitioner no. 1 is placed at serial no. 134, petitioner no. 2 at serial no. 95, petitioner no. 3 at serial no. 150 and the petitioner no. 4 at serial no. 447, whereas, the private respondent no. 6 was placed at serial no. 212, respondent no. 7 at serial no. 680 and the private respondent no. 8 at serial no. 706.

6. The services of the petitioners along with others were later on transferred to the Road Construction Department, Bihar, Patna vide its Office Order No. 15 dated 20.01.2017. The Road Construction Department has also come up with a seniority list, wherein the private respondents have been shown junior to the petitioners, except respondent no. 6, who has been shown to be senior to the petitioner no. 4, the particulars of which have been mentioned at Paragraph No. 7 to the writ petition. Despite the aforementioned facts when the Road Construction Department started the process of preparation of eligibility list for promotion to the post of Assistant Engineer under 10% quota from the Junior Engineers having qualification of AMIE or equivalent, their claim has not been considered in the right perspective, compelling the petitioners to file a representation for inclusion of their name in the eligibility list. The copy of the representation has been placed on record as

Annexure-P/6.

7. Thereafter, the Road Construction Department came up with eligibility list as contained in Memo No. 6263 (E) dated 17.10.2022. However, the name of the petitioners did not find place in the said list, whereas the name of the respondent no. 6 was figured at serial no. 9 in the eligibility list for the year 2013. The name of the respondent no. 7 is shown at serial no. 18, whereas the name of respondent no. 8 has been placed at serial no. 20 in the eligibility list for the year 2012.

8. Based upon the eligibility list, the private respondents have been granted temporary promotion to various cadres vide Memo No. 19300 dated 13.10.2023, and finally, the Road Construction Department vide its notification contained in Memo No. 6720 (S) dated 07.11.2023 granted promotion to fifty Junior Engineers under 10% quota, including the private respondents, whose name figured at serial nos. 48 to 50 without considering the representation of the petitioners for inclusion of their names in the eligibility list. In the aforesaid premise, the petitioners again approached before the concerned respondents by filing detailed representations on 08.11.2023 and 08.12.2023.

9. Mr. Prashant Sinha, learned Advocate for the petitioners narrating the aforesaid facts contended that after

granting promotion to the private respondents, a fresh eligibility list was prepared vide Memo No. 205 (E) dated 11.01.2024, wherein the names of the petitioners no. 1 to 3 were included in the eligibility list of 2019, while the petitioner no. 4 was included in the eligibility list of 2017. Subsequent thereto, the other Junior Engineers, though senior to the petitioners in the seniority list, have further been granted promotion under 10% quota, ignoring the claim of the petitioners.

10. The learned Advocate for the petitioners drawing the attention of this Court to the resolution contained in Memo No. 5008 (S) dated 22.07.1998 submitted that the said resolution provided for 10% of quota for promotion for such Junior Engineers, who have obtained the qualification of AMEI or equivalent to the post of Junior Engineer.

11. The resolution aforementioned came to be amended vide another resolution contained in Memo No. 2475 (S) 21.02.2008. The said resolution clearly stipulates that for promotion to the post of Assistant Engineer to such Junior Engineers, who have passed the examination of AMIE or equivalent during their service period or even prior to coming into the service and have completed minimum five years of service as Junior Engineer, their names are required to be

included in the eligibility list, as per the seniority list. Clause 4(Ga) of the resolution mandates that eligibility list was to be prepared in the calendar year, through which the promotion is to be granted.

12. The aforesaid resolution was also a subject matter before the learned Division Bench of this Court in LPA No. 1761 of 2016, wherein the learned Division Bench vide order dated 20.04.2024 interpreting the said resolution in sum and substance held that the eligibility list should have been taken into account the, inter se, seniority of the Junior Engineer having the qualification of AMEI or equivalent and directed the respondents to promote the persons w.e.f. the date from which the persons junior to him were promoted. The judgment of the Division Bench has also been placed on the record, as Annexure-P/5B to the writ petition.

13. The learned Advocate for the petitioners, thus, referring to the judgment of the learned Division Bench has submitted that irrespective of the fact that the Resolution dated 21.02.2008 has been interpreted in clear terms by the Division Bench of this Court, the claim of the petitioners has not been considered for promotion, whereas the persons junior to the petitioners have been accorded the promotion to the post of

Assistant Engineer under 10% quota and having the qualification of AMIE or equivalent.

14. For redressal of the grievance, the petitioners have already filed representation before the competent authorities, but the same has not been considered compelling them to approach before this Court.

15. Considering the submissions of the learned Advocate for the petitioners, based upon the aforementioned facts, this Court for the ends of justice, direct the petitioners to file a fresh representation before the Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna along with a copy of the order of this Court alongwith the documents in support of their claim, preferably within a period of four weeks from today.

16. In case, such a representation is filed, the respondent no. 2 shall be obliged to consider the claim of the petitioners in the light of the judgment of the Division Bench of this Court in LPA No. 1761 of 2016 and the averments made in the writ petition, preferably within a period of eight weeks, thereafter.

17. Suffice it to observe that before passing any final order over the representation of the petitioners, the private

respondent nos. 6 to 8 must be given opportunity to place their claims.

18. The writ petition stands disposed off with the aforesaid direction.

(Harish Kumar, J.)

Jyoti Kumari/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.12.2024
Transmission Date	NA