

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2971 of 2020

1. Sameer Kumar Singh Son of Late Lalji Singh, Resident of Flat No. 104, Block-B, Regency Pragya Pradeep, Nandanpuri, Khajpura, P.S.-Rajeev Nagar, District-Patna, presently posted as Assistant Engineer, Rural Works Department, Works Division, Dumraon, Buxar.
2. Dinesh Pratap Singh, Son of Late Yogendra Singh, Resident of Village and P.O.-Dubahar, District-Ballia (Uttar Pradesh), presently posted as Assistant Engineer, Rural Works Department, Works Division, District-Sitamarhi.
3. Devendra Nath, Son of Late Ravindra Nath, Resident of Village and Post-Dighi Kala East, P.S.-Hazipur Sadar, District-Vaishali.
4. Akhilesh Kumar Mandal, Son of Late Sheopujan Singh, Resident of Village-Mushepur, Post-Mewar Sikariya, P.S.-Jehanabad, District Jehanabad.
5. Sudhir Kumar Singh, Son of Late Ganesh Singh, Resident of Village-Pinurth Khurd, Post-Sonbarsa, P.S.-Daraunda, District-Siwan.
6. Murlidhar Yadav, Son of Late Hari Narain Yadav, Resident of Village-Situmaha, Post-Salakhua, P.S.-Salakhua, District-Saharsa.
7. Sunil Kumar, Son of Sri Ram Singhasan Chaudhary, Resident of Village and Post-Kakila, P.S.-Jagdishpur, District-Bhojpur (Ara).
8. Narendra Prasad, Son of Late Gagandeo Prasad, Resident of Village and Post-Nimoiya, P.S.-Ghorasahan, District-East Champaran.
9. Ram Vilas Prasad, Son of Late Kishun Prasad Sah, Resident of Village and Post-Mirpur, P.S.-Chiraiya, District-East Champaran.
10. Radha Raman Singh, Son of Late Shaivi Prasad Singh, Resident of Village-Pareriya, Post-Gangta More, P.S.-Haveli Kharagpur, District-Munger.
11. Rajesh Prasad, Son of Sri Tarini Pandit, Resident of Mohalla-Indrapuri, Road No. 58/54, Post-Keshrinagar, P.S.-Patliputra, District-Patna.
12. Shailendra Kumar, Son of Sri Bhola Prasad Yadav, Resident of Village-Madhura, Post-Singiyawan, P.S.-Kishanpur, District-Supaul.
13. Devendra Kumar, Son of Sri Gupteshwar Prasad Yadav, Resident of Village and Post-Rajpur, P.S.-Pipra, District-Supaul.
14. Sanjay Kumar, Son of Late Umesh Prasad Sharma, Resident of Village-Chak Jamal, Post-Sahdeyee Bujurg, P.S.-Deshri, District-Vaishali.
15. Ram Kumar Satyarthi, Son of Sri Ram Prasad Gupta, Resident of Village-Sobhan, Post-Lal Shahpur, P.S.-Simri, District-Darbhanga.
16. Sanjay Kumar, Son of Sri Ram Chandra Prasad, Resident of Village-Budhramchak, Post-Pabhera, P.S.-Dhanarua, District-Patna.
17. Akhileshwar Prasad, Son of Sri Bindeshwari Prasad, Resident of Village and Post-Ketaki, P.S.-Dev, District-Aurangabad.



18. Prem Chand Gupta, Son of Late Ram Swaroop Sahu, Resident of Village-Chatariya, Post-Shubhankarpur, P.S. Sadar, District-Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Additional Secretary, Rural Works Department, Govt. of Bihar, Patna.
4. The Deputy Secretary, Rural Works Department, Govt. of Bihar, Patna.
5. Supriya Rani Daughter of Sri Radhika Raman Singh, resident of Village-Bhirha, Amarpur, P.S.-Medui Chowki, District-Lakhisarai.
6. Bhagwan Ray, son of Sri Ram Suresh Ray, resident of Village-Keshri, P.S.-Ekma, District-Chapra (Saran).
7. Rakesh Kumar, son of Sri Bhagwan Modi, resident of Village-Jhundo, P.S.-Khaira, District-Jamui.
8. Priyanka Kumari, daughter of Sri Rajendra Prasad, resident of Village-Murgiya Chak, P.S.-Vena, District-Nalanda.
9. Ram Chandra Pandit, son of Sri Munshin Pandit, resident of Village-Manpur, P.S.-Buniyadganj, District-Gaya.
10. Barun Kumar, son of Sri Mahendra Bhagat, resident of Mohalla -Sui Ki Masjid, Mogalpura, P.S. Khajekala, District-Patna
11. Shashank Saurabh, son of Sri Sahendra Rajak, resident of Flapic Apartment, Jagdeo Path, Bailey Road, P.S.Rajiv Nagar, District-Patna.
12. Neeraj Kumar Raj, son of Sri R. N. Rajak, resident of Village-Paryari, P.S.-Kinjar, District-Arwal.
13. Avinash Kumar, son of Sri Dayanand Prasad, resident of Village-Nagdih, P.S.-Barkighar, District-Sheikhpura.
14. Subhash Kumar, son of Sri Shyam Sundar Sharma, resident of Village-Saraswati Nagar, P.S.- Bariyarpur, District-Munger
15. Md. Jamil Abu Hassan, son of Sri Md.Khalil Ansari, resident of Village-Aliganj, P.S.-Chandauli, District-Gaya
16. Kuma Gaurav, son of Sri Bishnu Deo Chaudhary, resident of Village-Sijaul, P.S.-Andhrathari, District- Madhubani.
17. Vijay Kumar, son of Sri Raj Nandan Pandit, resident of Village-Chauhatta, P.S.-Hajipur, District-Vaishali.
18. Chandan Kumar Bhargav, son of Sri Ashok Kumar, resident of Village- Kiul Khagaur, P.S.-Lakhisarai, District- Lakhisarai.
19. Ajit Kumar, son of Sri Raj Kishore Singh, resident of Village-Sandalpur Road, Kumharar, P.S.-Bahadurpur, District-Patna
20. Ashfaque Ahmad, son of Md. S. N. Safullah, resident of Asiana Digha Road, P.S.-Rajiv Nagar, District-Patna.



21. Sunil Kumar, son of Sri Uma Shankar Singh, resident of Village-Chandi, P.S.-Sikraul, District-Buxar
22. Vivek Kumar, son of Sri Hanuman Baitha, resident of Village-Barva, P.S.-Inerwa, District-Pashchim Champaran.
23. Sanjay Kumar Anand, son of Sri Bihari Ray, resident of Purnendu Nagar, Phulwari Sharif, P.S.-Phulwari Sharif, District-Patna
24. Prabhat Kumar Raj, son of Sri Ashish Rajak, resident of Jai Prakash Nagar, P.S.-Jakkanpur, District-Patna
25. Vivek Soni, son of Late Maheshwar Prasad, resident of Village-Punpun, P.S.-Punpun, District-Patna.
26. Tej Pratap, son of Late Krishna Nandan Singh, resident of Village-Gyani Bigha, P.S.-Neemchak Bathani, District-Baya
27. Bhagirath Ram, son of Late Madhusudan Ram, resident of Village-Jawariya, P.S.-Marhora, District-Saran.
28. Satish Chandra, son of Sri Umakant Singh, resident of Village-Sahwajipur, P.S.-Narhat, District-Nawada
29. Pankaj Kumar, son of Ramji Prasad, resident of Village-Lohgadh, P.S.-Makhdumpur, District-Jehanabad.
30. Sujit Kumar Ranjan, son of Late Chandeshwara Baitha, resident of Village-Sirsiya Bazar, P.S.-Bela, District-Sitamarhi.
31. Sunil Kumar, son of Sri Bharat Chaudhary, resident of M.I.G.-17, Lohia Nagar, Kankarbagh Colony, P.S.- Kankarbagh, District-Patna
32. Avinash Kumar, son of Bipin Bihari Chaudhary, Resident of Village-Siho, P.S.-Sakara, District-Muzaffarpur
33. Ashok Kumar, son of Late Kailash Ram Rajak, resident of Mohalla-Pathak Toli, P.S.-Jehanabad, District-Jehanabad.
34. Vinod Kumar Prabhakar, son of Lakshmi Kant, resident of Mohalla-Chakbandi Road, Ward No.11. Bhabhua, P.S. Bhabhua, District-Kaimur
35. Braj Kishore Parasad, son of Late Babu Ram Rajak, resident of Village-Kosdihara, P.S.-Jamhor, District-Aurangabad.
36. Md. Gyasuddin, son of Ram Bali Das, resident of Village-Kirhindi, P.S.-Sheosagar, District-Rohtas
37. Ramanuj Kumar, son of Late Sidheshwar Prasad, resident of at Village-Balwapur, P.S.-Warisaliganj, District-Nawada
38. Rakesh Kumar, son of Sri Rajendra Chaudhary, resident of Azam Nagar, Rampur, P.S.-Araria, District-Araria.
39. Himanshu Raj son of Sri Rajendra Sahani, resident of Sunaina Bhawan, Shivpuri, P.S.-Shastri Nagar, District-Patna.
40. Praveen Kumar, son of Sri Kedarnath Ram, resident of Village-Daulatpurganj, P.S.-Obra, District-Aurangabad
41. Vikas Kumar, son of Sri Ram Kumar Prasad, resident of Village-Mahkar, Sapnari, P.S.- Mahkar, District-Gaya



42. Anant Kumar, son of Sri Tripurari Thakur, resident of Village-Nadhaul, Susta Madhopur, P.S.-Kijhani, District-Muzaffarpur.
43. Ran Vijay Kumar, son of Sri Satish Prasad Singh, resident of Village-Dumrawan, P.S.- Pakri Barawan, District-Nawada
44. Bibhash Pal, son of Sri Genesh Pal, resident of Barari West Tola, Barari, P.S. Barari, District-Bhagalpur.
45. Arvind Kumar Das, son of Sri S. N. Das Singh, resident of Mohalla-Kankarbagh, P.S.-Agamkuan, District-Patna.
46. Bharat Bhushan Bharti, son of Sri Bhola Paswan, resident of Magadh Colony, Hasanpura Road, P.S.-Beur, District-Patna.
47. Manish Kumar son of Sri Ram Kumar Prasad, resident of Village-Mahkar, Post-Sapneri, P.S. Khijarsarai, District-Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y V Giri, Sr. Advocate Mr. Rakesh Mohan Singh, Advocate Mr. Rajni Kant Singh, Advocate
For the State	:	Mr. Prem Ranjan Raj, Advocate
For the Intervenor	:	Mr. Lalit Kishore, Sr. Advocate Mr. Prabhu Nath Pathak, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 18-03-2025

This Court has heard Mr. Y V Giri, learned Senior Advocate along with Mr. Rakesh Mohan Singh, learned Advocate for the petitioners and Mr. Prem Ranjan Raj, learned Advocate for the State. The intervenor respondents have appeared through Mr. Lalit Kishore, learned Senior Advocate along with Mr. Prabhu Nath Pathak, learned Advocate.

2. The petitioners, before this Court, are the Junior Engineers, who acquired qualification of Associate Membership of Institution of Engineers (hereinafter referred to as “AMIE”)



or equivalent qualification in the year 2011-2012, while some of them have obtained the qualification in the year 2005, 2008, 2009 and 2010 are aggrieved with the inaction of the respondents in not considering their cases for promotion to the post of Assistant Engineers under 10 per cent quota from the date of completion of five years of service as Junior Engineers, qua the available vacancy in the cadre of Assistant Engineers in terms of paragraph no. 4 (ख) of resolution contained in Memo No. 5008 (s) dated 22.07.1998. The petitioners further seek issuance of writ in the nature of mandamus directing the respondent authorities to shift back the date of their promotion with effect from 2012 and 2013, the year in which they have attained the eligibility for promotion and vacancy were available under 10 per cent quota in the cadre of Assistant Engineer in terms of the Bench decision of this Court in CWJC No. 16049 of 2016, which order has attained finality upon being implemented by the Road Construction Department by shifting back the date of promotion to the identically situated Junior Engineers. The petitioners further sought a direction to rectify the notification issued under Memo No. 4739 dated 14.05.2018 to the extent whereby, the Under Secretary, Rural Works Department as though belatedly extended the promotion to 32



Junior Engineers holding the qualification of AMIE or equivalent degree, including the petitioners against 10 per cent quota in the cadre of Assistant Engineers, but with effect from the date of issuance of the notification.

3. Before parting with this writ petition, it would be apposite to narrate the short facts of the case, which would be relevant for the present case. The petitioners were duly appointed as Junior Engineers in the year 1999 in terms of the Advertisement published by the Bihar Public Service Commission on the basis of a requisition made by Road Construction Department, Government of Bihar. Some of the petitioners were also appointed prior to the said advertisement. While the petitioners were discharging their duty on the aforementioned post, in the meanwhile, Government of Bihar in the Department of Road Construction vide resolution bearing Memo No. 5008 (s) dated 22.07.1998 enhanced the quota for promotion to the post of Assistant Engineer from the post of Junior Engineer, having the qualification of AMIE or equivalent from 3 per cent to 10 per cent. The resolution aforementioned specifically provided that the benefit of promotion would be available under this quota of 10 per cent to all such Junior Engineer, who possessed such qualification of AMIE or



equivalent, prior to the joining of service or those who had acquired such qualification during their service period and had rendered five years service in the cadre of Junior Engineer. The stipulation under Clause 4 (ग) was amended vide resolution bearing Memo No. 2475 (s) dated 21.02.2008 and the benefit of promotion shall be made available to all such Junior Engineer, who have passed the AMIE or equivalent examination even prior to coming into service as Junior Engineer.

4. The petitioners, after being appointed as Junior Engineers acquired the qualification of AMIE or equivalent degree in the year 2011 and 2012, while some of them have obtained much prior thereto and thus, they became eligible for being considered for promotion to the post of Assistant Engineer under 10 per cent quota with effect from the date of completion of five years of service as Junior Engineers, subject to the availability of vacancy in the cadre of Assistant Engineers. In the meanwhile, cadres of Junior Engineers and Assistant Engineers in the Road Construction Department was bifurcated in the year 2013 and certain Junior Engineers and the Assistant Engineers were brought in the cadre of Rural Works Department. In terms of bifurcation of the cadre, the petitioners brought in the cadre of Junior Engineers in the Rural Works



Department in the year 2012. There were 909 sanctioned post of Assistant Engineer in Rural Works Department in 2012, out of which the 10 per cent of the cadre strength were to be filled up through the Junior Engineer, having the qualification of AMIE or equivalent degree with five years of regular service. Since some of the persons were also working under this quota, the information obtained by the petitioners, 13 vacancies were created in the cadre of Assistant Engineers in the year 2012. Further in the year 2013, 32 vacancies were created in the cadre of Assistant Engineer of the said department.

5. Notwithstanding the specific prescriptions contemplated under the resolution dated 22.07.1998 and its amended resolution dated 21.02.2008, directing the respondent authorities to calculate the vacancy for promotion for every year under 10 per cent quota, the department did not work out to calculate the vacancy, nor took any steps to fill up the vacancies under the 10 per cent quota.

6. Similar identical situation cropped up in the Road Construction Department, where some of the junior engineers, who had been belatedly promoted to the cadre of Assistant Engineer under 10 per cent quota, preferred CWJC No. 16049 of 2016 before this Court, seeking a direction upon the respondent



authorities to shift back their promotion to the date of eligibility and creation of vacancy under 10 per cent quota. The writ petition came to be allowed on 15.03.2017 with a specific direction upon the respondent authorities to consider the claim of the petitioners of the said case for promotion with effect from the date on which, each of them have been found fit for promotion in terms of the list so issued dated 24.09.2009, subject to availability of vacancy in the particular year earmarked for such promotion and pass appropriate orders in accordance with law. Leading to the aforesaid direction, the Principal Secretary, Road Construction Department, Government of Bihar vide Memo No. 11270 (s) dated 07.12.2017 shifted back the date of promotion of the petitioners of CWJC No. 16049 of 2016 with effect from 31.12.2008.

7. Likewise the Rural Works Department vide its Memo No. 4739 dated 04.05.2018 granted promotion to 32 engineers holding the qualification of AMIE or equivalent degree, including the petitioners, against 10 per cent quota in the cadre of Assistant Engineers, but made it effective from the date of issuance of notification. It is this action which compelled the petitioners to represent before the Secretary, Rural Works Department seeking parity to the petitioners of CWJC No.



16049 of 2016. However, in response to such representation, the Deputy Secretary, Rural Works Department vide its Letter dated 18.09.2019 (Annexure-6) communicated to the petitioner that the date of shifting back of the promotion of the persons of Road Construction Department is put to challenge in CWJC No. 4547 of 2018, hence the decision shall be taken, regarding shifting back of the date of promotion of the petitioners, after disposal of CWJC No. 4547 of 2018.

8. It would be worth noting that in the aforementioned CWJC No. 4547 dated 2018, the petitioners of the present writ petition had also preferred interlocutory application no. 04 of 2020. However, this Court having taken note of the fact that the petitioners have filed the present writ petition bearing CWJC No. 2971 of 2020, wherein they have also assailed the communication dated 18.09.2019, the interlocutory application was disposed off and the issue is left open to be considered in CWJC No. 2971 of 2020. The Court further directed that since the petitioners of CWJC No. 4547 of 2018 are aggrieved with the provisional gradation list and the matter is pending consideration before the authorities, the writ petition also came to be disposed off with an expectation that the authorities shall consider all the issues in accordance with law, while considering



the objection raised by the petitioners.

9. Mr. Y V Giri, learned Senior Advocate having taken this Court through the resolution dated 22.07.1998 and its amended provision has contended that the issue raised before this Court has already been set at rest by a Bench decision of this Court in the case of *Arwind Kumar and Ors. Vs. The State of Bihar and Ors.* (CWJC No. 16049 of 2016) vide its order dated 15.03.2017. Notwithstanding the aforesaid settled legal position, the Rural Works Department failed to appreciate the factum of the order having been passed in CWJC No. 16049 of 2016 has attained its finality and, moreover, the Rural Works Department was also a party in CWJC NO. 16049 of 2016. Hence, in no circumstances, they can absolve from their duty to extend the benefit of the order of this Court passed in CWJC No. 16049 of 2016 to the petitioners by shifting back their date of promotion under 10 per cent of quota to the date of attainment of eligibility and the date of creation of vacancy. The CWJC No. 4547 of 2018 has now been disposed off by this Court vide order dated 19.12.2022 and admittedly the Court did not interfere with the decision of the Road Construction Department to shift back the date of promotion of the identically situated Assistant Engineers. Hence, the petitioners are also entitled to



get the identical relief.

10. It is also informed to this Court that in CWJC No. 6773 of 2010, one Dinesh Pratap Singh was also included in the cadre of Junior Engineers of Rural Works Department and subsequently, he was granted promotion to the post of Assistant Engineer vide Memo No. 4739 dated 14.05.2018 along with the other petitioners of the said case with effect from the date of issuance of the notification, he also assailed the same and claimed for shifting back his date of promotion whereupon, the learned Co-ordinate Bench of this Court vide order dated 10.04.2024 allowed the writ petition and directed the authorities to consider the grievance of the petitioners with reference to the service record of each petitioners, like date of entry into service, date of passing requisite examination and date of occurrence of vacancy and date of filling up of such vacancy read with relevant provisions for promotion to the post of Assistant Engineer from the date of their junior were promoted.

11. Dispelling the aforementioned contention, learned Advocate for the State has urged before this Court that the order in CWJC NO. 16049 of 2016 was only confined to the Road Construction Department and not to the Rural Works Department, at all, which the petitioners belong. Mere



acquisition of the AMIE degree does not justify retrospective promotion; vacancies must exist and five years of service must complete post qualification. It is also the contention of the learned Advocate for the State that though the petitioners seek retrospective promotion with effect from the due date of their qualification, but there had been no AMIE quota vacancies existed until 2017; all the more, the petitioners were promoted in the year 2018 to be more specific vide Memo No. 4739 dated 14.05.2018 with effect from the date of such notification. There is no rule prescribed, allowing retrospective promotion and the vacancies under the AMIE quota were not available until 2017. So petitioners' request to shift back the date of promotion to 2013 is unsustainable. Moreover, this Court as well as the Hon'ble Apex Court on so many occasions has held that promotion cannot be back dated to vacancy date. To support the aforesaid contention, reliance has also been placed on a decision rendered by this Court in CWJC No. 1945 of 2008 (*Chandra Mani Baitha Vs. The State of Bihar*) duly upheld in LPA No. 688 of 2018, where the Court ruled that seniority starts from actual promotion date and not with effect from the date from when the vacancies arose. Reliance has also been placed on a decision of the Hon'ble Apex Court in the case of *Union of*



India Vs. Manpreet Singh Poonam (Civil Appeal No. 517-518 of 2017) [(2022) 6 SCC 105].

12. Mr. Lalit Kishore, learned Senior Advocate for the intervenor respondents has vehemently refuted the contention of the petitioners and primarily submitted that the present writ petition is not at all maintainable on various reasons *inter alia* during the pendency of this case, the representation submitted by the petitioners to shift their date of promotion has already come to be rejected by the Engineer-in-Chief, Rural Works Department vide its order dated 19.06.2023, albeit the petitioners have not chosen to challenge the same. It is further contended that the final merit list of the Assistant Engineer has already been published and notified and the several intervenor respondents have also been promoted to the post of next higher grade, i.e., Executive Engineer with effect from the 1st of January, 2024 based on seniority list, which seniority list has also not been questioned.

13. Referring to the averments made in the affidavit filed on behalf of the intervenor respondents, learned Senior Advocate further contended that admittedly intervenors were appointed as Assistant Engineer long back in the year 2013 through direct recruitment against the vacancies arisen up to



2008. Nonetheless, the petitioners cadre was originally in the Road Construction Department and later on, were transferred to the Rural Works Department in the year 2013. If the petitioners had continued in Rural Works Department, they would not have been eligible for promotion to the post of Assistant Engineer until 2023 as the Junior Engineers of 1995 batch, who also obtained AMIE in 2009 were promoted in the year 2023, due to non-availability of post under the said quota.

14. Placing reliance upon a decision of the Hon'ble Apex Court in the case of ***State of Uttarakhand Vs. Dinesh Kumar Sharma, (2007) 1 SCC 683*** it is contended that the Hon'ble Court held in no uncertain terms that the claim of the promotion and seniority from the date when vacancies arose is unreasonable and not sustainable. The identical issue involved in the writ petition had come up for consideration in ***Chandra Mani Baitha*** (supra) which stood affirmed by the learned Division Bench of this Court in LPA No. 688 of 2018. Reliance has also been placed on a ruling of the ***Manpreet Singh Poonam*** (supra) and the decision rendered in ***Bihar State Electricity Board Vs. Dharamdeo Das, 2024 (3) (SC) PLJR 400/2024 SCC Online (SC) 1768*** to the effect that promotion is effective from the date it is granted and not from the date when



vacancies occurs on subject post or when the post is itself created. No rights for promotion, on the basis of computing *kalavadhi* and minimum qualification. Promotion to the post should be granted from the date of promotion and not on the date from which vacancies may have arisen.

15. Having heard the learned Advocate for the respective parties and after meticulous examination of the materials available on record, this Court finds that the moot question for consideration before this Court is in limited bound as to whether the petitioners are entitled to get the identical relief as has been accorded to the identically situated Junior Engineers in terms of Bench decision of this Court in CWJC No. 16049 of 2016, wherein this Court after considering all the relevant materials directed for shifting back the date of promotion in the cadre of Assistant Engineer from the date of attainment of eligibility and creation of vacancy under 10 per cent quota of AMIE or equivalent degree.

16. The facts are admitted that the Road Construction Department was the nodal department for the cadre of the Junior Engineers, which later on furcated in other departments, including the Rural Works Department of which the petitioners belong. Nonetheless, all the departments are the department



under the State and the service condition including the rules and regulations for their promotional avenues are being governed by the statutory rules and the regulations made in this behalf.

17. Indubitably, the Government of Bihar in the Department of Road Construction came out with a resolution on 22.07.1998 with a clear stipulation that all the Junior Engineers, who possessed qualification of AMIE or equivalent degree prior to the joining of service of those, who had acquired such qualification during their service period and had rendered five years of service in the cadre of Junior Engineers were found eligible for promotion to the post of Assistant Engineer under 10 per cent quota allotted in this regard. Claus (३) of said resolution dated 22.07.1998 further mandate that the promotion under the 10 per cent quota upon completion of the eligibility shall be made subject to the availability of vacancy which shall be calculated by each calendar year. Subsequent thereto, amendment was brought vide Memo No. 2475 (s) dated 21.02.2018 and the discrimination between Junior Engineer who had acquired the qualification before coming into service or after coming into service was creased out by making all the Junior Engineers, who had acquired such qualification with five years minimum service on the post of Junior Engineer were held



eligible for such consideration. The resolution discussed hereinabove still holds the field and the consideration for promotion to the post of Assistant Engineers under 10 per cent quota, who are having qualification of AMIE or its equivalent degree along with five years minimum service on the post of Junior Engineer were held eligible for such consideration obviously subject to availability of vacancy.

18. This Court is on a fix as to when the identical issue brought before this court by identically situated persons has already been resolved and answered, all the more given effect to by implementing the order how the respondent authorities are justifying their action or inaction in not extending the identical benefit to the petitioners. The uniformity is the hall mark of the good governance. It is well settled that every action of the executive government must be informed by reasons and should be free from arbitrariness. That is very essence of the rule of law and its bare minimum requirement. The decision taken in an arbitrary manner contradicts the principle of legitimate expectation and the plea of legitimate expectation relates to procedural fairness in decision making and forms part of the rule of non-arbitrariness as denial of administrative fairness is Constitutional anathema vide *E. P. Royappa Vs. State*



of Tamil Nadu, AIR 1974 SC 555; Maneka Gandhi Vs. Union of India, AIR 1978 SC 597 and Kumari Shrilekha Vidyarthi Vs. State of Uttar Pradesh, AIR 1991 SC 537.

19. In the case of *Haji T. M. Hassan Rawther Vs. Kerala Financial Corporation, AIR 1988 SC 157*, the Hon'ble Apex Court had unequivocally held that the rule of law inhibits arbitrary action and such action is liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favoritism and nepotism. The Constitution Bench of the Apex Court in the case of *State of Andhra Pradesh Vs. Nalla Raja Reddy, AIR 1967 SC 1458* has observed that official arbitrariness is more subversive of doctrine of equality than the statutory discrimination. In spite of statutory discrimination, one knows where he stands but the wand of official arbitrariness can be waved in all directions indiscriminately.

20. Article 14 of the Constitution strikes at arbitrariness in State action and ensure fairness and quality of treatment. It requires that State action must be based on valid relevant principles alike to all similarly situate and not to be



guided by any extraneous or irrelevant considerations. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary State action which Article 14 of the Constitution adopts. Good administration requires public authorities to act in a predictable manner and honour the promises made or practices established unless there is good reason not to do so vide *E. P. Royappa* (supra), *State of Jharkhand Vs. Brahmputra Metallics Ltd. (2023) 10 SCC 634* and *Shivnandan C. T. Vs. High Court of Kerela, (2024) 3 SCC 799*.

21. The petitioners who have come in the service after participating in a due recruitment process for legitimate expectation with their process of promotion will be fair and not arbitrary in terms of the prevalent rules, regulations and resolutions. The Apex Court in the case of *Shivnandan C. T.* (supra) has held that the basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognizes that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past



practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure. However, the doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it.

22. Now coming to the case in hand, it is true that mere acquisition of the AMIE degree and rendering of five years of service as a Junior Engineer does not justify promotion, however, it cannot be ruled that the consideration for promotion of an incumbent upon acquisition of the eligibility is his fundamental right. The learned co-ordinate Bench of this Court while resolving the identical issue has emphasized the significance of the timely consideration for promotion, as has held in the case of ***C. O. Arumugam and Ors. Vs. The State of Tamil Nadu and Ors., reported in (1991) (Supp) 2 SCC 199.*** The Court while allowing the CWJC No. 16049 of 2016 has opined that the very action of the respondents in classifying all the Junior Engineers possessing AMIE qualification or its equivalent as one, irrespective of the date on which each one of them had acquired the eligibility for such promotion, is a discriminatory act. In other words unequals have been treated as equals even when the respondents are conscious as regarding the



eligibility date of each of the Junior Engineers which stands confirmed from the list enclosed to the writ petition. The grievance so raised is found to be genuine and the Court is surprised that when attention was drawn of the respondents they have also acted thereupon which is confirmed from the notings file but they did not act upon only on the appreciation that it would open a Pandora box, hence they decided it otherwise. In order to give quietus to the lis which is unnecessarily being raised by the parties, this Court thinks it apt to encapsulate the relevant observation made by the learned coordinate Bench of this Court in CWJC No. 16049 of 2016.

“In my opinion even if the order of promotion was issued on 1.4.2010, the effective date of promotion of each of the Junior Engineers mentioned therein has to be in reference to the date on which, each of them acquired eligibility subject to the vacancies available against 10% quota. The respondents having initiated the process of promotion in the year 2004 by earmarking vacancies arising in each year beginning from 2003 for being filled up from the Junior Engineers possessing A.M.I.E. qualification or its equivalent against 10% quota reserved for them, the completion of such process in issuance of promotional order also had to be in terms



of the vacancies so notified vide advertisement dated 18.3.2004 present at Annexure-2 , the notification dated 27.5.2004 at Annexure-3 and its revision vide notification dated 17.3.2009 vide Annexure-4.

In the circumstances so discussed it is rightly argued by Mr. Giri, learned senior counsel appearing for the petitioners that the delayed action on the part of the respondents cannot prejudice the case of the petitioners and their respective promotions have to be considered with effect from the date each of the petitioners have acquired such qualification subject to availability of vacancies. The submission is well taken and has to be upheld.

*Paragraph 25 to 29 of the judgment relied upon by Mr. Giri rendered in the case of **Chittaranjan Kumar Buernevey** (supra) would be an answer to the present situation as well which runs as under:*

“25. In the impugned order the Board is quite right in saying that there cannot be any automatic filling up of the post by promotion as soon as it falls vacant. But one thing is far too well settled to be disputed that right to be considered for promotion flows from the constitutional guarantee under Articles 14 and 16 to the Constitution. Against that



background the other assertion in the impugned order that the Board „thought it fit“ to consider the case of the petitioner for promotion from 28th April, 1986 without giving any justification by the petitioner should not be considered for promotion earlier and with effect from the date of occurring of the vacancy especially when the petitioner's eligibility for such consideration is not disputed in the impugned order does not satisfy the test of either reason or relevance.

*2. In **C.O. Arumugam and others vs. The State of Tamil Nadue and others** reported in (1991) (Supp.) 2 SCC page 129, the Apex Court made it clear that consideration for promotion can only be postponed on reasonable ground. Here no reasonable ground has been shown in the impugned order why the petitioner's case for consideration for promotion to the post of Under Secretary was postponed.*

27. So in the absence of any cogent reason in the impugned order, this Court cannot sustain the same. The attempt of the learned counsel for the Board to improve the impugned order on the basis of additional reasons not mentioned in it also cannot be accepted for the well settled legal position discussed here-in-above.

28. Therefore, the question is whether an employer is free to defer at its sweet will the consideration of an incumbent's case of promotion when the vacancy occurs and when the person whose case is ripe for consideration is making repeated representations for



such consideration of his case. If the answer is given by this Court in affirmative then an employer would be put in the position of being an „imperium in imperio’. Under the constitutional set up no body can claim that position. On the other hand the Apex Court is constantly harping on the fact that the governmental authorities in keeping with the concept of a Welfare State should act as a model employer. Acting as a model employer, implies that persons who are entitled to be considered for promotion at the time when the vacancy occurs ought to be so considered in accordance with law and they must know where they stand. Therefore, a fair consideration of case for promotion implies a timely consideration and not a belated one or at any time when the employer thinks it fit. As the employee has a fundamental right of having his case for promotion considered fairly, similarly the employer has an obligation to do it objectively. There is no scope for a subjective approach in this area. So the authority must remember that in considering an employee’s case for promotion, it is undertaking an exercise in the context of certain constitutional imperatives. And it is expected that the authority must act with a due sense of responsibility and in an objective manner and in such cases always there is an accountability attached to its actions. So the authority cannot take the stand, as it has taken in the impugned order that it will consider the case for promotion „when it thinks fit. The



impugned order thus betrays a clear lack of perception on the part of the authorities about its duties in this respect.

29. This Court is of the view that discipline in public service is not a one way traffic. If the authorities expect discipline and dedication from the employees, they must also adhere to some discipline in the discharge of duties and obligations and as a model employer one such obligation is to consider the eligible employees for promotion in accordance with the rules and within a reasonable time when vacancies in the promotional post occur.

In the circumstances discussed, the petitioners are found entitled to the relief so prayed in this writ petition.

The respondent authorities concerned including the Principal Secretary, Road Construction Department are directed to consider the claim of the petitioners for promotion with effect from the date on which each of them have been found fit for promotion in terms of the list so issued dated 24.9.2009 present at Annexure-5 subject to availability of vacancies in that particular year earmarked for such promotion and pass appropriate orders in accordance with law within a period of three months from date of receipt/production of a copy of this order.

The writ petition is allowed.



*Let a writ of mandamus issue
accordingly.”*

emphasis supplied by this Court

23. To answer the contention raised by learned Advocate for the State and the intervenor respondent, there is no quarrel with regard to the settled legal position that seniority will be granted from the date the incumbents have entered into cadre in particular, when the vacancies have arisen. The vacancy might have arisen earlier will not be a relevant factor but seniority will be granted from the date they have entered into cadre.

24. The Apex Court as well as this Court in various rulings has crystallized this issue and held that no person can be promoted retrospectively even from the date when he was not born in the cadre so as to adversely affect others. It is also settled by several decisions that amongst particulars of the same correct seniority is reckoned from the date of joining. However, the settled legal position does not absolve the respondents from their duty not to consider the case of the incumbents for their promotion when the vacancy occurs and when the person whose case is ripe for consideration. It is not the sweet will of the employer to consider the case of the incumbent for promotion as and when he feels necessary. The highest Court of the land has cautioned that a welfare state should act as a model employer; a



fair consideration of case of promotion implies a timely consideration and not a belated one as the employee has a fundamental right of having his case for promotion considered fairly. There is no scope of subjective approach in this area. Further the objection raised by the intervenor respondents to the extent of challenging the order passed on the representation of the petitioners and also finalization of the seniority list and subsequent promotion during the interregnum period are mainly confined to the question of seniority qua the petitioners with others, however, the case in hand, the question posed before this Court is only in respect to rightful entitlement of the petitioners for consideration of their promotion to the post of Assistant Engineer under 10 per cent of quota, who are having the degree of AMIE or equivalent degree with continuance working of five years on the post of Junior Engineer, subject to availability of vacancy in terms of a government resolution and its amended provision noted hereinabove.

25. This Court is also not oblivious that the Bihar State Litigation Policy, 2011, especially Clause 4 (c) (i) mandates that all similarly situated employees should be granted the benefits of covered matters and if the orders of the Court have been implemented, in case of certain litigants, it should be



implemented in respect of all other identically situated persons, if the State Litigation Policy has been brought in existence in order to extend uniformity with respect to identically situated persons, this Court has no hesitation to hold that the claim of the petitioners' is identical to those of the petitioners of CWJC No. 16049 of 2016, which fact has not been disputed in substance. Moreover, the stand in the counter affidavit that the order passed in CWJC No. 16049 of 2016 is confined to Rural Development Department, Government of Bihar and the petitioners belong to Rural Works Department, Government is wholly unsustainable in law as well as on facts and thus here by stands rejected.

26. In view of the settled legal position and the discussions made, hereinabove, this Court finds the case of the petitioners is identical to those of the petitioners of CWJC No. 16049 of 2016 and thus, to maintain uniformity direct the respondent nos. 2 and 3 to consider the claim of the petitioners for promotion with effect from the date on which each of them have been found fit for promotion in terms of the resolution dated 22.07.1998 and its amended provision as contained in Memo No. 2475 dated 21.02.2008 in accordance with law within a period of four months, from the date of receipt/production of a copy of this order.



27. The writ petition stands allowed.

28. All the pending applications also stand disposed
off.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.03.2025
Transmission Date	NA

