

(2003) 02 PAT CK 0072
In the Patna High Court
Case No : L.P.A. No. 1361 of 1995

Bishwanath Dubey and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 24-02-2003

Acts Referred:

Citation : (2003) 02 PAT CK 0072

Final Decision : Allowed

Judgement

Ravi Dhavan, C.J.—This Letters Patent Appeal is against an order dated 11 September, 1995 on C.W.J.C. No. 4900 of 1995: Bishwanath Dubey and Ors. v. The State of Bihar and Ors.

2. On facts taken in the petition, on record, there is no issue. The petitioners were admittedly senior to the respondents and prayed that they be given their seniority over the respondents at the rightful place in a combined cadre of the departments concerned. The relief as prayed was denied. The learned Judge was of the opinion that the petitioners had approached the High Court belatedly. Limitation defeated the cause. Thus, the present Letters Patent Appeal.

3. While the matter was being debated, gradually the Court had to examine 11 sets of records (and many cases within these 11 sets of records) so that substantial justice is done that a person otherwise a senior is not left down the ladder; to inquire the reasons why seniors were left out and juniors promoted over them. This circumstance is an aspect on record and not in issue. Then why did all this happen? Collusion and misrepresentation between claim seekers and State officials is a circumstance which is emerging from the record.

4. At the very outset the Court cannot escape noticing an Act of Legislature which is germane to the issues before the Court. This enactment is known as: Assistants of the Secretariat and Attached Offices Joint Cadre Act, 1989. The expressions "departments and attached offices," "Joint Cadre" and "Member" have been defined in Section 2. The most relevant aspect is that one joint cadre

took effect from 30 August, 1988. Section 3 of the Act reads "All the Assistants of the Secretariat and its attached offices shall become members of the joint cadre of the Assistants and promotion of the Assistants to higher posts shall hereinafter be made on the basis of their places in the joint cadre and the gradation list so prepared irrespective of the departments/attached offices where such posts exist," In the circumstances, regard being had to the stipulation of the Act that there is a joint cadre is an intention of the legislature. It is effective from 30 August, 1988. The gradation list so prepared, is only a consequential act.

5. Having seen the entire records, the passage of litigation as it came to the High Court, and one set that went up to the Supreme Court, the Court has no hesitation in summing up that somewhere down the line there has been collusion between the litigants seeking relief and the Government departments so readily concealing the records of the State and permitting the relief to be granted without contest. Once an Act of legislature, in a matter like the present one relating to public service gives a joint cadre then the placement of Government servants whether in seniority or on promotion is an exercise in public law. While the Government servant may claim his rightful seniority at the right place, it is his service right. In so far as the State is concerned, it is to ensure that gradation list strictly conforms to a graded seniority. Otherwise, it would lead to injustice and inequality in public service. This is what has happened in the present case.

6. The first of the writ petitions was filed before the High Court in 1993. This was C.W.J.C. No. 1840 of 1993. The array of parties of this writ petition is relevant. It is reproduced:

"(1) Smt. Krishna Rai W/o Ravindra Nath Roy resident of mohalla-New Alkapuri, P.S. Gardanibagh, district-Patna.

(2) Hari Shankar Jha son of late Rajeshwar Jha resident of Mohalla- Lal Bahadur Shastrinagar Flat No. 620, P.S. L.B.S. Nagar, Patna-23.

(3) Kaushal Kishore Mishra son of Sri Sheo Kumar Mishra resident of mohalla-Dhirachak, P.S. Anisabad, district-Patna.

(4) Arvind Kumar Sinha son of late Sachida Nand Sinha resident of Road No. 24. Quarter No. 6, Gardanibagh P.S. Gardanibagh district and town-Patna.

(5) Awadh Lal son of late Jhari Lal resident of Mohalla- Diwan mohalla, Baghpato, Patna City, district- Patna.

(6) Braj Bhushan Roy son of Ram Sewak Rai, resident of mohalla- Dhirachak, P.S. Anisabad district - Patna.

Versus. ----Petitioners

(1) The State of Bihar.

(2) Secretary, Personnel and Administrative Reforms Department, Old

Secretariat, Patna.

(3) Under Secretary to the Government of Bihar, Personnel and Administrative Reforms Department, Old Secretariat, Patna.

(4) Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Bihar, Patna.

(5) Sunil Kumar Singh son of not known to the petitioner.

(6) Sri Gyanchand son of not known to the petitioners.

(7) Sri Gyanchand son of not known to the petitioners.

(8) Anil Kumar Jha son of not known to the petitioners.

(9) Rajan Kumar Gupta son of not known to the petitioners.

(10) Kishore Kumar son of not known to the petitioners.

(11) Satyendra Kumar Sinha son of not known to the petitioners.

All at present posted as Senior Section Grade Assistant, in the office of Road and Building Construction Department, Nirman Bhawan, Patna.

Respondents."

7. It is on record of this present petition that while notice was issued to the respondents the contesting respondents, that is, Respondents 5, 6, 7, 8 and 9 and 10 only, as a set filed a counter-affidavit to the petition. For reasons best known within the department concerned, the State of Bihar did not resist the petition and chose to keep away from replying to the petition. A counter-affidavit was not filed. Thus, the seeds of collusion were being laid in the litigation at the High Court. The correct facts were being kept away from the High Court. In any proceedings that lay ahead, because the State did not come out with the correct version, the decision rendered was on incorrect and wrong facts. Not only this, any decision which was rendered on this writ petition (C.W.J.C. No. 1840 of 1993) on 25 October, 1994 could best be described as a decision between the parties which may have exchanged the pleadings. The State kept away from the proceedings. No Letters Patent Appeal was filed by the State of Bihar against this decision. There was another fatal flaw. The State of Bihar cannot escape the provisions of the Act which by law put an obligation upon it to place everybody in a combined cadre and integrate the seniority. This set of records i.e. C.W.J.C. No. 1804 of 1993 may be classified as record "A".

8. Five persons who were not parties to the writ petition, being M/s Vijay Kant Sharma, Sachidanand Singh, Dharamnath Jha, Premendra Prasad and Vinod Kumar Prasad filed a Letters Patent Appeal No. 159 of 1994 challenging the judgment dated 25 October, 1994 rendered on C.W.J.C. No. 1840 of 1993. The Letters Patent Appeal was dismissed on 12 April, 1995 by their Lordships Hon'ble S.K. Singh and P.K. Sarin JJ. basically on the ground that the appellants were not

parties to the original cause, that is, the writ petition (C.W.J.C. No. 1840 of 1993). This order on Letters Patent Appeal No. 159 of 1994 rested with no further appeal. This set of record has been marked as record "B".

9. Now six persons who had filed C.W.J.C. No. 1840 of 1993 (M/s. Smt. Krishna Rai, Hari Shankar Jha, Kaushal Kishore Mishra, Arvind Kumar Sinha, Awadh Lal and Braj Bhushan Roy) filed a contempt action, in effect, complaining to the High Court that the writ of mandamus which was issued to give effect to their seniority is not being complied with. This case was registered as M.J.C. No. 112 of 1995: Smt Krishna Rai and Ors. v. The State of Bihar and Ors. On 20 April, 1995 a show cause notice was issued to the State respondents. No show cause was filed. On 23 May, 1995 the State Counsel took an adjournment with instruction to implement the judgment in C.W.J.C. No. 1840 of 1994 dated 25 October, 1994. On 26 July, 1995 a supplementary show cause was filed by an affidavit. This affidavit gave no explanation except to State that the judgment in the writ petition has been complied with. A gradation list of six of the petitioners (C.W.J.C. No. 1840 of 1993) was appended to the supplementary affidavit. The gradation list was without details whether these persons, petitioners and applications of the contempt action, were above or below any other person in the combined cadre. In the circumstances, with submission coming on behalf of the State of Bihar that the judgment in the writ petition (C.W. J.C. No. 1840 of 1993) dated 25 October, 1994 has been complied with, the contempt action was consigned and the notices were discharged. This record is labeled "C".

10. Then, two writ petitions were filed: (a) C.W.J.C. No, 5604 of 1994 and (b) C.W.J.C. No. 9829 of 1994. The array of parties in these two writ petitions are reproduced:

C.W.J.C. No. 5604 of 1994

- (1) Naresh Prasad Sinha
- (2) Shyamji Prasad Sah
- (3) Ram Briksha Thakur
- (4) Shambhu Pathak
- (5) Arjun Prasad
- (6) Kripanath Pandey
- (7) Uma Shankar Sharma
- (8) Braham Do Singh (9) Sadhu Sharan Singh (10) Bhola Ram (11) Subhanand Jha
- (12) Ram Lochan Jha
- (13) Smt. Sobha Sinha

versus.

(1) The State of Bihar

(2) The Secretary, Personnel and Administrative Reforms Department, Old Secretariat, Patna.

(3) The Under Secretary to the Government of Bihar, Personnel and Administrative Reforms Department, old Secretariat, Patna-1.

(4) Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Vishwasaraiya Bhawan (Technical Secretariat) Bailey Road, Patna-1.

(5) Additional Secretary to the Government of Bihar, Personnel and Administrative Reforms Department, Old Secretariat, Patna 1.

(6) Sunil Kumar Singh

(7) Sri Gayan Chandra

(8) Anil Kumar Jha

(9) Ranjan Kumar Gupta

(10) Kishore Kumar

(11) Satyendra Kumar Sinha

C.W.J.C. No. 9829 of 1994

(1) Ganesh Singh

(2) Pulin Krishna

(3) Arjun Prasad Sah

versus.

(1) The State of Bihar

(2) The Secretary, Personnel and Administrative Reforms Department, Old Secretariat, Patna.

(3) The Under Secretary to the Government of Bihar Personnel and Administrative Reforms Department, Old Secretariat, Patna.

(4) Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Vishwasaraiya Bhawan (Technical Secretariat) Bailey Road, Patna

(5) Additional Secretary to the Government of Bihar, Personnel and Administrative Reforms Department, Old Secretariat, Patna.

(6) Sunil Kumar Singh

- (7) Sri Gyan Chandra
- (8) Anil Kumar Jha
- (9) Ranjan Kumar Gupta
- (10) Kishore Kumar
- (11) Satyendra Kumar Sinha."

11. Suffice it to say that these writ petitioners were by 16 Government employees. At this stage it needs to be recorded that these petitioners had attempted impleadment in C.W.J.C. No. 1840 of 1993 but their impleadment application, as intervenors to join the cause was not permitted. Their application seeking intervention in the writ petition was rejected by an order of 26 April, 1994. These petitioners in the two sets of writ petitions (C.W.J.C. No. 5604 and 9829 both of 1994) claimed similar status, seniority and promotion as the petitioners in C.W.J.C. No. 1840 of 1993 had been granted. During pendency of these two writ petitions, the State Government readily issued a Government order dated 5 May, 1995 referring to C.W.J.C, No. 1804 of 1993, in effect, stating that such a promotion in the circumstances similar to petitioners on C.W.J.C. No. 1840 of 1993 has been considered and granted by the Government. The writ petitions were accordingly disposed of on the basis of this Government order. Again, the Government was carrying out no exercise of its own on C.W.J.C. No. 1840 of 1993.

12. Causes are decided on the basis of rival pleadings of the parties. When the State is a party litigant, then, to file a reply on a notice of motion issued to the State is a public duty. To avoid a reply in an action against the State gives rise to an irresistible presumption of collusion and abetting fraud.

13. It needs to be mentioned at the expense of repetition that the Government had not placed its version as a counter-affidavit in C.W.J.C. No. 1840 of 1993. The date of decision of the two Writ Petition C.W.J.C. No. 5604 of 1994 and 9829 of 1994 is 12 July, 1995, This set of record has been marked as record "D".

14. The petitioners of C.W.J.C. No. 5604 of 1994 and 9829 of 1994 finding that the entire relief as sought whether on seniority or promotions was not being granted filed a contempt case. This was M.J.C. No. 2016 of the 1995: Naresh Prasad Sinha and Ors. v. The State of Bihar and Ors. In this contempt case a show cause was filed by the Secretary, Personnel and Administrative Reforms, Shri S.N. Biswas, today the Chief Secretary, Government of Bihar. In effect, the Secretary was submitting that promotions being sought by these petitioners cannot be granted as there are persons senior to them. In this affidavit, the Secretary concerned was also placing on record that the promotions to the petitioners who filed C.W.J.C. No. 1840 of 1993 also cannot be granted. He mentioned his reasons in the show cause. He referred to the Act which spoke of one joint cadre becoming effective from a certain date, and that no placement to higher post could be made, except in accordance with the integrated gradation

list so prepared irrespective of the departments/attached offices where such posts exist. It also needs to be placed on record that in this affidavit the Secretary evaded reply to the glaring circumstance that a counter-affidavit had not been filed in reply to the writ petition (C.W.J.C. No. 1840 of 1993) or that the State of Bihar did not file a Letters Patent Appeal, This aspect is now acceptance of an engineered collusion within the departments of the Government. The affidavit of the Secretary is reproduced:

"(1) That the present show cause is being filed by the opposite party No. 2 for kind consideration by this Hon''ble Court.

(2) That the opposite party herein tenders unqualified apology if it appears from the facts stated hereinafter that there has been any wilful and/or deliberate disobedience on his part in carrying out the directions given by this Hon''ble Court in the order out of which the present contempt application arises.

(3) That from the perusal of the impugned order it is clear that a positive direction was issued by this Hon''ble Court for consideration of their cases for grant of promotion in the Senior Selection Grade and on the post of Section Officer within a period of two months from the date of receipt/production of the copy of the order.

(4) That the said order was made available to the answering opposite party on 19-7-1995.

(5) That in the mean time the State of Bihar through the answering opposite party preferred Letters Patent Appeal being L.P. A. No. 915/95 and a stay application was also filed in the said appeal.

(6) That the answering opposite party quite bona fide was waiting for the disposal of the said appeal.

(7) That this fact was brought to the notice of this Hon''ble Court in the present proceeding by filing a counter-affidavit on behalf of the answering opposite party which was duly affirmed by Sri Ravi kant, successor in the office of the opposite party No. 4 in the present contempt application.

(8) That in this circumstances the consideration of the cases of the petitioners were delayed and the opposite party herein is full of regrets for the same.

(9) That the answering opposite party considered the claim of the petitioners in the light of the direction for such consideration made by this Hon''ble Court on the basis of entire facts/materials available on records. The claim of the petitioners has been rejected after due consideration by a reasoned order dated 13-1-1996 with a copy to the petitioners.

(10) That from the perusal of the said order, it will be obvious that the claim of the petitioners for consequential promotions has been rejected on the ground that the order of promotion dated 5-5-1995 issued by the Road Construction Department has already been cancelled by letter No. Sang Sang-4011/95

Ka-1993 dated 23-5-1995 of the Personnel and Administrative Department as it was found to have been issued against the provisions of the Bihar Act-9 of 1989 and Rules framed thereunder as per Section 10 of the said Act. Further as per amended Section 3 (by reason of Amending Act No. 24/93) of the said Act, the claim of the petitioners for promotion to the post of Selection Grade with effect from 7-9-1987 has already lapsed and as such the consequential promotion cannot be given to the writ petitioners.

(11) That from the facts stated herein above it would appear that the answering opposite party has not acted in breach of the positive direction of this Hon''ble Court.

(12) That in the submission of the deponent the directions of this Hon''ble Court have party.

(13) That the deponent submits that he has acted quite bona fidely in carrying out the direction of this Hon''ble Court.

(14) That the deponent refrains from making parawise reply of the statements made in the contempt application, which shall be filed, if deemed necessary, with the leave of this Hon''ble Court."

This is now a very serious matter. The exercise of certain persons in service coming in a batch and not giving correct facts nor the State of Bihar answering the petition to counter any incorrect statement both are irresponsible and scandalous situations. This set of the record i.e. C.W.J.C. No. 5604 of 1994 and 9429 of 1994 along with M.J.C. No. 2016 of 1995 have been marked as record "E".

15. Again, in this contempt case (M.J.C. No. 2016 of 1995) the learned Judge seized of the contempt case recorded that as the direction in the writ petition stands complied the Court did not desire to proceed any further with the contempt matter. Thus, the show cause of the Secretary, Personnel and Administrative Reforms merely lies on record without noticing its contents. The contempt action was consigned on 19 March, 1996.

16. Against the decision on the two writ petitioners (C.W.J.C. No. 5604 of 1994 and 9829 of 1994) decided on 12 July, 1995) in effect, requiring the State to grant two more promotions in the circumstances similar to petitioners in C.W.J.C. No. 1840 of 1993, the State of Bihar filed two Letters Patent Appeals. These were Letters Patent Appeals No. 915 of 1995 and 916 of 1995. These Letters Patent Appeals were dismissed. (L.P.A. No. 195 of 1995 by order dated 11 January, 1995 and L.P.A. No. 196 by order dated 18 January, 1996). In L.P.A. No. 195 of 1995 noticing the submissions on behalf of the State of Bihar that juniors have been wrongly given promotions the Court observed in its order that "in that case the appellants shall get liberty to file a review application, if permissible. This appeal is dismissed." In so far as the appellate Bench is concerned, this was a logical order. Any fact not having been brought to the Hon''ble Bench which was

deciding the writ petition, clearly the fault lay somewhere within the Government departments. Not answering the writ petition or not answering the show cause notice when an opportunity was offered by the High Court, nor filing an appeal (Letters Patent Appeal) against the decision in C.W.J.C. No 1840 of 1993 in which a counter-affidavit had not been filed only reveals a mix-up of vested interests who had arranged that the Government should not oppose their unfair maneuvers. This part of the record has been marked as record "F".

17. It needs to be placed on record that no review application was filed by the State at the High Court despite observations of the appellate Court.

18. Against the decision in L.P.A. No. 915 of 1995 dated 11 January, 1996, a SLP No. 9564 of 1996 was filed. Against the decision in L.P.A. No. 916 of 1995 dated 18 January, 1996, another SLP No. 9565 of 1996 was filed. The order of the Supreme Court on these two Special Leave Petitions is reproduced:

"Upon hearing Counsel the Court made the following

ORDER

Mr. B.B. Singh, learned Counsel for the State of Bihar States that the High Court is not adverted to the Assistants of the Secretariat and Attached Offices Joint Cadre Act, 1989 and he maintains that if the impugned order is sustained it would be in clear violation of the, provisions of the said Act. Such argument does not seem to have been raised before the High Court. For the first time in this Court, we would not permit it. Mr. Singh States that in this view of the matter he would approach the High Court for review. He may do the same. In case the High Court does not review the matter he may again come to this Court challenging the impugned order of the High Court as well as the review order. The special leave petitions, stand disposed of."

19. It appears that a case on fresh facts was being made out for the first time at the Bar of the Supreme Court. The Supreme Court did not permit this. This is clearly recorded in its order. In view of the submission made by State Counsel that review of the judgment of the High Court be permitted, the Supreme Court recorded in its order" he may do the same." The Special Leave Petitions were, thus, consigned, this part of the record has been marked as record "G".

20. Returning from the Supreme Court two review applications were filed. One was Civil Review No. 62 of 1996 to review the order dated 12 July, 1995 on C.W.J.C. No. 5604 of 1994. The other was Civil Review No. 63 of 1996 to review the order dated 12 July, 1995 on C.W.J.C. No. 9829 of 1994. In so far as Civil Review No. 62 of 1996 was concerned, it was dismissed for default on 21-8-1998. Civil Review No. 63 of 1996 was dismissed on merit on 1-5-2000 and no interference was made by the High Court on this review application.

21. The order dated 1-5-2000 on one review application, seeking review or order dated 12-7-1995 (C.W.J.C. No. 9829 of 1994) is reproduced:

"Heard learned Counsel for the parties.

This review application on behalf of the State is directed against the common order dated 12-7-1995 passed in the connected writ petition bearing C.W.J.C. No. 9829 of 1994 heard with C.W.J.C. No. 5604 of 1994.

It appears that the State filed appeals against the said common order bearing L.P.A. No. 915 and 916 of 1995 respectively. L.P.A. No. 915 was dismissed by order dated 11-1-1996. Following the said order, L.P.A. No. 916 of 1995 was also dismissed vide order dated 18-1-1996, thus, order dated 12-7-1995 passed in the connected writ petitions stands affirmed by the Division Bench in the said appeals preferred by the State and its officials. It is true that in L.P.A. No. 915 of 1995, on the submission advanced by the State that certain facts were not brought to the notice of the Hon"ble Judge, the appellants were given the liberty to file review application, if permissible.

However, having regard to the fact that the order impugned passed in the connected writ petitions stands affirmed by the Division Bench in L.P.A, No. 915 of 1995 and also in the analogous L.P.A, No. 916 of 1995, in my opinion, the present review application is not maintainable.

The review application is thus dismissed."

22. The last set of the record is C.W.J.C. No. 6796 of 1996: Md. Khaliuzzaman and Ors. v. The State of Bihar and 29 Ors. In so far as the respondents are concerned, in this writ petition the first seven respondents are State respondents. Thereafter, the next 23 respondents are individual respondents. Perusing the array of parties, the Court finds that these respondents are no other than those who had filed the writ petitions and managed to procure the order from the High Court without the State contesting the case either in the writ petition or in the contempt applications. This writ petition is pending. The counter-affidavit of the State of Bihar is not on record. A reply to the counter-affidavit is on record. This matter has been pending since the last 5-7 years. Again there is a likelihood of a repeat story of persons not entitled to seniority, gradation or promotion being granted reliefs only because the truth and the correct picture will not be placed before the High Court. This record C.W.J.C. No. 6796 of 1996 is being marked as record "I". This is being placed with the records of all other cases which have been so identified.

23. In the net result what has happened is that there is a clear case of collusion within the Government. The petitioners who were resorting to sharp practices with the advantage of this collusion, were not placing the correct facts before the High Court and got away with reliefs. With the State not filing its defence neither in the writ petition, in context, nor in the contempt action, the Court was left with a record as it was presented. The law takes care of such situations whether it is fraud or collusion. This order cannot affect those who have been wrongly affected and any order of the High Court if obtained by fraud or collusion can hardly be sustained on the principle of Section 44 of the Evidence Act, 1882. This

section is reproduced;

"Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.--Any party to a suit or other proceeding may show that a judgment order or decree which is relevant under Sections 40, 41 or 42 and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion."

24. This is a very sad unfortunate circumstance that for ten years the time of the High Court and the Supreme Court has been wasted in judging causes presented with material suppression of facts between the petitioners and State departments While the petitioners concealed facts, the State respondents did not challenge the petitioners. The State respondents themselves suppressed facts by not replying to the writ petition. The decisions were not challenged in Letters Patent Appeals. Review is a remedy for those bona fide innocent litigants who suffer in circumstances involuntary to hem. In the present set of circumstances the State respondents were aware that a writ petition with incorrect facts had been filed, but the writ petition was not challenged. All this has been occasioned because there is a sleazy mix-up amongst Government servants claiming wrongful promotions fraudulently. The departments of the Government colluded. The Government's advisors at all levels eluded their responsibility to present the correct perspective. There was deception at all levels between the unfair relief seekers and the escapist Government defence line.

25. Definite allegations were made against the Government respondents on illegal promotions. In the absence of denial affidavits by the State administration against who allegations were made the Courts which decided such matters, would be constrained to accept allegations so remaining unrebutted and unanswered on the test of probability. Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, .

26. Clearly, three sets of papers placed before the Court show that there was a gradation list available on 3 August, 1992 having been the result of an exercise by the department of Personnel and Administrative Reforms. This gradation list has been placed before the Court and is reproduced:

Details of Petitioners Appellants in the gradation list of Assistants published vide Letter No. - 275 dated 3-8-1992 by the Department of Personal and administrative Reforms

Sr. No. Name Position in gradation list Date of Appointment Date of probation/ date of confirmation Date of promotion

Junior scl. grade Sr. Scl. grade Sec. Officer

01 Kamala Prasad 669 10-3-1975 10-3-1975/10-3-1977 30-6-1988 30-8-1994
10-10-1996

02 Sudhir Chandra Chaudary 470 26-2-1975 26-2-1975/26-2-1977 30-8-1988

30-8-1994 10-10-1996

03 Ramesh Nandan Sahay 526 10-3-1975 10-3-1975/10-3-1977 30-8-1988
30-8-1994 10-10-1996

04 Shrish Chandra Kumar 616 25-6-1975 25-6-1975/25-6-1977 30-8-1968
30-8-1994 10-10-1996

05 Surenhra Sharma 620 17-6-1975 25-6-1975/25-6-1977 30-8-1 988
30-8-1994 10-10-1996

06 Jai Chandra Mishra 682 22-11-1975 22-11-1975/22-11-1977 30-8-1988
30-8-1994 20-3-1998

07 Bishwanath Dubey 748 25-3-1976 25-3-1976/25-3-1977 30-8-1988
30-8-1994 30-5-1998

08 Shivdani Singh 750 30-3-1976 30-3-1976/30-3-1978 30-8-1988 30-8-1994
30-5-1998

09 Babban Sharnia 766 28-6-1 975 28-6-1976/28-8-1978 30-8-1988 30-8-1994
30-5-1998

10 Ramashish Roy 773 20-5-1976 20-5-1976/20-5-1978 30-8-1988 30-8-1994
30-5-1998

11 Hasnain Ahmad 867 21-2-1977 21-2-1977/21-2-1979 30-8-1988 30-8-1994
30-5-1998

12 Jagannath Yadav 926 20-7-1977 20-7-1977/20-7-1979 20-8-1988 30-8-1994
19-12-1998

13 Uttam Prasad Yadav 972 30-5-1978 30-5-1978/30-5-1980 30-8-1988
30-8-1994 Not promoted yet

14 Akhauri Prabhat Kr. Sinha 983 20-6-1978 20-6-1978/20-6-1980 30-8-1988
30-8-1994 Not promoted yet

Details of Respondent II set in the gradation list of Assistants published vide
letter No.-275 dated 3-8-1 992 by the Deptt. Of Personnel and Administrative
Reforms:

Sr. No. Name Position in gradation list Date of Appointment Date of probation/
date of confirmation Date of promotion

Junior scl. grade Sr. Scl. grade Sec. Officer

01 Krishna Roy 1595 4-9-1980 4-9-1980/4/9/1982 7-9-1987 7-9-1990 7-9-1992

02 Harishankar Jha 1596 3-2-1981 3-2-1981/3-2-1983 7-9-1987 7-9-1990
7-9-1992

03 Kaushal Kishor Mishra 1620 4-9-1980 14-1-1981/14-1-1983 7-9-1987

7-9-1990 7-9-1992

04 Arvind Kumar Sinha 1643 4-9-1980 14-1-1981/14-1-1983 7-9-1987
7-9-1990 7-9-1992

05 Awadh Lai 1814 4-9-1980 11-1-1982/11-1-1984 7-9-1987 7-9-1990 7-9-1992

06 Braj Bhushan Roy 1817 4-9-1980 4-11-1982/4-11-1984 7-9-1987 7-9-1990
7-9-1992

Note:

(1) Even though Respondent second set were much junior to appellants taking respective date of appointment and their position in combined gradation list, they have been promoted ahead of appellants because of judgment of this Hon"ble Court in CWJC 1840/93 dated 25-10-1994

(2) In CWJC 1840/93 appellants of present appeal were not made party respondents.

(3) In CWJC 1840/93, State of Bihar does not appear to have filed any counter-affidavit.

(4) In present L.P.A., State has filed its counter-affidavit and has admitted the case of appellants in Toto. Page 58-69

Details of Respondent III set in the gradation list of selection grade Assistants published vide letter No. -349 dated 20-11-1991 by the Deptt. Of Personnel and Administrative Reforms:

Sr. No. Name Position in gradation list Date of Appointment Date of probation/
date of confirmation Date of promotion

Junior Scl. grade Sr. Scl. grade Sec. Officer

01 Sunil Kumar Sinha 620 7-9-1979 7-9-1982/7-9-1984 7-9-1987 7-9-1990
7-9-1992

02 Shree Gyan Chand 621 7-9-1979 7-9-1982/7-9-1984 7-9-1987 7-9-1990
07-09-1992

03 Anil Kumar Jha 622 7-9-1979 7-9-1982/7-9-1984 7-9-1987 7-9-1990
7-9-1992

04 Ranjan Kumar Gupta 623 10-9-1979 10-9-1982/10-9-1984 10-09-1987
10-9-1990 10-9-1992

05 Kishor Kumar 629 11-11-1979 11-11-1982/11-11-1984 11-11-1987
11-11-1990 10-9-1992

06 Satendra Kumar --- 18-06-1980 Not Promoted. Joined other service.

Since the Illrd set respondents have been promoted in Jr. Selection grade before

the joint cadre came in existence, therefore, they were not placed in the combined gradation list of Assistants and their name has been placed in the Jr. selection grade list.

27. In so far as the State departments are concerned, they were in any case under an obligation to go through an exercise as required by law under the Act know as Assistants of the Secretariat and Attached Officers Joint Cadre Act, 1989 (Bihar Act 9 of 1989).

28. Taking out a Government order that the High Court had ordered it so was a fallacy. Firstly, the State departments never filed their counter-affidavits. Secondly when a notice was issued on a contempt action they avoided giving details to the High Court. Thirdly, When the State departments were reminded that no reply was filed either in the writ petitioner or in contempt action, it readily came with a bald statement that the judgment has been implemented. Material suppression of facts and collusion are now beyond reasonable doubt from the State of the record. Such circumstances vitiate public justice. It breeds injustice and this has to be rooted out by the High Court by going into every nook and corner where injustice has been done.

29. How will those persons be answerable to public justice that they suppressed facts and received orders on incorrect facts presented? How will departments of the Government be made answerable that they did not file a reply to the writ petition or contempt action and participated in collusion when wrong facts were presented and benefits were received by those who were not entitled to it?

30. The Department of Personnel and Administrative Reforms, the State of Bihar, shall carry out an exercise afresh as from the date of the applicability of the Act of 1989 and as a consequence of one joint cadre so created, correct placement in seniority or promotion to be made effective as given in the Act itself.

31. If any benefit has been received incorrectly or wrongfully as a result of collusion or suppression of facts which includes the State department concerned not filing its pleadings, and such benefits are inconsistent with the provisions of the Act, the wrong shall be remedied. Strictly in accordance with the Act persons concerned shall be placed in their correct positions by restituting them to correct positions as required by Act. Illegally begotten promotions shall be recalled and adjusted by refunds whether from salary or pension.

32. The Chief Secretary, Government of Bihar and the Ministry of Law, Government of Bihar, shall cause an enquiry to be made as to why a counter-affidavit was not filed in C.W.J.C. No. 1840 of 1993 and no show cause was filed in M.J.C. No. 112 of 1995 leading to a situation of correct facts being kept away by the petitioners as they had a vested interest in it and further material suppression of facts on behalf of the State department concerned, by not telling the High Court nor the Supreme Court, the correct perspective as even the Supreme Court subsequently declined to interfere and only permitted a review application. In as much as the valuable time of the High Court for the last ten

years was wasted in judging the case with incorrect facts or facts not placed by the State giving rise to incorrect conclusions on the basis of the facts presented and again by default by the State departments by not filing replies to cases despite opportunity by the High Court, public justice requires the situation to be mitigated. Both those who filed cases on material suppression of fact and took advantage of Court orders on suppressed fact, as well as those in the State department who would not file pleadings despite notices issued by Court, must be identified and charged with misconduct in public service.

33. Consequently, this has led to denial of administration of justice and correct position in seniority to rightful persons, a situation, unfortunately, to the detriment of persons, who did not receive their rightful dues.

34 The shabby manner in which the cases of the State were handled by not putting up defence, whether this was negligence or collusion, it has caused State Government expenditure. If the gross cost of litigation were to be taken into account in the various cases which were not defended and in which the correct picture was not given to the Superior Courts of Record whether before a Division presided by learned Judge, Letters Patent Appeal or at the Supreme Court this would be a substantial amount. Not filing counter-affidavits when put under a notice is a very serious matter. These aspects have been noticed by the Supreme Court in various decisions, a reference to which has been made by this Court in this decision. Ultimately, rightful people were denied promotion and those who were not entitled to promotion received illegal advantages. All this happened in the face of an Act known as Assistants of the Secretariat and Attached Offices Joint Cadre Act, 1989. This matter needs to be taken into account seriously as Government litigations pending in Courts need to be handled with dedication. Administrative justice to its employees must come from the State itself. Administrative collusion and vested interests breach the equity clauses of the Constitution. This leads to litigation. This is what happened in the cases noticed in this matter before the Court.

35. For not placing the correct circumstances and not filing replies on record of the petition, this Court imposes special costs on the State of Bihar standing at Rs. 50,000. This amount will be deposited with the Bihar State Legal Services Authority within three months from today.

36. In the result, the impugned order dated 11 September, 1995 is quashed and the appeal is allowed with the observations as mentioned above.

37. Let a copy of this judgment be sent to the Chief Secretary, Government of Bihar and the Law Secretary, Government of Bihar