

(1993) 10 SC CK 0100
In the Supreme Court Of India
Case No : Civil Appeal No. 2619 Of 1983

Vinodanand Yadav and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 14-10-1993

Acts Referred:

Citation : (1994) 2 SCC 44 Supp

Hon'ble Judges : N. Venkatachala, J;K. Ramaswamy, J;A. M. Ahmadii, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. The appellants were directly recruited as Assistant Engineers (Mechanical) in the Public Health Engineering Department of the State of Bihar. The contesting respondents were initially appointed as Engineering Assistants (Civil) and on the basis of the 8.33 per cent quota fixed for them for promotion to the next higher post of Assistant Engineers, they were promoted as Assistant Engineers (Mechanical) on different dates, but were given retrospective promotion w.e.f. 22/08/1970. Respondents 4 and 6 were initially promoted on 22/07/1972 whereas respondent 5 was promoted on 26/06/1976. Respondents 4 and 6 were promoted retrospectively w.e.f. 12/11/1971 and 15/04/1972 respectively whereas Respondent 5 was promoted w.e.f. 1/02/1972. By a further order dated 28/12/1978 all the three respondents were granted promotion retrospectively w.e.f. 22/08/1970. On the basis of this retrospective promotion w.e.f. 22/08/1970, they were shown as seniors to the appellants in the gradation list prepared by the State government. The appellants, therefore, challenged the gradation list essentially on two grounds, namely, (1 that promotion could not have been granted to respondents 4, 5 and 6 from a date prior to their having been borne on the cadre and (2 the seniority had to be determined on the basis of the relevant rules as in existence at the material date which was not done. The direct recruits, therefore, challenged the gradation list but the High court did not accept the-challenge based on the aforesaid two grounds and dismissed the

writ petitions. It is against the said order of dismissal that the present appeal is preferred.

2. The learned counsel for the appellants invited our attention to the decision of this court in *State of Bihar v. Akhourī Sachindra Nath*. The question in that case was more or less similar to the question arising in the present appeal. In that case also the question was regarding the fixation of inter se seniority between direct recruits and promotees. In that case also the promotees were granted seniority from retrospective date. That was the bone of contention between the parties. This court held in the backdrop of those facts that no person could be promoted with retrospective effect from a date when he was not borne on the cadre so as to adversely affect others. It held that promotees not borne on the cadre at the time when direct recruits came to be appointed cannot be given seniority in service over direct recruits. The ratio of that decision applies squarely in the present appeal also. In view of the same, the learned counsel for the State also found it difficult to support the judgment of the High court.

3. IN the result we allow this appeal and set aside the impugned order of the High court and direct the State to refix the seniority in the light of the decision of this court referred to above. There will be no order as to costs.