

[2019] 6 S.C.R. 653

NAND KUMAR MANJHI &amp; ANR. ETC.

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v.

THE STATE OF BIHAR &amp; ORS. ETC.

(Civil Appeal Nos. 4020-4022 of 2019)

APRIL 22, 2019

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**[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]**

*Bihar Forest Service Rules, 1953 – rr.3(aa), 22, 24 & 35 – Respondent No.1-State published advertisement on 24.07.85 inviting applications for filling up 40 posts of Assistant Conservator of Forests (ACF) through direct recruitment – Posts filled up vide Notification dtd.14.12.87– Appellants participated in the selection but were unsuccessful in getting appointed – Appellants with some other unsuccessful candidates made representations inter alia to Chief Minister, Minister of Forests and Environment for appointment against vacant posts beyond the 40 advertised posts – Commission recommended the names of 12 candidates, including the appellants, for appointment as ACFs – Notification dtd. 13.04.88 issued appointing 11 candidates, including the appellants – In 1987, 52 Forest Rangers were also promoted as ACFs – Further appointments were made through direct recruitment and promotion in 1990, 1992 and 1995 – Proposal to regularise the services of the appellants approved by the Governor on 03.10.05 – Appellants confirmed vide notification dtd. 04.10.10 w.e.f. from the date of their regularisation i.e. 03.10.05 – State published the Final Seniority List – Appellants placed at the bottom of the Seniority List, below the 1987 Promotees, the Direct Recruits and Promotees of 1990, the 1992 Promotees, and Promotees of 1995 – Objected by the appellants – Appellants filed writ petitions – Dismissed – LPAs also dismissed – Held: As per r.35 of the Bihar Forest Service Rules, 1953, the seniority of officers appointed to the Bihar Forest Service has to be determined with reference to the date of their substantive appointment – An appointment in substantive capacity is one which is not fortuitous or ad hoc, and is made in compliance with the extant rules and regulations – Appointment of the appellants were made beyond the vacancies advertised in 1985 – Appellants admittedly secured*

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- A *appointment as ACFs through the back-door by making various representations and persistent lobbying – Pursuant to these representations, the State appointed the appellants on 13.04.88 purportedly with reference to the 1985 advertisement – This was illegal and fortuitous, since the posts advertised in 1985 had been filled up from its merit list which stood fully exhausted – There is no provision for maintaining a Wait List under the 1953 Rules– Hence, the appointment of the appellants was wholly illegal and contrary to the statutory rules – Proposal to regularise the services of the appellants was initiated, taking a humanitarian view, since by then the Appellants had already served for almost 17 years – High Court*
- B *rightly held that the seniority of the appellants can be reckoned only from the date of their regularisation in service w.e.f. 03.10.05, and not from the date of their initial appointment on 13.04.88, as claimed by them – Impugned judgment affirmed.*

**Dismissing the appeals, the Court**

- D **HELD: 1.1 As per Rule 35 of the Bihar Forest Service Rules, 1953, the seniority of officers appointed to the Bihar Forest Service has to be determined with reference to the date of their substantive appointment. An appointment in substantive capacity is one which is not fortuitous or *ad hoc*, and is made in compliance**
- E **with the extant rules and regulations. The Appellants had admittedly secured appointment as ACFs through the back-door by making various representations to the Chief Minister on 12.06.1987, the Minister of Forests and Environment on 21.08.1987, and the Secretary, Department of Forests and Environment on 06.11.1987. Pursuant to these representations,**
- F **the State appointed the Appellants on 13.04.1988 purportedly with reference to the 1985 advertisement. This was completely illegal and fortuitous, since the posts advertised in 1985 had been filled up from the merit list. [Paras 8.1, 8.2 and 8.3][666-D; 668-A-C]**
- G **1.2 The recruitment initiated by the 1985 Advertisement culminated with the appointment of ACFs by the State *vide* Notification dated 14.12.1987 against the posts advertised. With their appointment, the Merit List prepared in pursuance of the 1985 Advertisement stood exhausted, and no further**

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appointments could have been made from it. Rule 22 of the Bihar Forest Service Rules, 1953 provides for the preparation of the Merit List on the basis of the aggregate marks secured by a candidate in the written examination as well as *viva voce* test. It provides that the Commission shall nominate such number of candidates from the merit list as may have been fixed by the Governor. There is no provision for maintaining a Wait List under the Bihar Forest Service Rules, 1953. Hence, the appointment of the Appellants was wholly illegal and contrary to the statutory rules. IThe appointments of the Appellants were made beyond the vacancies advertised in 1985, which was in contravention of the well-settled principle of law. [Paras 8.4-8.6][668-E-G; 669-A-B]

1.3 As a result of the persistent lobbying by the Appellants, they were able to secure appointment as ACFs on 13.04.1988 purportedly against the 1985 Advertisement. The appointment of the Appellants was wholly illegal, and in contravention of the Bihar Forest Service Rules, 1953. The posts advertised in 1985 were duly filled up by the selected candidates. The list of the 1985 advertisement stood fully exhausted. [Paras 8.7][670-C-D]

1.4 Proposal to regularise the services of the Appellants was initiated, taking a humanitarian view of the matter, since by then the Appellants had already served for almost 17 years. In the proposal, it was mentioned that the appointment of the Appellants as ACFs in 1988 was “irregular”. However, the cancellation of the appointments at that juncture would result in further litigation, since it was made on the basis of a letter from the Commission. [Paras 8.11][670-G-H; 671-A]

1.5 In the aforesaid background facts, the High Court was fully justified in dismissing the Writ Petitions and the Letters Patent Appeals filed by the Appellants. The High Court rightly held that the seniority of the Appellants can be reckoned only from the date of their regularisation in service w.e.f. 03.10.2005, and not from the date of their initial appointment on 13.04.1988, as claimed by them. The impugned Judgment passed by the High Court is affirmed. [Paras 8.14, 8.15][671-E; 672-A]

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A *Baleshwar Dass & Ors. v. State of U.P. & Ors.* (1980) 4 SCC 226 : [1981] 1 SCR 449 ; *O.P. Singla & Anr. v. Union of India & Ors.*, (1984) 4 SCC 450 : [1985] 1 SCR 351 ; *Rakhi Ray & Ors. v. High Court of Delhi & Ors.* (2010) 2 SCC 637 : [2010] 2 SCR 239 – relied on.

B *Sanjay k. Sinha -II & Ors. v. State of Bihar & Ors.* (2004) 10 SCC 734 : [2004] 2 Suppl. SCR 834 – referred to.

#### Case Law Reference

C	[2004] 2 Suppl. SCR 834	referred to	Para 2.11
	[1981] 1 SCR 449	relied on	Para 8.2
	[1985] 1 SCR 351	relied on	Para 8.2
	[2010] 2 SCR 239	relied on	Para 8.4

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4020-4022 of 2019.

From the Judgment and Order dated 10.11.2014 of the High Court of Judicature at Patna in Letters Patent Appeal Nos. 491, 257 and 509 of 2013.

E Rakesh Dwivedi, Sr. Adv., Rudreshwar Singh, Ms. Isha Singh, Ms. Snehil Sonay, Siddhartha Iyer, Kaushik Poddar, Advs. for the Appellants.

F Dinesh Dwivedi, Nagendra Rai, Sr. Advs., Chandra Prakash, Chandan Kumar, Yasharth Kant, Gaurav Agrawal, Abhinav Mukerji, Ms. Bihu Sharma, Ms. Pratishthaq Vij, Ms. Purnima Krishna, Adv. Ms. Purna Singh, Shantanu Sagar, Advs. for the Respondents.

The Judgment of the Court was delivered by

**INDU MALHOTRA, J.** Leave granted.

G 1. The present Civil Appeals arise out of Special Leave Petition (Civil) Nos. 11320-11322 of 2015 wherein the impugned Judgment and Order dated 10.11.2014 passed by the Patna High Court in Letters Patent Appeal Nos. 491 of 2013, 257 of 2013 and 509 of 2013 has been challenged.

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2. The factual matrix in the present Civil Appeals is as under: A

2.1. The Respondent No. 1 – State of Bihar published an advertisement on 24.07.1985 inviting applications for filling up 40 posts of Assistant Conservator of Forests (“ACF”) through direct recruitment under the Bihar Forest Service Rules, 1953. B

On the basis of the examination conducted in December 1985 and *viva voce*, the Bihar Public Service Commission (“the Commission”) prepared a list of successful candidates.

On the recommendations of the Commission, the posts of ACFs advertised were filled up by the State *vide* C  
Notification dated 14.12.1987. On filling up of the advertised posts, the Merit List got exhausted.

The Appellants, in the present case, had participated in the selection, but were unsuccessful in getting appointed. D

2.2. The Appellants and some other candidates who were unsuccessful in obtaining appointment as ACFs in the 1985 selection, made representations before the Chief Minister on 12.06.1987, the Minister of Forests and Environment on 21.08.1987, and the Secretary, Department of Forests and Environment on 06.11.1987 for appointment against vacant posts beyond the 40 advertised posts. E

2.3. On 21.10.1987, the State took a decision to fill the existing vacant posts of ACFs from the list of successful candidates who had qualified in the Competitive Examination conducted in 1985 and 1986 respectively, but did not get appointed. F

2.4. On 15.02.1988, the State Government sought the names of 13 successful candidates from the Commission, as per the Merit List prepared pursuant to the selection against the 1985 advertisement.

The Commission *vide* letter dated 20.02.1988 G  
recommended the names of 12 candidates, which included the names of the Appellants, for appointment as ACFs.

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A The State issued a Notification dated 13.04.1988 appointing 11 candidates, including the Appellants, from the list forwarded by the Commission as ACFs.

B 2.5. On 10.08.1989, 8 more candidates were appointed to the posts of ACF which fell vacant on account of non-joining of candidates appointed *vide* Notifications dated 14.12.1987 and 13.04.1988. The names of these 8 candidates were also shown against the 1985 Advertisement.

C 2.6. On 12.06.1987, the State Government sent a requisition to initiate the process for appointment of 40 more ACFs through direct recruitment.

D Pursuant to the requisition made by the State on 12.06.1987, a fresh Advertisement for 40 posts of ACFs through direct recruitment was published by the Commission on 20.12.1987. The Commission conducted written examination in September 1988.

The State appointed 35 direct recruits as ACFs on 30.03.1990 against the vacancies notified in the 1987 advertisement.

E 2.7. The State promoted 30 Range Officers, including Respondent Nos. 21-32<sup>1</sup>, as ACFs w.e.f. 30.03.1990 *vide* Notifications dated 16/17.08.1990, 18.07.1991 and 02.09.1992, respectively.

F 2.8. During the period from 20.06.1987 to 17.10.1987, the State further promoted 52 Forest Rangers to the post of ACF.

G 2.9. The Bihar Forest Service Rules, 1953 were amended to insert Rule 3(aa) on 26.12.1989 with retrospective effect. As per Rule 3(aa), Range Officers of Forests who have passed the Ranger Course after securing Honours shall be deemed to be eligible to be appointed as Assistant Conservators of Forests, and shall be treated as direct recruits.

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H <sup>1</sup> Names of Respondent Nos. 21-22, 24 and 28 have been deleted from the array of parties *vide* Order dated November 6, 2017 passed by the learned Chamber Judge.

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Rule 3(aa) is reproduced hereinbelow: A

*“3. The appointments of the service shall ordinarily be made by -...*

*...(aa) The Range Officer of Forest, who passes the Ranger Course securing Honours shall be eligible for admission to the 2nd year/2 (two) years of State Forest Service Course in Forestry conducted by Government of India. They shall be treated as direct recruit to the Bihar Forest Service Cadre (as Assistant Conservator of Forests) and the provisions as laid down in the Rule 29, shall be applicable to these selected Range Officers of Forests...”* B C

The State Government vide various Notifications dated 09.03.1990, appointed 10 Range Officers who had obtained Honours in the Rangers Course, including Respondent Nos. 8 and 9 as ACFs. D

2.10. The State published a final Seniority List on 24.07.1989, wherein the ACFs who were promoted on 06.10.1987 and 23.11.1987, were placed above the Direct Recruits appointed on 14.12.1987.

Insofar as the Appellants in these Appeals are concerned, they were accorded seniority w.e.f. the date of their appointment *i.e.* 13.04.1988. E

2.11. The Seniority List came to be challenged by the Direct Recruits appointed on 14.12.1987 by way of CWJC No. 8305 of 1989 before the Patna High Court. F

CWJC Nos. 8305 of 1989 culminated in the Judgment dated 31.05.2004 passed in *Sanjay K. Sinha – II & Ors. v. State of Bihar & Ors.*<sup>2</sup> by this Court. It was held that the appointments of the 1987 Promotees were fortuitous since they were made against non-existent posts, and could not confer any benefit of seniority from the purported date of promotion. The final Seniority List dated 24.07.1989 was quashed, and the State was directed to prepare a fresh Seniority List. This Court granted liberty to the State to G

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<sup>2</sup>[(2004) 10 SCC 734]

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- A regularise the appointment of the 1987 Promotees, whilst holding that seniority could not be given to them over the Direct Recruits appointed on 14.12.1987. This Court noted that there were only 133 posts in the Bihar Forest Service, and not 277 as contended by the 1987 Promotees.
- B 2.12. Upon creation of the State of Jharkhand, several officers from the Bihar Forest Service were transferred to the Jharkhand cadre, including some of those who were appointed along with the Appellants on 13.04.1988 and 10.08.1989.
- C 2.13. After bifurcation of the State of Bihar and creation of the State of Jharkhand, the validity of the appointments of the Appellants and other ACFs appointed by the State on 13.04.1988 and 10.08.1989 was discussed at different levels during President's Rule in Bihar, as is apparent from the File Notings placed on record.
- D The Law Department was of the opinion that these appointments were irregular since they were appointed purportedly against the advertisement of 1985, even though the Select List had got exhausted. It was however observed that cancellation of their appointment would result in litigation, since the appointments were made on the basis of the recommendations of the Commission. Furthermore, the appointees had by now served for about 17 years. It was suggested that such appointments may be regularised since they were irregular, but not illegal.
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- F The issue of their *inter se* seniority *vis-à-vis* the 1987 Promotees was also considered, and a decision was sought from the State Government. The proposal for regularisation of the appointments of these ACFs was submitted for approval before the Governor on 03.10.2005.
- G 2.14. A perusal of letter dated 15.07.2006 addressed by the Additional Secretary to the Government to the Secretary, Bihar Legislative Assembly indicates that the proposal was approved, and the “...*State Government after Enquiry regularised these appointments and closed this episode.*”.
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The Appellants came to be regularised by the State Government w.e.f. 03.10.2005. A

- 2.15. On 09.03.2010, shadow posts were created by the State since the “...*working force [was] in excess than created force...since 1987...*”.

The State confirmed the services of the Appellants w.e.f. 03.10.2005, by issuance of Notification dated 04.10.2010. B

- 2.16. On 31.03.2010, a Provisional Seniority List was published, wherein the Appellants were placed below the Direct Recruits and Promotees who were appointed w.e.f. 30.03.1990, Respondent No. 10 – Hemkant Rai, the 1992 Promotees and the 1995 Promotees. C

- 2.17. Objections were raised by the Appellants regarding their placement in the Seniority List. A High-Level Scrutiny Committee was constituted by the State to look into their grievances. D

The High-Level Scrutiny Committee rejected the objections raised by the Appellants.

It was noted that they were regularised only w.e.f. 03.10.2005, and hence were not entitled to being placed above the persons appointed in 1987, 1990, 1992 and 1995. E

- 2.18. The Final Seniority List was published on 02.07.2010. The Appellants were placed at the bottom of the Seniority List at Serial Nos. 321 to 338 *i.e.* below the 1987 Promotees, Direct Recruits as well as Promotees appointed w.e.f. 30.03.1990, Respondent No. 10 – Hemkant Rai, the 1992 and 1995 Promotees. F

- 2.19. Several Writ Petitions were filed before the Patna High Court by various officers appointed in the Bihar Forest Service cadre to challenge their *inter se* seniority in the cadre as per the Final Seniority List dated 02.07.2010. G

- 2.20. The Appellants before this Court filed CWJC Nos.10925, 11160 and 11337 of 2010 to challenge their placement below the 1987 Promotees (Serial Nos. 167 and 209), Respondent No. 10 – Hemkant Rai (Serial No. 211) and T.N. Jha (Serial No. 212), 1987 Direct Recruits (Serial Nos. 215 to 249) H

A and Promotees (Serial Nos. 250 to 289), some of whom are Respondents in the present proceedings.

2.21. The Writ Petitions were heard together and disposed of by the common Judgment and Order dated 06.11.2012 passed by the learned Single Judge.

B The Writ Petitions filed by the Appellants herein (CWJC Nos.10925, 11160 and 11337 of 2010) were dismissed.

The learned Single Judge held that:

C i) The Appellants were rightly placed at the bottom of the Seniority List since their initial appointments on 13.04.1988, were purportedly from the list of candidates prepared for the 1985 advertisement. Since the appointment of the Appellants was beyond the 40 advertised vacancies, it was completely illegal.

D ii) The Appellants persuaded the State to appoint them, which was a rank illegality, which cannot be termed just as a mere irregularity, or minor deviation from the Rules.

E iii) On a humanitarian basis, the Appellants were deemed to be regularised w.e.f. 03.10.2005 *i.e.* the date of their confirmation in service. This date has to be taken as the legitimate date of entry into the cadre; upto this date their entry into the cadre was a rank illegality.

F 2.22. The Appellants preferred Letters Patent Appeal Nos. 257, 491 and 509 of 2013 before a Division Bench against the common Judgment dated 06.11.2012 passed by the learned Single Judge of the Patna High Court.

2.23. The Letters Patent Appeals were dismissed by a common Judgment dated 10.11.2014, wherein it was held that:

G i) The Appellants cannot claim seniority on the principle of continuous officiation from the date of their appointment *i.e.* 13.04.1988. The seniority accorded to them from the date of their regularisation in the cadre *i.e.* 03.10.2005, does not call for any interference in exercise of the powers of judicial review.

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ii) The appointment of the Appellants was illegal, and in contravention of all canons of service jurisprudence. It was based on the generosity of the State. A

iii) The recruitment process commenced pursuant to the 1985 Advertisement for 40 posts of ACFs, was completed on the appointments made on 14.12.1987. B

iv) The recruitment process having been completed, there was no occasion for the State to make any further appointments pursuant to the 1985 Advertisement.

v) The Appellants were persons who had not been selected or recommended by the Commission, nor were they wait-listed candidates. C

vi) The appointment of the Appellants ought to be considered *non est*.

vii) The State Government *vide* Notification dated 04.10.2010 regularised their services w.e.f. 03.10.2005. D

3. The Appellants filed the present Special Leave Petitions to challenge the common Impugned Judgment dated 10.11.2014 passed by the learned Division Bench of the Patna High Court.

4. Mr. Rakesh Dwivedi, learned Senior Counsel, appeared on behalf of the Appellants, and prayed for setting aside the impugned Judgment dated 10.11.2014 passed by the Division Bench. E

Mr. Abhinav Mukerji, learned Advocate, appeared on behalf of the State, and the official respondents from the Department of Environment & Forests, and Personnel and Administrative Reforms Department, Government of Bihar. F

Mr. Dinesh Dwivedi, learned Senior Advocate, appeared on behalf of some of the Direct Recruits from the 1990 batch (Respondent Nos. 13, 15, 16, 17 and 19).

5. We have perused the record with the able assistance of the Counsel for the parties. G

The issue which arises for our consideration in the present Civil Appeals is whether the Appellants have rightly been placed at the bottom of the Seniority List dated 02.07.2010, by according them seniority from H

- A the date of their regularisation in the service on 03.10.2005, and not from the date of their initial appointment *i.e.* 13.04.1988.

6. SUBMISSIONS OF PETITIONERS

- B 6.1. The counsel for the Appellants submitted that the Appellants ought to have been accorded seniority w.e.f. the date of their initial appointment *i.e.* 13.04.1988. Otherwise, they would lose 17 years of service by being placed at the bottom of the final Seniority List dated 02.07.2010.
- C 6.2. It was further submitted that the Appellants were appointed as ACFs on the basis of the recommendation of the Commission *vide* letter dated 20.02.1988. The recommendation was sent after receiving a requisition from the State Government *vide* letter dated 15.02.1988.
- D 6.3. All the private Respondents were appointed after the Appellants in 1989, and thereafter.
- 6.4. The final Seniority List published by the State on 24.07.1989 was never challenged by the Respondents insofar as it related to the seniority of the Appellants.
- E 6.5. The action of the State in according seniority to the Respondents from the dates of their appointment, while denying the same to the Appellants was wholly arbitrary and unjustified.
- F 6.6. Both the Appellants and the private Respondents were appointed beyond the cadre strength, and their appointments were regularised after the creation of shadow posts *vide* Notification dated 09.03.2010.

7. SUBMISSIONS OF RESPONDENTS

- G 7.1. The Counsel for the Respondents defended the common impugned Judgment dated 10.11.2014, and stated that the Appellants have correctly been accorded seniority only from the date of their regularisation w.e.f. 03.10.2005.
- i) It was submitted that the appointment of the Appellants was *de hors* the Bihar Forest Service Rules, 1953 since

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they were made beyond the 40 vacancies notified by the 1985 Advertisement. The Select List prepared pursuant to the 1985 Advertisement, stood exhausted with the appointment of the 39 candidates on 14.12.1987. The appointments of the Appellants were not in accordance with the Bihar Forest Service Rules, 1953. A B

- ii) Rule 35 of the Bihar Forest Service Rules, 1953 mandates that seniority is to be reckoned from the date of substantive appointment.

The Appellants were not appointed against substantive posts of ACFs on the date of their initial appointment on 13.04.1988. C

- iii) The mere continuance in service over a long period of time, would not entitle the Appellants to claim seniority from the date of their initial appointment; at best, their claim could be considered only after they were regularised w.e.f. 03.10.2005. D

- iv) It was further submitted that the final Seniority List published on 24.07.1987 wherein the Appellants had been accorded seniority w.e.f. the date of their appointment *i.e.* 13.04.1988 was quashed by this Court *vide* Judgment and Order dated 31.05.2004 in *Sanjay K. Sinha – II & Ors. v. State of Bihar & Ors.*<sup>3</sup>. E

- 7.2. The Counsel for the State and the Official Respondents supported the common impugned Judgment and Order dated 10.11.2014, and submitted that the Appellants would be entitled to seniority only from the date of their regularisation *i.e.* 03.10.2005. F

- i) It was submitted that the Appellants were appointed on 13.04.1988 on the recommendation of the Commission sent on a requisition made by the State, after the Select List against the 1985 advertisement had got exhausted. G

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<sup>3</sup> [(2004) 10 SCC 734]

- A ii) By the Notification dated 09.03.2010, shadow posts were created for appointments, which were found to have been made against non-existent vacancies.
- iii) The appointments of the Appellants came to be regularised on 03.10.2005, after a proposal to that effect was approved by the Governor.
- B iv) It was submitted that the *inter se* seniority of the Appellants was fixed in the final Seniority List dated 02.07.2010 after obtaining the opinion of the High-Level Scrutiny Committee headed by the Principal Chief Conservator of Forests, Bihar.
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#### 8. DISCUSSION AND ANALYSIS

- 8.1. As per Rule 35 of the Bihar Forest Service Rules, 1953, the seniority of officers appointed to the Bihar Forest Service has to be determined with reference to the date of their substantive appointment.

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Rule 35 is extracted hereinbelow for ready reference:

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“35. Seniority of officers appointed to the Service shall be determined with reference to the date of their substantive appointment to the Service.

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*(i) in the case of members of the Service appointed by direct recruitment at the same time, their seniority inter se shall be in the order of merit in which their names are placed in the list of successful candidates at the Final Examination of the Indian Forest College, Dehra Dun;*

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*(ii) in case where appointments are made to the Service both by direct recruitment and promotion of selected Rangers at the same time, the promoted members of the Service shall be senior to the members directly recruited; and*

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*(iii) the seniority inter se of Rangers on substantive appointment to the Service by promotion at the same time shall be their seniority inter se held as Rangers.”*

(emphasis supplied)

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Rule 35 came up for consideration before this Court in a previous round of litigation pertaining to *inter se* seniority of the 1987 Promotees in *Sanjay K. Sinha-II & Ors. v. State of Bihar & Ors.*<sup>4</sup>. This Court held that:

*“12. In this connection we have to note that Rule 35 of the Bihar Forest Service Rules provides that seniority of officers appointed to the service is to be determined with reference to the date of their substantive appointment. In order to become a member of the service the person concerned has to satisfy at least two conditions — first, appointment must be in substantive capacity, and second, the appointment has to be to the post in the service according to the Rules and within the quota to a substantive vacancy (per Keshav Chandra Joshi v. Union of India [1992 Supp (1) SCC 272 : 1993 SCC (L&S) 694 : (1993) 24 ATC 545] ).*

*13. In the present case neither of the two conditions is satisfied. The posts to which substantive appointments were to be made were not available, therefore, there could be no appointment to the service. When there is no appointment to the service, much less substantive appointment to the service, the promotees could not be given seniority with effect from the purported date of their promotion...*

*17. It is settled law that appointments made contrary to the rules are merely fortuitous and do not confer benefit of seniority on the appointees over and above the regular/substantive appointees to the service. (See C.K. Antony v. B. Muraleedharan [(1998) 6 SCC 630 : 1998 SCC (L&S) 1624] , M.S.L. Patil, Asstt. Conservator of Forests v. State of Maharashtra [(1996) 11 SCC 361 : 1997 SCC (L&S) 241] and State of Maharashtra v. Sanjay Thakre [1995 Supp (2) SCC 407 : 1995 SCC (L&S) 867 : (1995) 30 ATC 132] ).”*

(emphasis supplied)

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<sup>4</sup> [(2004) 10 SCC 734].

- A 8.2. An appointment in substantive capacity is one which is not fortuitous or *ad hoc*, and is made in compliance with the extant rules and regulations.<sup>5</sup>
- B 8.3. The Appellants had admittedly secured appointment as ACFs through the back-door by making various representations to the Chief Minister on 12.06.1987, the Minister of Forests and Environment on 21.08.1987, and the Secretary, Department of Forests and Environment on 06.11.1987.
- C Pursuant to these representations, the State appointed the Appellants on 13.04.1988 purportedly with reference to the 1985 advertisement. This was completely illegal and fortuitous, since the posts advertised in 1985 had been filled up from the merit list.
- 8.4. Reference may also be made to Rule 24 which provides as under:
- D “24. No recommendations except those invited in form of the application will be taken into consideration. Any attempt on the part of a candidate to obtain support for his application by other means will disqualify him for appointment.”
- E The recruitment initiated by the 1985 Advertisement culminated with the appointment of ACFs by the State *vide* Notification dated 14.12.1987 against the posts advertised.
- F With their appointment, the Merit List prepared in pursuance of the 1985 Advertisement stood exhausted, and no further appointments could have been made from it.<sup>6</sup>
- G 8.5. Rule 22 of the Bihar Forest Service Rules, 1953 provides for the preparation of the Merit List on the basis of the aggregate marks secured by a candidate in the written examination as well as *viva voce* test. It provides that the Commission shall nominate such number of candidates from the merit list as may have been fixed by the Governor.

<sup>5</sup> *Baleshwar Dass & Ors. v. State of U.P. & Ors.*, (1980) 4 SCC 226 (paragraphs 31 and 32); *O.P. Singla & Anr. v. Union of India & Ors.*, (1984) 4 SCC 450 (paragraph 81).

<sup>6</sup> See *Rakhi Ray & Ors. v. High Court of Delhi & Ors.*, (2010) 2 SCC 637 (paragraphs 7 to 13).



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There is no provision for maintaining a Wait List under the Bihar Forest Service Rules, 1953. A

Hence, the appointment of the Appellants was wholly illegal and contrary to the statutory rules.

8.6. In the background facts set out hereinabove, it is abundantly clear that the appointments of the Appellants were made beyond the vacancies advertised in 1985, which was in contravention of the well-settled principle of law enunciated in *Rakhi Ray & Ors. v. High Court of Delhi & Ors.*<sup>7</sup>. The relevant extract from the decision of this Court in *Rakhi Ray & Ors. v. High Court of Delhi & Ors.* is reproduced hereinbelow for ready reference: B C

“7. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as “the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under *Article* 14 read with *Article* 16(1) of the Constitution”, of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to “improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated from and such a deviation is permissible only after adopting policy decision based on some rationale”, otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, is not permissible in law. (Vide *Union of India v. Ishwar Singh Khatri* [1992 Supp (3) SCC 84 : 1992 SCC (L&S) 999 : (1992) 21 ATC 851], *Gujarat State Dy. Executive Engineers’ Assn. v. State of Gujarat* [1994 Supp (2) SCC 591 : 1994 SCC (L&S) 1159 : (1994) 28 ATC 78], *State of Bihar v. Secretariat Asstt. Successful Examinees Union 1986* [(1994) 1 D E F G

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<sup>7</sup> (2010) 2 SCC 637 (paragraph 7).

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A SCC 126 : 1994 SCC (L&S) 274 : (1994) 26 ATC 500 :  
AIR 1994 SC 736], *Prem Singh v. Haryana*  
*SEB* [(1996) 4 SCC 319 : 1996 SCC (L&S) 934]  
and *Ashok Kumar v. Banking Service Recruitment*  
*Board* [(1996) 1 SCC 283 : 1996 SCC (L&S) 298 : (1996)  
32 ATC 235 : AIR 1996 SC 976] ).”

B

(emphasis supplied)

8.7. As a result of the persistent lobbying by the Appellants,  
they were able to secure appointment as ACFs on  
13.04.1988 purportedly against the 1985 Advertisement. The  
C appointment of the Appellants was wholly illegal, and in  
contravention of the Bihar Forest Service Rules, 1953. The  
posts advertised in 1985 were duly filled up by the selected  
candidates. The list of the 1985 advertisement stood fully  
exhausted.

D

8.8. A fresh selection of ACFs through direct recruitment was  
initiated pursuant to an advertisement in 1987.

8.9. While the recruitment process pursuant to the 1987  
advertisement was underway, the State requested the  
Commission to forward 13 names from the list against the  
1985 advertisement, which stood exhausted. The  
E Commission forwarded the names of the Appellants, and  
some others purportedly from the list prepared pursuant to  
the 1985 advertisement *vide* letter dated 20.02.1988. This  
whole process was completely illegal, as the list of 1985  
had got exhausted.

F

8.10. In 1987, 52 Forest Rangers were promoted as ACFs.

Further appointments were made through direct  
recruitment and promotion in 1990, 1992, and 1995.

8.11. A proposal to regularise the services of the Appellants was  
initiated, taking a humanitarian view of the matter, since by  
G then the Appellants had already served for almost 17 years.  
In the proposal, it was mentioned that the appointment of  
the Appellants as ACFs in 1988 was “irregular”. However,  
the cancellation of the appointments at this juncture would

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result in further litigation, since it was made on the basis of a letter from the Commission. The proposal was approved by the Governor on 03.10.2005. A

The State granted confirmation to the Appellants *vide* Notification dated 04.10.2010 w.e.f. from the date of their regularisation *i.e.* 03.10.2005. B

8.12. The State published the Final Seniority List on 02.07.2010. The Appellants were placed at the bottom of the Seniority List at Serial Nos. 321 to 338 *i.e.* below the 1987 Promotees, the Direct Recruits as well as Promotees of 1990, Respondent No. 10 – Hemkant Rai, the 1992 Promotees, C and Promotees of 1995 on the basis of the date of regular appointment as ACF.

8.13. The Appellants raised objections to their position on the Seniority List, and claimed seniority from the date of their initial appointment on 13.04.1988 and continuous officiation till their regularisation w.e.f. 03.10.2005. D

8.14. In the aforesaid background facts, the Patna High Court was fully justified in dismissing the Writ Petitions and the Letters Patent Appeals filed by the Appellants. The High Court rightly held that the seniority of the Appellants can be reckoned only from the date of their regularisation in service w.e.f. 03.10.2005, and not from the date of their initial appointment on 13.04.1988, as claimed by them. The Appellants had secured an illegal appointment in 1988 through the back-door, which was wholly illegal and *de hors* the Statutory Rules. Their services came to be regularised only on 03.10.2005. As per Rule 35 of the Bihar Forest Service Rules, 1953 the seniority of officers shall be determined with reference to the date of their substantive appointment to the service. Hence, the claim for seniority from the date of their initial appointment was wholly untenable, misconceived, and contrary to statutory Rules. E F G

8.15. In view of the aforesaid findings, the present Civil Appeals are dismissed with no order as to costs. The impugned Judgment and Order dated 10.11.2014 passed by the Patna

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A High Court in L.P.A. Nos. 491 of 2013, 257 of 2013 and 509 of 2013 is hereby affirmed.

Pending I.A.s, if any, are disposed of by the present Judgment.

B Ordered accordingly.

Divya Pandey

Appeals dismissed.