

JUDGMENT AND ORDER (ORAL)

Heard Mr. S.K. Goswami, learned Counsel for the petitioners and Dr. B. Ahmed, learned Standing Counsel, Irrigation Department. Also heard Mr. J. Chutia, learned Counsel appearing for the respondent Nos. 4, 5 and 6.

2. By way of this petition under article 226 of the Constitution of India, petitioners seek quashing of promotion of respondent Nos. 4, 5 and 6 to the post of Assistant Executive Engineer (Mechanical) in the Irrigation Department, Government of Assam as well as the inter-se-seniority position of the petitioners vis- -vis the respondent Nos. 4, 5 and 6. Further prayer made is to restore the seniority position of the petitioners above respondent Nos. 4, 5 and 6.

3. Facts of the case may be briefly noted.

4. After being selected by the Assam Public Service Commission (APSC), petitioners were appointed to the post of Assistant Engineer (Mechanical) in the Irrigation Department, Government of Assam on various dates in the year 1981. Respondent Nos. 4, 5 and 6, who belong to the reserved categories, were also appointed to the post of Assistant Engineer (Mechanical) in the Irrigation Department, Government of Assam much later than the petitioners on various dates in the years 1986 and 1987. The following statement as furnished by the petitioners in the writ petition will indicate the respective position of the petitioners and respondent Nos. 4, 5 and 6:-

Sl. No.	Name	Category	Designation	Date of Joining
1.	Md. Maznoo Hussain (Petitioner No.1)	General	Assistant Engineer (Mechanical)	28-02-1981
2.	Sri Damodar Sarma (Petitioner No.2)	General	Assistant Engineer (Mechanical)	26-05-1981
3.	Sri Mintu Sarma (Petitioner No.3)	General	Assistant Engineer (Mechanical)	28-02-1981
4.	Sri Ramendra Narayan Barman (Respondent No.4)	Schedule Tribe- ST(P)	Assistant Engineer (Mechanical)	09-01-1987
5.	Sri Abani Medhi (Respondent No.5)	Schedule Caste- SC	Assistant Engineer (Mechanical)	14-10-1986
6.	Sri Naba Kumar Shyam (Respondent No.6)	Schedule Tribe- ST(H)	Assistant Engineer (Mechanical)	13-07-1987

5. In the gradation list of Assistant Engineer (Mechanical) as on 01-01-1985, petitioners were placed at Serial Nos. 109, 111 and 117. At that stage, respondents 4, 5 and 6 had not yet joined service. Again, in the gradation list of Assistant Engineer (Mechanical) as on 01-11-2000, petitioners were placed at Serial Nos. 93, 95 and 101 whereas respondents 4, 5 and 6 were placed at Serial Nos. 115, 116 and 117.

6. In the gradation list dated 17-08-2002, the names of the petitioners were placed at Serial Nos. 19, 21 and 27 respectively whereas the names of respondent Nos. 4, 5 and 6 were placed at Serial Nos. 40, 41 and 42 respectively.

7. Thus, petitioners were admittedly senior to respondent Nos. 4, 5 and 6.

8. On 07-12-2004, a Departmental Promotion Committee (DPC) meeting was held to consider promotion from the rank of Assistant Engineer (Mechanical) to the rank of Assistant Executive Engineer (Mechanical) in the Irrigation Department.

tment. DPC considered 7 vacancies in the post of Assistant Executive Engineer (Mechanical) for the year 2004. Accordingly, as per provision of Rule 13 (2) of the Assam Engineering (Irrigation Department) Service Rules, 1978, a total of 28 officers in the rank of Assistant Engineer (Mechanical) were considered having come within the zone of consideration, being 4 times the number of vacancies. The above 28 officers were from Serial No.15 to Serial No.42 in the gradation list as the officers from Serial Nos. 1 to 14 had either expired or were promoted to the higher rank before the year 2004. In the list of 28 officers in order of seniority falling within the zone of consideration, position of the petitioners were 5, 17 and 13 whereas the position of respondent Nos. 4, 5 and 6 were 26, 27 and 28. DPC shortlisted 14 candidates being double the number of vacancies and amongst the shortlisted candidates, petitioner Nos. 1 and 2 were placed at Serial Nos. 5 and 7 whereas respondents 4, 5 and 6 were placed at Serial Nos. 12, 13 and 14.

9. On the ground of filling up of the backlog vacancies for reserved categories, the appointing authority i.e. Secretary to the Government of Assam, Irrigation Department promoted the first 3 candidates from amongst the shortlisted candidates and respondent Nos. 4, 5 and 6 to the post of Assistant Executive Engineer (Mechanical) vide the notification dated 09-09-2005. Respondent Nos. 4, 5 and 6 were placed above the other 3 promotees in the promotion order.

10. Aggrieved by their supercession, petitioners submitted representation dated 25-10-2005. However, no decision was taken on the said representation.

11. On 29-03-2011, information under the Right to Information Act, 2005 was sought for as to how the officers at Serial Nos. 40, 41 and 42 (respondent Nos. 4, 5 and 6) in the gradation list of Assistant Engineer (Mechanical) could be promoted to the post of Assistant Executive Engineer (Mechanical). As per information furnished, DPC considered promotion for 7 vacancies in the rank of Assistant Executive Engineer (Mechanical) by clubbing together vacancies for the years 2004, 2005 and 2006, the break-up of which is as follows :-

Year	Number of vacancies
2004	-----
2005	-----
2006	-----
	Total ---
	05
	01
	01
	07

Therefore, 28 officers being 4 times the number of vacancies fell within the zone of consideration. These 28 officers in the feeder-cadre of Assistant Engineer (Mechanical) were from Serial Nos. 15 to Serial No.42 in the gradation list. Accordingly, respondent Nos. 4, 5 and 6 came within the zone of consideration and considering the back-log vacancies for the reserved categories, they were promoted against the roster points earmarked for the reserved categories.

12. When the aforesaid information was made available, it became evident that there were 5 vacancies in the year 2004 which meant that the zone of consideration should have been limited to 20 officers i.e. from Serial Nos. 15 to 34, in which case, respondent Nos. 4, 5 and 6 would not have come within the zone of consideration.

13. In the meanwhile, petitioners 1 and 2 were promoted to the rank of Assistant Executive Engineer on 18-01-2007 whereas petitioner No.3 was so promoted on 15-02-2007.

14. The Irrigation Department published the final seniority list of the officers of the mechanical wing from the rank of Assistant Executive Engineer to the rank of Additional Chief Engineer on 29-08-2009. In the said seniority list of Assistant Executive Engineer, respondents 4, 5 and 6 were placed at Serial Nos. 30, 31 and 32 whereas petitioners were placed at Serial Nos. 33, 35 and 41 below the said respondents.

15. Again in the gradation list dated 11-08-2011, respondents 4, 5 and 6 have been placed at Serial Nos. 19, 20 and 21 above petitioner Nos. 1 and 2 at Serial Nos. 22 and 23 and petitioner No.3 at Serial No.29.

16. Petitioners submitted representation dated 19-08-2011 before the Secretary to the Government of Assam, Irrigation Department stating that respondent Nos. 4, 5 and 6 were erroneously promoted to the rank of Assistant Executive Engineer and thereafter they were given seniority over the petitioners. Prayer was made to rectify the situation and to restore their seniority position above respondent Nos. 4, 5 and 6.

17. Contention of the petitioners is that DPC had erred in considering 7 vacancies for the year 2004 when the actual vacancies for the said year was 5. DPC had clubbed together the vacancies for the years 2004, 2005 and 2006 which increased the number of vacancies to 7 as a result of which the zone of consideration got enlarged to 28 because of which, respondents 4, 5 and 6 came into reckoning. Had the clubbing not been done, the said respondents would not have come within the zone of consideration and consequently would not have been promoted. Petitioners have also contended that promotion of respondents 4, 5 and 6 as reserved category candidates was in violation of the law laid down by the Hon'ble Supreme Court in the case of M. Nagraj -Vs- Union of India reported in (2006) 8 SCC 212 in as much as no quantifiable data as regards backwardness of the class, inadequacy of representation in public employment of that class and overall efficiency of the administration had been assessed before promoting respondents 4, 5 and 6 as reserved category candidates. Petitioners have also questioned the assignment of seniority position of respondent Nos. 4, 5 and 6 above the petitioners as illegal. According to the petitioners, since the said respondents were promoted earlier to the petitioners despite being juniors in the cadre by virtue of reservation principle, they shall not be entitled to seniority over the petitioners and once the petitioners were promoted to the next higher rank of Assistant Executive Engineer, the law entitled them to regain their seniority. Therefore, petitioners contend that in the gradation list of Assistant Executive Engineer, they should be placed above respondent Nos. 4, 5 and 6.

18. Respondent No.1 has filed an affidavit through the Deputy Secretary of the Department. It is stated that in the DPC meeting, the vacancy position in the cadre of Assistant Executive Engineer for the year 2004 was wrongly shown as 7 due to inadvertent mistake. The actual vacancy was 6. The said error was rectified by an office note dated 07-05-2005. Consequently, 6 persons were promoted to the post of Assistant Executive Engineer vide the order dated 09-09-2005. Because of the inadvertent mistake, 28 persons in order of seniority from the gradation list of the feeder cadre were considered for promotion, including respondent Nos. 4, 5 and 6 who belong to the reserved category. DPC recommended 14 persons, including respondent Nos. 4, 5 and 6. It is stated that Government of Assam has not assessed the representation of backward classes in the State's services.

19. Respondent Nos. 4, 5 and 6 have filed a common affidavit. Stand taken by the said respondents is that the writ petition is hit by delay and laches. Respondent Nos. 4, 5 and 6 were promoted to the post of Assistant Executive Engineer by order dated 09-09-2005 pursuant to the recommendation of the DPC dated 07-12-2004. Petitioner Nos. 1 and 2 were so promoted on 18-01-2007 whereas pe

tioner No.3 was promoted on 15-02-2007. Petitioners have filed the writ petition only on 03-12-2011. This long delay has not been properly explained. Further, petitioner Nos. 2 and 3 were placed in Category-III in the selection and, as such they were not found suitable for promotion. Petitioner Nos. 2 and 3, therefore, cannot challenge the promotion of respondent Nos. 4, 5 and 6. Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 provides for reservation to members of Scheduled Castes and Scheduled Tribes in matters of promotion on the basis of a 20 point roster which is a running account. The said Act also provides for carry over of backlog vacancies to be filled up at the time of next consideration. Under the Assam Engineering (Irrigation Department) Service Rules, 1978, cadre-wise gradation list is to be prepared each year. Since respondent Nos. 4, 5 and 6 were promoted to the cadre of Assistant Executive Engineer ahead of the petitioners, they have been rightly placed above the petitioners in the gradation list of Assistant Executive Engineer. It is contended that respondents 4, 5 and 6 had the eligibility for promotion as per the said Rules. On the date of selection, there were 12 backlog vacancies in the cadre of Assistant Executive Engineer for the reserved categories, 5 for ST (P), 3 for ST (H) and 4 for SC. Being reserved category candidates, respondent Nos. 4, 5 and 6 were entitled to consideration for promotion against the backlog vacancies. Regarding clubbing of vacancies, the said respondents have stated that the correctness of the contention of the petitioners can only be verified from the original record. Respondent Nos. 4, 5 and 6 have also placed reliance on an office memorandum issued by the State Government on 12-03-2002 following the Constitution (85th) Amendment Act, 2001 granting consequential seniority to the reserved category candidates on their promotion. They have also stated that in the gradation list of Assistant Executive Engineer (Mechanical) dated 10-01-2007, which has been annexed to the writ petition, out of the 41 Assistant Executive Engineer (Mechanical), only respondent Nos. 4, 5 and 6 belong to the reserved category which clearly shows that the reserved category candidates are not adequately represented in the cadre of Assistant Executive Engineer (Mechanical).

20. In their reply affidavit, petitioners have stated that though respondent Nos. 4, 5 and 6 were promoted on the basis of DPC recommendation dated 07-12-2004, copy of DPC resolution was received by the petitioners only after filing of application dated 13-07-2011 under the Right to Information Act, 2005 by the wife of petitioner No.1. Thereafter, the writ petition was filed. Therefore, the petitioners contend that there is no delay in filing the writ petition. It is further stated that though petitioner Nos. 2 and 3 were placed in category I II in the DPC meeting dated 07-04-2004, the same was because ACRs of the said petitioners were not placed before the DPC because of which marks based on merit could not be allotted. Therefore, recommendation of DPC is not legally sustainable. It is further stated that respondent Nos. 4 and 6 had got 8 marks as per assessment of DPC which placed them in category III. Therefore, their recommendation by DPC is also illegal. Petitioners have also contended that cadre strength of Assistant Executive Engineer (Mechanical) is 42. As per Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978, maximum reservation permissible would be 9, 4 for ST(P), 3 for SC and 2 for ST(H). There cannot be 12 backlog vacancies. Besides the above, petitioners have reiterated their contentions urged in the writ petition.

21. Mr. S.K. Goswami, learned Counsel for the petitioners submits that the Assam Engineering (Irrigation Department) Service Rules, 1978 does not contain any provision for reservation to backward classes in promotion. However, under the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978, there is provision for reservation to backward classes in matters of promotion. He, however, submits that under Article 16 (4A) of the Constitution, there is no vested right to claim promotion on the strength of reservation. It is an enabling provision for the State to provide for reservation in matters of promotion with consequential seniority in favour of the Sch

eduled Castes and Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State. Learned Counsel would therefore contend, referring to the judgment of the Hon'ble Supreme Court in M. Nagaraj (supra), that if the State wants to make reservation for Scheduled Caste and Scheduled Tribe candidates in matters of promotion, it could do so only after collecting quantifiable data touching backwardness of such category of candidates and inadequacy of representation of such category in public employment. Since the State has admitted that such an exercise was not carried out before promoting respondent Nos. 4, 5 and 6, such promotion should be interfered with by this Court. He further submits that since the State has admitted clubbing of vacancies which resulted in consideration of 7 vacancies for the year 2004 as against 5 vacancies by the DPC resulting in illegal enlargement of the zone of consideration because of which respondent Nos. 4, 5 and 6 came within the zone of consideration, the DPC proceedings dated 07-12-2004 should be set aside, being illegal. He has referred to a judgment of the Hon'ble Supreme Court in the case of Vijay Singh Charak -Vs- Union of India and others reported in (2007) 9 SCC 743 to contend that clubbing of vacancies of several years is illegal. Learned Counsel for the petitioners contend that since the seniority of respondent Nos. 4, 5 and 6 over the petitioners in the post of Assistant Executive Engineer is because of the illegal recommendation of the DPC, the anomaly should be rectified by restoring the seniority position of the petitioners over the said respondents. In any case, respondent Nos. 4, 5 and 6 having secured accelerated promotion on the strength of reservation, they cannot claim accelerated seniority over the petitioners in the promoted post after the petitioners got promotion. Learned Counsel for the petitioners has placed reliance on a number of judgments in addition to the above judgments including, 1992 Supp. (3) SCC 217 (Indra Sawhney -Vs- Union of India), (2011) 1 SCC 467 (Suraj Bhan Meena -Vs- State of Rajasthan) and (2012) 7 SCC 1 (UP Power Corporation Limited -Vs- Rajesh Kumar).

22. Dr. Ahmed, learned Standing Counsel, Irrigation Department submits that Irrigation Department has admitted that there was a mistake in considering 7 vacancies by the DPC for the year 2004 which resulted in an enlarged zone of consideration bringing within its fold respondent Nos. 4, 5 and 6. Had this clubbing of vacancies not taken place, respondent Nos. 4, 5 and 6 would not have come within the zone of consideration. Contending that it was a bonafide mistake, learned Standing Counsel submits that without entering into the other contentious aspects raised by the petitioners, the Court may confine its adjudication to the immediate issue of clubbing of vacancies. He further submits that because of the admitted position, petitioners may be given consequential seniority by way of notional benefit without disturbing the promotion of respondent Nos. 4, 5 and 6.

23. Though learned Counsel for the respondent Nos. 4, 5 and 6 did not make oral submissions before the Court, he submitted written argument. It is contended that petitioners have challenged recommendation of the DPC held on 07-12-2004 in the year 2012 without explaining the delay and laches. Wife of petitioner No. 1 had filed application dated 29-03-2011 under the Right to Information Act, 2005 pursuant to which she received the reply dated 13-07-2011. This delay of 7 years has not been explained. Since the seniority position in the post of Assistant Executive Engineer has been settled, the same should not be disturbed now at this belated stage. It is also contended that respondent Nos. 4, 5 and 6 were entitled to consideration for promotion to the rank of Assistant Executive Engineer in the year 2002 as there were 11 vacancies. Position of respondent Nos. 4, 5 and 6 being at Sl. Nos. 40, 41 and 42 of the gradation list of 2002, they came within the zone of consideration ($11 \times 4 = 44$) but they were denied consideration. Highlighting the above grievance, respondent Nos. 4, 5 and 6 have filed W P(C) No. 1521/2013, which is stated to be pending. The said respondents have also contended that an examination of the gradation lists of various categories of officers in the Department including the post of Assistant Executive Engineer would reflect inadequate representation of Scheduled Castes and Scheduled Tribes in

the services under the Department.

24. Submissions made have been considered. Also perused the record produced by the learned Standing Counsel.

25. Before proceeding further, relevant provisions of the Assam Engineering (Irrigation Department) Service Rules, 1978 (1978 Rules) and the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 (Reservation Act) may be looked into.

26. The 1978 Rules have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. As per Rule 3, the cadre of Assistant Executive Engineer is in Class I of the Assam Engineering (Irrigation Department) Service (Service). Rule 5(2) provides that recruitment to Class I, which includes the cadre of Assistant Executive Engineer, shall be made by promotion only in accordance with Rules 12 and 13. According to Rule 12, all vacancies in Class I grade shall be filled up by promotion. From the feeder-cadre of Assistant Engineer, promotion is made to the post of Assistant Executive Engineer. For such promotion, an Assistant Engineer should have rendered minimum continuous service of 5(five) years on the 1st January of the year of promotion. As per Rule 13, before the end of each year, the Government is required to make an assessment of the likely number of vacancies to be filled up by promotion in the next year in each cadre. Officers numbering 4 times the number of vacancies in order of seniority are required to be considered. Selection for promotion from Assistant Engineer to Assistant Executive Engineer shall be on the basis of merit with due regard to seniority. The Selection Board after examining the case of each of the candidates falling within the zone of consideration, shall recommend to the appointing authority a list of officers double the probable number of vacancies in order of preference, found suitable for promotion. Appointing authority shall consider the list recommended by the Selection Board and approve the same unless any change is considered necessary. Rule 17 provides for reservation to Scheduled Caste and Scheduled Tribe candidates in case of direct recruitment. The 1978 Rules is silent regarding reservation for such category of candidates in matters of promotion. Rule 24 provides for preparation and publication of a gradation list every year containing the names of all members of the service cadre-wise in order of seniority.

27. As per Section 5 of the Reservation Act, which has since been superseded by a new reservation Act, there shall be reservation for members of Scheduled Castes and Scheduled Tribes in vacancies to be filled up by promotion in any establishment in the manner prescribed therein. Establishment has been defined to mean any office of the State Government amongst others. Under the said section, the percentage of reservation for the various categories are as under:-

ST (P) --	10%
ST (H) --	05%
SC --	07%

A 20 point roster has been provided to give effect to such reservation. Two roster points i.e. 1 and 11 are earmarked for ST (P); two roster points i.e. 3 and 12 are earmarked for SC and one roster point i.e. 7 is earmarked for ST (H). Thus, in a 20 point roster, the posts at 5 points are earmarked for reserved categories as indicated above.

28. As per the Government affidavit, in the DPC meeting held on 30-07-2002, 11 vacancies in the cadre of Assistant Executive Engineer (Mechanical) for the year 2002 were considered. 4 persons were considered eligible for promotion and accordingly, they were promoted. Thus, there remained 7 vacancies. In the next DPC meeting held on 11-10-2004, 4 persons were recommended against 7 vacancies, who were thereafter promoted, leaving 3 vacancies. In the impugned DPC mee-

ting held on 07-12-2004, the vacancy position for the year 2004 was shown as 7 through inadvertent mistake. The actual vacancy position for the year 2004 was 5 and for the year 2005 it was 1. Because the vacancy position was shown as 7, in view of Rules 12 and 13 of the 1978 Rules, 28 officers from the gradation list of Assistant Engineer being four times the number of vacancies came within the zone of consideration. In the available gradation list of Assistant Engineer dated 17-08-2002, the officers from Sl. Nos. 1 to 14 were already promoted. The 28 officers falling within the zone of consideration were from Sl. Nos. 15 to 42. Petitioners were at Sl. Nos. 19, 21 and 27 whereas respondent Nos. 4, 5 and 6 were at Sl. Nos. 40, 41 and 42. Had the actual vacancy for the year 2004 i.e. 5 been considered, the zone of consideration would have been limited to 20 officers (5 x 4) from Sl. Nos. 15 to 34. In such a case, respondent Nos. 4, 5 and 6 would not have come within the zone of consideration.

29. Respondent No.1 has not only admitted that there was clubbing of vacancies, 5 of 2004 and 1 of 2005, there was still erroneous calculation of vacancies at 7, which is beyond even the clubbed vacancies. It is because of this error that respondent Nos. 4, 5 and 6 came within the zone of consideration and in view of backlog vacancies for reserved category, they were recommended by the DPC and consequentially promoted on 09-09-2005.

30. Consequently, in the gradation list of Assistant Executive Engineer dated 10-01-2007, respondent Nos. 4, 5 and 6 were placed at Sl. Nos. 39, 40 and 41 whereas petitioners continued to be placed in the gradation list of Assistant Engineer at Sl. Nos. 1, 3 and 9.

31. After the petitioners were promoted to the post of Assistant Executive Engineer on 18-01-2007, in the gradation list of Assistant Executive Engineer published on 29-08-2009, respondent Nos. 4, 5 and 6 were placed at Sl. Nos. 30, 31 and 32 above the petitioners at Sl. Nos. 33, 35 and 41. Thereafter, in the gradation list dated 11-08-2011, respondent Nos. 4, 5 and 6 were placed at Sl. Nos. 19, 20 and 21 whereas petitioners were placed below them at Sl. Nos. 22, 23 and 29.

32. In Shiba Sankar Mahapatra and others -Vs- State of Orissa and others reported in (2010) 12 SCC 471, the Hon'ble Supreme Court after referring to various previous decisions held that once seniority is fixed and remains in existence for a reasonable period, any challenge to the same should not be entertained. A period of 3 to 4 years has been assessed by the Apex Court to be a reasonable period for challenging the seniority, beyond which the onus will be on the person who challenges the seniority to explain the delay by furnishing satisfactory explanation. In the subsequent case of Vijay Kumar Kaul -Vs- Union of India reported in (2012) 7 SCC 610, the Hon'ble Apex Court further put in a note of caution that affected party has to be impleaded and heard.

33. In this case, though a number of gradation lists have been challenged, the concerned gradation lists would be the ones dated 29-08-2009 and 11-08-2011. Applying the above time frame, the challenge to the above gradation lists by instituting the present proceeding in the year 2011 (03-12-2011) cannot be termed as beyond reasonable period and, therefore, belated. But the fact remains that in the gradation list dated 29-08-2009, there is one officer above petitioner No. 2 and 5 additional officers above petitioner No. 3. Likewise, in the gradation list dated 11-08-2011, there are 5 (five) officers above petitioner No. 3. They are not before the Court. All the said officers would be affected in the event of any re-arrangement of seniority.

34. It is also true that there is delay in challenging the decision of the DPC dated 07-12-2004 recommending promotion of respondent Nos. 4, 5 and 6 and their consequential promotion dated 09-09-2005.

35. Ordinarily, in such a situation, the Court would have refrained from interfering with the recommendations of the DPC dated 07-12-2004. However, as already noticed in the earlier part of this judgment, respondent No.1 has admitted on affidavit that as against 5 vacancies for the year 2004, DPC considered 7 vacancies for the said year. In addition to the above, Dr. B. Ahmed, learned Standing Counsel, Irrigation Department made a categorical statement before the Court in the course of his argument that without interfering with the promotion of respondent Nos. 4, 5 and 6 and without entering into other contentious issues like catch up rule after accelerated promotion etc, petitioners may be given consequential seniority by way of notional benefit.

36. This is an exercise which the Court would not like to carry out in a proceeding under Article 226 of the Constitution. However, in view of the stand taken in the affidavit filed by the respondent No.1 and the submission of the Departmental Counsel, Court is of the view that respondent No.1 may reconsider the matter.

37. Accordingly, without expressing any opinion on merit on the other issues raised by the petitioners, respondent No.1 is directed to consider the seniority of the petitioners, respondent Nos. 4, 5 and 6 and other affected officers in the rank of Assistant Executive Engineer (Mechanical) in accordance with law within a period of 3 (three) months from today. Till such a decision is taken, order dated 26-02-2013 passed in Misc. Case No.415/2013 directing maintenance of status quo in respect of promotion to the post of Executive Engineer (Mechanical) shall continue.

38. Writ petition is disposed of.

39. Record produced is returned back to the learned Departmental Counsel.