

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9146 of 2018

1. Upendra Kumar and Ors Son of Late Pairu Mahto, Resident of Village- Dhari, P.O. and Police Station- Karande, District- Sheikhpura.
2. Avinash Shankar, Son of Sri Krishna Choudhary, Resident of Village- Mirbigha, P.O.- Penhesa, Police Station- Shekhopursarai, District- Sheikhpura.
3. Sudhir Kumar, Son of Sri Kishore Prasad, Resident of Village- Sarika, Police Station and District- Sheikhpura
4. Naresh Kumar Mandal, Son of Late Kishori Prasad Mandal, Resident of Mohalla- Madanasauna, Police Station and District- Sheikhpura.
5. Pramod Kumar, Son of Sri Krishna Prasad, Resident of Village- Chakwai, Post- Chakwai, District- Nawadah.
6. Raj Kumar Mishra, Son of Late Devanand Mishra, Resident of Mohalla- D/72, Police Station- Anishabad, Police Station- Gardanibagh, District- Patna.
7. Murli Manohar, Son of Sri Krishna Murari Prasad, Resident of Nagdih, Police Station- Barbigha, District- Sheikhpura.
8. Sanjay Kumar, Son of Late Yogeshwar Thakur, Resident of Mohalla- Brahamtola, Police Station- Barbigha, District- Sheikhpura.
9. Sanjay Kumar, Son of Sri Banarasi Das, Resident of Village- Sadikpur, Police Station- Shekhopursarai, District- Sheikhpura.
10. Bipin Bihari, Son of Sri Dev Nandan Rajak, Resident of Village- Kutout, Police Station- Barbigha, District- Sheikhpura.
11. Vijay Kumar Baranwal, Son of Late Yogeshwar Prasad Baranwal, Resident of Mohalla- Samachak, Police Station- Barbigha, District- Sheikhpura.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Under Secretary, General Administration Department, Govt. of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Department of Finance, Govt. of Bihar, Old Secretariat, Patna.
4. The Deputy Secretary, Department of Finance, Govt. of Bihar, Old Secretariat, Patna.
5. The Divisional Commissioner, Munger Division, Munger.
6. The District Magistrate, Sheikhpura.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Kundan Kumar Sinha
For the Respondent/s	:	Mr.Md.N.H.Khan, SC-1
		Mr. Md. Irshad, AC to SC- 1



CORAM: HONOURABLE MR. JUSTICE KUMAR MANISH
CAV JUDGMENT
Date : 18-08-2026

1. Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State-respondents.
2. The present writ application has been filed by the petitioners seeking interalia for the following reliefs:

(i) *To quash the order contained in letter No. 10 dated 22.11.2017 (Annexure-1) issued under the signature of Respondent No. 2 (Under Secretary, General Administration Department, Govt. of Bihar), whereby the District Magistrate, Sheikhpura was instructed to treat the petitioners as Lower Division Clerks in the pay scale of Rs. 4000–6000/- (old) and directed that their cases for promotion to Upper Division Clerk / Head Clerk be considered only after all Lower Division Clerks appointed prior to these petitioners in the pay scale of Rs. 3050–4590/- are granted regular promotion to Upper Division Clerk;*

3. Brief facts as emerging from the pleadings are that the Bihar Public Service Commission (BPSC) published an advertisement bearing Advertisement No. 54 of 1998 dated 26.01.1998 for selection and appointment to Class-III posts of Assistant/Clerk in the pay scale of Rs. 1200–1800/- for Sheikhpura District (Annexure-2). All the petitioners applied pursuant to the said advertisement.



4. Subsequently, the competitive examination and interview process was conducted by the BPSC, and the petitioners were declared to be successful. However, in their initial appointment orders bearing Memo No. 113 dated 31.03.2005, issued by the District Magistrate, Sheikhpura (Annexure-3), they were posted as Lower Division Clerks in the lower pay scale of Rs. 3050- 4590/-.
5. It is upon verification of the background facts, it transpired that during the period between the advertisement (1998) and actual appointment (2005), the State Government issued Finance Department Letter No. 8825/F dated 20.12.2000 bifurcating the cadre of Assistant/Clerk into Lower Division Clerk (Rs. 3050–4590/-) and Upper Division Clerk (Rs. 4000–6000/-). Under the said resolution, appointees were placed in the lower scale.
6. The aggrieved appointees under Advertisement No. 04/98 (Bhojpur District) approached before this Hon'ble Court in ***C.W.J.C. No. 13577 of 2006 (Manish Kumar Pathak & Ors. v. State of Bihar)***, which was allowed vide order dated 17.12.2007 (Annexure- 4) directing the concerned respondent authorities to place the appointees in the pay scale of Rs. 4000- 6000/- from initial appointment. The order dated 17.12.2007, passed in *CWJC No. 13577 of 2006*, was assailed by the respondent authorities in L.P.A No. 522 of 2008 and S.L.P. No. 419 of 2010 which were subsequently dismissed.



7. Consequently, the Finance Department vide Letter No. 6884(F) dated 25.06.2010 extended the benefit state-wide keeping in view the aforesaid judgement passed in *CWJC No. 13577 of 2006*. (Annexure-5).
8. Admittedly, the present petitioners also approached before the Hon'ble High Court in *C.W.J.C. No. 7726 of 2009* and *C.W.J.C. No. 9587 of 2009*, which were disposed of in terms of the judgement given in *Manish Kumar Pathak*(supra), and vide District Magistrate Memo No. 428 dated 22.09.2009 (Annexure-6), the petitioners' pay scale was modified to Rs. 4000–6000/- w.e.f. their initial appointment date i.e. 31.03.2005. It is further submitted that, vide Memo No. 168 dated 25.04.2015 (Annexure-7), the petitioners were granted financial progression under the MACP Scheme in Pay Band-1 with Grade Pay Rs. 2800/- treating their entry status in the UDC pay scale.
9. Learned counsel appearing on behalf of the petitioners submits that the petitioners were selected against an advertisement which was issued for posts carrying the pay scale of Rs. 1200-1800/-, and the same was subsequently replaced by the Upper Division Clerk scale of Rs. 4000-6000/-. It is contended on behalf of the Petitioners that having modified their appointment to the Upper Division Clerks, with a pay scale of Rs. 4000- 6000/- w.e.f. their initial date of joining in 2005, is in pursuance to the judicial mandates, and the administrative authorities cannot relegate them to the post of Lower Division Clerk after more than a decade. It is



further submitted that placing them in the Lower Division Clerk seniority list and making their promotional prospects contingent upon the promotion of Lower Division Clerks who were appointed in lower pay scales is in violation to the mandate of Articles 14 and 16 of the Constitution of India.

10. Per contra, the learned State respondents supports the decision of the General Administration Department contained in Letter No. 14819 dated 22.11.2017, placing heavy reliance on the counter-affidavit filed on behalf of Respondent No. 6. It has been contended by the counsel for the state that the bifurcation policy dated 20.12.2000, strictly mandates direct recruitment post to be on the post of Lower Division Clerk. The State Counsel asserts that judicial orders merely extended the pay scale of Rs. 4000–6000/- to the petitioners by way of financial protection but did not alter their substantive legal cadre status as Lower Division Clerks. Hence, their seniority remains tied to the Lower Division Clerk cadre, and therefore, the Petitioners must undergo regular step-by-step promotion.

11. Having heard learned counsel for the parties and having perused the materials on record, the primary question for determination is that whether the petitioners, who were recruited pursuant to an advertisement for posts in the scale of Rs. 1200–1800/- (revised to Upper Division Clerk scale Rs. 4000–6000/-) and whose initial appointment was modified to the Upper Division Clerk pay scale from their date of joining under binding judicial orders, can be treated as Lower Division Clerks for the purpose of cadre



status and seniority, or whether they are entitled to be placed in the Upper Division Clerk cadre with corresponding promotional avenues.

12. This Court examines the underlying purpose of pay scale and promotion as laid down through established precedents. A pay scale attached to an advertised post reflects the status, duties, and cadre level assigned by the employer at the inception of the selection process. In ***Manish Kumar Pathak & Ors. v. State of Bihar* (C.W.J.C. No. 13577 of 2006, decided on 17.12.2007)**, a Single Bench of this Hon'ble Court has examined the effect of administrative delay and cadre bifurcation on advertised pay scales and has held as follows:

"5. ... when the selection process had begun by issue of Advertisement, there was one post of Assistant-cum-Typist in the scale of Rs.1200-1800/- and the selection process was delayed unnecessarily which was beyond the control of the petitioners and they are being asked to suffer only on account of the delay of appointing authority or the Commission for which petitioners cannot be held responsible in any manner. Even in view of Clause (5) of the instructions contained in letter dated 20th December, 2000, Annexure-5 if the authorities were not inclined to appoint the petitioners in the revised scale of the advertised post they ought to have cancelled the advertisement and the selection process but once they have not chosen to cancel the advertisement



and the selection process then they have to appoint the petitioners in the corresponding revised scale of the post advertised..."

"6. In the circumstances, the appointment letter of the petitioners... is modified to the extent that the petitioners are directed to be appointed in the pay-scale of Rs. 4,000-6,000/-. Consequential benefit to the petitioners of the higher pay-scale be given to them.."

- 13.** It is apparent in view of the aforesaid that when candidates apply pursuant to an advertisement specifying a particular scale (Rs. 1200–1800/-), the employer cannot unilaterally downgrade their scale upon appointment simply because the selection process suffered administrative delays. Moreover, the Court held that unless the State cancels the advertisement entirely, candidates must be appointed in the corresponding revised scale of the advertised post- which was the UDC scale of Rs. 4000-6000/-.
- 14.** This Hon'ble Court in the case of **Manish Kumar Pathak v State of Bihar(supra)** has categorically ruled that candidates are entitled to the revised Upper Division Clerk scale as their initial appointment status, the State cannot subsequently reclassify petitioner as a Lower Division Clerk for seniority and promotional purposes.
- 15.** Following the dismissal of the State's **L.P.A. No. 522/2008 and S.L.P. No. 419/2010** against **Manish Kumar Pathak v state of Bihar(supra)**, the Finance Department issued Letter No. 6884(F) on 25.06.2010 adopting the



judgment state-wide. Therefore, treating the petitioner as a Lower Division Clerk violates the State's own binding policy and the mandate as decided in the case of *Manish Kumar Pathak v State of Bihar(supra)*.

16. Applying the aforesaid facts and judicial decision to the case at hand, this Court is of the view that the petitioners were recruited under Advertisement No. 54/98 for posts carrying the scale of Rs. 1200–1800/-. Pursuant to the orders passed in *C.W.J.C. No. 9587 of 2009* and the consequential Office Order Memo No. 428 dated 22.09.2009 issued by the District Magistrate, Sheikhpura, the initial appointment of the petitioners was modified at the very inception to the pay scale of Rs. 4000- 6000/- with effect from their initial joining dates in March/April 2005.

17. It is not out of place to mention that under the *Bihar Collectorate Clerical Cadre (Recruitment and Conditions of Service) Rules, 2011*(as amended vide Notification dated 02.09.2013) (Annexures-8 & 8/1), Rule 3 outlines the cadre hierarchy:

(a) Basic Grade: Lower Division Clerk (PB-1, Rs. 5200–20200 + Grade Pay Rs. 1900/-)

(b) First Promotional Level: Upper Division Clerk (PB-1, Rs. 5200–20200 + Grade Pay Rs. 2400/-)

(c) Second Promotional Level: Head Clerk (PB-2, Rs. 9300–34800 + Grade Pay Rs. 4200/-)



(d) Third Promotional Level: Assistant Administrative Officer
(PB-2, Rs. 9300–34800 + Grade Pay Rs. 4600/-).

18. The contention of the state respondents is that the petitioners may enjoy the pay scale of Rs. 4000-6000/- (Grade Pay Rs. 2400/-) from initial appointment but simultaneously be treated as Lower Division Clerks in Grade Pay Rs. 1900/- for seniority and promotional purposes, creates an unsustainable contradiction.
19. The order passed in the case of *Manish Kumar Pathak*(supra) explicitly modified the initial appointment to the revised scale of the advertised post. Since the advertised post corresponded to the Upper Division Clerk level, the petitioners cannot be legally constrained to be treated at the Lower Division Clerk level in the seniority list or be made subordinate for promotion to Lower Division Clerks appointed in lower scales.
20. Consequently, the instruction contained in letter No. 10 / Memo No. 14819 dated 22.11.2017 issued by the Under Secretary, General Administration Department, Govt. of Bihar (Annexure-1), which directs that the petitioners be retained in the Lower Division Clerk seniority list, is contrary to judicial precedents and statutory rules, and is hereby **quashed**.
21. This Court is of the view that the petitioners are entitled to be recognized as Upper Division Clerks from the date of their initial appointment in the pay



scale of Rs. 4000–6000/-. The State respondents, including Respondent No. 6 (District Magistrate, Sheikhpura), are directed to

- i. Place the petitioners in the gradation/seniority list of Upper Division Clerks in accordance with their initial date of appointment;
- ii. To further consider the prayer of the present petitioners for regular promotion to the post of Head Clerk / Assistant Administrative Officer in terms of the applicable cadre rules and grant all consequential benefits, within a period of three months from the date of receipt/production of a copy of this order.

22. The writ application is accordingly **allowed**.

23. There shall be no order as to costs.

(Kumar Manish, J)

sanjeev/-

AFR/NAFR	
CAV DATE	11-08-2026
Uploading Date	18-08-2026
Transmission Date	

