

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3727 of 2011

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Md.Arshad Son of Late Ainul Haque Ansari, Resident of Mohalla Khan Mirza, Police Station Sultanganj, District - Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Old Secretariate, Patna.
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Old Secretariate, Patna.
3. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, New Secretariate, Patna.
4. The Director, Secondary Education, Human Resources Development, Department Govt. of Bihar, New Secretariate Patna.
5. The Director, State Council of Education Research and Training (SCERT) Bihar, Patna -6.
6. The District Magistrate, Patna-cum-Chairman District Level Compassionate Committee, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Aditya Narain Singh
Mr. Kundan Kumar Sinha
For the Respondent/s : Mr. Anshuman Singh, GP 24
Mr. Sriram Krishna, AC to GP 24

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 08-12-2015

Learned counsel for the petitioner submits that one typographical error has occurred in paragraph - 8. He submits that in place of Sl. No. 33, it has incorrectly been typed as Sl.No. 31. He makes a prayer for allowing him to make correction.

The prayer is allowed. It may be corrected.

Heard Sri Aditya Narain Singh, learned counsel for

the petitioner and Sri Anshuman Singh, learned Govt. Pleader – 24.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has filed the present writ petition in the month of February, 2011, with a prayer to direct the respondents to place the petitioner in pay scale of Rs. 4000-6000/- instead of Rs. 3050-4590/-.

Short fact of the case is that the petitioner's father was in a Government service and died on 19-03-2000 while in service. After the death of the father of the petitioner, the petitioner filed application for being appointed on compassionate ground. The District Compassionate Committee in its meeting dated 15-11-2000 considered the case of petitioner alongwith other 111 such persons and thereafter, recommendation was made for appointment. The petitioner's case was recommended by the District Compassionate Committee for being appointed against Class III post. This recommendation was made, vide Memo No. 1715 dated 20th November, 2000. Subsequently, vide Memo no. 80 dated 31-01-2001 (**Annexure - 2** to the writ petition), the petitioner was appointed as Lower Division Clerk in the pay scale of Rs. 3050-4590/-. The petitioner has claimed that he was



entitled to be given pay scale of Rs. 4000-6000/- and while substantiating the claim, Sri Aditya Narain Singh, learned counsel for the petitioner submits that once selection process was initiated and case of petitioner was recommended for being appointed against Class III post, he was required to be appointed against Class III post in the pay scale of Rs. 4000-6000/-, which was applicable at the relevant time. He submits that in identical situation, almost two persons, whose names were recommended by the District Compassionate Appointment Committee, were appointed and given the pay scale of Rs. 4000-6000/- discriminating the case of the petitioner and as such, the petitioner is entitled to get the pay scale of Rs. 4000-6000/-.

In this case, a counter affidavit has been filed on behalf of respondent no. 4.

Sri Anshuman Singh, learned Govt. Pleader - 24 has raised an objection that the date on which the appointment letter was issued in favour of the petitioner, the earlier merged cadre of Lower Division Clerk and Upper Division Clerk was again de-merged, vide Govt. resolution dated 20th December, 2000 (**Annexure - 4** to the writ petition). He submits that after the issuance of the Government resolution, no direct appointment



was to be made against Upper Division Clerk. All appointment against Class III post was to be made as Lower Division Clerk, for which, pay scale as per recommendation of Fitment Committee was fixed as Rs. 3050-4590/-, which has been given to the petitioner. He further submits that the writ petition is primarily required to be rejected on the ground that the petitioner, in view of **Annexure - 2** to the writ petition i.e. his appointment letter, had already joined and he started to discharge duty in the pay scale, which was mentioned in his appointment letter and he continued for more than ten years and after about ten years, the present writ petition was filed and as such, the writ petition is fit to be rejected on the ground of delay itself. Controverting the submission of learned counsel for the petitioner that two persons were given pay scale of Rs. 4000-6000/-, Sri Anshuman Singh, learned Govt. Pleader submits that their appointment letters were issued prior to issuance of Government resolution dated 20th December, 2000 and as such, petitioner's case may not be equated with the case of those persons. In this case, petitioner's appointment letter was issued on 31-01-2001, which is after the issuance of resolution dated 20th December, 2000, whereby the Class III post was de-merged as Lower Division Clerk and Upper

Division Clerk in the pay scale of Rs. 3050-4590/- and Rs. 4000-6000/- respectively.

Learned counsel for the petitioner in reply to the stand taken by the State counsel has firstly placed reliance on a judgment of the Apex Court reported in **(1995) 5 Supreme Court Cases 628 (M.R. Gupta Versus Union of India and Others)**. He submits that in view of incorrect fixation of pay scale, the petitioner is suffering recurring loss and immediately after receipt of the same in every month, he is having cause of action for filing the writ petition. He has placed reliance on Paragraph - 5 of the judgment. He further submits that once the process of selection was initiated, prior to resolution dated 20th December, 2000, the situation which was prevailing prior to 20th December, 2000 is required to be adhered to. He submits that in the case of appointment of the petitioner and others, appointment process was initiated and even the District Compassionate Appointment Committee had recommended the name of the petitioner on 15-11-2000 and as such, the petitioner was entitled to get the pay scale of Rs. 4000-6000/-, which was available at the time of recommendation. To substantiate his submission, he has placed reliance on **2007 (1)) PLJR 159 (Ganesh Singh and Ors. Vs. The**



State of Bihar & Ors.), particularly paragraph 13, 14 & 15 of the judgment. He further submits that ofcourse sub-clause (ii) of clause 5 of Govt. resolution dated 20-12-2000 empowers the Government to cancel all such appointment process, which was initiated prior to 20th December, 2000, but in the present case, the respondents had not taken any step to cancel the process of selection and as such, on the basis of the said clause, the petitioner may not be denied pay scale of Rs. 4000-6000/-. He has argued that the resolution dated 20th December, 2000 is required to be examined in its totality, not in isolation. To support his submission, he has placed reliance on **(2003) 3 Supreme Court Cases 57 (Commissioner of Income Tax Versus Hindustan Bulk Carriers)**. He has emphatically argued that once from the same recommendation, at least two other persons similarly situated were granted the pay scale of Rs. 4000-6000/-, there was no reason to deny the same pay scale to the petitioner, which is against the principle enshrined under Article 14 and 16 of the Constitution of India and as such, he makes a prayer for issuance of direction for re-fixation of pay scale of the petitioner.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. The relief, which



has been sought for in the present writ petition, is fit to be rejected primarily on the ground that the petitioner was given pay scale of Rs. 3050-4590/- since he was appointed as Lower Division Clerk. In the writ petition, there is no prayer for quashing of his appointment letter. The appointment letter specifies that the petitioner was appointed in the month of January, 2001, as Lower Division Clerk. Unless the said notification is assailed, the petitioner is not entitled to make a prayer for grant of pay scale of Upper Division Clerk. Secondly, the present writ petition is required to be rejected on the ground that the petitioner has slumbered over his right for several years. On perusal of the writ petition, it is evident that appointment letter was issued in the year 2001, pursuant to which, the petitioner joined and started functioning. After about ten years in the month of July, 2010, it appears that for the first time, the petitioner claimed for correction of his pay scale. It appears that such representation was filed only with a view to file the present writ petition, which was filed in the month of February, 2011. So far as judgment on which, reliance has been placed i.e. **1995 (5) SCC 628**, the Court is of the opinion that the petitioner may not get any relief on the said judgment. In the said case, being aggrieved with the pay



scale, the petitioner had filed representation before the authority concerned immediately and after enactment of Administrative Tribunal Act, the petition was filed, which was filed belatedly and as such, his petition was rejected by the Tribunal only on the ground of limitation. In that situation, the Apex Court interfered with the matter. Ofcourse, it was indicated that in view of incorrect fixation of pay scale, which is recurring cause of action and it cannot be rejected on this very ground alone, but fact remains that in the present case, the petitioner was basically appointed as Lower Division Clerk, for which, pay scale was Rs. 3050-4590/- was available. It is not a case that the petitioner has assailed the order of his appointment. Moreover, in the present case, representation itself was filed after about ten years, which is sufficient to draw an inference that the petitioner slumbered over his right for a long period and as such, he cannot be entitled to get any relief. Lastly, the Court is of the opinion that the petitioner was not appointed pursuant to any advertisement and filing application with requisite fee. The petitioner has been appointed on compassionate ground. It is the opinion of the Court that appointment on compassionate ground is an exception to Article 14 and 16 of the Constitution of India. Moreover, such

appointment is to be provided only and only with a view to provide immediate financial assistance to the family of the deceased employee. In the present case, obviously, immediately after the death, the petitioner was provided with employment as Lower Division Clerk and he continued for such a long time. In absence of any prayer for quashing of the appointment letter i.e. Annexure - 2 as well as the fact that petitioner slumbered over his right for several years, no relief can be granted.

The writ petition stands dismissed.

(Rakesh Kumar, J.)

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