

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21624 of 2014

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1. Satendra Kumar Son of Late Mahesh Prasad "Awadh Kunj" Resident of Mohalla - Babhan Toli Gali (Behind Post Office), P.O- Mahendru, P.S- Sultanganj, District- Patna
 2. Bhaskar Kumar Sinha Son of Late Raj Kishore Prasad Sinha Resident of Village + P.O - Kumaiya, P.S- Tajpur District - Samstipur.
 3. Kishore Kumar Chaudhary Son of Late Jeeb Nath Chaudhary Resident of Village + P.O- Sapt, P.S- Rahika, District - Madhubani.
 4. Rajesh kumar Yadav Son of Late Jagannath Yadav Resident of Bhawanipur Tola, Village - Lakshmipur, P.S- Sakri, P.O- Bhawanipur, Anchal-Pandaul, District - Madhubani.
 5. Ram Shankar Rai Son of Late Jagdish Rai Resident of Village + P.O- Rasidpur, P.S- Khajauli, Via- Kaluahi, District - Madhubani.
 6. Rakesh Kumar Son of Late Shan Prasad Shrivastava Near Night School, Opposite Dr. Rani Pathak, Resident of village - Naya Tola, District - Muzaffarpur.
 7. Manoj Kumar Poddar Son of Late Krishna Kant Poddar Resident of Village - Shahpur, P.O- Bhore Jairam, District - Samastipur.
- Petitioners

Versus

1. The State Of Bihar Through The Principal Secretary, Human Resources Department, New Secretariat, Govt. Of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Principal Secretary Department of Finance, Govt. of Bihar, Patna.
4. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
5. The Engineer in Chief, P.H.E.D., Govt. of Bihar Secretariat Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siyaram Pandey
For the Respondent/s : Mr. Sc28- Ajeet Kumar

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGEMENT

3 09-12-2015 Heard learned counsel for the petitioners as well as

learned counsel appearing for the State.

2. The petitioners seek quashing of the order dated

08.11.2014 (Annexure-6 series), passed by Superintending

Engineer, Public Health Engineering Circle Darbhanga



(respondent no.7), whereby they have been reverted from the post of Junior Accounts Clerk (Lower Division Junior Accounts Clerk)/ Lower Division Clerk (Accounts Section) in revised pay scale of Rs. 5200-20200 with grade pay 2400 to the post of Lower Division Clerk of Pay Scale in the pay scale of 5200-20200 with grade pay 1900.

3. Before I examine the grounds on which the impugned order has been assailed, it would be relevant to notice the facts of the case in brief.

4. The petitioners were appointed on compassionate ground on death of their father against vacant post of Junior Accounts Clerk (Lower Division Junior Accounts Clerk)/Lower Division/Lower Division Clerk (Accounts Section) under Public Health Engineering Department, circle Darbhanga by respondent no.7. Copies of appointment letters are annexed as annexure-1 series. However, by Office Orders No. 16, 17, 18, 22 and 24, of respondent no.7 dated 02.05.2014, they were reverted from the post of Junior Accounts Clerk (Lower Division Junior Accounts Clerk) to the post of Lower Division Clerk in a lower pay scale. The petitioners challenged order dated 02.05.2014 in C.W.J.C. No. 10939 of 2014. The learned single Judge by order, dated 23.07.2014



quashed the impugned orders dated 02.05.2015 reverting them on the ground of being violative of principal of natural justice. On remand, hearing was provided to the petitioners. However not being satisfied with the representations of the petitioners, respondent no.7 vide his order dated 8.11.2014, rejected their case against reversal to the post of Lower Division Accounts Clerk (Lower Division Junior Accounts Clerk)/Lower Division Clerk (Accounts Section). Giving reasons for his view, respondent no.7 observed that the compassionate appointment cannot be made on a scale, higher than Rs.3050-4590 in view of Government circular. As such he observed that the appointment of petitioners, as Junior Accounts Clerk/Lower Division Accounts Clerk carrying higher scale than the scale of Rs.3050-4590 was in teeth of letter, dated 15.6.2001 of Personnel and Administrative Department and Letter dated 22.1.2013 of Finance Department.

5. Petitioners submit that they were appointed on a vacant post of Lower Division Accounts Clerk in the year 2006-08. Now, after serving on the said post for 6 to 12 years, they are reverted to a lower rank and scale. They submit that some of the persons similarly appointed on compassionate ground on Lower Division Accounts Clerk in Minor Irrigation Department,

like petitioners have not been disturbed. In support of their submissions, they cite the example of one Jitendra Kumar and one Chandra Madhav.

6. Counsel for the State submits that the case of Jitendra Kumar and Chandra Madhav are different. He submits that the efforts were taken to correct the mistake in their case also and their pay scales were lowered. However for some reasons, while reducing their pay scale, their rank was simultaneously not reduced from lower Division Accounts Clerk to that of Lower division Clerk. A query was too made to the Finance Department whether payment in lower pay scale can be made to a person holding a higher rank of Junior Accounts Clerk. The Finance Department, in such circumstances, opined that the pay scale of Junior Accounts Clerk is Rs.3500-4590, as such lower scale cannot be assigned to a person holding such post. Thus, they have continued in the said rank and scale.

7. The issue before this Court is whether the respondents were justified in reverting petitioners' to the post of Lower Division Clerk from the post of Junior Accounts Clerk (Lower Division Junior Accounts Clerk) after six to twelve years of their appointment. I find that the letter dated 15.6.2001



of the Personnel and Administrative Department and letter dated 2.1.2003 of the Finance Department, prohibit appointment on compassionate ground on a scale higher than Rs.3050-4590, eg. a pay scale admissible to Lower Division Clerk. Nonetheless, petitioners were appointed in the rank of Lower Division Accounts Clerk/Junior Division Accounts Clerk, which carries higher pay scale. Petitioners, in view of Government circulars could not have been validly appointed on the post of Junior Accounts Clerk or Lower Division Accounts Clerk. The Government is within its ambit to correct such mistake. Petitioners cannot claim a right to be appointed on a higher post and scale than admissible in law or under Government circulars in matter of compassionate appointment. They cannot take advantage of procedural mistake, which can be corrected.

8. So far as case of Chndra Madhav and Jitendra Kumar are concerned, there was no query to the Finance Department, whether a compassionate appointment can be made on a rank higher than one carrying the scale, admissible to Lower Division Clerk. For the reasons best known to the Minor Irrigation Department/Water Resources Department, it did not choose to revert the rank of Jintendra Kumar and Chandra Madhav from Junior Accounts Clerk or Lower Divisional



Accounts Clerk to that of a Lower Divisional Clerk. The impugned order lowering the rank and scale of the petitioners to bring in tune with the Government circulars cannot be faulted on the ground that some of the candidates, who were appointed on compassionate ground have been treated differently and has not been reverted, from Junior Divisional Accounts Clerk/Junior Accounts Clerk to Lower Divisional Clerk

9. In my view, respondents should try to maintain parity and act in consonance with their own circulars in matter of compassionate appointment. Petitioners may represent before respondent no.2, who would duly consider the grievance in accordance with law. The petitioners can bring to the notice of respondent no.3 any circular of the Government on which they may rely including circular no. 311 dated 25.5.2015. With observations aforesaid, the writ application stands disposed of.

(Samarendra Pratap Singh, J)

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