

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1498 of 2011

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1. Avinash Kumar Chakerwarty son of Late Dhruvnath Pandit resident of Village - Bangra (Kumar Tola), P.S. - Daudnagar, District - Chapra
 2. Ajay Kuamr Dubey son of Parshuram Dubey, resident of Village - Selaun, P.S. - Guthni, District - Siwan
 3. Pradeep Kumar son of Late Bhuneshwar Prasad resident of Village - Shukla Toli, Siwan, P.S. - Shukla Toli Siwan, District - Siwan
 4. Saurabh Kumar Singh son of Late Dr. Uma Shankar Sinha resident of Village - Hariharpur Lalgah, P.S. - Gautam Budh Nagar, Jarwara, District - Siwan
 5. Meena Verma wife of Late Anil Kumar Verma resident of Village - Patori, P.S. - Panchgachia, District - Saharsa

.... Petitioner/s

Versus

1. The State Of Bihar, Through The Chief Secretary, Main Secretariat, Patna
2. Principal Secretary, Department Of General Administration (Formerly Known As Personnel And Administrative Reforms Department), Government Of Bihar, Main Secretariat, Patna
3. The District Magistrate, Siwan
4. Deputy Collector, Establishment, Collectorate, Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kishore Kumar Thakur
For the Respondent/s : AC to AAG No. 11

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

5 29-10-2015 Heard Sri Kishore Kumar Thakur, learned counsel for
the petitioners and learned AC to AAG No. 11.

Five petitioners invoking writ jurisdiction of this court under Article 226 of the Constitution of India have made a prayer for directing the respondents for granting them pay scale of Rs. 4000/- - 6000/- on the ground that in similar circumstances other persons were granted same relief. Lower Division Clerks in the

Collectorate of Siwan was granted same pay scale. The petitioners have further prayed for directing the respondents to make payment of arrears of difference of amount of salary in the pay scale of Rs. 4000/- - 6000/-.

As per the writ petition, all the petitioners were appointed in the clerical cadre of the Collectorate of Siwan on compassionate ground. The petitioner no. 1 and 4 were appointed by the office order no. 86 dated 6.8.2002 and petitioner no. 5 was appointed as Lower Division Clerk by the office order dated 5th October 2002. The petitioner no. 2 and 3 were appointed as Copyist in the Collectorate of Siwan vide order no. 21 dated 23.10.2006. The petitioners at the time of appointment were granted pay scale of Rs. 3050/- - 4500/-. The petitioners have based their claim on the basis of an order dated 17.12.2007 passed in C.W.JC. No. 13577 of 2006. It has been argued by Sri Thakur, that in the said case also petitioners were appointed after the post of Lower Division Clerk and Upper Division Clerk were demerged but this court directed to grant them pay scale of Rs. 4000/- - 6000/-. He further submits that in identical situation same employees were reappointed vide Annexure – '5' and on reappointment they were provided pay scale of Rs. 4000/- - 6000/- whereas, petitioners have been given pay scale of Rs.

3050/- - 4500/-. The petitioners have claimed parity. It was submitted that denying the claim of pay scale of Rs. 4000/- - 6000/- would amount to violation of Articles 14 and 16 of the Constitution of India and as such a prayer has been made to direct the respondents to grant pay scale of Rs. 4000/- - 6000/- from the date of their initial appointment and also to pay difference of arrear salary.

In this case an intervention petition vide I.A. No. 5671 of 2011 has been filed wherein petitioners of intervention petition have prayed for being impleaded as petitioner in the writ petition. Sri Bipin Bihari Singh, learned counsel for the intervenors submits that intervenors are also entitled to get the same relief. So far as intervention petition is concerned the court is of the opinion that in a writ petition an intervention petition for granting relief similar to the intervenor/petitioner may not be entertained. As per High Court Rules an intervenor can be allowed to oppose the writ petition not to claim the same relief. Accordingly the intervention petition stands dismissed.

In this case a counter affidavit has been filed on behalf of the respondent no. 3 and 4. Learned State Counsel opposing the prayer of the petitioners submits that petitioners were appointed after the decision was taken by the Government

whereby demerger of Lower Division Clerk and Upper Division Clerk was given effect to. The resolution was passed by the Government of Bihar in the month of December 2000 wherein it was indicated that direct appointment shall be made only on the post of Lower Division Clerk.

Learned counsel for the petitioners has argued that clause 5(ii) of the resolution dated 20th December 2000 has been unsettled by this court in a writ petition and same has been affirmed. He submits that Clause 5(ii) of Annexure - 2 clarifies that even all the procedures regarding appointment under process stands cancelled. Meaning thereby after the resolution no process of appointment directly in the Upper Division Clerk or Clerk in the pay scale of Rs. 4000/- - 6000/- was to be made. According to learned counsel the said provision has also been unsettled by this court.

Learned State Counsel opposing the prayer of the petitioners submits that admittedly petitioners were appointed after the decision was taken by the Government demerging the Lower Division Clerk and Upper Division Clerk. Notification was issued in the year 2000 whereas petitioner no. **1, 4 and 5** were appointed in the year 2002 on compassionate ground whereas in compliance with order passed in a contempt petition remaining



petitioners were appointed in the year 2006. Learned counsel for the State submits that so far as Annexure – ‘5’ is concerned, those persons were earlier retrenched and subsequently they were appointed afresh and as such according to learned counsel for the state, petitioners case may not be treated as similar to those cases. Learned State Counsel has argued that the writ petition is fit to be rejected on the ground of delay itself which was replied by Mr. Thakur that it is a continuous cause of action and as such, on this ground the right of the petitioners may not be defeated.

Besides hearing learned counsel for the parties I have also perused the materials available on record. Fact remains that in the year 2000 itself decision was taken that initial appointment in Class III post shall be made as Lower Division Clerk for which pay scale was prescribed as Rs. 3050/- - 4500/-. Admittedly petitioner no. 1, 4 and 5 were appointed on compassionate ground in the year 2002 and as such they were rightly appointed as Lower Division Clerk in the pay scale of Rs. 3050/- - 4500/-. Similarly the other writ petitioners were appointed in view of the order passed by the writ court and in contempt proceeding. So far as the order on which reliance has been placed i.e. Annexure – ‘3’ to the writ petition (order dated 17th December 2007 passed in C.W.J.C. No. 13577 of 2006) is



concerned, admittedly in the said case advertisement for appointment as 'Assistant' was issued in the year 1998. All the processes were initiated and thereafter with a hope that petitioners of the said writ petition were intending to be appointed as Assistant, participated in the selection process and during pendency of the selection process subsequent decision was taken. This court relying on a judgment reported in **2007 (1) PLJR 159 (Ganesh Singh and Ors. vs. The State of Bihar and Ors.)** allowed the writ petition and directed for granting pay scale of Rs. 4000/- - 6000/-. This is not the case in respect of the petitioners. Petitioner no. **1, 4 and 5** were appointed purely on compassionate ground which is to be granted for immediate financial relief to the family of the deceased employee. Moreover, the appointment letter in respect of petitioner no. **1, 4 and 5** was issued in the year 2002. So far as the remaining petitioners are concerned, they were appointed in compliance with the order of this court and as such, the petitioners of the present case may not get the benefit of parity or equality as granted in C.W.J.C. No. 13577 of 2006. So far as Annexure- 5 is concerned, admittedly they were retrenched employees and subsequently, as per policy decision, they were given the pay scale of Rs. 4000/- - 6000/- and as such, the petitioners are not entitled to get any

relief. Moreover, the writ petition is fit to be rejected on the ground that despite the fact that petitioner no. 1, 4 and 5 were appointed in 2002 itself in the pay scale of Rs. 3050/- - 4500/- after lapse of about 9 years, they approached this court. Similarly, remaining petitioners were appointed in the year 2006 and they withdrew salary as per their appointment for a long period and after much belated stage they approached this court. So on both the counts the petitioners are not entitled for any relief.

The writ petition stands dismissed.

(Rakesh Kumar, J)

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