

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5368 of 2008

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Umakant Mishra, s/o Late Shatrughan Mishra, resident of village + P.O. Maharani,
P.S. – Mahammadpur, District Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Siwan
3. The B.D.O. Maharajganj, P.O.+P.S. Maharajganj, District Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bipin Bihari Singh
Mr. Sunil Kumar Shrivastava
Mr. Shyama Kant Singh

For the Respondent/s : AC to SC 4

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 21-04-2015

Heard learned counsel for the petitioner and learned AC to
SC No. 4.

The petitioner, invoking writ jurisdiction of this court under Article 226 of the Constitution of India, has prayed for directing the respondents to grant pay scale of Rs. 4000 - 6000 from the date of his initial appointment on the ground that while recommending his appointment the compassionate appointment committee had observed to grant scale of Rs. 4000 - 6000.

Short fact of the case is that after the death of father of the petitioner, petitioner's case was considered by the compassionate appointment committee for his appointment and in its meeting dated 9.5.2000 it was decided to appoint the petitioner on compassionate



ground on Class III post in the scale of Rs. 4000 - 6000. However, subsequently, by Order No.38 / 2001 contained in Memo No. 372 dated 15.12.2001, the petitioner was appointed as Lower Division Clerk in the pay scale of Rs. 3050 - 4500. The petitioner joined thereafter and he continued on the said post. However, in the year 2008, the present writ petition was filed by the petitioner with a prayer, as indicated above.

Learned counsel for the petitioner submits that once the compassionate appointment committee had recommended the case of the petitioner for being appointed in the pay scale of Rs. 4000 – 6000, subsequently, there was no reason to deny pay scale of Rs. 4000 – 6000. However, contrary to the recommendation, in an illegal manner, the petitioner was appointed as Lower Division Clerk in the pay scale of Rs. 3050 - 4500. Learned counsel for the petitioner has placed reliance on a single bench judgment of this court passed in CWJC No. 476 of 2007 disposed of on 18.7.2011. The petitioner has brought on record photo copy of the order as Annexure – 5 to the supplementary affidavit. It has been argued that since the appointment process was initiated prior to taking decision by the Government for appointing at initial stage as Lower Division Clerk, the respondents were required to follow the earlier process of his appointment and as such, the petitioner was required to be given

pay scale of Rs. 4000 - 6000. Banking on the single bench judgment of this court (Annexure – 5) the learned counsel for the petitioner makes a prayer for directing the respondents to grant pay scale of Rs. 4000 - 6000 from the date of his initial appointment.

Learned State Counsel has opposed the prayer of the petitioner. He submits that of-course earlier the compassionate appointment committee had decided to appoint the petitioner as Assistant (Class III) in the pay scale of Rs. 4000 - 6000 and he was to be appointed against Class III post in the office of Deputy Director, Consolidation, Siwan, however, since the consolidation proceeding was on the verge of conclusion, it was decided that petitioner may be adjusted in the Collectorate. Learned counsel for the State has referred to Annexure - 3 to the writ petition whereby the Department of Revenue And Land Reforms had intimated the District Magistrate on this point. He further submits that before completion of the appointment procedure, the Government of Bihar had already taken a decision to demerge the post of Assistant as Lower Division Clerk and Upper Division Clerk in the pay scale of Rs. 3050 -4500 and Rs. 4000 - 6000 respectively. Learned State Counsel has placed reliance on Annexure – A to the counter affidavit. He has specifically placed paragraph no. 5 of Annexure - A and submits that after demerger all direct appointments was to be



made as Lower Division Clerk and the post of Upper Division Clerk was to be treated as promotional post. It has been argued that in view of the decision of the Government the petitioner was appointed as Lower Division Clerk in the pay scale of Rs. 3050 - 4500. He submits that there is no illegality in the order of initial appointment of the petitioner as Lower Division Clerk. Learned counsel for the State has also persuaded the Court that the petitioner may not get any benefit from the judgment of single bench i.e. Annexure – 5 to the supplementary affidavit filed by the petitioner.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that even though the petitioner was recommended by the compassionate appointment committee, he was appointed as Lower Division Clerk long back in the year 2001 and without any hindrance and without any objection the petitioner continued on the said post and withdrew salary also, however, after lapse of several years in the year 2008, the petitioner approached this court with a prayer to direct the respondents to pay him salary with effect from his initial date of appointment in the pay scale of Rs. 4000 – 6000. Primarily the writ petition was fit to be rejected on the ground of approaching this court much belatedly. However, since the appointment of the petitioner was made in terms of the Government resolution itself, which

specified that initial appointment shall be made as Lower Division Clerk in the pay scale of Rs. 3050 - 4500, I do not see any reason to interfere in the matter. So far single bench judgment is concerned (i.e. Annexure – 5 to the supplementary affidavit), the court is of the opinion that in the said case the Government had deviated from the advertisement published for appointment and as such, this court interfered in the matter. This is not the case of petitioner. Petitioner was given appointment on compassionate ground since the father of the petitioner who was a Government employee died in harness. The object of employment on compassionate ground is basically to provide immediate financial help to the family of the bereaved employee and as such, the petitioner may not get any help from the single bench judgment passed in CWJC No. 476 of 2007.

In view of the facts and circumstances, I do not find any ground to interfere in the matter.

The writ petition stands dismissed.

(Rakesh Kumar, J)

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