

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25446 of 2013

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1. Gyan Prakash Shrivastav Son Of Late Dharnidhar Prasad Shrivastav Resident Of Village - Mangalpur Kala, P.O. Mangalpur, Gudaria, P.S. Nautan, District - West Champaran

2. Abdul Samad Ansari Son Of Mr. Nezamuddin Ansari Resident Of Village - Sabeya Kala, P.O. Mushari, P.S. Sirishya, West Champaran

.... Petitioner/s

Versus

1. The State Of Bihar, Through The Chief Secretary, Government Of Bihar, Patna
2. Secretary, Department Of Personnel And Administrative Reforms, Government Of Bihar, Patna

3. Joint Secretary, Department Of Personnel And Administrative Reforms, Government Of Bihar, Patna

4. Principal Secretary, Department Of Finance, Government Of Bihar, Patna

5. Secretary, Department Of Revenue And Land Reforms, Government Of Bihar, Patna

6. District Magistrate, West Champaran, Bettiah

7. District Magistrate, East Champaran, Motihari

8. Bihar Public Service Commission, Through The Secretary, Bailey Road, Patna

9. The Secretary, Bihar Public Service Commission, Bailey Road, Patna

10. Arvind Kumar Verma Son Of Late Radheshyam Prasad, C/O Tulsi Prasad Lodge, Room No.01, Nahar Road, Shahganj, Mahendru, Patna - 6

11. Sanjay Kumar Son Of Shivchandra Tiwari Deepak Resident Of Village - Bankatva, Via Ghorasahan, District - East Champaran

12. Satyendra Narain Son Of Baleshwar Prasad Yadav Resident Of Village - Sonari, P.O. Majhauili, P.S. Sirdala, District - Nawada

13. Sarvesh Kumar Son Of Madhusudan Prasad Resident Of Village - Mainatand, P.O. Marjadva, District - West Champaran

14. Jai Prakash Sah Son Of Satyanarain Sah Resident Of Village - Pakuhava, P.S. Mainatand, Via Sikta, District - West Champaran

15. Jai Kishore Ram Son Of Late Mangal Ram Resident Of Mohalla - Piunibagh, Basbaria, P.O. Bettia, District - West Champaran

16. Navin Kumar Son Of Suryadeo Prasad Resident Of Adarsh Bihar Colony, Rukanpura, Bailey Road, P.S. B.V. College, Patna - 14

17. Hasan Imam Ansari Son Of Serajul Hoda Resident Of Village And P.O. Chuhari, District - West Champaran

18. Lal Babu Mahto Son Of Sri Ram Chandra Mahto Resident Of I.T.I. Coloni, East Kargahia, P.S. Barbat Pasrain, P.S. Bettia Muffasil, District - West Champaran

19. Md. Matiur Rahman Son Of Lal Mohammad Resident Of Village Sikariya, P.O. Kakan, District - Araria

20. Dilip Kumar Son Of Dinanath Prasad Resident Of Village And P.O. Chanpatia, District - West Champaran

21. Harsh Narain Guro Son Of Baldeo Guro Resident Of Village - Dhumli Parsa, P.O. Serva Masjidva, Via Narkatiaganj, District - West Champaran

22. Sri Serjul Haque Son Of Sri Navijan Ansari Resident Of Village - Sisbania, P.S. Sugauli, District - East Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur,
Mr. Md. Imteyaz Ahmad,

For the State : Mr. Malay Kumar Choudhary, Advocates.
For B.P.S.C. : Mr. Mritunjay Kumar, AC to SC 23
: Mr. Rajni Kant jha,
Mr. Sanjay Pandey,
Mr. R.K. Jha, Advocates.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 06-05-2016

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Heard the parties.

2. In the present writ petition, petitioners are claiming that they should be given the pay scale of Rs.1200-1800 and substituted scale of pay of Rs.4000-6000 as are being given to the private respondents who were appointed along with them on the basis of the same competitive examination and were junior to them in the merit list.

3. Before deciding this issue some essential facts are required to be adverted for the proper consideration of the matter. It appears that Bihar Public Service Commission (hereinafter referred to as "the Commission") published an advertisement vide Advertisement No. 17/98 and 18/98 in the daily newspaper Hindustan dated 26.8.1998 whereby invited applications from the eligible persons for the appointment of Class III posts. Applications were for following posts, such as, Assistant Clerk, Assistant Typist, accounts clerk and V.L.W scale of pay were shown as Rs.1200-1800 whereas for the post of Revenue Karamchari, Junior Accounts Clerk, Copier, Village Worker pay scale were shown as Rs.975-1540.

4. Petitioners, respondents and others applied. Petitioners in their first choice have opted for the post of clerks and second option was given for Revenue Karamchari. The Commission published the result of successful candidates, all the respondents were shown to be junior in the merit list which is clear from the recommendation of the Commission dated 15.1.2003, pointed out that all the respondents were junior to them were given the post of clerk, petitioners and others who were senior were appointed as Revenue Karamchari. He has further submitted that they have joined the posts without any objection, reason was that after the advertisement the Government at the time of selection bifurcated the post of clerk, as lower division clerk carrying pay scale of Rs.975-1540 and upper division clerk carrying pay scale of Rs.1200-1800. As the pay scale of those persons who were shown to be junior in the merit list in the recommendation of the Commission, they were given the pay scale of Rs.975-Rs.1540, on that account without any grudge and grievances petitioners joined the post of Revenue Karamchari in the pay scale of Rs.975-Rs.1540 identical to pay of newly added respondent, but they have raised the objection about their placement in the category of Revenue Karamchari as all those who have been shown to be junior were given the post of clerk. Petitioners and other juniors were working on the same pay scale but later on

those who were appointed as clerk in the pay scale of Rs.975-Rs.1540 along with the petitioners raised a grievance that at the time of advertisement the pay scale of clerk was shown Rs.1200-1800, after selection their pay scale cannot be reduced.

5. When juniors respondents did not get any satisfactory reply to the grievance, they approached this Court vide C.W.J.C. No.13577 of 2006, this Court arrived to a conclusion that at the time of advertisement for the post of clerk the pay scale was shown to Rs.1200-1800 accordingly they applied for the post, now after, the selection the same cannot be reduced and directed that the pay scale that has been shown in the advertisement and its replacement scale be restored. It will be relevant to quote paragraph 5 of the order passed in C.W.J.C. No.13577 of 2006:

“5. Having heard counsel for the parties and having perused the instructions of the State Government contained in letter dated 20th December, 2000, Annexure-5, I am of the view that 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 in Annexure-1”

6. This order was unsuccessfully challenged in the Letters Patent Appeal vide L.P.A. No. 522 of 2008, affirmed the view taken by the learned Single Judge. The matter went to Hon’ble Supreme Court vide S.L.P. No.419 of 2010, the same was dismissed. When pay scale was restored the petitioners also claimed that as juniors were given higher pay scale, the petitioners should also be brought at par with the pay scale of junior.

7. Representation of the petitioners was considered by the District Magistrate rejected their claim vide Memo NO.9 dated 2.1.2015.

8. Learned counsel for the petitioners submits that petitioners in their applications opted the post of clerk as first choice and second choice for Revenue Karamchari. In the merit list these



petitioners were shown to be seniors to all the respondents, at the time of appointment, their scale of pay was identical pay scale what their juniors were in the pay scale. Even then they raised a grievance after six months of wrong placement on the post of Revenue Karamchari but they have not seriously pursued reason was that they were given same pay scale as of junior when pay scale of juniors enhanced on account of the judgment passed by this Court and affirmed by the Hon'ble Supreme Court since then it has been causing a hurt burn on account of facts those who were shown to be junior have getting high pay scale and as such there was no delay and laches on the part of the petitioners but it is the District Magistrate who has wrongly allotted the post of Revenue Karamchari. As all the persons who were shown to be junior in the block they were appointed as Revenue Karamchari and similarly, in block who were juniors to the petitioners were appointed as post of clerk and as such they are entitled identical pay scale of his juniors.

9. Learned counsel for the State has submitted that though petitioners were senior in the merit list and they have also opted for the post of clerk as per first choice but after the receipt of recommendation they were adjusted against second choice and they never raised any objection about their placement on the post of Revenue Karamchari and they have worked on that post for a

long time, their status cannot be changed and respondents cannot be asked to join the post of Revenue Karamchari. If they have not raised any grievance or protest the principle of waiver and acquiescence will apply and after such lapse of time they cannot be allowed to raise a grievance.

10. Having considered the rival contentions of the parties from the record it appears that though the petitioners had given their first choice as clerk as it is apparently clear from the form filled up by the petitioners along with the supplementary affidavit but question will arise in the present case that they were appointed as per advertisement in the year 2004 and all the respondents have worked for years together on the post of clerk. Though, in the seniority list, petitioners are senior in merit list but in block they were brought to the post of Revenue Karamchari. Question would arise whether it will be justified for this Court to give direction for changing of their status after long lapse of time. The petitioners did not raise any grievance when they were posted on the post of Revenue Karamchari it is the respondent who after their joining raised a protest about the manner they were treated and pay scale was enhanced by the order of this Court whether this order will be applicable to the petitioners certainly answer will not. Reason is that post carries pay scale and if there was anomalies then they should have raised

grievance at earliest which would have been rectified looking to the facts and circumstances as petitioners were senior in the merit list. After long delay, it will not be proper to interfere in the matter.

11. This Court feels that let this matter be referred to the Principal Secretary; Department of Finance, Government of Bihar who will consider the case of the petitioners and will take proper decision to mitigate woes faced by the petitioners.

12. With the aforesaid observation this writ petition is disposed of.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	20.5.2016
Transmission Date	