

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5021 of 2011

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1. Anit Kumar Singh S/o Late Panchanand Singh, R/o Ramavtar Apartment, Ashiyana Ramnagari More, P.S. Rajiv Nagar, District – Patna.
 2. Raj Kumar, S/o Late Prem Chandra, R/o Vill/Moh. Bakarganj, Moharampur, P.S. Pirbahore, Patna, District – Patna.
 3. Vijay Kumar Sinha, S/o Late Bindeshwari Prasad Sinha, R/o Diet Campus, Mohallat Panchyati Akhara, Gaya, P.S. Kotwali, District Gaya.
 4. Rana Lalan Narain Singh, S/o Late Jaydutt Narain Singh, Mohalla – Chand Chaura, Gaya, P.S. Civil Line, District – Gaya.

.... Petitioners

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
3. The Additional Secretary, Department of Finance, Govt. of Bihar, Patna.
4. The Deputy Secretary, Department of Finance, Govt. of Bihar, Patna (Treasury)
5. The District Magistrate, Patna.
6. The District Magistrate, Gaya.
7. The Treasury Officer, Secretariate Treasury, Vikash Bhawan, Patna
8. The Treasury Officer, Gaya, District Gaya.
9. The Sub-Treasury Officer, Sherghati, District Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi

For the Respondent/s : Mr. Anil Kumar Sinha, GA-1

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 25-10-2016

Heard Sri Siya Ram Sahi, learned counsel for the petitioners and Sri Anil Kumar Sinha, learned Govt. Advocate – 1.

The petitioners, who were appointed on compassionate ground as a Clerk in the Treasury, have approached this Court invoking its writ jurisdiction, with a prayer to grant following reliefs:-

1. **For issuance of an appropriate writ commanding the respondents to grant benefit to the petitioners in terms of Bihar State Employees Service Condition (Assured Career Progression Scheme) Rule 2003 (hereinafter referred as A.C.P.) w.e.f. 9.8.1999 in the Scale of Rs. 5300-9000 is first A.C.P. and the scale of Rs.**

6500-10,500 as Second A.C.P. after completion of 24 years of service with due interest.

2. **For issuance of an appropriate writ commanding the respondents to also consider the case of the petitioner in terms of Bihar State Employees Condition of Service Assured Career Progression Scheme (Amendment) Rule 2007 in the Scale of Rs. 6500-10,000 as first A.C.P. and in the scale of Rs. 10,000-15,200 as Second A.C.P. with due interest.**
3. **Any other relief/reliefs for which petitioners are entitled under law as well as on facts.**

After filing of the writ petition, a counter affidavit was filed on behalf of respondent/State and a plea was taken that identical matter is pending before this Court in C.W.J.C. No. 6751 of 2007. This specific stand was taken in paragraph – 7(a) and 7(b) of the counter affidavit filed on behalf of respondent no. 2 to 4 on 20th May, 2011. During the pendency of the present writ petition, the said writ petition i.e. C.W.J.C. No. 6751 of 2007 was allowed, in terms of an order passed by a Bench of this Court in C.W.J.C. No. 817 of 2007 (i.e. *Prabhat Shankar Poddar vs. The State of Bihar and Others*). In the said case also, claim was denied by the respondent/State on the plea that they were appointed on compassionate ground. Against the order passed in C.W.J.C. No. 817 of 2007, the State had preferred an appeal, vide L.P.A. No. 2006 of 2011 and other connected appeals. The said appeal was dismissed *in limine* on 05-12-2013, vide **Annexure – 8** to the writ petition (running page 182). The issue, which has been raised in the present petition, was already set at rest by the Division Bench of this



Court. Thereafter, the respondent/State has come out with a Notification, vide **Annexure – 18** i.e. an order contained in letter no. 2856 dated 06-04-2016. After the matter was already decided that the persons appointed on compassionate ground may not be discriminated, the State Government has come out with a decision to distinguish the case of the persons appointed on compassionate ground, as Clerk in the Treasury and thereafter, the said order was assailed by the petitioners by filing an interlocutory application i.e. I.A. No. 5154 of 2016.

Primarily, the Court is of the opinion that Annexure – 18 is exactly in the teeth of order passed in C.W.J.C. No. 817 of 2007, which was finally settled by the Division Bench. There was no occasion for the State authority to again create a distinction between the Treasury Clerk appointed directly and the Clerk of the Treasury, who were appointed on compassionate ground. Normally, after the appointment on compassionate ground, an employee may not be discriminated with other employee. Since the dispute was already set at rest and respondents themselves had taken the plea in the counter affidavit that one similar matter was pending before this Court and this Court had decided the issue, thereafter the State authority may not be allowed to create any distinction and deny the relief, which has been sought for in the present writ petition, similar to the reliefs, which were claimed in earlier writ petitions.

By way of referring to an order dated 26-07-2001 passed in C.W.J.C. No. 3063 of 1992 passed by a Single Bench of this Court, Sri Anil Kumar Sinha, learned Govt. Advocate – 1 had tried to distinguish the case, however; Sri Shahi, learned counsel for the petitioners has argued that the said order is *per incurium*, since it was contrary to the order passed in C.W.J.C. No. 817 of 2007, which was approved by the Division Bench. The Court is in agreement with the submission of Mr. Shahi.

Accordingly, the writ petition is allowed and order contained in Annexure – 18 i.e. letter no. 2856 dated 06-04-2016 is also set aside.

All the consequential benefits, in view of setting aside the impugned order and allowing the writ petition shall be provided to the petitioners within a period of three months from the date of receipt/production of a copy of this order.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	
CAV DATE	
Uploading Date	29.10.2016
Transmission Date	