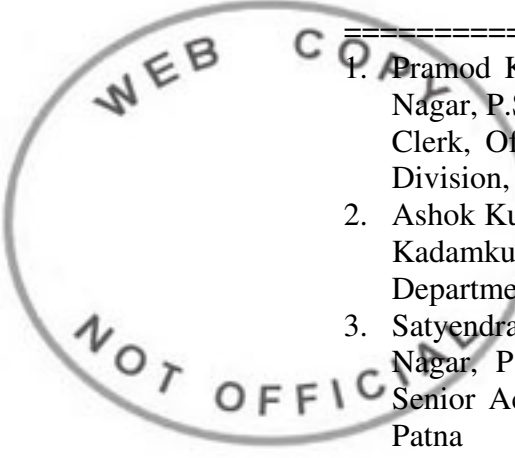


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7001 of 2013

- 
1. Pramod Kumar S/O Late Ganga Sagar Chaudhary R/O Road No. 15, Rajeev Nagar, P.S.- Rajeev Nagar, District- Patna, presently posted As Senior Accounts Clerk, Office Of The Executive Engineer, Rural Works Department (Works Division, Hathua, District- Gopalganj), Government Of Bihar, Patna
 2. Ashok Kumar S/O Shri Parmarthi Sharma R/O Mohalla- West Lohanipur, P.O.- Kadamkuan, District- Patna, Retired Senior Accounts Clerk, Water Resources Department, Government Of Bihar, Patna
 3. Satyendra Kumar Singh S/O Late Rameshwar Singh R/O Mohalla-Ram Krishna Nagar, P.O.- Jaganpura, P.S.- Ram Krishna Nagar, District- Patna, retired Senior Accounts Clerk, Water Resources Department, Government Of Bihar, Patna
 4. Md. Jafarullah S/O Late Abdul Barakat R/O Village +P.O.- Daulatpur, P.S.- Ara Mufassil, District- Bhojpur At Ara, Retired Senior Accounts Clerk, Office Of The Executive Engineer, Design Division No. 1, Water Resources Department, Anisabad, District- Patna

.... Petitioners

Versus

1. The State Of Bihar through The Chief Secretary Government Of Bihar, Patna
2. The Principal Secretary Department Of Finance, Government Of Bihar, Patna
3. The Principal Secretary Rural Works Department, Government Of Bihar, Patna
4. The Principal Secretary Water Resources Department, Government Of Bihar, Patna
5. The Secretary, Road Construction Department Vishwesharaiya Bhawan, Bailey Road, Patna

.... Respondents

with

Civil Writ Jurisdiction Case No. 7302 of 2013

Ashok Kumar Verma S/o Late Sidheshwar Prasad Verma Resident of Postal Park, Road No. 4 Indra Nagar (East), Po - GPO, PS - Kankarbagh, District - Patna, Presently Posted As Senior Accounts Clerk, Canal Design Division No. 3, Water Resources Department, Government Of Bihar, Anisabad, Patna

.... Petitioner

Versus

1. The State Of Bihar through The Chief Secretary, Government Of Bihar, Patna
2. The Principal Secretary, Department Of Finance, Government Of Bihar, Patna
3. The Principal Secretary, Rural Works Department, Government Of Bihar, Patna
4. The Principal Secretary, Water Resources Department, Government Of Bihar, Patna
5. The Secretary, Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna

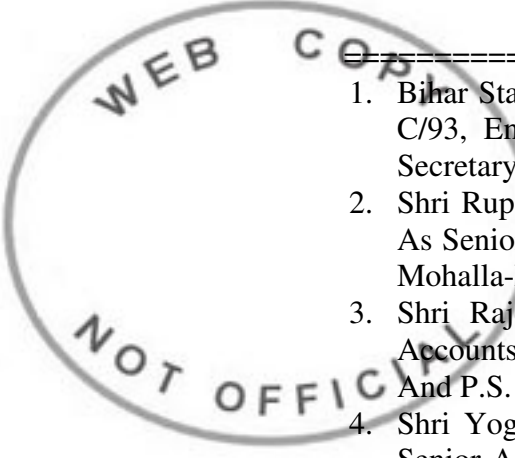
.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 2452 of 2012

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1. Bihar State Works Department Accounts Clerk Association , having Office At C/93, Engineers Club, Sinha Library Road, Patna - 1 through Its General Secretary, Shri Yogendra Prasad Dinkar
 2. Shri Rupak Kumar Sinha Son Of Late Shashi Mohan Prasad Presently Posted As Senior Accounts Clerk At Public Health Division, Patna West, Resident Of Mohalla-Rajendra Nagar, Road No-6B, P.S. - Kadam Kuan, District- Patna
 3. Shri Rajeshwar Prasad Singh Son Of Late Bishun Singh Retired Senior Accounts Clerk from Rural Works Division No-1, Hajipur, Resident Of Village And P.S. - Sonepur, District - Saran
 4. Shri Yognendra Prasad Dinkar Son of late Devan Singh, presently Posted As Senior Accounts Clerk At Public Health Division, Hajipur, District - Vaishali, Resident Of Bag Dulhan, P.O., P.S. And Town Hajipur, District - Vishali
 5. Shri Ranvijay Prasad Son Of Shri Mohan Prasad Presently Posted As Accounts Clerk in Vaishali Building Division, Hajipur, Resident Of Village - Girdhari Chak, P.S.- Vena, District - Nalanda
 6. Shri Randhir Kumar Suman son of Late Manohar Rout Retired Senior Accounts Clerk From Works Division No-1, Hajipur, Resident Of Village - Pagahiya, P.S. Kathaiya, District - Muzaffarpur
 7. Shri Ashok Kumar Verma Son Of Late Mahendra Prasad Verma Presently Posted as Accounts Clerk At Tubewell Division, Begusarai, Resident Of Nakhas Chowk, Town And P.S.- Hajipur, District Vaishali
 8. Narendra Kumar Son Of Late Raghubir Prasad Retired as Senior Accounts Clerk, Public Health Division, Patna, West, Resident of Village - Chakdhari, P.S.- Daniyama, District - Patna
 9. Shri Dinesh Prasad Sinha Son Of Late Alakhdhari Prasad Retired Senior Accounts Clerk, Public Health Division, Bhagalpur East, Resident Of Mohalla-Bhikampur Gumti, P.O.- Kotwali, P.S.- Esakchak, District - Bhagalpur

.... Petitioners

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna
2. The Principal Secretary, Finance Department, Government Of Bihar, Patna
3. The Principal Secretary, Building Construction Department, Government Of Bihar, Patna
4. The Principal Secretary, Road Construction Department, Government Of Bihar, Patna
5. The Principal Secretary, Public Health And Engineering Department (P.H.E.D.), Government Of Bihar, Patna
6. The Principal Secretary Rural Works Department, Government Of Bihar, Patna
7. The Secretary Minor Irrigation Department, Government Of Bihar, Patna
8. The Joint Secretary, Finance Department, Government Of Bihar, Patna

.... Respondents

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Appearance :

(In CWJC No. 7001 of 2013)

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate

For the Respondent/s : Mr. P.N. Shahi, Sr. Advocate, AAG-06
Mr. Dharendra Verma, AC to AAG-6

(In CWJC No. 7302 of 2013)

For the Petitioner/s : Mr. S.B.K. Mangalam, Advocate

For the Respondent/s : Mr. Rajiv Roy, GP-1
Mr. Arun Kumar, AC to GP-1

(In CWJC No. 2452 of 2012)

For the Petitioner/s : Mr. Abhay Shankar Singh, Advocate

Mr. Amit Kant Mishra, Advocate

For the Respondent/s : Mr. S.S.P. Yadav SC-19

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 08-08-2016

Heard learned counsel for the petitioners and the learned
counsel for the State.

In all these petitions are disposed of on a short point
without going into detail on the merit of these cases.

In the present case, the petitioners are claiming relief of
mandamus for a direction to grant the pay scale of Rs. 5500-9000
with effect from 01.01.1996, corresponding to the pay scale of PB II
Grade Pay 4600 with effect from 01.01.2006, on the ground that if
the Senior Accounts Clerk in the service of the Government of India
has been paid his salary in the pay scale of Rs. 5500-9000 with
effect from 01.01.1996 and corresponding pay scale of Rs. 5500-
9000 with effect from 01.01.2006, the same benefit cannot be
denied to the petitioners since the State Government has already
implemented the same pay scale for its employees at par with the
employees of the Central Government, but in the course of
argument, they have modified their claim that they should be given



the salary at par with the Senior Accounts Clerk of the Treasury Department. The ground has been taken that in past, the Senior Accounts Clerk and Accounts Clerk of Treasury Department were claiming the same pay scale at par with the Accounts Clerk of the Works Department and on the ground of nature of duties performed by Accounts Clerk of the Treasury Department are discharging that same duty as that of the Accounts Clerk of the Works Department. In nutshell, the claim was made that they should be paid equal pay for equal work, but in course of time, salary of Accounts Clerk and Senior Accounts Clerk of the Treasury has gone up and the salary of the Accounts Clerk Works Department could not catch as a result caused heart burning to these petitioners, claiming that, they should be given the same pay scale, corresponding revised pay scale to the Accounts Clerk or Senior Accounts Clerk of Works Department at par with the Accounts Clerk and Senior Accounts Clerk of the Treasury Department.

The learned counsel for the State has pointed out that some of the persons have entered into the services on a compassionate ground, they cannot claim the same treatment as those who have entered into facing the test of selection as the persons who are appointed on compassionate ground is by way of compassion, was not required to undergo any test of the selection



and in support of the claim, the learned counsel for the State has placed reliance on the order passed by this Court in C.W.J.C. No. 10441 of 2010 where the persons who were appointed on compassionate ground were claiming the same pay scale as that of the persons who have been appointed in a regular manner but the Court refused to accept the submission, claiming that equal pay for equal work will not be applicable, when the entry in the service for the two sets of the employees are different. It will be nothing but a bald claim which cannot be accepted in view of the nature of entry of the compassionate ground, it will be useful to quote the relevant paragraph of the aforesaid judgment, which reads as follows:-

“In Renjith Kumar” s case (supra), a two Bench decision, was rendered on its own facts. The controversy related to parity in pay scale between Presiding officers of Industrial Tribunal and District Judges. The expression “ the only difference is their source of recruitment” was made in context of the fact that the former did not require approval of the High Court while the latter did so with the State contending that the difference lay in the appointments made under Articles-

233 and 234 of the Constitution. It was held at paragraph 18 :-

“18. In the present case, the respondents' claim before the High Court was confined to equal scale of pay to that of the District Judges. This was based on the fact that the respondents are discharging similar duties and functions in the administration of justice and their scale of pay was equal to that of District Judges till revision of pay scales of the judicial officers in the year 1998. The Industrial Tribunals are indisputably judicial tribunals manned by legal professionals who are eligible to be appointed as District Judges or Judges of the High Courts. The Presiding Officers are exercising judicial powers and duties under the ID Act, 1947 and their decisions are subject-matter of challenge before the High Court by way of writ petition. The only difference is their source of recruitment.”

Both appointments were based on a competitive selection process and related to discharge of judicial duties amenable to challenge in similar manner under the law. The petitioners are clearly distinguishable as



falling in a category by themselves to which both the judgments sought to be relied upon have no applicability. It cannot be lost sight of that it is the contention of the respondents that except for those recruited under the advertisement of 1998 mentioning the pay-scale of Rs.4000-6000/- even subsequent appointees through competitive merit selection have been granted the pay-scale of Rs.3050-4590/- only. The writ applications are dismissed.”

This Court is not giving any opinion on the merit of the cases. Of course, the person who has entered into the service on compassionate ground cannot compare with those persons who have entered into the service by different manner, method and after passing through the test of selection as, at the same time, the learned counsel for the State has taken plea that it is a matter of 1999, for the first time, the petitioners have approached this Court claiming for equal pay for equal work and, so much so that they have never raised the plea of discrimination before the Pay Revision Committee.

Learned counsel for the petitioners submits that as equal pay for equal work has been adverted on the principle of Article 39 of the Constitution of India which falls in Part IV of



the Constitution is meant for the governance of the country. At the same time, the non-payment of the salary at par with the corresponding employee at equal status is continuing discrimination where as the State claims that equal pay for equal work will not be entertainable after lapse of long period. It has further been submitted that petitioners cannot compare themselves with Accounts Clerk and Senior Accounts Clerk of Treasury Department has placed reliance on the judgment of the Division Bench in C.W.J.C. No. 8184 of 1988 at Annexure I /2. At the same time, the petitioner has placed reliance on the judgment of C.W.J.C. No. 3063 of 1992 which was challenged by the State in L.P.A. 165 of 2002, the same was dismissed by the Division Bench. When a person makes a prayer for issuance of mandamus, two essential ingredients are required, first whether the person has ever made any claim of the relief sought in the writ application before the authority concerned and, at the same time, the claim is based upon either to the statutory right or the legal right, but in these cases, petitioners have not approached to the Appropriate Authority for their claim.

In such circumstances, let the petitioners should file a detailed claim before the Principal Secretary, Finance Department, who will be obliged to look into the case of the

petitioners and take decision by passing a reasoned order preferably within a period of six months on the date from filing of the representation.

With these observations and directions, these petitions are disposed of.

(Shivaji Pandey, J)

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