

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13451 of 2013

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1. Md. Samiuddin Son Of Sri Slehuddin Resident Of Village And P.O.- Maheshpatti, P.S.- Ujiarpur, District Samastipur
 2. Md. Haroon Rashid Son Of Md. Idris Resident Of Nagmatia Colony, Road No. 4/B, Near Masjid, Nagmatia Road, P.S.- Civil Line Gaya, District- Gaya

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Cabinet Secretariat (Rajbhasa Directorate) Department, Old Secretariat, Patna
2. The Director, Cabinet Secretariat (Rajbhasa) Department, (Urdu Directorate), Old Secretariat, Patna
3. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok, Adv.
Mr. Jitendra Kumar Rai, Adv.
For the Respondent/s : Ms. Kumari Amrita, Adv.
Dr. Anand Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-09-2016

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

In this case, the petitioners have claimed that their pay-scale, which was fixed, vide memo no. 269 dated 21.12.2010, be rectified and the same should be revised in the corresponding pay-scale of Rs. 4000-6000 (now revised to Rs. 5200-20200 and the Grade Pay of Rs. 2400) as similarly situated persons have been provided the

same benefit and also provide corresponding benefit under the Bihar Pension Rules, 1950.

This case has a chequered history as the Rashtrabhasa Department, Government of Bihar published an advertisement dated 19.1.1990 whereby invited an application for 249 posts of Urdu typist in the pay-scale of Rs. 580-680 (which was revised to 1200-1800, the corresponding change was made to Rs. 4000-6000 and ultimately 5200-20200 with pay band of Rs. 2400/-).

The present petitioners and others applied for the post and accordingly the petitioners were issued admit card asking them to appear in the selection test, following the selection test, a list of 239 candidates was published for appointment against 249 posts, later on it transpires that in the select list of 239 candidates, the name of five persons were repeated on account of the fact that they have filed an application from more than two different districts and consequently they have appeared in the selection test, accordingly, they were selected from two different places. On account of that, the five posts also remained vacant. So in total 15 posts of Urdu typist remained vacant. For filling up these remaining vacancies, the petitioners and others were directed to appear in the office of the Director, Rashtrabhasa Department, Government of Bihar, Patna with all the original document on 20.12.1993, the petitioners duly complied with



the direction and submitted the papers in the office. The petitioners and others were directed to appear in the further test on 24.12.1993 for filling up the 10 posts reserved for the candidate belonging to Annexure-II categories which were coming vacant from before. Later on, Special Selection Committee, in the meeting held on 29.12.1993, took the decision to filling up the 10 of Annexure-II reserve category candidate on the basis of test held on 24.12.1993. It also took a decision to fill up the five vacancies created from non-joining of the candidates in the select list on account of repetition of the names of the candidates in the earlier select list. On the basis of said decision taken by the Special Selection Committee, a general notice was issued in the newspaper giving the name of selected candidates including the petitioners for filling up the vacancies but, these two petitioners were deprived of the appointment claiming that they should also be appointed against the vacant post and they have wrongly been treated arbitrarily. When the authority did not pay any heed to the request of the petitioners, the petitioners moved this Court in CWJC No. 1640 of 1997. The Court found that the authorities have flouted the reservation policy of reservation as out of 234 posts, 179 candidates from the general category were appointed against 124 posts meant for the general category quota. In other words, 55 excess candidates of general category candidates were already appointed against 60



reserved posts and it was found that the respondent authorities have appointed more candidates of general category on the post meant for reserved category candidate. It also appears from the order that the respondents have sought permission from the then Hon'ble Chief Minister, the permission was granted for de-reservation subject to the carry forward of the reserved post for three recruitment year. The Court has found that there is 91% posts were occupied by the general category candidate. In such circumstances, the Court has stated that depriving the petitioners from appointment is quite unreasonable, unfair and unsustainable in law, accordingly, the Court directed for appointment of the petitioners which was approved by the Division Bench in L.P.A. No. 1289 of 1999, the same was challenged by the State of Bihar in S.L.P. No. 3634 of 2001 and the Hon'ble Supreme Court recorded that there was encroachment upon the post of reserved category candidate but, the Court did not give any opinion as their cases were not subject matter before the Hon'ble Supreme Court. Accordingly, it has been directed that it would be open to the Government to de-reserve 60 posts, all these de-reserved posts be filled up by the candidates from general category and the respondent may also consider on merit. Thus, the order passed by the learned Single Judge became final. When the order was not complied, then the petitioners approached this Court in M.J.C. No. 3350 of 1999 feeling



the heat of contempt proceeding, the petitioners were appointed but, in a reduced pay-scale of 3050-4590 whereas the claim has been made that they should have been appointed in the pay-scale of Rs. 4000-6000. After joining, the petitioners filed representation for correction of the pay-scale but, it did not give any positive result, ultimately the petitioners approached this Court in the present case.

A claim has been made by the petitioners that they have been appointed against the vacancies published on 19.1.1990 and those who have been appointed earlier against the same notification have been granted higher pay-scale but, these petitioners, who have been appointed on the behest of the Court's order, they have been adjusted against the reduced salary which is not permissible in law and is in violation of Article 14 of the Constitution of India which shows discriminatory attitude of the respondents. In support of the submission, learned counsel for the petitioners have placed reliance on an order passed by this Court in CWJC No. 13577 of 2006 (Manish Kumar Pathak & Ors. Vs. The State of Bihar & Ors.) wherein persons were appointed against the post notified but, on account of certain development, they were adjusted in the lower pay-scale, the Court has taken a view that invitation was given for the appointment of the candidates in particular pay-scale and later on, after selection, paying the lesser pay-scale is violative of Article 14 of



the Constitution of India and this Court has directed that pay-scale should be as that of notification was published in the newspaper. In the present case, learned counsel for the petitioner has submitted that not only the pay-scale was advertised in the newspaper but, by and large, all the persons, except these two petitioners, have been given higher pay-scale, so action should be rectified by this Court whereas learned counsel for the State has submitted that the petitioners cannot compare themselves on account of the fact that at the first instance of selection on 239 posts, these petitioners were not selected but, later on special test was conducted and, in that selection, they were appointed.

Having heard learned counsel for the parties, it will be relevant to mention that the advertisement against which these petitioners applied for their appointment was published on 9.1.1990, out of that, 239 candidates were appointed, out of that 5 candidates did not join, thereafter, the Department decided to fill up 15 vacant posts, 5 posts which was remained vacant on account of repeated candidates and 10 vacant posts out of 249 vacancies. So, for that, examination was conducted, they were called for test in which petitioners were declared successful. All selections have been made against single notification, in first go 239 persons were appointed, petitioners were called for their proficiency test internally but they were deprived of their appointment. The internal proficiency test



cannot be said that selection was made in different transaction but it was single transaction against single advertisement. There cannot be any distinction between the persons who were appointed against the 239 posts and against the five posts, the two petitioners were appointed. It is not a case of the State that the fresh advertisement was published and against that vacancies, petitioners were selected but not appointed. Further test held to verify their proficiency in such circumstances, when all other persons have been given single pay-scale, it will not be proper that the petitioners should be discriminated and paid reduced pay-scale on account of further test held by the Director. Virtually, they were the persons appointed against the same advertisement, merely appointment after internal proficiency test cannot be a basis to give reduced pay-scale when both the petitioners are discharging the same nature of duty. These petitioners and others were Urdu typist, were appointed against the same advertisement, so giving different pay-scale is arbitrariness and discriminatory act of the respondents. It is well known principle of law that the arbitrariness and discrimination are antithesis rule of law, violates Article 14 of the Constitution of India and the respondents cannot make discrimination in the same class not based on reasonable classification for the purpose sought to be achieved.

In such view of the matter, this Court holds that the

petitioners are entitled to the same pay-scale as that of 239 candidates appointed as a Urdu typist. The petitioners are entitled to the scale of pay from the date of appointment and the respondents are directed to make necessary calculation and pay the difference of salary.

This application is, accordingly, allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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