

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13053 of 2013

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1. Shila Sinha, wife of Sri Vinod Kumar Sinha, R/O Ushari, P.O.- Hasanpur, District- Siwan, Presently Residing At New Basti Mahadewa, P.S.- Siwan Town, District- Siwan.
 2. Ashok Kumar Sinha, son of Giriwar Dhari Sinha, resident of Mohalla- Kasera Toli, P.S.- Siwan Town, District- Siwan.

.... Petitioners

Versus

1. The State of Bihar.
2. The Collector, Siwan, P.S. and Distt.- Siwan.
3. The Deputy Collector (Establishment), Siwan, P.S. and District- Siwan.

.... Respondents

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Appearance:

For the Petitioners: Mr. Bipin Bihari Singh, Adv.

For the Respondent: Mr. Shashi Shekhar Kumar Prasad, A.C. to P.A.A.G.-2

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 29-11-2016

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

2. In this case, the petitioners are claiming that they should be regularized in the pay scale of Rs.4000-6000/- from the date of their initial appointment, but they have wrongly been regularized in the pay scale of Rs.3050-4590/- by letter dated 23.10.2006 passed by the District Magistrate, Siwan in compliance of the order passed by this Court in C.W.J.C. No.9934 of 1999 and M.J.C. No.1750 of 2005.

3. The short facts of this case are that the petitioners were



working as Copyist in the Collectorate, Siwan on daily wages basis since March, 1992 and they continued to discharge the duty upto November, 1995 and thereafter their services were dispensed with. Against the action of the respondents, the petitioners have approached this Court in C.W.J.C. No.9934 of 1999, which was finally heard and disposed of on 17.12.2004 with a direction to the respondents to create the posts at the earliest and the same be filled up in accordance with law within a period of six months from the date of receipt/production of a copy of this order.

4. When the regularization was not made, the petitioners approached this Court in Contempt proceeding vide M.J.C. No.1750 of 2006 and this Court vide order dated 16.10.2006 disposed of the said Contempt petition on the assurance of the State that they were going to comply the order in its true letter and spirit. In pursuance thereof, the petitioners were absorbed in the service as Lower Division Clerk in the pay scale of Rs.3050-4590/- vide Memo No.209 dated 23.10.2006.

5. The grievance of the petitioners is that they should be regularized in the pay scale of Rs.4000-6000/- as they became entitled for absorption while the post of Lowe Division Clerk and Upper Division Clerk were merged together and at that time there



was only one pay scale of Rs.4000-6000/-. But, it is required to be noted that the de-merger has taken place in the year 2000 and thereby the post of Lower Division Clerk and Upper Division Clerk were created. As the history goes, before 1980 there were two posts i.e. Lower Division Clerk and Upper Division Clerk, but the Government by its policy decision merged both the posts and this merger continued upto the year 2000 and thereafter again there was a de-merger and two pay scales have been provided one for the Lower Division Clerk and another for the Upper Division Clerk.

6. Learned counsel for the petitioners submits that the cause of action took place in the year 1999 when the petitioners have filed the writ application No.9934 of 1999. But, the said writ application was disposed of on 17.12.2004 with a direction to the respondents to create the posts at the earliest and the same be filled up in accordance with law and when this order was not complied then ultimately order was passed on 16.10.2006 in M.J.C. No.1750 of 2005 and thereafter the petitioner was absorbed in the service of Lower Division Clerk. So, the petitioners cannot claim any right before the order was passed by this Court on 17.12.2004 and already in the year 2000 there were two posts i.e. Lower Division Clerk in the pay scale of Rs.3050-4590/- and Upper Division Clerk

in the pay scale of Rs.4000/- to 6000/-.



7. To substantiate the claim of the petitioners, learned counsel for the petitioners has placed reliance on the order passed by this Court in C.W.J.C. No.13577 of 2006, which was disposed of on 07.12.2007, which has been decided in different facts as the matter was related to direct recruitment of Assistant-cum-Typist, advertisement was published in the year 1998 and pay scale was mentioned in the said advertisement as Rs.1200-1800/-, which was equivalent to Rs.4000-6000/-. But when the selection was made it was made in the pay scale of Rs.3050-4590. This Court took into consideration that the advertisement was published in which the pay scale of Rs.4000-6000/- was mentioned. If the authorities were not inclined to appoint the candidates in the revised scale, they could have withdrawn the said advertisement and go for fresh appointment, but instead of that they have followed the advertisement of 1998, which itself provides the pay scale of Rs.4000-6000/-, so there cannot be any appointment below the pay scale which has been mentioned in the advertisement.

8. The case which is pressed into service will not be applicable in the present case as in that case the facts are quite different. In that case, the advertisement was of the year 1998,

whereas in the present case, the cause of action has arisen in the year 2004 when this Court passed the order and directed the respondents to create the post and fill up the same in accordance with law, before that the petitioner has no cause of action.

9. In such view of the matter, this Court does not find any merit in this writ application. Accordingly, this writ application is dismissed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
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