

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7898 of 2011

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Md. Manzar Alam son of Late Md. Shafi, Resident of village – Bhag Baisa, Police Station – Kochadhaman, District – Kishanganj, At present posted as Moharir in the Department of Chakbandi Combine Building, Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar
 2. The Principal Secretary, Department of Land Reforms & Revenue, Bihar, Patna, Old Secretariat, Patna.
 3. The Director, Land Records & Measurement, Bihar, Patna Old Secretariat, Patna.
 4. The District Magistrate, Saharsa.
 5. The Settlement Officer, Saharsa.
 6. The District Magistrate, Bhagalpur.
 7. The Settlement Officer, Bhagalpur.
 8. Arun Kumar Paswan, son of Late Rajendra Paswan
 9. Md. Aftab Alam son of Late Ghulam Mohammad
 10. Md. Shakil Jamali son of Late Md. Shahabuddin
 11. Anand Kumar Sah son of Late Jyotish Prasad Sah
 12. Md. Nasir Alam son of Late Manjoor Alam
- Sl.No. 8 to 12 posted as Moharir in the Department of Chakbandi, Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Md. Najmul Hodda

For the Respondent/s : AC to GP 8

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

9. 25-02-2016 Heard Mr. Md. Najmul Hodda, learned counsel for the petitioner and learned A.C. to Govt. Pleader – 8.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for issuance of appropriate writ directing the respondents to pay him salary in the pay scale of Rs. 4000-6000/- and all other consequential benefit. Besides this, he has made a prayer for making payment of difference of salary and other allowances with

statutory interest.

The case of the petitioner is that after the death of his father, who died in harness on 25-06-1994 as Draftman, the petitioner applied for being appointed on compassionate ground. The case of the petitioner alongwith other five persons was recommended for appointment on compassionate ground and order was passed for their appointment on compassionate ground. The name of petitioner with other five persons was recommended, vide letter dated 18-05-1999 (**Annexure – 1** to the writ petition). The order was passed by the Director, Land Records and Measurement addressed to the Settlement Officer, Saharsa for appointing the petitioner with other four persons on compassionate ground after completing certain formalities. It is case of the petitioner that thereafter, in respect of four persons from Annexure – 1, the order was passed for their appointment as Moharir, for which, six posts had already been sanctioned, which is evident from **Annexure – 1** to the writ petition. However, some delay occurred in issuance of appointment letter to the petitioner and finally, appointment letter was issued in favour of the petitioner on 17-01-2001 and immediately thereafter, the petitioner joined as Moharir in the pay-scale of 3200-4900/-. A specific plea has been taken that other persons, who were directed to be appointed, vide



Annexure – 1 to the writ petition, were also appointed in the same pay-scale i.e. 3200-4900/-. However, subsequently in view of de-merger, vide **Annexure – 3** to the writ petition, the petitioner who was appointed in the month of January, 2001, was asked to draw the lesser pay scale than the persons, who were appointed alongwith the petitioner few days before. Those persons have been granted pay scale of Rs. 4000-6000/-

A plea has been taken by learned counsel for the petitioner that since selection process had issued in the year 1999 itself and from the same recommendation, appointments were made, only on the ground that appointment letter was not issued in favour of the petitioner by the end of December, 2000, the petitioner may not be denied the scale, which is being provided to other similarly situated persons.

In this case, counter affidavit has been filed on behalf of respondent no. 4 & 5 and a plea has been taken that since the petitioner was appointed on 17-01-2001 i.e. the date on which post was de-merged and thereafter, initial appointment was to be made as Lower Divisional Clerk. Accordingly, the petitioner has been provided the scale of Lower Divisional Clerk.

It has been argued by learned State counsel that ofcourse, other four persons were recommended by the same

letter, but they were appointed by the month of December, 2000 i.e. before de-merger and as such, they have been provided the scale of Rs. 4000-6000/- and no error has been committed in respect of fixation of the pay scale of the petitioner.

At the time of argument, learned counsel for the petitioner placed heavy reliance on a Single Bench judgment of this Court reported in **2007 (1) PLJR 159 (Ganesh Singh and Ors. Vs. The State of Bihar & Ors.)**. He has specifically placed reliance on paragraph – 15 of the judgment. Similarly, he has placed reliance on **2013 (1) PLJR 752 (State of Bihar vs. Sunil Kumar)** i.e. Division Bench judgment. On aforesaid ground, a plea has been taken that the petitioner is entitled to get the pay scale of Rs. 4000-6000/- and also he is entitled to get the difference of salary and other allowances.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that the selection process of the petitioner was initiated in the year 1999 itself and petitioner's name was recommended for being appointed, vide **Annexure – 1** to the writ petition i.e. order dated 18-05-1999 alongwith other four persons. From **Annexure – 1**, it is evident that six posts of Moharir was sanctioned at the relevant time. It is true that few days delay has occurred in issuance of

appointment letter in favour of the petitioner, but only on the ground that appointment letter was belatedly issued in favour of the petitioner, the petitioner may not be denied salary equal to the persons, who were similarly recommended by the same letter. In **Ganesh Singh's case (*supra*)**, this question was examined by a Bench of this court. It would be proper to quote paragraph 15 of the said judgment, which is as follows:-

“15. Apart from the fair stand of learned Addl. Advocate General-III, there can hardly be any doubt that the petitioner was entitled to be appointed in the pay scale of Rs. 4000-6000/- since all other persons, who had appeared in the same examination, have been appointed in the same pay scale and thus the petitioner cannot be made to suffer for the laches of the District Magistrate, Patna. In the said circumstances, it is directed that the respondent authorities shall appoint the petitioner, *Ram Nath Singh*, on the higher post of clerk in the pay scale of Rs. 4000-6000/- as has been granted to other such employees instead of Rs. 3050-4590/- with effect from the date of his appointment and he would be entitled to all consequential benefits, including the payment of difference of salary and other allowances for the period in question.”

Similar question was examined by a Division Bench of this Court in **Sunil Kumar's case (*supra*)** and in paragraph – 10 of the judgment, the Division Bench had examined the issue and observed as follows:-

“10. We find ourselves in agreement with the views expressed by the learned single Judges in the orders under appeal. All those employees of the State who were appointed on different dates through the same combined competitive examination on random basis and when the posts

were having same pay scale and were therefore, admittedly equivalent to each other cannot be made to suffer by the State by placing some of the 16 such services in lower pay scale. This would amount to impermissible classification and discrimination. The purpose of granting central equivalence in pay scales can be achieved without resorting to such discrimination and for this, the option was given by the Fitment Appellate Committee as well as by the learned single Judge in the case of *Sunil Kumar & Ors.* But unfortunately, the State has not opted for such a suggested course of action. Hence in our view, there is no scope to take a different view in the matter. We are also of the considered view that such employees as the writ petitioners belonging to one or other of the 16 services must be given same revised pay scale w.e.f. 1.1.1996 notionally and effective from 1.4.1997.”

In view of proposition of law as well as the fact that the petitioner was directed to be appointed, vide letter dated 18-05-1999 alongwith other persons, only on the laches, which had occurred on the part of the respondent/State, the petitioner's right may not be infringed.

Accordingly, the writ petition stands allowed with a direction to provide the pay scale to the petitioner as Rs. 4000-6000/-, which was provided to similarly situated persons i.e. respondent no. 8 to 12. The fact that the pay scale of Rs. 4000-6000/- was provided to respondent no. 8 to 12 has not been disputed by the respondent/State.

The writ petition stands allowed with all consequential benefits. All the formalities are required to be

completed within a period of two months from the date of receipt/production of a copy of this order.

(Rakesh Kumar, J.)

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