

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1835 of 2012

IN

Civil Writ Jurisdiction Case No. 8992 of 2005

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1. The State of Bihar
 2. The Secretary, Personal and Administrative Reforms Department, Government of Bihar, Patna
 3. The District Magistrate-Cum-Collector Rohtas at Sasaram
 4. The Treasury Officer, Rohtas at Sasaram
 5. Establishment Deputy Collector, Rohtas at Sasaram

.... Appellants

Versus

1. Mina Devi W/O Late Ram Nagina Prasad R/O Mohalla- Company Sarai, Near Kali Sthan, Sasaram, P.O. & P.S.- Sasaram, District- Rohtas
2. Santosh Kumar S/O Late Ram Nagina Prasad R/O Mohalla - Company Sarai, Near Kali Sthan, Sasaram, P.O. & P.S.- Sasaram, District- Rohtas
3. The Accountant General, Bihar, Vir Chand Patel Path, Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Krishna Kant Singh, Advocate

For the Respondents : Mr. Sachchidanand Choudhary, Advocate

For the Accountant General : Mr. Madhuresh Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 11-03-2016

The State is in this Intra-Court Appeal against the judgment and order dated 01.02.2012 passed in C.W.J.C. No. 8992 of 2005 by learned Single Judge of this Court, whereby learned Single Judge set aside the order of the District Magistrate-cum-Collector, Rohtas, denying the benefit of merger of pay scales to the heirs and representatives of the original writ petitioner, and this Court further directed payments to be made forthwith.

We have heard learned counsel for the State and learned counsel for the contesting petitioners/respondents.

It is not in dispute that Late Ram Nagina Prasad the original petitioner got promotion to the grade of Stenographer Grade-II w.e.f. 21.06.1974. In the writ petition, it was categorically stated that w.e.f. 01.03.1977, the scale admissible to Stenographer Grade-II was merged with Stenographer Grade-I. We may note that, in the counter affidavit in the writ proceeding, this position is accepted. Claim of the writ petitioner was that he was thus entitled to the scale of Stenographer Grade-I w.e.f. 01.03.1977, but he was not granted the same. He kept filing representations and ultimately he was forced to approach the learned Chief Secretary of the State. The Chief Secretary then directed the Collector, Rohtas, to take a decision in the matter. By this time, the original writ petitioner had superannuated on 31.01.1998. The Collector, Rohtas, then examined the matter, and by Annexure-1 to the writ petition being order dated 25.06.2005, rejected the claim being barred by limitation. The learned Single Judge has set aside this order of the Collector and directed the payments.

Learned counsel for the State submits that the claim as made by the writ petitioner was grossly barred by



limitation. Learned Single Judge did not entertain this plea nor do we propose to raise this plea. The reason is simple. A person is entitled to a pay scale who has to be given that pay scale as a matter of entitlement. The State, which is a welfare State, cannot say that though I am bound by the statute and I am bound to grant the pay scale to my employee, but if I have slept over the matter, the right of the employee is extinguished or restricted. Such a plea from a model employer like the State cannot be comprehended, especially when, in the counter affidavit, the position that the pay scale of Stenographer Grade-II was merged with Stenographer Grade-I w.e.f. 01.03.1977 is not in dispute. The State must do what is right and what is lawful and not act arbitrarily. There being no dispute on this count, the learned Single Judge was correct in allowing the writ petition, and consequently, we find that no error committed by learned Single Judge.

This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R.

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