IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18433 of 2016

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1. Shashi Shekhar Ambastha, son of Late Rudra Bihari Charan, Resident of Mohalla- Sheikhpura, P.O.- Bihar Veterinary College, P.S. Shastri Nagar, District- Patna, presently posted as Senior Accounts Clerk, office of Executive Engineer (Mechanical), Road Construction Department, National Highway Mechanical Planning Division, Patna.
2. Rajiv Ranjan, son of Late Ram Pukar Mahto, Resident of Mohalla- Gachhi Tola, Station Road, P.O. and P.S. Begusarai, District- Begusarai, presently posted as Senior Accounts Clerk, office of Executive Engineer (Mechanical), Road Construction Department, National Highway Mechanical Division, Nawada.
3. Pradeep Kumar Sinha, son of Late Bishwanath Prasad, Resident of Behind the house of Dhanraj Singh (Ex. M.P.), Punai Chak, P.O. Punaichak, P.S. Shastri Nagar, District- Patna, presently posted as Senior Accounts Clerk, office of Executive Engineer (Mechanical), Road Construction Department, Mechanical Circle, Patna.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum- Additional Secretary-cum- Special Secretary, Road Construction Department, Government of Bihar, Patna.
6. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna.
7. The Joint Secretary, Road Construction Department, Government of Bihar, Patna.
8. The Chief Engineer (Mechanical), Road Construction Department, Mechanical Wing, Bihar, Patna.
9. The Superintending Engineer (Mechanical), Road Construction Department, Mechanical Circle, Patna.
10. The Superintending Engineer, Road Construction Department, National Highway, Mechanical Circle, Patna.
11. The Executive Engineer (Mechanical), Road Construction Department, National Highway, Mechanical Planning Division, Patna.
12. The Executive Engineer (Mechanical), Road Construction Department, National Highway, Mechanical Division, Nawada.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 18971 of 2016

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Sanjay Kumar, Son of late Ambika Prasad Singh, Resident of Village and P.O. Bakhtiyarpur, P.S. Bakhtiyarpur, District- Patna, presently working as Senior Accounts Clerk in the office of Executive Engineer, Minor Water Resources Department, Minor Irrigation Division, Patna, near Patna High Court.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Minor Water Resources Department, Government of Bihar, Patna.
6. The Executive Engineer, Minor Water Resources Department, Minor Irrigation Division, Patna, near Patna High Court.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 11825 of 2016

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1. Krishna Kumar Sinha, son of late Ganesh Dutt, resident of House No. 27, Lal Bahadur Shastri Nagar, Norh S.K.Puri, P.O. G.P.O., P.S. Sri Krishnapuri, District Patna, the retired Senior Accounts Clerk, Water Resources Department, Flood Protection Division, Mokama, Camp Bakhtiyarpur, District Patna
2. Akhauri Jai Ranjan Prasad, son of late Akhauri Janardan Prasad, resident of Road No.11, East Ashok Nagar, P.O. Lohia Nagar, P.S. Kankarbag, District Patna, the retired Senior Accounts Clerk, Water Resources Department, Water Ways Division, Sheikhpura, District Sheikhpura
3. Prabhu Nandan Sharma, son of late Sugambar Mistriri, resident of Mohalla Bhaluhipur, P.O. Ara Chowk, P.S. Ara Town, District Bhojpur at Ara, the retired Senior Accounts Clerk, Water Resources Department, Flood Protection Division, Bihta, Camp Khagaul, District Patna
4. Mohit Narayan Singh, son of late Anandu Singh, resident of village Sakarpura, P.O. and P.S. Masaurhi, District Patna, the Retired senior Accounts Clerk, Water Resources Department, Flood Protection Division, Mokama, Camp Bakhtiyarpur, District Patna
5. Rudra Narayan Khan, son of late Fulbhadra Khan, resident of Brahm Asthani, Lane No.1, Raghunath Tola, Anishabad, P.O. Anishabad, P.S. Gardanibag, District Patna, the retired Senior Accounts Clerk, Water Resources Department, Irrigation Division, Rajauli, District Nawada
6. Kuldip Singh, son of late Jhopali Mahto, resident of Karma Tanti More, P.O. Karma Tar, P.S. Dugda, District Bokaro (Jharkhand), the retired Senior Accounts Clerk, Water Resources Department, Irrigation Division, Rajauli, District Nawada

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Finance Secretary, Finance Department, Govt. of Bihar, Patna
3. The Secretary (Expenditure), Finance Department, Govt. of Bihar, Patna
4. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna
5. The Superintending Engineer, Water Resources Department, Punpun Flood Protection Circle, Anishabad, Patna
6. The Superintending Engineer, Water Resources Department, Irrigation Circle, Jamui
7. The Superintending Engineer, Water Resources Department, Ganga Sone Flood Protection Circle, Mithapur, Patna
8. The Superintending Engineer, Water Resources Department, Water Ways

Circle, Biharsharif
9. The Executive Engineer, Water Resources Department, Flood Protection Division, Mokama, Camp Bakhtiyarpur, District Patna
10. The Executive Engineer, Water Resources Department, Water Ways Division, Sheikhpura, District Sheikhpura
11. The Executive Engineer, Water Resources Department, Flood Protection Division, Bihta, Camp Khagaul, District Patna
12. The Executive Engineer, Water Resources Department, Irrigation Division, Rajauli, District Nawada

.... Respondents

with

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Civil Writ Jurisdiction Case No. 15678 of 2016

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1. Abhay Shankar Sharan, Son of Sri Rama Shankar Sharan, Resident of Flat No. 205, Vijay Apartment, P.O.- G.P.O., P.S. Gardanibag, District- Patna, presently posted as Senior Accounts Clerk, Dam gate Design Division-3, Water Resources Department, Anishabad, Patna.
2. Neelam Gupta, Wife of Sri Santosh Kumar, Resident of Mohalla- Shivpur Khas Mahal, P.O. Mahendru, P.S. Sultanganj, District- Patna, presently posted as Senior Accounts Clerk, Flood Control Design Division-2, Water Resources Department, Anishabad, Patna.
3. Veena Devi, Wife of Late Kamla Thakur, Resident of Flat No. 229, Road No. 5, Rajbanshi Nagar, P.O. and P.S. Shastri Nagar, District- Patna, presently posted as Senior Accounts Clerk, Flood Control Design Division-1, Water Resources Department, Anishabad, Patna.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Chief Engineer, Central Design Research and Quality Control, Water Resources Department, Anishabad, Patna.
6. The Executive Engineer, Gate Design Division-3, Water Resources Department, Anishabad, Patna.
7. The Executive Engineer, Flood Control Design Division-2, Water Resources Department, Anishabad, Patna.
8. The Executive Engineer, Flood Control Design Division-1, Water Resources Department, Anishabad, Patna.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 19219 of 2016

==

Braj Kishore Singh, Son of Late Ram Kripal Singh Resident of village and P.O. Jhikti, P.S. Kurhani, District - Muzaffarpur, Presently Posted as Senior Accounts Clerk, office of Executive Engineer (Mechanical), Road Construction Department, Mechanical Division, Sikandarpur, Muzaffarpur, District - Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Finance Secretary, Finance Department, Government of Bihar, Patna
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna
4. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
5. The Engineer - in - Chief - Cum - Additional Secretary - Cum - Special Secretary, Road Construction Department, Government of Bihar, Patna
6. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna
7. The Joint Secretary, Road Construction Department, Government of Bihar, Patna
8. The Chief Engineer (Mechanical), Road Construction Department, Government of Bihar, Patna
9. The Chief Engineer (Mechanical), Road Construction Department, Mechanical Wing, Bihar, Patna
10. The Executive Engineer (Mechanical), Road Construction Department, Mechanical Wing, Bihar, Patna

.... Respondents

with

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Civil Writ Jurisdiction Case No. 19804 of 2016

===

Prashant Kumar son of Late Shyam Kishore Prasad Singh Resident of village and P.O. Sarottar, P.S. Khajuria, District - East Champaran at Motihari, presently posted as Senior Accounts Clerk in the office of Executive Engineer, Public Health Engineering Department, Public Health Division, Muzaffarpur.

.... Petitioner

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 Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Public Health and Engineering Department, Government of Bihar, Patna.
6. The Regional Chief Engineer, Public Health Engineering Department, Muzaffarpur.
7. The Superintending Engineer, Public Health Engineering Department, Public Health Circle, Muzaffarpur.
8. The Executive Engineer, Public Health Engineering Department, Public Health Division, Muzaffarpur.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 15921 of 2016

===

1. Prem Chandra Thakur Son of Late Ram Swarath Thakur Resident of village - Jhahuri, P.O. Bishinpur, P.S. Kalyanpur, District - Samastipur, Presently Posted as Senior Accounts Clerk, Flood Control Division, Water Resources Department, Dalsingsarai, District Samastipur

2. Tej Narayan Jha Son of Late Posan Jha Resident of village and P.O. Logunia Suryakanth, P.S. Samastipur Muffasil, District - Samastipur, Presently Posted as Senior Accounts Clerk, Flood Control Division - 2, Water Resources Department, Khagaria, District Khagaria

3. Harendra Prasad Yadav Son of Late Ram Pravesh Prasad Resident of village - Chhitar Chak, P.O. and P.S. Sonepur, District - Saran at Chapra, Presently Posted as Senior Accounts Clerk Road Division, Road Contruction Department, Vaishali

4. Ajay Kumar Singh Son of Sri Ram Janak Singh Resident of village - Bhojpur, P.O. Bishunpur, P.S. Wazirganj, District - Gaya Presently Posted as Accounts Clerk, Public Health Mechanical Division, Public Heaalth Engineering Department, Gaya

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Finance Secretary, Finance Department, Government of Bihar, Patna
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna
4. The Principal Secretary, Water Resource Department, Government of Bihar, Patna
5. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
6. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna
7. The Executive Engineer, Flood Control Division, Water Resources Department, Dalsingsarai
8. The Executive Engineer, Flood Control Division - 2, Water Resources Department, Khagaria
9. The Executive Engineer, Road Division, Road Construction Department, Vaishali
10. The Executive Engineer, Public Health Mechanical Division, Public Health Engineering Department, Gaya

.... Respondents

with

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Civil Writ Jurisdiction Case No. 20438 of 2016

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1. Akhilesh Upadhyay, son of Late Sidhanath Upadhyay, Resident of Village and PO- Sadisopur, P.S.- Bihta, District- Patna, presently posted as Senior Accounts Clerk, Office of the Chief Engineer Planning, Monitoring and Ground Water, Minor Water Resources Department, Government of Bihar, Patna.
2. Amar Kumar, son of Late Siya Sharan Prasad Nandan, Resident of Mohalla- New Alkapuri, Gardanibag, PO- Anishabad, P.S. Gardanibag, District- Patna, presently posted as Senior Accounts Clerk, Office of the Chief Engineer, Planning, Monitoring and Ground Water, Minor Water Resources Department, Government of Bihar, Patna.
3. Amarendra Kumar Sinha, son of Late Alakh Kumar Singh, Resident of Village- Katahal Tola, Sohsarai, PO and PS- Sohsarai, District- Nalanda at Biharsharif, presently posted as Senior Accounts Clerk, office of the Executive Engineer, Minor Water Resources Department, Minor Irrigation Division, Patna.
4. Shatrunjay Kumar, son of Late Akhileshwar Prasad Singh, Resident of Village- Sakari Chowki, PO and PS- Arwal, District- Arwal, presently posted as Senior Accounts Clerk, office of the Engineer-in-Chief, Minor Water Resources

Department, Government of Bihar, Patna.

5. Sheo Pujan Prasad, son of Late Ram Briksha Ram, Resident of Village and PO- Sameya Garh, PS- Ghosbari, District- Patna, presently posted as Senior Acconts Clerk, office of the Engineer-in-Chief, Minor Water Resources Department, Government of Bihar, Patna.

6. Ramanuj Verma, son of Late Ram Pravesh Verma, Resident of Village- Azad Nagar, PO- Chiroura, PS- Naubatpur, District- Patna, presently posted as Senior Accounts Clerk, office of the Chief Engineer, Minor Water Resources Department, Sheikhpura, Patna.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Minor Water Resources Department, Government of Bihar, Patna.
6. The Chief Engineer, Planning, Monitoring and Ground Water, Minor Water Resources Department Department, Government of Bihar, Patna.
7. The Chief Engineer, Minor Water Resources Department, Shiekhpura, Patna.
8. The Executive Engineer, Minor Water Resources Department, Minor Irrigation Division, Patna.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 19833 of 2016

==

Santosh Kumar, son of Late Braj Mohan Ram, Resident of Mohalla- Sri Nagar, Thakurwari Road, P.O. and P.S. Aurangabad, District- Aurangabad, presently posted as Senior Accounts Clerk in the office of the Executive Engineer (Mechanical), Road Construction Department, National Highway Mechanical Division, Dehri-on-Sone, District- Rohtas.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum- Additional Secretary-cum- Special Secretary, Road Construction Department, Government of Bihar, Patna.
6. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna.
7. The Joint Secretary, Road Construction Department, Government of Bihar, Patna.
8. The Chief Engineer (Mechanical), Road Construction Department, Mechanical Wing, Bihar, Patna.
9. The Superintending Engineer (Mechanical), Road Construction Department, National Highway Mechanical Circle, Patna.
10. The Executive Engineer (Mechanical), Road Construction Department, National

Highway, Mechanical Division, Dehri-on- Sone, District- Rohtas.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 19197 of 2016

===

Rajib Lochan Chatterjee Son of late Biroja Nand Chatterjee Resident of C-2, Anand Vila Apartment, Ashiana Road, P.O. Ashiana Nagar, P.S. Rajiv Nagar, District- Patna, National Highway Mechanical Circle, Road Construction Department, Bishwesharaiya Bhawan, Bailey Road, Patna.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Government of Bihar, Patna.
2. The Secretary, Finance Department , Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department , Government of Bihar, Patna.
4. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-Cum- Additional Secretary-cum-Special Secretary, Road Construction , Road Construction Department, Government of Bihar, Patna.
6. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna.
7. The Joint Secretary, Road Construction Department, Government of Bihar, Patna.
8. The Chief Engineer(Mechanical), Road Construction Department, Mechanical Wing, Bihar, Patna.
9. The Superintending Engineer(Mechanical), National Highway Mechanical Circle, Road Construction Department, Bihswesharaiya Bhawan, Bailey Road, Patna.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 19584 of 2016

===

1. Sunil Kumar Singh Son of Late Hari Shankar Prasad Singh Resident of Village and P.O. Ram Nagar, P.S. Gaighat, District-Muzaffarpur, Presently Working as Senior Accounts Clerk in Office of the Executive Engineer (Mechanical), Road Construction Department, National Highway Mechanical Division, Muzaffarpur
2. Sandeep Narain Singh Son of Late Shashi Bhushan Singh Resident of Village and P.O. Devapur, P.S. Barauli, District-Gopalganj, Presently Working as Senior Accounts Clerk in Office of the Executive Engineer (Mechanical), Road Construction Department, National Highway Mechanical Division, Muzaffarpur

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Finance Secretary, Finance Department, Government of Bihar, Patna
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna
4. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
5. The Engineer-in-Chief, Additional Secretary-Cum-Special Secretary, Road

Construction Department, Government of Bihar, Patna
6. The Deputy Secretary, Road Construction, Department, Government of Bihar, Patna.
7. The Joint Secretary, Road Construction Department. Government of Bihar, Patna
8. The Chief Engineer, (Mechanical), Road Construction Department, Mechanical Wing, Bihar, Patna
9. The Superintendent Engineer, ((Mechanical), Road Construction Department, National Highway Mechanical Circle Patna
10. The Executive Engineer, (Mechanical) Road Construction Department, National Highway Mechanical Division, Muzaffarpur

.... Respondents

with

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Civil Writ Jurisdiction Case No. 19239 of 2016

===

1. Nand Kishore Singh, son of Late Janki Singh, resident of Village- Tarwan, P.S.- Phulwarisharif, District- Patna.
2. Rajesh Kumar Srivastava, son of Late Ramdeo Prasad Srivastava, resident of Village- Kishun Nagar, P.S.- Kanti, District- Muzaffarpur.
3. Anjani Kumar Sharma, son of Late Umashankar Sharma, resident of Mohalla- Lakshmisagar, (Chuna Bhatti), P.S.- Darbhanga Sadar, District- Darbhanga.
4. Ganesh Shankar Vidyarthi, son of Late Gauri Shankar Mauli, resident of Village- Malahi, P.S.- Sursand, District- Sitamarhi.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Finance, Main Secretariat, Patna.
2. The Principal Secretary Road Construction Department, Government of Bihar, Vishweshwaraiya Bhawan, Bailey Road, Patna.
3. Executive Engineer, Road Division, Road Construction Department, Chapra (Saran).
4. Superintending Engineer, Bridge Design Circle, Central Design Organization, Road Construction Department.
5. Chief Engineer, Flood Control And Water Discharge, Water Resources Department Samastipur.
6. Executive Engineer, Flood Control Division, Darbhanga.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 19442 of 2016

===

1. Amresh Kumar Sinha, son of Late Dasai Ram, Resident of village- Kanauji, P.O. Manoharpur, Kachhuwara, P.S. Gopalpur, District- Patna, the retired Senior Accounts Clerk, Water Resources Department, Drainage Division, Hazipur, District- Vaishali at Hajipur.
2. Akhileshwar Patel, son of Late Laldhari Patel, Resident of village- Rasoolpur, P.O. Sine, P.S. Paterhi Belsar, District- Vaishali at Hajipur, the retired Senior Accounts Clerk, Water Resources Department, Irrigation Mechanical Division, Muzaffarpur.
3. Nand Kishore Singh, son of Late Jagarnath Singh, Resident of village- Baijalpur

Jamuni, P.O. and P.S. Sonpur, District- Saran at Chapra, the retired Senior Accounts Clerk, Water Resources Department, Irrigation Mechanical Division, Muzaffarpur.
4. Chitranjan Prasad Singh, son of Late Triyug Prasad Singh, Resident of village, P.O. and P.S. Vaishali, District- Vaishali at Hajipur, the retired Senior Accounts Clerk, Water Resources Department, Tirhut Canal Division, Saraiya, District- Muzaffarpur.
5. Ram Janam Jha, son of Late Jagan Jha, Resident of village- Kanhauli Rajput Tola, P.O.- R.K. Ashram Bela, P.S. Kanhauli, District- Muzaffarpur, the retired Senior Accounts Clerk, Water Resources Department, Tirhut Canal Division No. 1, Muzaffarpur.
6. Kameshwar Prasad Singh, son of Late Deo Narayan Prasad Singh, Resident of village- Bayadih, P.O. Raghunathpur, P.S. Saraiya, District- Muzaffarpur, the retired Senior Accounts Clerk, Water Resources Department, Water Ways Division, Muzaffarpur presently known as Flood Control Division, Muzaffarpur.
7. Hari Nandan Prasad Yadav, son of Late Jang Bahadur Roy, Resident of village- Parmanandpur, P.O. Ladaura Pakari, P.S. Muzaffarpur Sadar, District- Muzaffarpur, the retired Senior Accounts Clerk, Water Resources Department, Irrigation Mechanical Division, Muzaffarpur.

.... Petitioners

Versus

1. The State of Bihar, through the Chief Secretary, Gov. of Bihar, Patna
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum- Additional Secretary-cum- Special Secretary, Water Resources Department, Government of Bihar, Patna.
6. The Chief Engineer Water Resources Department, Muzaffarpur.
7. The Executive Engineer, Water Resources Department, Irrigation Mechanical Division, Muzaffarpur.
8. The Executive Engineer, Water Resources Department, Drainage Division, Hajipur.
9. The Executive Engineer, Water Resources Department, Tirhut Canal Division, Saraiya, District- Muzaffarpur.
10. The Executive Engineer, Water Resources Department, Tirhut Canal Division No.1, Muzaffarpur.
11. The Executive Engineer, Water Resources Department, Flood Control Division, Muzaffarpur.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 19114 of 2016

==

1. Bidyanand Jha son of Late Gopalji Jha Resident of Mohalla - Gosala, Ward No. 7, Madhubani, P.O. and P.S. Madhubani, District - Madhubani, the retired Accounts Clerk, Water Resources Department, Flood Control Division, Samastipur.
2. Narayan Ji Jha Son of Late Bishwambhar Jha Resident of Village and P.O. Bithauli, P.S. Baheri, District - Darbhanga, the retired Accounts Clerk, Water Resources Department, Flood Control Division No. 2, Jhanjharpur.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Water Resources Department, Government of Bihar, Patna.
6. The Chief Engineer, Water Resources Department, Flood Control and Drainage, Samastipur.
7. The Executive Engineer, Water Resources Department, Flood Control Division, Samastipur.
8. The Executive Engineer, Water Resources Department, Flood Control Division No. 2, Jhanjharpur, District - Darbhanga.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 18936 of 2016

==

1. Bhupendra Prasad, son of Late Chhedi Lal Karn, Resident of Village- Ketuka, P.O. Baraiul, P.S. Darbhanga Sadar, District- Darbhanga, the retired Accounts Clerk, Rural Works Department, Works Division, Dalsingsarai, District- Samastipur.
2. Gauri Shankar Jha, son of Late Kamal Lochan Jha, Resident of Village and P.O. Bithauli, P.S. Baheri, District- Darbhanga, the retired Accounts Clerk, Rural Works Department, Works Division, Dalsingsarai, District- Samastipur.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
5. The Engineer-in-Chief -cum- Additional Secretary -cum- Special Secretary, Rural Works Department, Government of Bihar, Patna.
6. The Executive Engineer, Rural Works Department, Works Division, Dalsingsarai, District- Samastipur.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 10831 of 2016

==

1. Rajeev Ranjan, son of late Sri Narayan Singh, resident of Road No.10, Ashok Nagar, Kankarbag, P.S. Kankarbag, District Patna, presently working as Senior Accounts Clerk in Dam and Gate Design, Division No.4, Water Resources Department, Anishabad, Patna
2. Akhilesh Kumar Singh, son of late Sukhdeo Prasad Singh, resident of opposite AP/4, Azad Path, Saristabad, P.S. Gardanibag, District Patna, presently working as Senior Accounts Clerk, in Dam and Gate Design Division No.1, Water Resources Department, Anishabad, Patna

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Chief Engineer, Central Design, Research and Quality Control, Water Resources Department, Anishabad, Patna
6. The Executive Engineer, Dam and Gate Design Division No.4, Water Resources Departments Anishabad, Pana
7. The Executive Engineer, Dam and Gate Design Division No.1, Water Resources Department, Anishabad, Patna

.... Respondents

with

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Civil Writ Jurisdiction Case No. 14203 of 2016

===

1. Krishna Murari Gupta son of Late Tek Narayan Lal Resident of Mohalla - Panchshil Nagar, P.O. Digha, P.S. Danapur, District - Patna, the retired Senior Accounts Clerk, Rural Works Department, Rural Development Division, Rajgir, District - Nalanda.
2. Vinod Krishna Jamuar son of Late Jai Krishna Jamuar Resident of L.I.G., 14, Lohiya Nagar, P.O. and P.S. Kankarbag, District - Patna, the retires Senior Accounts Clerk, Water Resources Department, Ganga Sone Flood Protection Division, Digha, Patna.
3. Raj Kishore Sharma son of Late Jagdeo Prasad Sharma Resident of village and P.O. - Tilak Tajpur, P.S. Runnisadipur, District - Sitamarhi, the retired Senior Accounts Clerk, Water Resources Department, Dam Gate Design Division No. 4, Anishabad, Patna.
4. Bishnudutt Pandey son of Late Banshidhar Pandey Resident of Village and P.O. Sultanpur, P.S. - Derni District - Saran at Chapra, the retired Senior Accounts Clerk, Water Resources Department, Irrigation Mechanical Monitoring Division, Patna.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
6. The Executive Engineer, Rural Works Department, Rural Development Division, Rajgir, District - Nalanda.
7. The Exeucutive Engineer, Water Resources Department, Canal Division No. 3, Anishabad, Patna.
8. The Executive Engineer, Water Resources Department, Ganga Sone Floor Protection Division, Digha, Patna.
9. The Executive Engineer, Water Resources Department, Dam Gate Design Division No. 4, Anishabad, Patna.
10. The Executive Engineer, Water Resources Department, Irrigation Mechanical Monitoring Division, Patna.

.... Respondents

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Appearance :

(In CWJC No.18433 of 2016)
For the Petitioner/s : Mr. S.B.K.Manglam, Adv.
For the Respondent/s : Mr. Anuj Kumar, AC to GP-4
(In CWJC No.18971 of 2016)
For the Petitioner/s : Mr. S.B.K.Manglam, Adv.
For the Respondent/s : Mr. Ajay Kumar Rastogi, AAG10
Mr. Sushil Kr. Singh, AC to AAG10
(In CWJC No.11825 of 2016)
For the Petitioner/s : Mr. S.B.K.Manglam, Adv.
For the Respondent/s : Mr. D.K. Prasad, GP-14
(In CWJC No.15678 of 2016)
For the Petitioner/s : Mr. S.B.K.Mangalam, Adv.
For the Respondent/s : Mr. Rakesh Prabhat, AC to SC21
(In CWJC No.19219 of 2016)
For the Petitioner/s : Mr. S.B.K.Mangalam, Adv.
For the Respondent/s : Mr. Chitranjan Sinha, PAAG2
Mr. Ranjan Kumar Singh, AC to PAAG2
(In CWJC No.19804 of 2016)
For the Petitioner/s : Mr. S.B.K.Mangalam, Adv.
For the Respondent/s : Mr. Chitranjan Sinha, PAAG2
Mr. Ranjan Kumar Singh, AC to PAAG2
(In CWJC No.15921 of 2016)
For the Petitioner/s : Mr. S.B.K.Mangalam, Adv.
For the Respondent/s : Mr. Chitranjan Sinha, PAAG2
Mr. Ranjan Kumar Singh, AC to PAAG2
(In CWJC No.20438 of 2016)
For the Petitioner/s : Mr. S.B.K.Manglam, Adv.
For the Respondent/s : Mr. Chitranjan Sinha, PAAG2
Mr. Ranjan Kumar Singh, AC to PAAG2
(In CWJC No.19833 of 2016)
For the Petitioner/s : Mr. S.B.K.Mangalam, Adv.
For the Respondent/s : Mr. Raghwendra Kumar, SC22
(In CWJC No.19197 of 2016)
For the Petitioner/s : Mr. S.B.K.Manglam, Adv.
For the Respondent/s : Mr. Ajay Kumar Rastogi, AAG10
Mr. Rohitabh Das, AC to AAG10
(In CWJC No.19584 of 2016)
For the Petitioner/s : Mr. S.B.K.Manglam, Adv.
For the Respondent/s : Mr. Ajay Kumar Rastogi, AAG10
Mr. Rohitabh Das, AC to AAG10
(In CWJC No.19239 of 2016)
For the Petitioner/s : Mr. Kishore Kumar Thakur, Adv.
For the Respondent/s : Ms. Anuradha Singh, SC21
Mr. Rakesh Prabhat, AC to SC21
(In CWJC No.19442 of 2016)
For the Petitioner/s : Mr. S.B.K.Mangalam, Adv.
For the Respondent/s : Mr. S.Rahman, AC to GP24
(In CWJC No.19114 of 2016)
For the Petitioner/s : Mr. S.B.K.Mangalam, Adv.
For the Respondent/s : Mr. Raghwendra Kumar, SC22

(In CWJC No.18936 of 2016)
For the Petitioner/s : Mr. S.B.K.Manglam, Adv.
For the Respondent/s : Mr. Chitranjan Sinha, PAAG2
Mr. Ranjan Kumar Singh, AC to PAAG2
(In CWJC No.10831 of 2016)
For the Petitioner/s : Mr. Shashi Bhushan Kumar Manglam, Adv.
For the Respondent/s : Mr. Sanghamitra Ghosh, AC to GP15
(In CWJC No.14203 of 2016)
For the Petitioner/s : Mr. S.B.K.Manglam, Adv.
For the Respondent/s : Mr. Ajay Kumar Rastogi, AAG10
Mr. Sushil Kr. Singh, AC to AAG10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
CAV JUDGMENT
Date: 28-11-2017

The batch of cases in hand is a living example of State generated litigations for even though the relief prayed by the petitioners in their respective writ petitions should ordinarily flow to them in view of the law settled by this Court on the issue raised and contested herein and in view of Clause 4C of the Bihar Litigation Policy, 2011 but the same is being denied by the State in its Finance Department, inter alia, on grounds that these petitioners were either not a party to the writ petition or form a class apart. The State, thus, by trying to create artificial classification amongst the same set of employees, has denied the benefits to these petitioners which should have been automatically extended to them since it is not in dispute that the issues raised and contested in this batch of writ petitions stands squarely covered by the judgments which though finds reference in the orders impugned herein but is not being extended to these petitioners.

Although each of the writ petition raises identical issues but since according to the petitioners the pleadings in C.W.J.C.No. 18433/2016 and C.W.J.C.No. 19239/2016 would cover the rest of the cases, I shall be referring to the pleadings as well as relief claimed therein, in these two writ petitions for ready reference unless specifically clarified with reference to any other writ petition.

With the consent of the parties the writ petitions have been heard with a view to final disposal at the stage of admission itself.

Since the issues in contest and the relief prayed by the writ petitioners in each of the writ petitions is the same, hence I would place on record the relief prayed by the petitioners in C.W.J.C.No. 18433/2016 which practically covers the cases of other petitioners as well:

> "(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the letter dated 27.9.2016 issued under the signature of the Joint Secretary, Road Construction Department, Govt. of Bihar, Patna (respondent no.7) and contained in his memo no. 7936 dated 27.9.2016, whereby and whereunder a direction has been issued to respondent no.8 and all other concerned that the benefits of Resolution No. 3111 dated 25.3.2015 and Resolution No. 163 dated 8.1.2016 would not be available to the Accounts Clerk appointed on compassionate ground.
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> (II) For issuance of an appropriate writ in the nature of

CERTIORARI for quashing the letter dated 7.10.2016 issued under the signature of the respondent no.3 and contained in his memo no. 8083 dated 7.10.2016 whereby and whereunder the respondent no.3 has informed the Accountant General, Bihar, Patna that the benefits of Resolution no. 5276 dated 30.6.2016 and Resulution no. 163 dated 8.1.2016 would not be available to the Accounts Clerk, who were either not a petitioner in C.W.J.C.No. 19015 of 2011 and C.W.J.C.No. 16346 of 2011 or if they have been appointed on compassionate ground.

(III) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the last paragraph of memo no. 5276 dated 30.6.2016 whereby and whereunder the benefits of the aforesaid Government Resolution has been restricted to the writ petitioners of the two writ petitions i.e. C.W.J.C.No. 18015 of 2011 and 16346 of 2011.

(IV) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the respondent Authorities for grant of similar pay scale to the petitioners at par with the petitioners of the aforementioned two writ petitions i.e. C.W.J.C.No. 18015 of 2011 and C.W.J.C.No. 16346 of 2011 on the ground that if the petitioners of C.W.J.C.No. 18015 of 2011 was also appointed on compassionate ground and he has been granted the benefits of first Assured Career Progression in the pay scale of Accounts Officer i.e. Rs.6500- 10,500 and its corresponding pay band PB-3, the writ petitioners, who are also similar to the petitioner of C.W.J.C.No.

> 18015 of 2011 cannot be discriminated and therefore, the impugned letters issued by the respondent Authorities offends the provisions of Articles 14 and 39(1)(d) of the Constitution of India."

The petitioners in C.W.J.C.No. 19239/2016 while questioning the order bearing no. 163 dated 8.1.2016 have alongside made a supplementary prayer for grant of 1^{st} and 2nd Assured Career Progression in the pay scale of Rs.6500-10,500/- (P.B.2+ 4800) and Rs.10,000-15,200 (Pay Band- 3+6600) respectively in the light of the resolution bearing No. 3111 dated 25.3.2015 of the State Government.

Facts:

The petitioners in C.W.J.C.No. 18433/2016 were appointed as Accounts Clerk in the year 1990 on which post they gave their joining in the respective office on 31.7.1990. The petitioners claim to be Graduates before they joined the service. All these petitioners were appointed on compassionate ground.

In so far as the petitioners in C.W.J.C.No. 19239.2016 are concerned, while petitioner no.1 was appointed as Junior Accounts Clerk on compassionate ground vide order dated 23.5.1987, petitioner no.2 was similarly appointed on compassionate ground on the post of Junior Accounts Clerk on 8.4.1988, Petitioner no.3 was appointed as Junior Accounts Clerk on compassionate ground vide order bearing No. 2780 dated 7.12.1994 and petitioner no.4 was appointed on compassionate ground against the post of Junior Accounts Clerk vide Memo No. 78/C dated 27.3.1997.

The petitioner in C.W.J.C.No. 18971/2016 is also a compassionate appointee having been appointed as Accounts Clerk vide Memo No. 221 dated 23.1.1993.

In so far as the petitioners in C.W.J.C.No. 11825/2016 is concerned, while petitioners no. 1, 2 and 4 were appointed as Junior Accounts Clerk prior to 1.5.1980 and were upgraded as Accounts Clerk with effect from 1.5.1980, petitioners no. 3, 5 and 6 were appointed as Accounts Clerk on 16.10.1981, 11.1.1982 and 23.5.1981 respectively. Again while petitioners no. 1 and 2 are Graduates, petitioners no. 3 to 6 are non-Graduates.

In so far as the petitioners in C.W.J.C.No. 14203.2016 is concerned, while petitioners no. 1 and 2 were appointed on 13.5.1972 11.7.1972 respectively, petitioners no. 3 and 4 were appointed on 30.2.1983 and 8.5.1987 respectively in the Accounts Clerical Cadre.

In so far as the petitioners in C.W.J.C.No. 10831/2016 is concerned, both of them were appointed as Accounts Clerk and they joined their post on 3.5.1990.

In so far as the petitioners in C.W.J.C.No. 18936/2016 is concerned, both of them were initially appointed with the Bihar State Road Transport Corporation as a Conductor and Ticket Collector respectively in the year 1982 and though were retrenched under a policy decision but were absorbed in the services of the State, as an Accounts Clerk vide order dated 21.1.1990 and 8.6.1990 respectively.

Similarly petitioner no.1 in C.W.J.C.No. 19114/2016 was also appointed with the Bihar State Road Transport Corporation and petitioner no.2 was appointed with the Water Wage Division. Both these petitioners have been adjusted against the vacant sanctioned post of Accounts Clerk vide order dated 16.7.1981 with the Irrigation Department.

In so far as the petitioners in C.W.J.C.No. 19442/2016 is concerned, while petitioner no.1 was appointed as a Chowkidar in the work charge establishment and in view of the policy decision of the State Government, was subsequently appointed as Accounts Clerk with effect from 1.3.1981, petitioners no. 2 and 7 were appointed as Work Sarkar and were absorbed as Accounts Clerk on 9.5.1979 and 13.8.1980 respectively. Petitioner no.3 was initially appointed as Work Charge Typist and was subsequently appointed as Accounts Clerk with effect from 30.7.1981. Petitioners no.4 and 5 were appointed as Treasure Guard initially but was subsequently appointed as Accounts Clerk with effect from 1.3.1981. Petitioner no.6 was appointed as Work Charge Gauze Reader but was subsequently appointed as Accounts Clerk with effect from 21.3.1981.

The petitioners in C.W.J.C.No. 19239/2016 were appointed in the unified cadre of Accounts Clerk during the period of merger and prior to demerger date i.e. 27/28.9.1999.

The petitioners in C.W.J.C.No. 19584/2016 were appointed as Accounts Clerk on compassionate ground on 16.7.1993 and 9.7.1998 i.e. during the period the cadre was unified.

The petitioner in C.W.J.C.No. 19197/2016 was appointed on compassionate ground in the year 1991 as Accounts Clerk.

The petitioner in C.W.J.C.No. 19833/2016 was appointed as Accounts Clerk on compassionate ground vide memo No. 443 dated 6.8.1999.

While petitioner no.1 in C.W.J.C.No. 20438/2016 was appointed as Accounts Clerk in the year 1992, the other petitioners were appointed in the year 1994. All the petitioners were appointed on compassionate ground.

The petitioners in C.W.J.C.No. 15921/2016 were appointed during the merger period i.e. 1.5.1980 and 28.9.1999.

The petitioner in C.W.J.C.No. 19804/2016 was appointed as Accounts clerk in the year 1983.

The petitioner in C.W.J.C.No. 19219/2016 was appointed as Accounts Clerk on compassionate ground on 17.9.1993. The petitioner is a Graduate.

The petitioners in C.W.J.C.No. 15678/2016 were appointed as Accounts Clerk after 1.5.1980 but before 28.9.1999.

In sum and substance the grievance of the petitioners is directed against the resolution of the State Government in its Finance Department bearing Memo No. 163 dated 8.1.2016 whereby in purported compliance of the judgment and order passed by this Court in C.W.J.C.No. 18015/2011 as confirmed by the Division Bench in L.P.A.No. 1260/2012 and by the Supreme Court in S.L.P.No. 21329 of 2015 and even while extending the benefit of Assured Career Progression to the employees in the Accounts Clerical Cadre, it has been restricted to those possessed with Graduate qualification. The resolution is impugned at Annexure P/9 to C.W.J.C.No. 18433/2016.

The petitioners are also aggrieved by the resolution of the State Government in its Finance Department bearing No. 5276 dated 30.6.2016 whereby in reference to resolution No. 163 dated 8.1.2016, it has been resolved that the benefit of Assured Career Progression so allowed, would be restricted exclusively to the petitioners in C.W.J.C.Nos. 18015/2011 and 16346/2011.

The third order which aggrieves the petitioners is a letter bearing No. 8083 dated 7.10.2016 of the Secretary, Expenditure, whereby he has intimated the Accountant General that resolution No. 163 dated 8.1.2016 and resolution No. 5276 dated 30.6.2016 would be applicable only in the case of direct recruits and would not cover those appointed on compassionate ground or by way of absorption or on account of up-gradation of posts in the Accounts Clerical Cadre. A copy of the letter is at Annexure P/11.

The last of the letter which aggrieves the petitioners is the consequential order issued by the Road Construction Department in denying the benefit of resolution No. 3111 dated 25.3.2015 to the petitioners in the light of the advisory issued by the Finance Department in its resolution no. 163 dated 8.1.2016 which has not been made applicable to compassionate appointees which is impugned at Annexure P/12.

Three sets of counter affidavit has been filed in C.W.J.C.No. 18433/2016 and which, in my opinion, would be covering the cases of other petitioners as well, inasmuch as it proceeds to defend the impugned action questioned in this batch of proceedings. While the 1st set of counter affidavit is filed on behalf of respondents no. 2 and 3 i.e. the Finance Secretary and the Secretary, Expenditure, Department of Finance, the other is filed on behalf of respondents no. 4 to 12, i.e. authorities of the Road Construction Department. There is a third counter affidavit filed on behalf of the Principal Secretary (respondent no.1). While counter affidavit filed on behalf of the Road Construction Department at paragraph-19 simply surrenders to the directions issued by the Finance Department for the purported action, the counter affidavit filed on behalf of respondents no. 2 and 3 instead of responding to the issue raised has proceeded to question the very grant of pay scale to the compassionate appointees of Rs.4000-6000 which according to the Finance Department, the compassionate appointees were not entitled to. In reference to some earlier circulars it is stated in paragraphs 8 to 12 that the compassionate appointees were entitled to a scale of Rs.1200-1800, the replacement scale of which is Rs.3050-4590 and not Rs.4000-6000. Since this stand was in conflict with the decision of the State Government found in resolution No. 3111 dated 25.3.2015 at Annexure 3 that a class is sought to be created by the Finance Department to opine that the benefit of the policy decision was not applicable to the compassionate appointees although no such classification can be found in the resolution dated 25.3.2015. Despite the judgment and order on record settling issue of pay scale as well as the grant of progression under the ACP Scheme, it is contended in paragraph 14 that the issue was different and in reference to the judgment of the Supreme Court in the case of **D.S.Nakara & ors. vs. Union of India**, since reported in AIR 1983 SC 130, it is stated that grant of such pay scale would be a discrimination to other appointees in the State.

The counter affidavit filed on behalf of the Principal

Secretary while reiterating the position explained in the counter affidavit filed on behalf of respondents no. 2 and 3 has proceeded to comment on the very appointment of the petitioners in the Accounts Clerical Cadre because according to the Principal Secretary, these petitioners could not have been appointed in the Accounts Clerical Cadre.

Mr. S.B.K.Manglam, learned counsel has appeared for the petitioners in C.W.J.C.No. 18433/2016 as well as the other writ petitions except C.W.J.C.No. 19239/2016, whose petitioners are represented by Mr. K.K.Thakur. The State is represented by the learned State Counsel whose appearance stands noted.

Mr. Manglam and Mr. Thakur, learned counsel, while reiterating the sequence of events have made a rather short submission. According to the learned counsel, the issue of grant of pay scale to the appointees in the Accounts Clerical Cadre whether on compassionate ground or on by way of direct recruitment or by way of up-gradation or merger stands resolved under the judgments of this Court and the respondents having lost its challenge all through, the order put to challenge herein is a clear case of overreach by the Finance Department because the issues raised herein have already been contested and deliberated upon by the Courts. According to the learned counsel, the circulars put to challenge which restricts the benefit of Assured Career Progression to the petitioners before this Court in the previous round of litigation, is a clear case of arbitrary classification because the State cannot be allowed to differentiate between the same set of employees. According to the learned counsel, the advisory put to challenge are discriminatory and exhibits abuse of executive power by the Finance Department to deny the relief to these petitioners simply because some of them were not there in the previous round. It is further the argument of learned counsel for the petitioners that although this issue has been engaging this Court since early 1990's but never at any stage, the issue of appointment was raised by the Finance Department to contest the identical relief prayed by the petitioners in the earlier round of proceedings and the respondents having lost the challenge up to the Supreme Court and even after extending identical reliefs to similarly situated employees, have instead of extending similar benefits to the petitioners, as extended to their counter parts, have raised a bogey of appointment which was never raised by the State at any earlier stage of the proceedings. According to the learned counsel for the petitioners, the issue raised by the Finance Department as regarding appointment of the petitioners in the Accounts Clerical Cadre is not only in the teeth of the resolution of the State Government bearing No. 3111 dated 25.3.2015 rather it is a clear case of overreach of the judgments pronounced on the issue.

Mr. Manglam has produced a letter bearing No. 8833 dated 16.11.2016 of the Secretary, Expenditure (respondent no.3) addressed to the Accountant General in which even while accepting that the benefit of Assured Career Progression was being extended to non-graduates in the light of the judgment and order passed by this Court, placed at Annexure P/7, he yet maintains that the non-petitioners would be guided by resolution No. 163 dated 8.1.2016 at Annexure P/9 which restricts the benefit of Assured Career Progression to the Graduates and his letter no. 5276 dated 30.6.2016 at Annexure P/10 which restricts the benefit to the writ petitioners of the said writ petition alone which according to the Secretary, Expenditure yet continues to operate independently. He submits that there cannot be a more brazen defiance by the Finance Department to the positions settled by this Court in creating an artificial classification to deny the benefit of Assured Career Progression simply because they were not a party to the earlier round of proceedings.

The argument of Mr. Manglam and Mr. Thakur, learned counsel for the petitioners, has been rather vehemently contested by the learned counsel for the State and Mr. Anuj Kumar, learned AC to GP-24, while appearing for the State in C.W.J.C.No. 18433/2016 has chosen to question the very grant of pay scale to the petitioners which according to the learned counsel was not in tune with the scheme of compassionate appointment. Simply reiterating what is stated in the counter affidavit filed on behalf of respondents no. 2 and 3 and respondent no.1 respectively, it is stated that these petitioners have been granted a pay scale to which they were not entitled. Learned counsel has made reference to the submission of respondents no. 2 and 3 at paragraph 8 onwards of the counter affidavit filed on their behalf in support of his submission.

Mr. A.K. Rastogi, learned AAG-10, has appeared on behalf of the respondents in C.W.J.C.No. 18971/2016 and while supporting the stand as advanced by Mr. Anuj Kumar he submits that the pay scales granted to these petitioners was not in tune with the policy decision on compassionate appointment. Similar stand has been adopted by Mr. Ranjan Kumar Singh, AC to PAAG-2 appearing in C.W.J.C.No. 19239/2016 with reference to the counter affidavit filed in C.W.J.C.No. 15678/2016.

Mr. Rakesh Prabhat, AC to SC-21, has also chosen to argue on the issue of merger and demerger of scales in the Accounts Clerical Cadre to submit that the demerger vide the decision dated 28.9.1999 at Annexure 5 of the said writ petition resulted in fixation of scale of Rs.4000-6000 for the Junior Accounts Clerk and Rs.4500-7000 for Senior Accounts Clerk. While admitting that these petitioners were adjusted in the scale granted to the Senior Accounts Clerk, it is submitted that the petitioners were granted their first ACP in the scale of Rs.5000-8000 which was the next scale above the scale of the Senior Accounts Clerk. It is submitted that the Bihar Accounts Service Rules, 2000 was enforced vide notification dated 28.3.2000, a copy of which is placed at Annexure 'C' to the counter affidavit filed in C.W.J.C.No. 15678/2016 and was published in the gazette on 15.4.2000. In reference to Chapter V he submits that it provides for promotion and an incumbent is required to possess a graduate qualification for promotion to the grade of Accounts Officer which is the next promotional post from the post of Senior Accounts Clerk in the chain of promotion. He next refers to Rule 17(4) to submit that the incumbent to the post of Accounts Officer would have to fulfil the qualifications prescribed in Schedule I and which is a graduate. In reference to the resolution of the State Government bearing No. 5276 dated 30.6.2016 he submits that since the order passed in L.P.A.No. 1260 of 2012 refers to the right of the writ petitioners alone, hence there is no infirmity in the circular. Learned counsel has next referred to a notification published in extra-ordinary gazette on 23.8.2012 whereby the Bihar Accounts Service Rules, 2000 was amended. It is the argument of Mr. Prabhat that the amendments were enforced with effect from 2000 i.e. the date when the service Rules were enforced and by the amendment the provision of filling up of the post in the basic grade of Accounts Officer by promotion was withdrawn and as per Rule 7 it is to be filled up by way of recruitment. According to Mr. Prabhat, although Rule 8 saves promotion already granted but no such promotion can be granted after enforcement of the amended Rules in 2012, to the post of Accounts Officer.

Mr. Dhurjati Kumar Prasad, learned GP-14, appearing in C.W.J.C.No. 11825/2016 has referred to a Division Bench judgment of this Court reported in 2017(2) PLJR 127 (**Rameshwar Roy v. the State of Bihar & ors.**) to submit that the Division Bench has held that unless the incumbent would fulfil the requisite qualification as required for promotion to the post of Accounts Officer, he shall not be entitled to the benefit of ACP. It is the argument of Mr. Prasad, learned State Counsel, that the circular in question in restricting the benefit to graduates which is the basic qualification for the post of Accounts Officer would suffer no infirmity in view of the pronouncement of the Division Bench.

I have heard learned counsel for the parties and have perused the records.

A brief summary of facts of the case on record leading to these writ petitions is that prior to 1.5.1980 there were two category of posts in the Accounts Clerical Cadre i.e. Junior Accounts Clerk in the then scale of Rs.220-315 and Senior Accounts Clerk in the scale of Rs.260-408. The two posts were merged with effect from 1.5.1980 and as a consequence of merger the pay of Junior Accounts Clerk was upgraded in the scale of Senior Accounts Clerk. The policy decision on merger was notified vide Notification No. 1876 dated 18.2.1981 issued by the Finance Department. There was, thus, a single post of Accounts Clerk since after 1.5.1980 in the scale of Senior Accounts Clerk.

The pleadings on record would indicate that the 4th Pay Revision Committee while recommending for revision of pay scale mentioned different pay scales for Junior Accounts Clerk and Senior Accounts Clerk even though no post of Junior Accounts Clerk was in existence. It is the case of the petitioners that the Finance Department taking advantage of the confusion created by the 4th Pay Revision Committee, issued letter no. 5899 dated 22.11.1990 intimating that henceforth the cadre of Accounts Clerk would be demerged and the appointments would now be made in the cadre of Junior Accounts Clerk and even the recommendation for the Time Bound Promotion to the members of merged cadre was withdrawn. Since attempt was also made to revert the incumbents to the post of Junior Accounts Clerk and to effect recovery that this action was questioned by the Employees Federation as well as individually in different writ petitions arising from C.W.J.C.No. 8473/1992 and analogous cases and the Bench while allowing the writ petition held that in absence of any notification on the demerger of the posts, neither the respondents would treat the petitioners as Junior Accounts Clerk nor are they empowered to recover any salary. The Bench while delivering the judgment took notice of two earlier judgments of this Court on the issue. The first case relied was rendered in C.W.J.C.No. 7186 of 1996 in which it was held that once an incumbent has been granted higher salary by virtue of merger/ upgradation, he cannot be debarred from grant of time bound promotion. The second case relied is reported in 1997(1) All PLR 154 in which it was held that in absence of any order of demerger, no reversion can take place. A copy of the judgment has been placed on record vide Annexure 3 to C.W.J.C.No. 19239/2016.

It is thereafter that the State came out with a letter bearing No. 3640 dated 15.6.1999 in its Finance Department wherein it was provided that the Junior Accounts Clerk, who became a member of merged cadre of Accounts Clerk before 1.4.1981 to draw salary of higher pay scale, would be treated as Accounts Clerk, but those who were appointed after 1.4.1981 in the scale of Junior Accounts Clerk would be entitled to that very scale only, since they accepted appointment in that pay scale. The notification dated 15.6.1999 was however superseded by a subsequent notification of the Finance

Department bearing Memo No. 6389 dated 28.9.1999 and in which it was decided that the Junior Accounts Clerk who became the members of amalgamated cadre and started drawing salary in the higher pay scale would be treated as Accounts Clerk and there was no question of absorbing them in the lower grade on the proposed revival or on the newly created junior cadre. Paragraph 3 of the resolution runs as under:

> "यह स्पष्ट किया जाता है कि वर्तमान में जो सेवा कर्मा है वह वरीय पदों पर ही रहेंगे और उन्हें पुनर्जीवित किये जाने वाले या नव सृजित किये जानेवाले निम्न स्तरीय संवर्ग में समायोजित करने का कोई प्रश्न नहीं हैं। निर्णय के बाद नियुक्त होने वाले कर्मी को ही उन निम्न स्तरीय संवर्गो में रखा जायेगा।"

It is not in dispute that all these petitioners have been appointed on their respective post during the period of merger. In fact it is since, despite the fact that there was a unified cadre of Accounts Clerk yet some of the appointees were shown to have been appointed against the non-existent post of a Junior Accounts Clerk that a writ petition came to be filed in this Court giving rise to C.W.J.C.No. 14506/2002 and C.W.J.C.No. 2963/2003. It is while these matters were pending consideration that the error as to the designation of the appointees in some of the cases was corrected and they were restored to the position of Accounts Clerk. By a common judgment and order dated 2.8.2012 placed on record at Annexure 7 to C.W.J.C.No.

19239/2016, the Bench taking note of such developments where some of the writ petitioners had not only been granted benefit of designation of Accounts Clerk but had also been granted the benefit of Assured Career Progression, disposed of the writ petition with the direction to the Secretary (Finance) for grant of similar relief to the rest of the petitioners, as well.

The observations of the Bench at paragraph 6 to 10 of the judgment at Annexure 7 would show that the contest engaging this Court presently in this batch of writ petitions, is continuing since more than a decade and despite the issues having put at rest by the judgments placed at Annexure 3 and 7 to C.W.J.C.No. 19239/2016 followed by some other judgments which would be discussed hereinafter, the State in its Finance Department, yet does not choose to put the matter at rest but is hell-bent upon engaging its employees as also this Court, in non-issues, by issuing such orders which despite taking notice of the judgments on the issue, yet proceed to create artificial classification causing unnecessary harassment both mental and financial to the petitioners in approaching this Court for the self same relief which already has been extended to others. As indicated, it is not in dispute that all these petitioners have been appointed in the cadre of Accounts Clerk during the period the cadre was unified.

From here I would shift my attention to the pleadings in

C.W.J.C.No. 18433/2016 and which would confirm the sorry state of affairs as to how, wholly unnecessarily these petitioners have been forced to take recourse to this extraordinary remedy by the artificial classification of the respondents, when in fact, the issue stands concluded by the judgment(s) of this Court which undisputedly covers the case of these petitioners as well and since it settles a legal position covering the Clerks in the Accounts Clerical Cadre, it partakes the nature of a judgment in rem.

The petitioners in C.W.J.C.No. 18433/2016 were appointed in the unified cadre of Accounts Clerk but in a lower scale of Rs.1200-1800 when according to them, they ought to be drawing their salary in the scale of Rs.1400-2300 as prevalent at the relevant time. All these petitioners claim to be Graduates and had been appointed on compassionate ground. Petitioners no. 1 and 3 alongwith some others feeling aggrieved by this denial, moved this Court in C.W.J.C.No. 5701/2004 (**Shashi Shekhar Ambastha & ors. v. State**) and C.W.J.C.No. 6542/2004 (**Pramod Kumar & ors. v. State**) and vide judgment and order passed on 3.5.2005 a Bench of this Court taking note of this fact that the petitioners were drawing their salary in the scale of Rs.4000-6000 which was a replacement scale of Rs.1200-1800 and not Rs.1400-2300/-, issued directions to the respondents to consider the grievance of the petitioners for grant of salary in the scale of Rs.1400-2300 with effect from initial appointment and in the replacement scale of Rs.4500-7000 with effect from 1.1.1996. A reading of the judgment would show that the issue of grant of scale of Rs.1400-2300 to a compassionate appointee had been raised by the respondents even at that stage. A copy of the judgment is placed on record vide Annexure P-1 to C.W.J.C.No. 18433/2016. In compliance of the judgment passed by this Court referred to above, the petitioners were granted relief vide office order No. 70 bearing Memo No. 3129 dated 23.3.2006 placed at Annexure P-2 to the writ petition.

As I have already made reference regarding demerger of the cadre following recommendations of 4th Pay Revision Committee, the State Government in its implementation of Central Pay Scale, decided to demerge the cadre of Accounts Clerk which was implemented with effect from 28.9.1999. A copy of the resolution has been enclosed at Annexure 5 to C.W.J.C.No. 19239/2016.

In between this period, the State Government enforced the Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as 'the ACP Rules'), a copy of which has been placed on record at Annexure P-4 to C.W.J.C.No. 18433/2016. The Rules substantively provided for the benefit of financial progression to such of the Government servants who long waited promotional benefits which was not coming or who could not succeed to obtain the same.

The 'ACP Rules' were amended in the year 2008 and when by addition of a proviso, it was stipulated that if there would be a promotional avenue in a cadre, the benefit of the 1st Career Progression would be in the basic grade of the promotional post. Since there was promotional avenue for Accounts Clerk to the post of Accounts Officer by way of limited examination, the petitioners no. 1 and 3 moved this Court in C.W.J.C.No. 7439/2010 for drawing the benefits of 1st ACP in the basic grade of Accounts Officer. The petitioner in C.W.J.C.No. 18015/2011 Pramod Kumar also moved through C.W.J.C.No. 6746/2010 and vide judgment and order passed on 23.6.2011, a copy of which is placed at Annexure P-5 to the writ petition, the Bench taking note of the Scheme under the 'ACP Rules' for financial progression as well as the objections raised by the respondents to deny the same, expressed its opinion in the following terms at paragraph 8 of the judgment:

> "8. There has to be difference between a substantive promotion and grant of ACP. The latter does not result in the benefit of higher post carrying a higher pay scale. It is basically an anti-stagnation measure to uplift the sagging spirit of an employee who may not have had an avenue of promotion or may have failed to secure promotion. A person may remain as Accounts Clerk throughout his life either for reason of lack of avenue for promotion or for

> having failed to qualify in the examination for promotion as Accounts Officer. To put at par the issue of grant of ACP with grant of promotion by requiring passing of the limited competitive examination for both purposes may prove counter productive to the entire scheme of ACP. If he clears the examination he gets promotion to higher post and he does not require ACP. If he does not clear the examination he stagnates and requires ACP. Yet it is denied because he did not pass the examination. The amendment made on 21.8.2008 (sic- 28.1.2008?) in the ACP Scheme visualizes that if there is avenue for promotion from one cadre to another then the basic of the pay scale of the promotional cadre post is available as ACP. There is no rider incorporated in it for clearing any examination much less any other process for promotion to the next higher post in the next cadre. To this Court, the amendment is clear in its language and only visualizes that the next higher post in the next cadre is an avenue for promotion."

The matter was, however, remitted to the Finance Secretary to examine the issue of grant of ACP in the light of the discussions made in the judgment. The Finance Department considered the matter and by the order bearing Memo No. 8120 dated 30.8.2011 rejected the claim advanced as being contrary to the ACP Scheme under 'the ACP Rules', a copy of which is placed at Annexure P-6 to the writ petition.

Feeling aggrieved some of the Accounts Clerk again moved this Court in C.W.J.C.No. 18015/2011 and C.W.J.C.No. 16346/2011 and the order was quashed holding the petitioners entitled for grant of ACP in the basic grade of Accounts Officer. It is stated at the Bar and not contested that while the case of the petitioner Pramod Kumar in C.W.J.C.No. 18015/2011 is a case of compassionate appointment, the petitioners in C.W.J.C.No. 16346/2011 are either non-Graduates or whose post has been upgraded to the post of Accounts Clerk. The Bench taking note of its earlier order had the following observations to be made while allowing the writ petitions vide judgment and order dated 16.2.2012 at Annexure P/7:

> " On the earlier occasion it was noticed that grant of ACP was an anti-stagnation measure for those who may not have avenues for promotion or failed to pass the examination and secure promotion. To put a substantive promotion to the post of Accounts Officer and for obtaining an ACP at par by requiring passing of the limited competitive examination for both purposes may prove counter productive to the entire scheme of ACP. The amendment made on 21.8.2008 contains no rider as suggested by the respondents.
>
> The distinction sought to be made in the impugned order with regard to grant of ACP under the Revenue Rules in the basic grade of Anchal Inspector cum Kanoongo to those holding the post of Revenue Karamchari does not appear to the Court. The post of Anchal Inspector cum Kanoongo is also a promotional avenue outside the cadre for 50% quota reserved for

Revenue Karamchari. The examination for confirmation on the post of Revenue Karmachari whereafter the candidate may become eligible for the higher post is similar to the ten years requirement to be fulfilled by Accounts Clerk before he can sit for the limited competitive examination. The promotion as Anchal Inspector cum Kanoongo is not routine and as a matter of course. It is dependent upon selection to be made by the selection committee. Rejection is inherent in the procedure. A person not selected by the Departmental Promotion Committee and one who fails to clear an examination for promotion, constitute one category for purposes of grant of ACP. The distinction urged between consideration by the committee under the Revenue Rules and an examination to be passed by the petitioners is not germane and frivolous in nature.

The fact that there is an eligibility requirement for ten years as Accounts Clerk before he becomes eligible to sit at the limited competitive examination for promotion to Accounts Officer does not detract from the factual position that it is a promotional avenue. The significance of a separate quota cannot be lost sight of or ignored and it is importance undermined.

It may be clarified that an Accounts Clerk cannot lay out a claim for ACP in the basic scale of Accounts Officer till he first fulfils the qualification of ten years of service as an Accounts Clerk. The channel for promotion to Accounts Officer opens only thereafter. The order dated 30.8.2011 is set aside.

> The petitioners are held entitled to be considered for grant of ACP in the basic grade of Accounts Officer. The order be complied with within a maximum period of four months.
>
> The writ applications are allowed."

Feeling aggrieved the State moved in intra-Court Appeal under the Letters Patent of this Court giving rise to L.P.A.No. 1260/2012 and the opinion of the Division Bench in the judgment and order dated 20.4.2015 at Annexure P/8, is in inconformity of the opinion expressed by the Writ Court. Even the Special Leave to Appeal (C) No. 21329/2015 preferred by the State was dismissed on 7.12.2015, copy of which is placed on record vide Annexure P-8/1 of the said writ petition.

I am tempted to reproduce the observations of the Division Bench while affirming the view of the Writ Court:

> "3. Having heard the learned counsels and considered the matter, in our view, the appeal merits no consideration. As noticed above, there were only two grounds for rejecting the claim of the writ petitioner. The first was that he had received an upgradation of pay scale in the year, 1999 and, as such, the 12 years period would be counted from 1999 and not 1992 when he was initially appointed. On the face of it though the submission may be attracted, on facts, it is misconceived. What was one in 1999 was the writ petitioner was held entitled to the upgraded pay scale right from the time of his

appointment in 1992. It was not an upgradation of pay scale in course of his appointment and subsequent to his appointment. He was paid the arrears from the time of his appointment upto the date of order. Therefore, he was receiving the upgraded pay scale from the date of appointment continuously and there was no upgradation in midstream. Thus, this ground, as urged by the State, is misconceived. The second ground was that petitioner not having qualified or not having taken the limited competitive examination for promotion, he could not be given the promotional grade of pay of Accounts Officer which was the next pay scale. This is equally misconceived. Had he taken those limited examinations and passed, he would be entitled to promotion. There is a distinction between promotion and ACP. ACP is a personal enhancement of pay scale to overcome stagnation. What is given is the next higher pay scale on completion of the period specified. I is not a promotion for if promotion is to be granted then he would get the promotional post as well which is not the case under ACP. Therefore, to say that as he had not taken the competitive examination for promotion, he would be disentitled to get ACP is not only misconceived but to us it appears to be a mala fide ground to deny ACP. ACP Rules do not stipulate passing of promotional examination because if a person passes the promotional examination then he would be promoted as such. There is a distinction between departmental examination and promotional exanimation. There is no dispute that the writ petitioner had cleared the departmental examination."

It is after dismissal of the Special Leave Petition on 7.12.2015 that the State Government in its Finance Department has again issued a resolution bearing No. 163 dated 8.1.2016 whereby after taking note of the fact that the basic qualification required to hold the post of Accounts Officer is uncontestingly a Graduate, that in the process of implementation of the judgment and order of this Court as affirmed by the Supreme Court, it has declared that only Graduates would be entitled to the benefit of financial progression since that is the basic qualification to hold the post of Accounts Clerk. A copy of the resolution is impugned at Annexure P/9 and which is followed by the second resolution bearing No. 5276 dated 30.6.2016 at Annexure P/10 whereby the benefit has been restricted to the writ petitioners exclusively in C.W.J.C.No. 18015/2011 and C.W.J.C.No. 16346/2011.

The Secretary (Expenditure), Finance Department by a third decision bearing Memo No. 8083 dated 7.10.2016, a copy of which has been placed on record vide Annexure P-11, has in reference to its earlier resolution dated 8.1.2016 placed at Annexure P-9 and 30.6.2016 placed at Annexure P-10 issued clarification to the Accountant General that the benefit of progression under the Assured

Career Progression Rules would only be extended to the direct appointees and not to those who had been appointed on the post of Accounts clerk by way of compassionate appointment, absorption or upgradation, which would be guided by the Finance Department Circular No. 867 dated 1.1.2015.

Since the order of the Writ Court and the Division Bench, present at Annexures P-7 and P-8, was not being complied that the writ petitioners in the said cases, moved in contempt and while the matter was pending that the order was complied and the contempt application was accordingly disposed of as manifest from Annexure P-10/1 vide order passed on 4.7.2016.

When this batch of writ petition was filed the only issue which required a deliberation was whether the respondent State Government in its Finance Department while issuing the resolution bearing No. 163 dated 8.1.2016 at Annexure P/9, Memo No. 5276 dated 30.6.2016 at Annexure P/10 and Memo No. 8083 dated 7.10.2016 at Annexure P/11 in purported compliance of the judgment and order passed in C.W.J.C.No. 18015/2016 and C.W.J.C.No. 16346/2011 could deny the relief to these petitioners simply because they were not party to the proceedings.

The resolutions put to challenge at Annexure P/9 to P/11 proceeds to exclude the non-petitioners on grounds that:

(a) only graduates are entitled to the benefit of Assured Career Progression because that is the minimum qualification for holding the post of Accounts Officer which is the next promotional post from the post of Senior Accounts Clerk held by the petitioners;

(b) it is only the petitioners who are covered by the judgment and order passed in C.W.J.C.No. 18015/2016 and C.W.J.C.No. 16346/2011, as taken note of in the order, who would be entitled to the benefit of Assured Career Progression even if they are non-graduates and compassionate appointees but this benefit would neither set a precedence for others nor would be extended to similarly situated employees; and

(c) the resolution dated 8.1.2016 and 7.10.2016 at Annexure P/9 and P/11 operate independently and are only applicable to direct employees but those appointed on compassionate ground, absorption or by up-gradation of post in the Accounts Clerical Cadre, would not be entitled to the benefit.

As I have observed although the writ petitions were filed challenging the artificial classification engineered by the State in its Finance Department vide the Circulars/ Notifications/ Resolutions under challenge but the counter affidavit filed in the proceedings enlarges the contest to comment upon the very appointment of these petitioners in the Accounts Clerical Cadre and to take a stand that neither these petitioners were entitled for appointment in the Accounts Clerical Cadre nor they were entitled to pay scale granted rather they were entitled to pay scale of Rs. 3050-4590 which is the replacement scale of Rs.1200-1800 admissible to the compassionate appointees under the circulars in question.

Noticeably the resolutions in question put to challenge herein whispers no objection regarding grant of pay scale to the petitioners coming under the Accounts Clerical Cadre. In fact after contesting this very issue at various levels and having lost the challenge all through that the issue of grant of pay scales to the clerks in the Accounts Clerical cadre was resolved by the State Government themselves vide their resolution no. 3111 dated 25.3.2015 which continues to be in force and which, while taking note of the judgment/ orders passed by this Court, has allowed the scales admissible to the Clerks in the Accounts Clerical Cadre in the following manner:

> "5. सम्यक विचारोपरांत कार्य विभागों के लेखा लिपिक संवर्ग के वेतनमान के संबंध में निम्नलिखित निर्णय लिया गया है:–
>
> (i) दिनांक 01/05/1980 से दिनांक 27/09/1999 की तिथि तक इस संवर्ग में नियुक्त कर्मी एकीकृत पदनाम वरीय लेखा लिपिक से अभिहित होंगे ऐसे लेखा लिपिक को दिनांक 01/04/1981 के प्रभाव से रु0 730–1080/–, दिनांक 01/01/1986 के प्रभाव से रु0 1400–2300/– दिनांक 01/01/1996 क प्रभाव से रु0 4500–7000/– तथा दिनांक 01/01/2006 के प्रभाव से पी0 बी0–1+2800/– अनुमान्य होगा।
>
> (ii) दिनांक 28/09/1999 एवं उसके बाद की तिथियों में

कार्य विभागों के लेखा लिपिक संवर्ग में कनीय लेखा लिपिक/निम्नवर्गीय लेखा लिपिक/निम्नवर्गीय लिपिक (लेखा) के पद पर नियुक्त कर्मी कनीय लेखा लिपिक के पदनाम से अभिहित होंगे तथा उन्हें दिनांक 31/12/2005 तक रु0 4000–6000/– तथा दिनांक 01/01/2006 से पी0बी0 1+2400 का वेतनमान अनुमान्य होगा। वरीय लेखा लिपिक कोटि में प्रोन्नति के बाद उनका वेतनमान 4500–7000 तथा दिनांक 01.01.2006 के बाद पी0बी0 1+2800 रु0 अनुमान्य होगा।"

A plain reading of the resolution would show that the State Government taking note of the decision of the Finance Department which has been circulated vide letter no. 6389 dated 28.9.1999, has classified the appointments in the Accounts Clerical Cadre in two categories. While category 1 consists of appointments made in between 1.5.1980 to 27.9.1999 the other relates to appointments made after 28.9.1999.

There is absolutely no confusion in the resolution of the State Government bearing no. 3111 dated 25.3.2015 as regarding the pay scale to which any person appointed in the Accounts Clerical Cadre would be entitled to, whether as a Junior Accounts Clerk or Lower Division Accounts Clerk or a Lower Division Clerk (Accounts). In fact it is following this resolution of the State Government in its Finance Department that pay fixation have also taken place. The resolution of the State dated 25.3.2015 is not without reason rather is the consequence of orders passed by this Court."

The discussion above thus would confirm that while in the process of defending the notifications/ resolutions put to challenge in this batch of writ petition, the State in its Finance Department has proceeded to challenge the very status of these petitioners though the same stands resolved under various orders of this Court passed from time to time as stands noted hereinabove.

In so far as the issue of appointment in the Accounts Clerical Cadre as well as the issue of grant of pay scale of Rs.1400-2300 (prerevised) is concerned, apart from the fact that the same is being raised belatedly even when there are no issues as regarding the genuineness of appointment of these petitioners, the Finance Department having contested these very issues since 2002 and having lost at every stage to result in the resolution of the State Govenrment bearing No. 3111 dated 25.3.2015, they yet do not wish to correct themselves rather is more keen to keep themselves, their employees as well as Courts engaged in frivolous protracted litigation at the tax payers cost.

In so far as the issue of grant of appointment, upgradation of post as well as grant of pay scale is concerned, Annexures 3, 4, 5 and 7 to C.W.J.C.No. 19229/2016 and Annexure 1 to C.W.J.C.No. 18433/2016 would confirm that the issue has engaged this Court since 1997 and despite the matter being put to rest by the resolution no. 3111 dated 25.3.2015 of the State Government, yet the Finance Department is not willing to accept the position, rather continues to raise stale issues which stands concluded under the orders of this Court. In fact, when, despite the settled legal position, the State in its Finance Department tried to question the status of compassionate appointees to the post in the Accounts Clerical Cadre as well as to the scale admissible to them despite the State Government's circular No. 3111 dated 25.3.2015, to issue an advisory bearing No. 5843 dated 11.7.2016 to restrict and exclude the compassionate appointees from the coverage of the resolution of the State Government dated 25.3.2015 followed by recovery proceedings drawn by the controlling departments, this led to filing of a number of writ petitions which were heard analogous with C.W.J.C.No. 9921/2017 (**Binit Kumar & ors. v. the State of Bihar & ors.**) and this Court after taking note of the march of events, vide judgment and order dated 21.8.2017 while quashing the restrictive notification issued by the Finance Department dated 11.7.2016 and imposing heavy cost on the State, has held as follows:

> " The resolution of the State Government dated 25.3.2015 takes note of every transition taken place on the issue of merger and de-merger as well as the pay scale attached to the post as revised from time to time. Now even when no classification has been made by the State Government in between the regular appointees and those appointed on compassionate ground in their resolution dated 25.3.2015 such distinction is sought to

be created by the Principal Secretary, Finance Department in his letter dated 11.7.2016 present at Annexure 'A' to the counter affidavit of the Building Construction Department filed in C.W.J.C.No. 9921 of 2017 which is a clear case of overreach by the Principal Secretary of the Finance Department to the resolution of the State Government and since it is in the teeth of the opinion expressed by the Division Bench, it is rendered unsustainable.

It is a perpetuation of illegality where the controlling department of the petitioners blindly following the directives of the Principal Secretary of the Finance Department present in his order bearing Memo No. 5843 dated 11.7.2016, have proceeded to re-designate these petitioners as lower division clerk in the scale of Rs.3050-4590/- from the date of their initial appointment and to recover the excess salary drawn by them by virtue of implementation of the resolution bearing no. 3111 dated 25.3.2015.

In view of the clear stipulation so present in the resolution of the State Government bearing no. 3111 dated 25.3.2015 present at Annexure 4 which has been referred to by the Division Bench in the case of **Ram Janam Jha** (supra) to uphold the claim of the compassionate appointees, the directives issued by the Principal Secretary of the Finance Department as contained in order no. 5843 dated 11.7.2016 is not only contrary to the State Government's decision but also is in the teeth of the judicial pronouncement of this Court and is accordingly quashed and set aside."

In so far the issue of grant of ACP to the petitioners is concerned, again the situation is no different for even though the matter stands resolved by the judgment of this Court present at Annexures P-7, P-8 and P-8/1 to C.W.J.C.No. 18433/2016 which has resulted in the resolution no. 163 dated 8.1.2016 impugned at Annexure P-9 but the State again has committed illegality to overreach the judicial verdict by yet declaring that even for the purpose of grant of ACP, an incumbent would be required to possess the qualification of a Graduate because that is the basic qualification for holding a post of Accounts Officer which is the next in the chain of promotion from the post of Senior Accounts Clerk.

I have consciously reproduced the opinion of the Writ Court in C.W.J.C.No. 18015/2016 and C.W.J.C.No. 16346/2011 as well as of the Division Bench in L.P.A.No. 1260/2012 on the issue of eligibility qualification for grant of ACP benefits which stands confirmed up to the Supreme Court to result in the resolution dated 8.1.2016, yet a closeted thought process does not permit the State to think beyond its myopic understanding of the legal position so much so that even while implementing the judgment of this Court it has attempted to overreach the same. The perpetuation of illegality is reflected in the second resolution bearing no. 5276 dated 30.6.2016 when it restricts the benefits only to the writ petitioners clarifying that the grant would not form a precedence. In my opinion, these resolutions dated 8.1.2016 and 30.6.2016 in so far as it has a restrictive application, border on contempt because once a position has been settled under the orders of this Court the benefit extends to all similarly placed and it would be a clear case of overreach by the State Government in a process of implementation to hold that the legal position settled by the Court would not form a precedence and cannot be extended to others, even if similarly situated. It is perhaps being encouraged by a defiant note found in the resolution of the State Government dated 8.1.2016 and 30.6.2016 that the Secretary (Expenditure), Department of Finance in reference to these very resolutions has intimated the Accountant General that whatsoever benefits is being granted under the said resolutions are only applicable to the direct recruits and would not be applicable to those appointed on compassionate ground or by way of absorption or by way of upgradation of posts.

Despite records of the proceeding confirming that every attempt of the State to classify the compassionate appointees as well as those occupying the post by upgradation or absorption, has been negated by the Court at every stage of contest and despite the resolution of the State Government bearing no. 3111 dated 25.3.2015 clearing all doubts on the eligibly of pay scales, yet the Finance Department has wholly malafidely created obstructions and persists with their opinion.

Although Mr. Prasad, learned GP-14, has relied upon the opinion of the Division Bench in the case of **Rameshwar Rai** (supra) but the reliance is misplaced because of two reasons. Firstly in the case of **Rameshwar Rai** (supra) the petitioner was facing punishment which led to denial and secondly, the attention of the Division bench was never invited to the position settled by this Court in the judgment of **Pramod Kumar & ors.** at Annexure P-7 as affirmed by the Division Bench in LPA No. 1260/2012 at Annexure P-8 and the Supreme Court at Annexure P-8/1 as also the fact that that the State in compliance of the judgment had proceeded to implement the judgment.

Once an incumbent joins a cadre, be it by way of compassionate appointment or by absorption or by upgradation of post, he/she forms an integral part of the cadre which can neither be bifurcated to form a sub-class nor can be treated as a class apart. The attempt of the Finance Department to treat the compassionate appointees and those who occupy the post by way of upgradation/ absorption as a class apart, is arbitrary, per se discriminatory as it is based on no intelligible differentia to support such opinion.

In fact the letter of the Secretary (Expenditure) bearing No. 8833 dated 16.11.2016, of which this Court has taken judicial notice on its production by learned counsel for the petitioners, very clearly accepts that the petitioners in C.W.J.C.No. 18015/2011 and C.W.J.C.No. 16346/2011 include non-graduates as well as those entering through compassionate appointments and who have been allowed benefits under the resolution dated 8.1.2016 at Annexure P-9 but the benefit has been restricted to them exclusively vide the second resolution dated 30.6.2016 with no justifiable explanation. The attempt of the State in its Finance Department to create a class amongst a class of Accounts Clerk in the Accounts Clerical Cadre in between those who have secured an order in their favour by virtue of the judgment passed in C.W.J.C.No. 18015/2011 heard with C.W.J.C.No. 16346/2011 vide Annexure P-7 as affirmed in L.P.A.No. 1260/2012 vide Annexure P-8 as also by the Supreme Court vide Annexure P-8/1 from those who were not a party to the proceedings, is patently discriminatory and in conflict not only with the judgments on the issue but also State's own litigation policy which mandates every department to extend such benefit to all who are covered by the judgment.

For the sake of convenience I deem it necessary to reproduce Paragraph- 4.C (1) of the Bihar State Litigation Policy, 2011 coming under Chapter IV. Prevention/ Control of Avoidable Litigation and reads as under:-

> "4.C. Covered Matters.
>
> 4.C(1). A good number of cases are from the category of similar cases. Each Government Department will aim to consider and settle the claim of the representationist/ applicant/ employee/ citizen, if the claim is found covered by any decision of the Court. Many service matters of this nature, can be disposed of at the level of the Department itself without compelling the litigant to come to the Court. In this manner, the Government Departments would be acting as efficient litigants."

Since the State has relied upon the judgment passed by a Constitution Bench of the Supreme Court in the case of **D.S.Nakara** (supra), I deem it necessary to place on record the opinion of the Constitution Bench which completely floors the adventurism of the State in trying to oppose the benefit admissble to these petitioners in ordinary course and more particularly in view of the authoritative pronouncement of the Courts:

> "7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In

order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

15. Thus the fundamental principles is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

While on the issue I am also tempted to reproduce the opinion of the Supreme Court expressed in a judgment reported in (2015)1 SCC 347 (**State of Uttar Pradesh and ors. v. Arvind Kumar Srivastava & ors.**) when while examining the very issue of extending the benefit of a judgment to similarly placed employees, the Supreme Court has summarized the principles in paragraph 22 of the judgment in the following manner:

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation

> is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C.Sharma v. Union of India, reported in (1997)6 SCC 721). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

It is unfortunate that the State in its Finance Department yet chooses to remain blind folded on the legal position which binds them. Certainly the case of these petitioners do not fall within the exceptions because the State's action to deny them the relief which has been extended to the clerks in the Accounts Clerical Cadre under the notifications put to challenge, is based on no rationale or any intelligible differentia. The State's action present in the impugned resolutions contained in Annexures P-9, P-10 and P-11 is apparently discriminatory because it outclasses similarly placed employees in the Accounts Clerical Cadre simply because they were not party to the earlier proceedings. There cannot be a better example of overreach, of discrimination and of arbitrariness striking at the root of Article 14 of the Constitution of India.

In what could have been disposed of without entering into lengthy discussion in view of the position settled by the Courts, the exhaustive discussion has been necessitated in the present case to demonstrate the State's obstinacy and penchant to generate unwarranted litigations contrary to its litigation policy and in the process keeping its employees engaged in protracted litigation which continues since 1997 and even after the matters stands resolved under the judgments of this Court.

For the discussions aforementioned, the resolutions of the State Government in its Finance Department bearing No. 163 dated 8.1.2016 in so far as it restricts the benefit of Assured Career Progression to the Graduates exclusively together with its resolution bearing No. 5276 dated 30.6.2016 in so far as it restricts the benefit of Assured Career Progression to only petitioners in C.W.J.C.No. 18015/2011 and C.W.J.C.No. 16346/2011 as well as the opinion of the Secretary (Expenditure), Department of Finance, contained in his letter bearing No. 8083 dated 7.10.2016 at Annexure P-11 to restrict the benefit under resolution dated 8.1.2016 and 30.6.2016 to direct recruits exclusively and to outclass compassionate appointees, those appointed by absorption as well as the Accounts Clerks holding the post by upgradation, from its applicability, are patently discriminatory and are accordingly quashed and set aside.

As a result, all consequential actions taken by the controlling departments against these petitioners are quashed and set aside. The State in its Finance Department together with the controlling departments of the petitioners are directed to accord the benefit of Assured Career Progression to these petitioners as extended to the petitioners in C.W.J.C.No. 18015/2011 and C.W.J.C.No. 16346/2011 from the due date in accordance with law within a period of three months from the date of receipt/ production of a copy of this order together with all consequential benefits.

The writ petitions are allowed together cost quantified at Rs.50,000/- payable by the State in the Patna High Court Legal Aid Committee, Patna in acting contrary to the litigation policy to engage its employees in frivolous protracted litigations.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	16.11.2017
Uploading Date	07.12.2017
Transmission Date	NA