

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1319 of 2014  
IN  
Civil Writ Jurisdiction Case No. 3040 of 2014**

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1. Abdur Rauf son of Late Abdul Jabbar, Resident of village/Mohalla- Islampur, Madhepura Purnia, District- Purnia
  2. Md. Moisuddin son of Late Md. Atujat Hussain, Resident of Moiz Cottage, Near Marketing Yard, Bhadurganj, P.O.- Bahadurganj, Distt- Kishanganj
  3. Dilip Kumar Mishra, son of Late Shiv Kumar Mishra, Resident of Koratbari, Ramnagar, P.O.- Purnia, District- Purnia
  4. Rangnath Mishra, son of Late Babban Mishra, Resident of Jaiprakash Nagar, Purnia, P.O. and Dist- Purnia
  5. Sundar Kant Jha, son of Suro Jha, resident of Shanti Nagar, Madhubani, P.O. and District- Purnia
  6. Bijoy Kumar Sinha, son of Parmeshwari Prasad Sinha Resident of Sipahi tola, Madhubani, P.O. and District- Purnia
  7. Kishore Kumar Singh, son of Late Chandra Mohan Singh Resident of Vill/Mohalla- Shivaji Colony, Purnia, P.O. and District- Purnia
  8. Prayag Prasad Gupta Son of Late Ram Ratan Prasad Gupta, resident of Ramnagar, P.O. and District- Purnia
  9. Sachchida Nand Sahay, son of Late Dayanand Prasad Resident of Mahboob Khan Tola, Near Kali Mandir, Purnia, P.O. and District- Purnia
  10. Shashi Ranjan Kumar, son of Late Krishnadeo Prasad Resident of Rajendra Nagar, Madhubani, P.O. and District- Purnia
  11. Jai Shankar Prasad Singh Son of Late Sharda Prasad Singh, Resident of Gandhi Nagar, Madhubani, P.O. and District- Purnia
  12. Kalanand Mandal son of Fakirchand Mandal, Resident of Bhagkohalia, Forbesganj, P.O. Forbesganj, District- Araria
  13. Bijay Kumar Sinha, son of Late Nand Kumar Prasad Sinha, Resident of Madhubani, P.O. and District- Purnia
  14. Azad Rajak, son of Late Maheshwari Rajak, Resident of Kishanganj, P.O. and District- Kishanganj
  15. Awadhesh Kumar Yadav, son of Late Manilal Yadav, Resident of Naya Tola, Line Bazar, P.O. and District- Purnia
  16. Md. Kalimuddin Ansari son of Late Md. Shaban Resident of Sipahi tola, Madhubani, P.O. and District- Purnia
  17. Kumud Narayan Thakur, son of Late Tej Narayan Thakur, resident of Subhash Nagar, P.O. and District- Purnia
  18. Mahmood Alam, son of Late Md. Sultan resident of Samesar, P.O.- Samser Hat, Distt- Kishanganj
  19. Raj Kishore Prasad Sah, son of Late Dharam Nath Prasad, Resident of Khajanchi Hat, Purnia, P.O. District- Purnia
  20. Hare Ram Das son of Late Jitendra Chandra Das, Resident of Ganguli Para, Purnia, P.O. and Distt- Purnia
  21. Sunil Kumar Sinha son of Shyam Nandan Prasad Resident of Rajni Chowk, Purnia, P.O. and District- Purnia
  22. Kalanand Bariyait, son of Late Saheb Bariyait, Resident of village and P.O.- Achara, District- Araria
  23. Suresh Prasad son of Late Santlal Ram, Resident of Nav Ratan Hata Purnia, P.O. and Dist- Purnia
  24. Mahboob Alam Khan son of Late Md. Afzal Khan, Resident of Village- Kadam



Rasool, Khagra, P.O. and District- Kishanganj  
25. Baidyanath Mandal, son of Late Harilal Mandal Resident of Vill/Mohalla- R.K.  
Mission Road, South Bhatta, P.O. and District- Purnia

.... .... Appellants

Versus

1. The Union of India through the Secretary, Ministry of Finance Department of Economic Affairs (Banking Division) Jeevan Deep, New Delhi 1
2. National Bank for Agriculture and Rural Development through Deputy General Manager, Sterling Centre, Shiv Sagar Estate, Dr. Annie Besant Road, Worli, Mumbai- 400018
3. The Zonal Manager, Central Bank of India, Patna
4. Utter Bihar Gramin Bank, Head Office, Kalambagh Chowk, Muzaffarpur through its Chairman
5. The Chairman, Utter Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur
6. General Manager, Uttar Bihar Gramin Bank, Kalambagh Chowk, District- Muzaffarpur
7. Anirudha Kumar Yadav son of Late Mahadeo Pd. Yadav, R/o Village- and P.S.- Belowri, Distt.- Purnia
8. Ghanshyam Roy son of Ram Sharan Ray, R/o Gautam Nagar Gangjala Saharsa, P.S. and Distt.- Saharsa
9. Nandeshwar Kumar Sinha son of Late Sukeshwar Pd. R/o Madhubani, P.O. and Distt.- Madhubani

.... .... Respondents

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**Appearance :**

For the Appellants :

Mr. Uday Bhanu Roy, Advocate

Mr. Sunil Kumar, Advocate

For the Respondent Bank: Mr. Ajay Kumar Sinha, Advocate

For the Respondent UoI: Mr. Ram Anurag Singh, C.G.C.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 02-05-2017

Heard learned counsel for the parties.

2. Merely because a litigant has lot of perseverance, it does not make his case better and better every time he litigates. Legal wisdom can surely dawn upon counsels as they progress in the litigation, but that by itself cannot form the basis for overlooking or ignoring the previous rounds of litigations and the orders which



came to be passed from time to time.

3. In the present round, appeal has been moved against the order dated 02.07.2014, by virtue of which the writ application of the appellants was dismissed by the learned single Judge, wherein an effort was made to claim financial benefits for the period 01.10.2000 to 31.03.2011. In the earlier round of litigation there was no clear and categorical order that the appellants would be entitled to the benefits of pay-scales on the so-called promoted posts, which is evident from reading of those orders passed either by the learned single Judge or the appellate Court, copies of which are part of the writ application as annexures.

4. The origin of the present litigation was a decision of the Bank to withdraw the benefit of a pay-scale which was extended to the appellants on ground of promotion on the post of Officer Junior Management Scale-I. Initially, these appellants were appointed as Clerk-cum-Cashier in Koshi Kshetriya Gramin Bank in the year 1980, but the promotion order came in the year 1989 and 1990 on the basis of the award of the National Industrial Tribunal. Since a wrong pay-scale was fixed or granted, the Bank decided to withdraw the benefit of the pay-scale by a Circular dated 12.09.2000. Circular dated 27.09.2000 was also issued for recovery of excess amount.

5. Writ applications, namely, C.W.J.C. No. 10504 of



2000 and C.W.J.C. No. 4768 of 2002, were filed challenging the Circulars. However, both the writ applications were dismissed on 17.02.2003. L.P.A. No. 227 of 2003 and L.P.A. No. 207 of 2003 were preferred. The Division Bench was of the view that since the respondent Bank had fixed the pay-scale on their own and not on any misrepresentation of the appellants, therefore, recovery was not sustainable in law.

6. Koshi Kshetriya Gramin Bank merged with what is known as Uttar Bihar Gramin Bank in the year 2008 because of the poor financial position. After the merger of the Bank, a resolution dated 29.06.2011 was issued wherein the pay-scale of the employees was re-fixed with retrospective effect, but it was decided that due to the poor financial condition of the Bank, the actual payment in the revised scale would be made effective only from 01.04.2011. The previous period would be treated only notionally.

7. The resolution dated 29.06.2011 was not a subject matter of challenge in earlier round of litigations, therefore, there is nothing much to be said about the decision of the Bank not to pay anything to the appellants for the period 01.10.2000 to 31.03.2011. The resolution dated 29.06.2011 still holds the field.

8. The appellants again moved the High Court by filing C.W.J.C. No. 5685 of 2013 praying therein to pay the arrears of the differential amount of salary for the period 01.10.2000 to



31.03.2011. That writ application came to be disposed of on 09.04.2013 with liberty to each of the petitioners of those writ applications to file separate representations before the Bank. The Bank considered the representation and passed a speaking order wherein they took a plea that it was not possible to pay the differential of salary for the period in question because of the pitiable financial situation and the learned single Judge also dismissed the writ application where the challenge was made to the speaking orders holding that the financial condition of the Bank did not permit the grant of benefit of arrears in terms of previous promotion orders.

9. Learned counsel for the appellants submits that if the appellants have been granted promotion, as a natural corollary they would also be entitled to the benefit of the pay-scale which goes with the promoted post. Since it was not done, they have a grievance and a right to claim so. The learned single Judge to that extent has committed error of law by dismissing the writ application.

10. An alternative thread of argument was thereafter built up saying that this policy of granting notional benefit and not actual benefit was not applied in payment with regard to the other employees, therefore, it is a clear cut case of discrimination.

11. Having gone through the pleadings as well as the order of the learned single Judge, the Court does not find that such a line of argument was taken before the learned single Judge, but it is



only an effort on the part of the appellants' counsel to innovate and make out a third case now which was not the case before the learned single Judge. This Court cannot declare the order of the learned single Judge to be bad on a ground which was not even urged and pleaded. Since there was no opportunity for the learned single Judge to consider and answer, therefore, this line of argument is not accepted and cannot form the basis for quashing the impugned order.

12. The Court, however, is also of the opinion that taking note that the previous effort of the appellants had failed and that the Circular or the Resolution dated 29.06.2011 has not been declared to be bad in law by any forum or Court of law, therefore, the decision of the learned single Judge to reject the prayer for payment for the period 01.10.2000 to 31.03.2011 cannot be said to be either erroneous or irrational.

13. The appeal has no merit. It is dismissed.

**(Ajay Kumar Tripathi, J)**

**(Nilu Agrawal, J)**

Pawan/-

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