

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12504 of 2013

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Mihir Kumar Mishra Son of Sri Kritya Nand Mishra Resident of Flat No. 302,
Ananpurna Apartment, Punaichak, P.S.- Shastri Nagar, District- Patna

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Finance, Govt. of Bihar, Patna
2. The Secretary, Road Construction Department, Bihar, Patna
3. The Officer Incharge, Finance (Personal Claim Fixation Cell) Department of Finance, Bihar, Patna
4. The Deputy Secretary (Management Cell), Road Construction Department, Bihar, Patna

.... Respondents

with

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Civil Writ Jurisdiction Case No. 19837 of 2013

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Awadhesh Upadhyay Son of Durgesh Upadhyay Resident of Village- Bangapur,
P.S- Parwalpur, District- Nalanda.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Finance, Govt. of Bihar, Patna
2. The Secretary, Road Construction Department, Bihar, Patna
3. The Officer Incharge, Finance (Personal Claim Fixation Cell) Department of Finance, Bihar, Patna
4. The Deputy Secretary (Management Cell), Road Construction Department, Bihar, Patna

.... Respondents

with

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Civil Writ Jurisdiction Case No. 23166 of 2013

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1. Ambika Prasad Singh Son of Late Ram Jatan Singh Resident of Village - Bijauli Basdiha, P.S. Aurangabad, District - Aurangabad
2. Krishna Nand Pandey Son of Late Ram Bachan Pandey Resident of Officer's flat Quarter No. E/6, in front of State Bank of India, Rajbanshi Nagar, New Punaichak, Patna
3. Kamal Kumar Vasudeo Son of Sri R.N. Vasudeo 2M/37, Near T.V. Tower, Mahatma Gandhi Nagar, P.S. Agamkuan, District - Patna - 26



.... Petitioners

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna
3. The Secretary, Road Construction Department, Bihar, Patna
4. The Deputy Secretary (Management Cell), Road Construction Department, Bihar, Patna
5. The Officer Incharge, Finance (Personal Claim Fixation Cell) Finance Department, Bihar, Patna

.... Respondents

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Appearance :

(In CWJC No.12504 of 2013)

For the Petitioner : Mr. P.N.Pathak, Advocate

For the Respondents : Mr. Sita Ram Yadav, GP16

(In CWJC No.19837 of 2013)

For the Petitioner :

For the Respondents : Mr. Sita Ram Yadav, GP16

(In CWJC No.23166 of 2013)

For the Petitioners : Mr.P.N.Panthak, Advocate

For the Respondents : Mr. Ashok Kumar Dubey, AC to AAG 11

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-07-2017

These three writ petitions have been filed claiming similar relief for pay protection of the petitioners in the light of the Notification No. 3535 dated 28.03.2012 issued by the Road Construction Department, Bihar, Patna; and for connected reliefs.

2. Considering the similar nature of the writ petitions and with the consent of the parties, all the three writ petitions are being disposed of together at the admission stage itself.

3. At the very outset, learned counsel for the petitioners submit that these matters are squarely covered by a judgment of the Division Bench dated 27.04.2017 passed in LP A No. 2285 of 2016 (Kamla Pati Singh and others vs. The State of Bihar and others) disposing of the



same on the following terms:

"In our considered view, the learned Writ Court has not taken note of all these factual aspects of the matter while dismissing the writ petition. Merely on the ground that petitioners are not Government servants, the benefit is denied. But the fact remains that even if the petitioners were treated as ad hoc but, for all practical purposes and in fact, they were Government servants and, therefore, the benefit of pay protection should be available to them. Even if the benefit of seniority or grant of A.C.P. may not be available to them, the pay protection should at least be granted to them as their substantive pay on their regularization should not be reduced. What they got while termed as ad hoc by the State Government cannot be taken away when they are regularized and if that be the principle to be applied, the petitioners are entitled to the benefit.

Keeping in view the aforesaid, we allow this appeal, quash the order passed by the learned Writ Court and the impugned order passed by the State Government and direct them to grant pay protection to the petitioners as contemplated in Rule 39 of the Bihar Service Code. However, grant of this pay protection will not mean that the petitioners would be entitled to seniority or promotion in the cadre in question. The same cannot be granted to them as the prayer identical in nature of the employees has already been rejected by a Division Bench of this Court in C.W.J.C. No.16664 of 2016. "

4. By a subsequent order dated 16.05.2017 in LPA No. 2285 of



2016, the reference to CWJC No. 16664 of 2016 in the last paragraph of the judgment was corrected to read as LPA No. 360 2014.

5. Learned counsels for the State accept that these cases are covered by the aforesaid Division Bench judgment.

6. Having regard to the stand of the parties and with their consent, these writ petitions are disposed of in line with and on the same terms in LPA No. 2285 of 2016.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11.07.2017
Transmission Date	N.A.

