

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.167 of 2016
IN
Civil Writ Jurisdiction Case No. 1498 of 2011**

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1. Avinash Kumar Chakerwarty, son of Late Dhurvnaath Pandit, resident of Village- Bangra (Kumhar Tola) P.S. Daudpur, District- Chapra.
 2. Ajay Kumar Dubey, son of Parshuram Dubey, resident of Village- Selaun, P.S.- Guthni, District- Siwan.
 3. Pradeep Kumar, son of Late Bhuneshwar Prasad, resident of Village- Sukla toli Siwan, P.S.- Shukla toli Siwan, District- Siwan.
 4. Saurabh Kumar Singh, son of late Dr. Uma Shankar Sinha, resident of Village- Hariharpur Lalgah, P.S.- Gautam Budh Nagar, Jarwara, District- Siwan.
 5. Meena Verma wife of late Anil Kumar Verma, resident of Village- Patori, P.S.- Pachgachia, District- Saharsa.

.... Petitioners-Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. Principal Secretary Department of General Administration (formerly known as Personnel and Administrative Reforms department) Government of Bihar, Main Secretariat, Patna.
3. District Magistrate, Siwan.
4. Deputy Collector, Establishment, Collectorate, Siwan.

.... Respondents-Respondent/s

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Appearance :

For the Appellant/s : Mr. Kishore Kumar Thakur, Advocate
For the Respondent/s : Mr. AC to AAG-12

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-06-2017

Seeking exception to an order dated 29th of October, 2015 passed by the writ Court in Civil Writ Jurisdiction Case No.1498 of 2011, this appeal has been filed under Clause 10 of the Letters Patent.

The appellants were working in the establishment of Collectorate, Siwan. They were appointed as Lower Division Clerks on compassionate ground. Petitioner Nos. 1 to 4 were appointed on



06.08.2002 and petitioner No.5 was appointed on 5th October, 2002 as Lower Division Clerks. At the time of appointment, they were granted pay in the scale of Rs.3050/- - Rs.4500/-.

Seeking benefit in the pay scale of Rs.4000/- - Rs.6000/- as has been granted to other Lower Division Clerks working in the same Department and in the same office in view of the order passed on 17.12.2007 in Civil Writ Jurisdiction Case No.13577 of 2006 and further claiming the aforesaid pay scale, which has been granted to various persons, who were initially working as employees in the non-formal education scheme and who were re-appointed in Class III posts after retrenchment sometimes in the year 2005 and 2006 and were granted the benefit of pay in the scale of Rs.4000/- - Rs.6000/-, petitioners also filed the writ petition and when the writ petition was dismissed, this appeal has been filed.

The facts, in brief, go to show that prior to 07.04.1977, the cadres of Lower Division Clerk and Upper Division Clerk were separate. However, on 07.04.1977, they were merged and a new nomenclature of Assistant was given to them and they were brought in a common pay scale of Rs.4000/- - Rs.6000/-. Subsequently, on 20th December, 2000, vide Annexure-2 to the writ petition, the cadre was de-merged, revival in creation of two cadres of Lower Division Clerk and Upper Division Clerk. In the Circular, Annexure-2, dated 20th December, 2000, stipulation was contained that only such persons will



be entitled to the pay scale of Rs.4000/- - Rs.6000/- in whose cases the process of selection is over and the selection has been completed and all other candidates, where the selection process is not complete, they will get pay scale of Rs.3050/- - Rs.4500/-.

When this process was going on, the Bihar Public Service Commission had prepared a panel and had made recommendation for appointment, but as the appointment could not be made prior to 20th December, 2000, when the selected candidates were placed in the pay scale of Rs.3050/- - Rs.4500/-, they filed a writ petition before this Court being CWJC No.13577 of 2006 and by a detailed order passed, a Bench of this Court held that as the appointment process had already commenced and the appointment was delayed due to the act of the State Government and the Bihar Public Service Commission, vide order dated 17th December, 2007, (Annexure-3 to the writ petition), the writ petition was allowed and all such candidates even though actually worked after 20th December, 2000 were directed to be paid the pay in the scale of Rs.4000/- - Rs.6000/-. Claiming parity and contending that the process of appointment of the petitioners also in the cadre of lower division clerk on compassionate basis was pending prior to December, 2000 and as they were appointed subsequently, they were also entitled to similar benefits. Apart from claiming similar benefits as is being granted to employees in whose cases CWJC No.13577 of 2006 was decided, the petitioners pointed out that many employees, who were



working in the non-formal education scheme as Class III and Class IV employees, they were retrenched prior to December, 2000 and thereafter vide memos dated 23rd July, 2005 and 20th July, 2006, vide Annexurs-4 and 5 to the writ petition, more than 300 of them were granted afresh appointment, this appointment was after 12th December, 2000 but they were all appointed in the pay scale of Rs.4000/- - Rs.6000/-. It was stated that petitioners are also entitled to similar direction as has been granted to these two cadres of employees, i.e. employees, who were retrenched in non-formal education scheme and then re-appointed in the year 2005 and 2006 and the employees, who were original petitioners in CWJC No.13577 of 2006.

The learned Writ Court examined the matter and found that in the case of CWJC No.13577 of 2006, the process of appointment was commenced and completed much before the Circular dated 20th December, 2000 was issued and therefore, merely because there was some delay in issuing the appointment order, the benefit of pay scale cannot be denied to them and the case of the petitioners is not identical in nature to the petitioners in CWJC No.13577 of 2006 and therefore, the benefit cannot be granted to them.

As far as the employees reinstated after they were retrenched in the non-formal education scheme are concerned, the learned Writ Court even though took note of the same, but has not adverted to address the issue in its totality. Learned counsel of the petitioner took us



through various documents in support of the contentions as are made hereinabove and tried to indicate that in dismissing the writ petition, the learned Writ Court has committed an error and invited our attention to the proceedings held in MJC No.1750 of 2005 and MJC No.2056 of 2005 arising out of CWJC No.9934 of 1999 (Ashok Kumar Sinha Vs. The State of Bihar & Ors.) and argued that in case of each of the petitioners, their claim for appointment on compassionate ground was pending much before 20th December, 2000 and if the Government itself has held their appointment on compassionate ground, the petitioners are entitled to similar treatment as was granted to employees in CWJC No.13577 of 2006. That apart, it was argued that when the employees working in the non-formal education scheme were retrenched and when in the year 2005 and 2006, they were given fresh appointment as is evident from Annexures 4 and 5 filed along with the writ petition dated 23rd July, 2005 and 20th July, 2006, petitioners are also entitled to similar benefit.

Learned counsel for the State refuted the aforesaid contentions and argued that in the Circular dated 20th December, 2000, (Annexure-2) there is a clear cut stipulation that all fresh appointment made after 20th December, 2000 will be in the pay scale of Rs.3050/- - Rs.4500/-, and as all the five petitioners herein were appointed after 20th December, 2000, they are not entitled to any benefit and on consideration of this aspect of the matter as the writ Court has dismissed



the writ petition, there is no error in the order.

We have heard learned counsel for the parties at length and we find that all the petitioners in the writ petition and the employees, who were appointed by virtue of the order passed in CWJC No.17566 of 2006 and the employees, who were originally working in the non-formal education scheme and who were given fresh appointment vide Annexure-4 dated 23rd July, 2005 and Annexure-5 dated 20th July, 2006, are all working in the same office, namely the Collectorate at Siwan, all are discharging identical function, but except the five petitioners, the other employees indicated herein above are getting higher pay in the scale of Rs.4000/- - Rs.6000/-. The only reason for giving the benefits are that they were appointed after the circular was issued on 20th December, 2000. However, the fact remains that even in the case of employees, who were petitioners in CWJC No.13755 of 2006, they were appointed after 20th December, 2000, but they have been granted the benefit in the higher scale of pay of Rs.4000/- - Rs.6000/- on account of the fact that the process of appointment initiated in the year 1999 was delayed because of the procedural delay. In the case of the petitioners also, as is evident from the records, their appointment process was also initiated in the year 1999-2000 and in the case of the petitioner Ashok Kumar Sinha, he filed the writ petition claiming compassionate appointment way back in the year 1999 in CWJC No.9934 of 1999 and it was only after the order was passed in the aforesaid MJC in the year



2005 that the appointment order was issued. That being so, we see no much difference between the employees, who were petitioners in CWJC No.13577 of 2006 and the present petitioners. Even if for the sake of argument it may be assumed that the petitioners and the employees, who were petitioners in CWJC No.13577 of 2006 form two different categories, there is no justification in the matter of discrimination between the present petitioners and the retrenched employees who were working in the non formal education scheme. It is clear that the non-formal education scheme came to an end and large number of Class-III and Class IV employees was retrenched and thereafter in the year 2005 and 2006 as is evident from Annexures 4 and 5, they were re-appointed as a fresh appointee in the year 2005 and 2006, that is much after 20th December, 2000 and in their case, they have been granted the higher pay scale of Rs.4000/- - Rs.6000/-. If that be so, there is a discrimination in the matter of granting similar benefit to the petitioners when more than 300 employees have been granted such benefit of higher pay scale in the grade of Rs.4000/- - Rs.6000/- even after they were appointed in the year 2005 and 2006, there is no reason as to why similar benefits should be denied to the petitioners when the petitioners are also doing similar work and were appointed after 20th December, 2000. To that effect, there is discrimination in the matter and the petitioners are entitled to equal treatment. That apart, the petitioners are working in the Collectorate at Siwan and many employees identically situated, like the



petitioners, who were appointed after 20th December, 2000, as is indicated hereinabove, are being granted pay in the scale of Rs.4000/- - Rs.6000/- and if that be the factual position, there is no reason why a similar benefit should not be extended to the petitioners.

Keeping in view the aforesaid, this appeal is allowed, the order impugned dated 29.10.2015 passed in CWJC No.1498 of 2011 is quashed. The said writ petition is allowed and the petitioners are directed to be paid the benefit in the scale of pay Rs.4000/- - Rs.6000/- retrospectively with effect from the date of appointment. However, arrears of the petitioner are only to be granted with effect from the date they filed the writ petition before the High Court, i.e. with effect from 21.01.2011.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

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CAV DATE	NA
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