# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.23781 of 2012**

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1. Syed Reyaz Monir, S/O Late Md. Monirul Hoda Resident Of Z-12, Ashiyana Nagar Phase-1, P.S- Rajiv Nagar, Town & District- Patna.
2. Lalan Kumar S/O Late Jagdish Prasad Sharma Resident Of R.M.S. Colony, East Ashok Nagar, Kankarbagh Colony, P.S- Kankarbagh, Town & District- Patna.
3. Narendra Kumar Singh, S/O Late Rajkeshwar Sharma Resident Of Kaliket Nagar, Sir Ganesh Dutta Path, New Bailey Road, P.S- Rupaspur, Danapur, District- Patna.
4. Ram Sewak Mahto, S/O Late Nageshwar Mahto Resident Of Dighi Kala (Panch Kurba),P.S- Sadar Hajipur, Hajipur District- Vaishali.
5. Arbind Kumar Rai, S/O Late Baldeo Rai, Resident Of Village- Bhikha Chak, P.O- Anishabad, P.S- Gardanibagh, Town & District- Patna.
6. Kaushal Kant S/O Late Musafir Prasad Yadav, Resident Of C/O Sri Ajay Singh, B- 74, Ashiyana Nagar Colony Phase-1, P.S- Rajiv Nagar, Town & District- Patna.
7. Satyajit Sanjaya S/O Late Akhouri V.P. Verma Nitishwar Prasad Marg, Naya Tola,P.S- Kaji Mohammadpur, District- Muzaffarpur.
8. Sharad Bharti S/O Late Radhey Krishna Prasad Resident Of " Vimal Niketan", Naya Tola, P.S- Kaji Mohammadpur, District- Muzaffarpur.
9. Anima Srivastava D/O Late Kamal Narayan Srivastava And W/O Sharad Bharti Resident Of "Vimal Niketan", Naya Tola, P.S- Kaji Mohammadpur, District- Muzaffarpur.
10. Rajiv Ranjan S/O Late Bishwanath Prasad Resident Of Raja Bazar, Ward No. 36, P.S- Motihari, District- Motihari.
11. Bidhan Chandra Roy S/Olate Mahabir Roy Resident Of New Chetna Path, Near Dal Mill, Shivpuri, Chitkohra, Anisabad, Town & District- Patna.
12. Sanjeev Kumar Verma S/O Late Madan Prasad Shrivastav Resident Of Near Raj Narayan Singh College, Balughat, Town & District- Muzaffarpur.

.... .... Petitioners

Versus

1. The State Of Bihar, Through The Principal Secretary, Finance Department, Government Of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Finance Department, Government Of Bihar, Old Secretariat, Patna.
3. The Secretary (Expenditure), Finance Department, Government Of Bihar, Old Secretariat, Patna
4. The Additional Secretary, Finance Department, Government Of Bihar, Old Secretariat, Patna.
5. The Joint Secretary, Finance Department, Government Of Bihar, Old Secretariat, Patna.
6. The Deputy Secretary, Finance Department, Government Of Bihar, Old Secretariat, Patna.
7. The Assistant Controller (Budget), Finance Department, Government Of Bihar, Old Secretariat, Patna.
8. The Treasury Officer, Secretariat Treasury, Sinchai Bhawan, Patna.
9. The Treasury Officer, Secretariat Treasury, Vikash Bhawan, Patna.

10. The District Treasury Officer, District Treasury, Patna.
11. The Treasury Officer, District Treasury, Danapur.
12. The District Treasury Officer, District Treasury, Muzaffarpur.
13. The District Treasury Officer, District Treasury,Motihari.
14. The District Treasury Officer, District Treasury, Vaishali, Hajipur.

.... .... Respondents

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**Appearance :**

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| For the Petitioners | : | Mr. Dhruba Mukherjee, Sr. Advocate<br>Mr. A.K. Chongdar, Advocate |
| For the Respondents | : | Mr. Sanjay Prakash Verma, AC to GA 1 |

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

**Date: 23-08-2017**

**I.A. No. 8233 of 2016**

This interlocutory application has been filed with a prayer for amendment of the writ petition by adding the following prayer –

> *"For issuance of a writ of Certiorari or any other appropriate writ, order or direction quashing order contained in Memo No. 6391 dated 10.08.2016 (Annexure-22 herein) issued under the signature of the Principal Secretary, Finance Department, Government of Bihar, Patna, whereby and whereunder the representation of the petitioners has been rejected on non-est ground."*

2. Having regard to the nature of the prayer, the interlocutory application is allowed and the petitioners are permitted to make appropriate amendment in the writ petition in course of the day.

**CWJC No. 23781 of 2012**

3. The present writ petition has been filed for the following reliefs –

*"(i) For issuance of a writ of mandamus or any other appropriate writ, order or direction commanding the Respondent Authorities to provide the petitioners Pay Scale of Rs. 5000-8000 with effect from 1.1.1996 or from their respective dates of joining, whichever is later, and replacement scale of Rs. 9,300/- to 34,800/- with Grade Pay of Rs. 4,200/- in PB-2 with effect from 1.1.2006 in terms of judgment and order dated 22.8.2006 passed in W.P. (S) No. 742 of 2004 which has been upheld by the Hon'ble Supreme Court and particularly in view of the fact that similarly situated Class-III employees of Treasury Cadre like these petitioners are getting the aforementioned pay scale and also taking into account the fact that the petitioners are discharging same and similar duties and responsibilities as being discharged by the other Class-III employees of Treasury Cadre:*

*(ii) For issuance of a writ of Mandamus or any other appropriate writ, order or direction commanding the respondent authorities to pay the petitioners all consequential benefits, such as, arrears of difference of salary etc. on account of providing the pay scale of Rs. 5000/- to 8000/- with effect from 1.1.1996 or from the date of their joining whichever is later and thereafter to pay further difference of arrears of salary with effect from 1.4.2007 after re-fixing their salary in the pay scale of Rs. 9,300/- to 34,800/- with corresponding Grade Pay of Rs. 4,200/- with effect from 1.1.2006; and*

*(iii) For issuance of a writ of Certiorari or any other appropriate writ, order or direction quashing order contained in Memo No. 6391 dated 10.08.2016 (Annexure-22 herein) issued under the signature of the Principal*

*Secretary, Finance Department, Government of Bihar, Patna, whereby and whereunder the representation of the petitioners has been rejected on non-est ground."*

4. The short facts of the case according to the petitioners are that they were initially appointed on compassionate basis as Treasury Clerks variously between the years 1984 and 1997 and are holding the posts of Accountant and Assistant Accountant (Class-III) under the Finance Department in various Treasuries. The petitioners claim the pay scale of Rs. 5000-8000 with effect from 01.01.1996 or from their respective dates of joining whichever is later, as well as replacement scale of Rs.9,300-34,800 with Grade Pay of Rs. 4200/- with effect from 1.1.2006 with all consequential benefits.

5. Mr. Dhruba Mukherjee, learned senior counsel for the petitioners, makes a short submission to the effect that the petitioners cannot be denied the benefit of the pay-scale and other benefits as admissible in the case of other similarly situated persons belonging to the same cadre on the specious ground that there was a distinction between those who had been taken into service on compassionate basis and those who had exercised their option for treasury cadre in the year 1979. Learned counsel submits that this issue has already been decided in various decisions and places reliance on the decision of the Hon'ble Jharkhand High Court, Ranchi in the case of Satyendra Kumar Dubey Vs. The State of Jharkhand and others in W.P. (S) No. 742

of 2004 (Annexure-4) as affirmed in LPA No. 515 of 2006 (The State of Jharkhand & others Vs. Satyendra Kumar Dubey) which was not interfered with by the Hon'ble Supreme Court in SLP (Civil) No. 6897 of 2007 vide order dated 13.08.2007. Learned counsel further relies on the judgment of this Court in CWJC No. 817 of 20007 (Prabhat Shankar Poddar Vs. The State of Bihar & others) squarely covering the issue.

6. Learned counsel for the respondents appears and has been heard.

7. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds merit in the submissions of the learned senior counsel for the petitioners that the issue is no longer res integra. The respondents have virtually taken a solitary ground for denying the benefits in question to the petitioners, to the effect that the petitioners were initially appointed on compassionate basis and their cases stood on a different footing than those who had opted for treasury cadre in the year 1979. As in the counter affidavit and so also in the order contained in Memo No. 6391 dated 10.08.2016 (Annexure-22), this has been made explicit. It is relevant to take note of letter no. 1693 dated 13.03.2007 expressing the view that in respect of the persons working in the treasury who had been appointed on compassionate basis or other than those who had opted for the treasury cadre in the year 1979, they were entitled to pay scale of Rs. 4000-6000 with effect from

01.01.1996 and not to the pay-scale of Rs.5000-8000. This Court in CWJC No. 817 of 2017 (*Prabhat Shankar Poddar Vs. The State of Bihar & others*) vide order dated 20.07.2011 (Annexure-8), while considering this issue, has already quashed the letter no. 1693 dated 13.03.2007 and LPA No. 2006 of 2011 (*The State of Bihar and Ors. Vs. Prabhat Shankar Poddar*) against the said decision has been dismissed vide order dated 05.12.2013. The decision of the Hon'ble Jharkhand High Court in W.P. (S) No. 742 of 2004 (*Satyendra Kumar Dubey Vs. The State of Jharkhand & Ors.*) has travelled upto the Hon'ble Supreme Court in SLP (Civil ) No. 6897 of 2007 which was however dismissed both on the ground of inordinate delay and merits vide order dated 13.08.2007.

8. This Court therefore has no hesitation in holding that the classification sought to be made by the respondents between the persons who were initially appointed on compassionate basis such as the petitioners, and those who had opted for treasury cadre in the year 1979, cannot be said to be a reasonable one and is thus unsustainable in law. The petitioners cannot be denied the benefit of higher pay scale and other benefits as claimed. Accordingly, the order contained in Memo No. 6391 dated 10.08.2016 (Annexure-22) is hereby quashed with a direction to the respondents to grant the petitioners' pay scale of Rs.5000-8000 with effect from 01.01.1996 or from their respective dates of joining, whichever is later, as well as replacement pay scale of Rs.9,300-34,800 with Grade Pay of Rs. 4200/- with effect from 01.01.2006

as granted in the case of the employees of the treasury cadre, with all consequential benefits.

9. The writ petition stands allowed.

**(Vikash Jain, J)**

B.T/Chandran

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| AFR/NAFR | NAFR |
| CAV DATE | N.A. |
| Uploading Date | 29.08.2017 |
| Transmission Date | N.A. |