

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1303 of 2014
IN
Civil Writ Jurisdiction Case No. 12147 of 2013**

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Sri Pankaj Kumar, aged about 42 years, Son of Late Awdhesh Kamat, Resident of
Ward No. 11, Purani Durga Asthan, P.O. + P.S. + District - Supaul.

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department,
Government of Bihar, Patna
2. The Principal Secretary, General Administration Department, Government of
Bihar, Patna
3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna
4. The Chief Engineer, Road Construction Department, Govt. of Bihar, North
Wing (C) Darbhanga
5. The Superintending Engineer, Road Construction Department, Road Circle,
Saharsa.
6. The Executive Engineer, Road Construction Department, Road Pramandal,
Supaul

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Y. V. Giri, Sr. Advocate

Mr. Sumit Kumar Jha, Advocate

For the Respondent/s : Mr. Lalit Kishore, Advocate General

Mr. Ashok Kumar Dubey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 23-02-2018

The instant Letters Patent Appeal has been filed on behalf
of the petitioner-appellant against the order dated 11.04.2014 passed
in C.W.J.C. No. 12147 of 2013, whereby and where under the Writ
Court after hearing the parties dismissed the writ application

2. The petitioner has filed C.W.J.C. No. 12147 of 2013
against the order dated 24.09.2012 and order dated 09.04.2013,



contained in Annexures-1 and 1/A and 1/B, issued by the Superintending Engineer, Road Construction Department, Road Circle, Saharsa whereby the petitioner was reverted and order of recovery was made on account of the fact that the petitioner was paid salary in the pay scale of Rs. 4000 – 6000/- instead of his entitlement of Rs. 3050 – 4590/-. The Writ Court considered the various aspects of the matter and noted that while effecting 6th Pay Revision Committee recommendation with effect from 01.01.2006 he was not entitled to the revised pay scale of Rs. 5200 – 20200/- with Pay Grade of Rs. 2400/-. The Writ Court rejected the contention of the counsel for the petitioner that since the petitioner was appointed as Junior Accounts Clerk and, as such, he was entitled to the pay scale of Junior Accounts Clerk notwithstanding the fact that he was appointed on compassionate ground. The Writ Court on consideration of the fact that the petitioner was appointed on compassionate ground and, as such, he was not entitled to the pay scale of Rs. 4000 – 6000/- which is the regular pay scale of regularly appointed Junior Accounts Clerk. The Writ Court also considered the grievance of the petitioner in the light of the judgment of the Apex Court in the case of **Chandi Prasad Uniyal & Others Vs. State of Uttarkhand and another**, reported in **(2012) 8 SCC 417** and held out that the petitioner is not entitled to the pay scale, which he received and, as such, there is no infirmity in the



order passed by the respondent directing recovery of the excess amount, which the petitioner received.

3. Aggrieved by the decision of the Writ Court dated 11.04.2014 passed in C.W.J.C. No. 12147 of 2013, the appellant has preferred this appeal under Clause 10 of the Letters Patent of Patna High Court Rules.

4. Mr Y. V. Giri, learned senior counsel appearing on behalf of the appellant submitted that the petitioner was appointed as Junior Accounts Clerk and as such he was entitled to the pay scale admissible to Jr. accounts clerk and on account of pay revision he was entitled to the revised pay scale with grade pay and the respondents have committed error in reverting the petitioner and directing recovery. Mr. Giri, placed reliance on the decision of this Court in LPA No. 167 of 2016 dated 23.06.2017 whereby Division Bench of this Court on consideration of the fact that on account of merger of Lower Division Clerk and Upper Division Clerk and a new nomenclature of Assistant was given and they were brought in the pay scale of Rs. 4000-6000/- after the merger of two cadres of Lower Division Clerk and Upper Division Clerk pay revision was effected and a distinction was drawn in the matter of pay revision and those who were in the Lower Division Clerk cadre, they were subjected to



revision of pay scale in the pay scale of Rs. 3050 – 4500/- and not the pay revision admissible to the Assistant i.e. pay scale of Rs. 4000 – 6000/-. This Court on consideration of the fact that once the cadre of Lower Division Clerk and Upper Division Clerk merged and both became Assistant after merger, the respondent cannot adopt two different yardstick in the matter of their pay revision on the ground that the earlier distinction of Lower Division Clerk and Upper Division Clerk, which came to an end on merger of both cadre in the cadre of Assistant. The Court also noticed the fact that more than 300 employees have been granted such benefit of higher pay scale of Rs. 4000 – 6000/- even after they were appointed in the year 2005 and 2006 and, as such, the Writ Court held out that there is no reason to deny the benefit to the petitioner when they are doing the same work and are appointed after December, 2000.

5. Mr. Giri submitted that the pay scale was fixed by the respondent and there was no misrepresentation or fraud practiced by the petitioner and, as such, the respondents are not justified in directing recovery of the excess amount allegedly paid to the petitioner. He submitted that the respondents as well as the Writ Court committed error in directing recovery and approving the action of the recovery.



6. Mr. Lalit Kishore, learned counsel appearing on behalf of the respondents, has drawn the attention of the Court to the letter of appointment of the writ petitioner contained Annexure-3 and submitted that the petitioner was appointed on compassionate ground in the pay scale of Rs. 3050-75-3950-80-4590/-. He submitted that at the relevant time the post was not available for appointment of the petitioner on compassionate ground and as a matter of indulgence and compassion, the respondents have appointed the petitioner in the pay of Rs. 3050-4590/- to provide financial assistance to the family of the late Awadhesh Kamat who died in harness and on account of death of the bread earner the family was facing financial hardship and as such the petitioner was offered appointment, although there was no post available for consideration of appointment of the petitioner on compassionate ground and so the compassion shown by the respondent in the matter of granting compassionate appointment cannot create right to claim the pay scale admissible to the Jr Accounts Clerk. Referring to the letter of appointment contained in Annexure-3 Mr. Lalit Kishore, learned, Advocate General submits that once the appointment of the petitioner was made in the pay scale of Rs. 3050-4590/- the subsequent change in the pay scale instead of Rs.3050-4590/- to Rs.4000-6000/- is illegal and without jurisdiction.

7. Mr Lalit Kishore submitted that the petitioner has no



right to claim the pay scale admissible to Jr. accounts clerk, as he was appointed on compassionate ground and for compassionate appointment the pay scale of Rs 3950 – 4590/- was the prescribed pay scale. The post of Jr. accounts clerk was not available for appointment on compassionate ground, but that was offered only for the purpose of providing compassionate appointment, as there was no vacancy available, it was like creating a supernuatory post to adjust the petitioner, otherwise the petitioner could not have been provided compassionate appointment in the present case. He submitted that since the petitioner was not entitled to the pay scale admissible to the compassionate appointee and in view of Annexure-3 was liable to refund the excess amount paid to the petitioner and there is no error in the order passed by the respondent and the decision of the Writ Court

8. We have gone through the materials available on record and after hearing the counsel for the petitioner as well as the counsel for the respondents we are of the considered view that the petitioner was appointed on compassionate ground and vide Annexure-3 he was appointed in the pay scale of Rs. 3050 – 75 – 3950 – 80 – 4590/- and that was the pay scale admissible for compassionate appointment. We also find substance in the submission of the learned Advocate General that the compassion was shown by the respondents in the matter of granting compassionate appointment to the petitioner otherwise



petitioner could not have been appointed, as no post was available for compassionate appointment other than the post of Jr accounts clerk, which was not meant for compassionate appointment. We have also examined the judgment on which Mr. Y.V. Giri placed reliance. The judgment in L.P.A. no. 167 of 2016 has no application in the present fact and circumstances. In L.P.A. No.167 of 2016. the action of the respondent was held to be arbitrary and discriminatory on account of the fact that once there was merger of Lower Division Clerk and Upper Division Clerk and they were included in the category of Assistant, there was no justification to treat differently after merger in the matter of grant of pay scale and pay revision and we have also considered in that case the fact that similarly circumstanced 300 others have been granted such pay scale. The fact of the present case is distinguishable from various Annexures enclosed with the writ petition and it is seen that petitioner was appointed on compassionate ground. He was consciously appointed in the pay scale of Rs. Rs. 3050– 4590/- and, as such, he cannot be automatically granted the pay scale of the Jr. Accounts Clerk, which was not available for compassionate appointment and, as such, we do not find the present case to be of reversion.

9. Thus, while considering the case of the writ petitioner-appellant as to his entitlement in the pay scale of Rs. 4000-6000/- i.e.



the pay scale of Junior Accounts Clerk, we find no error in the decision of the respondent and the judgment of the Writ Court.

10. Coming to the next submission of Mr. Giri, learned senior counsel that petitioner was not in any manner responsible for the pay fixation in the pay scale of Rs. 4000-6000/- and as such there is no fraud and misrepresentation and the competent respondents have consciously decided to grant him the pay scale, the recovery of such excess amount is impermissible in view of the fact that there was no fraud or misrepresentation practice of the petitioner.

11. Under the aforesaid circumstance, the Court is of the considered view that no interference is called for, so far as the entitlement of the petitioner for payment of pay scale is concerned, since the petitioner was appointed in the pay scale of Rs. 3050 – 4590/- he is not entitled to the pay scale of Rs. 4000 – 6000/-. The decision of the respondent, contained in Annexures-1, 1/A and 1/B do not warrant any interference. Accordingly, we upheld the decision of the Writ Court dated 11.04.2014 so far as entitlement of the petitioner for pay scale is concerned. However, in the totality of the facts situation, we notice that there was no fraud or misrepresentation by the petitioner and the competent respondents have consciously decided to pay the pay scale of Rs. 4000 – 6000/- vide Annexure-5,



we are unable to approve the action of the respondent directing recovery of the excess amount.

12. Accordingly, on consideration of the entire facts and circumstances, we partly allow the appeal, set aside the order of recovery of excess amount. However, we do not find any infirmity in the order holding that the petitioner is entitled to the pay scale of Rs. 3050 – 4590/- and its replacement scale on pay revision.

13. Accordingly, this appeal is partly allowed to the extent indicated hereinabove.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.03.2018
Transmission Date	

