

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15862 of 2013

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1. TAPAN KUMAR AWASTHI SON OF LATE SUDHIR KUMAR AWASTHI RESIDENT OF ASHRAM ROAD, NEAR MAHADEV CHOWK, WARD NO. 15, DISTRICT- ARARIA
 2. BHOLA PRASAD SON OF LATE MOTILAL RESIDENT OF MOHAKLLA- TEJ TOLA, BENGALI PARA, NEAR UMANG NURSERY, DISTRICT- KATIHAAR
 3. NARENDRA PRASAD AMBASTA SON OF LATE MAHENDRA PRASAD AMBASTA RESIDENT OF RAMNAGAR, MAIN ROAD, DISTRICT- PURNIA
 4. VISHNUDEO YADAV SON OF HARSHAN LAL YADAV RESIDENT OF P.O. MARANYA, P.S. K.HAT, DISTRICT- PURNIA
 5. MILAN KUMAR ROY SON OF LATE PRABHAT CHANDRA ROY RESIDENT OF ASHRAM ROAD, WARD NO. 15, DISTRICT- ARARIA
 6. RAMCHANDRA SAH SON OF BHOTHRI SAH RESIDENT OF KUSAILA, HAWAI ADDA COLLEGE SETU, DISTRICT- KATIHAAR
 7. KUWAR KUMAR CHOWDHARY SON OF LATE KAMLESHWAR PRASAD RESIDENT OF VILLAGE- PARORA, P.S. K.NAGAR, DISTRICT- PURNEA
 8. ANIL KUMAR SINHA SON OF LATE KAILASH NANDAN SINHA RESIDENT OF P.O.- MADHUBANI, P.S. K.HAT, DISTRICT- PURNEA. DISTRICT- KATIHAAR
 9. ANIL KUMAR BOSE SON OF LATE A.B. BOSE RESIDENT OF BHATTHA MISSION PARA, P.S. K.HAT, DISTRICT- PURNEA
 10. SURENDRA KUMAR SON OF LATE KEDAR LAL RESIDENT OF VILLAGE- MOHAMMADPUR, P.S.- SHERGHATI, DISTRICT- GAYA

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna
2. The I.G. Registration, Department Of Registration, Government Of Bihar, Vikas Bhawan, Bailey Road, Patna
3. The Secretary, Department Of Registration, Government Of Bihar, Vikas Bhawan, Bailey Road, Patna
4. The Secretary, Department Of Finance, Government Of Bihar, Old Secretariat, Patna
5. The Joint Secretary, Department Of Finance, Government Of Bihar, Old Secretariat, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kumar Kaushik
For the Respondent/s : Mr. Raju Giri (GP30)



CORAM: HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT
Date : 23-02-2018

This writ petition under Article 226 of the Constitution of India has been filed by petitioner for a direction to the respondents-authorities to grant the pay scale admissible to Upper Division Clerk of the Department of Registration from the date of their appointment in view of the decision taken by the Government by letter no.5206 dated 24.5.1980 by which the cadres of Lower Division Clerk and Upper Division Clerk were merged into single cadre of Clerk in the pay scale of Upper Division Clerk.

2. Briefly stated facts of the case as stated in petition is that petitioners were appointed as extra clerk in the Department of Registration after due advertisement and were consequently appointed as temporary clerk in the said department. Petitioner no. 1 was appointed as temporary clerk in the pay scale of Rs. 975-1540 on 8.8.1996. Petitioner nos. 2, 3,4,5,6,7 and 10 were appointed as temporary clerks in the pay scale of Rs. 975-1540 in 1990. Petitioner nos. 8 and 9 were appointed as temporary clerk in the pay scale of Rs. 975-1540 in 1997. Petitioner no. 1 was confirmed in his service by letter dated 20.6.2011 and remaining petitioners were confirmed vide letter dated 3.1.2008 in their services as Lower Division Clerk. It is apparent from orders of confirmation that petitioners were working on the post of Lower Division Clerk from the date of their appointment as temporary clerk and were being granted pay scale of Lower Division Clerk. It has been submitted by the petitioners that the State Government by letter dated 24.5.1980



has merged the cadre of Lower Division Clerk and Upper Division Clerk into one cadre of clerk in the pay scale of Upper Division Clerk , as a result of which Lower Division Clerk became entitled to pay scale of Upper Division Clerk as Lower Division Clerk cadre was seized to exist. By letter dated 28.9.1999 the State Government through a cabinet meeting decided to demerge the cadre of clerk into Upper Division Clerk and Lower Division Clerk which was merged in 1980 with a condition that clerks working before the date of demerger will be deemed to be Upper Division Clerk. The demerger was to be made effective from prospective date and similar decision was reiterated by the State Government in its letter dated 20.12.2000. Petitioners were working as clerks on 20.12.2000 when the aforesaid order of demerger of two cadres Lower Division Clerk and Upper Division Clerk came into effect and petitioners were to be treated as Upper Division Clerk and were entitled to the pay scale of Rs. 4000-6000 in place of Rs. 3050-4500 admissible to Lower Division Clerk. Although petitioners were entitled for pay scale of Upper Division Clerk as the post of Lower Division Clerk was merged with Upper Division Clerk and no post of Lower Division Clerk was in existence and petitioners were to have been granted pay scale of Upper Division Clerk of Rs. 4000-6000. Petitioners have made representation before Chairman, Redressal Grievance Committee of the Department of Registration vide letter dated 10.9.2011 and 16.12.2011 but no decision has been taken on their representation. It has further been stated that some of the temporary clerk of the Department of Registration had preferred a writ petition being CWJC No. 6107 of 1992 which was disposed of vide order dated 1.1.1997 with



a direction to the respondents to consider their claim and in light of aforesaid order the State Government vide Memo no.5850 dated 1.9.1998 decided to treat temporary clerks equivalent to the post of Remunerative Copyist, i.e., in the pay scale of Rs.4000-6000. Petitioners have lastly submitted that they are entitled for pay scale of Rs.4000-6000 from 1.1.1996 which is being illegally and wrongly denied to them.

3. A counter affidavit has been filed on behalf of the State in which it has been admitted that cadres of Lower Division Clerk having pay scale of Rs.220-315 and Upper Division Clerk having pay scale of Rs.284-372 of Muffasil offices were merged into one cadre of clerk having pay scale of Rs. 284-372 with effect from 1.5.1980. But cases of the petitioners are different as in the Registration Department where extra clerks were engaged on daily basis and these extra clerks were regularized in regular service on salary basis and 1000 posts were created named as temporary clerks in the pay scale of Rs.220-315 with effect from 1981. These posts were not included in the previous merger scheme of Lower Division Clerk and Upper Division Clerk and vide department letter dated 5.1.1984 40% of the vacant posts of clerks (Upper Division Clerk) was to be filled up through promotion from these temporary posts appointed from extra clerks (Upper Division Clerk) and rest 60% was to be directly recruited. Later on, cent percent vacant posts of clerks (UDC) began to be filled by promotion from these temporary clerks. The pay scale of these temporary clerks was revised as Rs.975-1540, Rs. 3050-4590, Rs. 5200 to 20,000 Grade pay Rs.1900 as consequence of pay revision. It has been submitted by State counsel that scale of petitioners' post temporary clerks was never merged in higher



scale and petitioners were working in the pay scale of Rs. 220-315, Rs. 3050-4590, Rs. 5200 to 20,000 Grade pay Rs.1900 from the very beginning and as such their claims to get benefit of merger given by letter no.5206 dated 24.5.1980 is not maintainable. It has further been contended that memo no. 5206 dated 24.5.1980 of the finance department is regarding merger of posts LDC and UDC which existed prior to 1.5.1980 were only merged. Petitioners' posts were specially created as temporary clerks with effect from 1981; as such their demand is not justified. It has lastly been submitted that order of merger was effective only for the posts of those cadres which were existing prior to the date 1.5.1980. The circular No. 8825 dated 20.12.2000 was related to earlier circular no. 5206 dated 24.5.1980 and dated 28.9.1999 and same were applicable only to those cadres which were merged in 1980 and demerged in 1999. As such benefits of said circulars are not available to the petitioners. It has further been submitted that neither Finance Department has communicated to the Registration Department that remunerative copyist of Revenue Department has been granted pay scale of Rs.4000-6000 nor petitioners have submitted any evidence of Finance Department's decision to raise the pay scale of remunerative copyist of Revenue Department from Rs. 3050-4500 to Rs.4000-6000. It has been mentioned by the Finance Department that whenever the Government will decide about rectification of the pay scale of remunerative copyist of Revenue Department it shall also be effective in case of temporary clerks of Registration Department but Registration Department is unaware of any such decision.



4. A rejoinder has been filed on behalf of the petitioners in which they have stated that no post of temporary clerk was in the Department, rather 1000 posts of clerk were sanctioned by the department who were to be absorbed from amongst the extra clerks who were then working on daily wages. The entire claim of appointment is clearly evident from letter no 1928 dated 28.5.1980 issued by the department. It would further appear from the aforesaid letter that 1000 posts of clerks were created by the Government vide Memo No. 3623 dated 2.12.1978. The aforesaid 1000 posts of clerk on temporary basis were made permanent vide Memo no. 1697 dated 14.9.1990 issued by the Department of Registration which was merged under the Revenue Department. By the aforesaid letter 1000 posts of clerk were made permanent with effect from 1.3.1990 in the pay scale of Rs.975-1540. The letters by which petitioners were confirmed in service discloses that they were confirmed in the cadre of LDC which did not exist after 1.5.1980 and was merged with Upper Division Clerk with pay scale of Upper Division Clerk. Pursuant to order dated 7.9.2016 passed by this Court a supplementary counter affidavit has been filed on behalf of the State of Bihar in which seniority list of temporary clerks in the Department of Registration has been enclosed.

5. Heard learned counsel for the petitioners and learned counsel for the State.

6. Extra clerks were engaged in work by the Registration Department on daily basis in order to cater the work of department. The Government took a decision to bring those extra clerks who were working in the department in regular service on



salary basis and as such 1000 posts were created as temporary clerk in the pay scale of Rs.220-315 with effect from 1981. The posts of petitioners were specially created posts as temporary clerks with effect from 1981. The Government took decision to create 1000 posts of clerks on temporary basis in order to cater need of work of Registration Department vide Memo no. 3623 dated 2.1.1978. At the time when these posts were created there were two cadres of clerk LDC and UDC and as such the posts were created in the pay scale of LDC. However, final notification was issued in 1981 but it appears that the merger of posts LDC and UDC was overlooked and 1000 posts of clerks on temporary basis were notified by the Government in the pay scale of LDC. However, as per the decision of the Government dated 1.5.1980 posts of LDC and UDC were merged. Therefore, in 1981 when the notification was issued by the Government for creation of 1000 posts of clerk on temporary basis ignoring the decision of the Government of merger of two posts. 1000 posts of clerks on temporary basis were made permanent on 14.9.1990 by the Department of Registration. Therefore, the stand of the Government that the petitioners were appointed on the post of temporary clerks on temporary posts is not correct as all the posts became permanent posts on 14.9.1990 and petitioners were appointed as clerks on a permanent posts having pay scale of Rs.975 -1540 which is the pay scale of LDC ignoring that no posts of LDC was in existence when petitioners were appointed. The Government is entitled to create permanent post as well as temporary post and is also entitled to change the temporary post into permanent post or abolish post. The Government in the year 1978 when there was existence of two separate



cadres of LDC and UDC created 1000 posts of clerks on temporary basis with the pay scale of Rs.220-315 but while issuing the notification in 1981 the merger of two posts LDC and UDC as a single post of clerk was overlooked and not taken into consideration. As per notification posts were created in the pay scale of LDC of Rs.220-315 although on the date of notification neither posts were in existence nor the pay scale. It has been stated by the Department in the counter affidavit that 1000 posts of clerks which were created in 1981 on temporary basis were made permanent post later and as such the contention of the Department that petitioners were appointed on temporary basis is contrary to their pleadings made in the counter affidavit. The post of clerks on temporary basis and its pay scale from 1981 ought to have been Rs.284-372 from 1.5.1980 or 1.4.1981 and its replacement scale on 1.4.1986 should be Rs. 1200-1800. The stand of the Government that the posts on which the petitioners were working were specially created posts of temporary clerk with effect from 1981 is erroneous. The posts were created in the Registration Department on regular basis and post can be created on a regular basis on the pay scale which were existing on the date same was notified. From the date when the posts were notified neither any post of LDC nor any such pay scale was in existence but there was only one post of clerk after merger of LDC and UDC having merged pay scale of R.284-372 and petitioners are entitled to have this pay scale and its subsequent replacement pay scale. The petitioners who were appointed after 1996 are entitled to have pay scale of Rs.4000-6000 and petitioners who were appointed prior to 1.1.1996 are entitled to pay scale of Rs. 1200-1800 and its subsequent



replacement scale. Initial appointment either on temporary posts or permanent posts is on temporary basis and such appointments are made permanent only after confirmation. There cannot be creation of any post like temporary clerk in a pay scale which was not in existence in the Department. The Department of Registration was already having permanent posts of clerk prior to 1980 it was LDC and UDC and after 1.5.1980 it was a single merger post of clerk and more than 1000 posts of clerk was created in addition to existing strength on temporary basis by notification 1981 which was made permanent in 1990 and same form the part of regular establishment and any contrary stand cannot be accepted. As stated above, petitioners will be deemed to have been appointed on the post of clerk in the pay scale of Rs.1200-1800 or Rs.4000-6000 and are also entitled for subsequent replacement scale. However, as petitioners have approached this Court for the first time in 2013 they cannot be granted monetary benefits of enhanced pay scale prior to three years from the date of filing of the writ petition. As such, the arrears of salary for which the petitioners are entitled because of enhancement of their pay scale and they will be entitled only after 1.4.2010 and no arrears of salary prior to 1.4.2010 is payable to the petitioners.

7. The respondents are directed to consider the pay scale of petitioners on their appointment as in the pay scale of Rs.1200-1800 and its replacement scale Rs.4000-6000 and fixed their salary in the said pay scale and pay them the arrears of salary arising out of replacement of their pay scale after 1.4.2010. Petitioners are also entitled to enhanced pay scale as the same was granted to remunerative copyists and Registration Department had undertaken that benefits as granted to remunerative



copyists will be extended to petitioners and petitioners are also entitled for same benefits but even after such undertaking given by the Department the benefits had not been extended to them.

8. The writ petition is allowed to the extent as indicated above and respondents are directed to revise the pay scale of petitioner as indicated in the order within three months from receipt/production of copy of order of this Court.

(S. Kumar, J)

sudip/-

AFR/NAFR	
CAV DATE	09.01.2018
Uploading Date	
Transmission Date	

