

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20320 of 2014

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1. Arvind Kumar Son of Late Devendra Prasad Singh Resident of Village and P.O. - Utarnawan, P.S. - Rahui, District - Nalanda
 2. Dheeraj Kumar Son of Late Naresh Kumar Samaiyar Resident of Mohalla - Kamruddinganj, P.O. - Biharsharif, P.S. - Laheri, District - Nalanda
 3. Jay Vardhan Son of Late Anand Prakash Resident of Village and P.O. - Sonchari, P.S. - Parwalpur, District - Nalanda
 4. Vinay Kumar Son of Late Awadhesh Prasad Resident of Village - Begampur, P.O. and P.S. Khudaganj, District - Nalanda
 5. Arvind Prasad Sharma Son of Late Rajendra Prasad Resident of Village - Shiv Nagar, P.O. - Habbiur, P.S. - Parmalpur, District - Nalanda
 6. Vikash Kumar Son of Late Nawal Kumar Resident of Village - Salempur (Nilami Gali), P.O. and P.S. Barh, District - Panta
 7. Ravi Shankar Kumar Son of Late Devendra Prasad Resident of Village - Uttarthu, P.O. and P.S. Bind, District - Nalanda
 8. Sanjay Kumar Sinha Son of Late Kapildeo Narayan Prasad Resident of Village - Juaphar Dih, P.O. and P.S. Nalanda, District - Nalanda
 9. Radhika Raman Son of Late Keshav Chandra Sharma Resident of Mohalla - Murarpur, P.O. Biharsharif, P.S. - Laheri, District - Nalanda
 10. Rahul Kumar Son of Late Prakash Chandra Pathak Resident of Mohalla - Mogal Kuan, near Pani Tanki, P.O. and P.S. - Sohsarai, District - Nalanda
 11. Kundan Kumar Sinha Son of Late Rajendra Prasad Resident of Village - Sherpur, P.O. - Mahmādpur, P.S. - Asthawa, District - Nalanda
 12. Sheela Devi Wife of Late Tribhuwan Nath Resident of Mohalla - Sahebganj, Sonar Patti, P.S. - Nagar Thana, District - Saran
 13. Kaushlendra Kumar Son of Late Bengali Prasad Resident of Village - Dariya Chowk, P.O. and P.S. - Aungari, District - Nalanda
 14. Akhilesh Kumar Son of Late Mithilesh Kumar Resident at Arpana Bank Colony, Ramjaypal Road, Beli Road, Danapur, District - Patna

.... Petitioners

Versus

1. The State of Bihar
2. The Principal Secretary, Personnel and Administrative Department, Government of Bihar Old Secretariat, Patna
3. The Principal Secretary, Department of Finance, Government of Bihar Old Secretariat, Patna
4. The Joint Secretary, Department of Finance, Government of Bihar Old Secretariat, Patna
5. The Deputy Secretary, Department of Finance, Government of Bihar Old Secretariat, Patna
6. The District Magistrate, Nalanda at Biharsharif
7. The Deputy Collector, Establishment Nalanda at Biharsharif

.... Respondents

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Appearance :

For the Petitioners : Mr. Bindhyachal Singh, Advocate and
Mr. Avinash Kumar, Advocate
For the State : Mr. Sarvesh Kumar Singh, AAG 13



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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date: 17-07-2018

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

2. This Court had earlier granted time to the respondents for filing counter affidavit, the same was not filed. Under last order dated 3.7.2018 it was directed that if no counter affidavit is filed, this Court would proceed on the basis of materials available on the record. In spite of repeated adjournments and last indulgence to the State, counter affidavit has not been filed on behalf of the State. As if the State has a privilege in the matter of filing counter affidavit and can endlessly keep the matter pending, again prayer for time is made on behalf of the State. This Court is not inclined to grant any further adjournment in the matter and proceeds to take up the matter for disposal.

3. Learned counsel for the petitioners submits that parity in the matter of grant of pay scale on the principle of Equal pay for equal work with those regularly appointed has been denied by the respondents by order dated 1.4.2013 bearing memo no. 476, issued by the District Magistrate, Nalanda. He submits that the rejection is mainly on the ground that source of recruitment of the petitioners was by way of compassionate appointment. Authorities have



therefore placed the petitioners in a separate class, which is unsustainable.

4. Judgment of this Court dated 21.8.2017, passed in C.W.J.C.No. 9921 of 2017 (Binit Kumar and others Vs. State of Bihar and others,) is relied upon by learned counsel for the petitioners.

Relevant paragraph of the judgment is being reproduced herein below:-

“The resolution of the State Government dated 25.3.2015 takes note of every transition taken place on the issue of merger and de-merger as well as the pay-scale attached to the post as revised from time to time. Now even when no classification has been made by the State Government in between the regular appointees and those appointed on compassionate ground in their resolution dated 25.3.2015 such distinction is sought to be created by the Principal Secretary, Finance Department in his letter dated 11.7.2016 present at Annexure „A” to the counter affidavit of the Building Construction Department filed in CWJC No.9921 of 2017 which is a clear case of overreach by the Principal Secretary of the Finance Department to the resolution of the State Government and since it is in the teeth of the opinion expressed by the Division Bench, it is rendered unsustainable.

It is a perpetuation of illegality where the controlling department of the petitioners blindly following the directives of the Principal Secretary of the Finance Department present in his order bearing Memo No.5843 dated 11.7.2016, have proceeded to re-designate these petitioners as lower division clerk in the scale of Rs.3050-4590/- from the date of their initial appointment and to recover the excess salary drawn by them by virtue of implementation of the resolution bearing no.3111 dated 25.3.2015.

In view of the clear stipulation so present in the



*resolution of the State Government bearing no.3111 dated 25.3.2015 present at Annexure 4 which has been referred to by the Division Bench in the case of **Ram Janam Jha** (supra) to uphold the claim of the compassionate appointees, the directives issued by the Principal Secretary of the Finance Department as contained in order no.5843 dated 11.7.2016 is not only contrary to the State Government's decision but also is in the teeth of the judicial pronouncement of this Court and is accordingly quashed and set aside.*

5. Said judgment has been passed relying upon the earlier judgment in case of Ram Janam Jha, which has been duly affirmed upto Hon'ble Apex Court after detailed consideration of the issue, respondent authorities would be obliged to consider the declaration of law.

6. Since the same has been done much after rejection of the petitioner's claim under letter dated 1.4.2013 bearing memo no. 476, petitioners will approach the District Magistrate, Nalanda respondent no.6 by making a detailed representation relying upon the declaration of law as noticed herein above in the case of **Binit Kumar (Supra)**, which this Court is informed has been affirmed by the Division Bench of this Court vide judgment dated 11.7.2018, passed in LPA No. 156 of 2018.

7. Since reliance has been placed on said declaration regarding parity between the appointee under compassionate appointment and under the regular appointment, this Court is not



inclined to delve into the issue again, as the same has been settled as noticed herein above.

8. Respondent no.6, the District Magistrate, Nalanda would be obliged to consider petitioners’ claim having regard to the declaration of law as noticed herein above and take a decision on the issue of parity between the petitioners and the employees having the same scale with those who have been regularly appointed on the post of Lower Division Clerk (LDC).

9. Petitioners would submit their detailed representation within a period of four weeks from today. After such representation is filed, respondent no.6 would be obliged to consider and dispose of the same by a reasoned and speaking order and if any consequential benefits are found to be paid to the petitioners, the same would also be paid to them within three months thereafter.

10. The writ petition is disposed of.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.7.2018
Transmission Date	NA

