

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.52 of 2018
IN
Civil Writ Jurisdiction Case No. 9921 of 2017

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1. Arbind Paswan, S/o Late Jay Mangal Paswan, Resident of Village- Chauhaniya, P.O.- Mehsi, P.S.- Madhuban, District- East Champaran.
 2. Deepak Kumar, S/o Late Lallu Mahto, Resident of Village- Kailashpuri, Ward No.10, P.O.- Dumra, P.S.- Dumra, District- Sitamarhi.
 3. Rakesh Kumar, S/o Late Ram Sevak Prasad, Resident of C/o Ramsevak Niketan, Shivhari Mohalla, Janakpur Road, Pupri, District- Sitamarhi.
 4. Sujeet Kumar, S/o Late Devendra Mishra, Resident of Village & P.O.- Barhi Mohan, P.S.- Purnahiya, District- Sheohar.
 5. Krishna Murari, S/o Late Anandi Prasad Singh, Resident of Village- Kemra, P.O.- Diha, P.S.- Ariyari, District- Sheikhpura.
 6. Suman Saurabh, S/o Late Arun Kumar Srivastava, Resident of Near Dharmdeo Sahay Mandir, Dahiyawan, P.S.- Chhapra, District- Saran.

.... Appellant/s

Versus

1. Binit Kumar S/o- Late Nandan Sahi, R/o- Damer Chowk, P.O.- Kazi Mohammadpur, District- Muzaffarpur.
2. Ravi Kumar, S/o- Late Ram Chandra Mahto, R/o- Manpur, P.S.- Kazi Mohammadpur, District- Muzaffarpur.
3. Namrata Rani, D/o- Late Vimal Kumar Singh, R/o- Krishna Nagar, Ward No.- 2, P.S.- Dumra, District- Sitamarhi.
4. The State of Bihar.
5. The Principal Secretary, Building Construction Department, Building Circle Muzaffarpur.
6. The Principal Secretary, Revenue Department Government of Bihar, Patna.

.... Respondent/s

with

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Letters Patent Appeal No. 158 of 2018
IN
Civil Writ Jurisdiction Case No. 8031 of 2017

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1. The State Of Bihar.
2. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Additional Secretary, Rural Works Department, Government of Bihar, Patna.
5. The Engineer-in- Chief, Rural Works Department, Government of Bihar, Patna.
6. The Chief Engineer, Range-3, Rural Works Department, Government of Bihar, Patna.
7. The Superintending Engineer, Rural Works Department, Works Circle, Siwan.
8. The Executive Engineer, Rural Works Department, Works Division, Gopalganj-2.

.... Appellant/s

Versus

Niraj Kumar, Son of Late Satyendra Narain Singh, R/o Village- Balaha, P.O.- Parrsauni, P.S.- Parsauni, District- Sitamarhi.

.... Respondent/s

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Appearance :

(In LPA No.52 of 2018)

For the Appellant/s : Mr. Dharendra Kumar Jha

For the Respondent/s : Mr. RAJ BALLABH PD. YADAV - AAG11

(In LPA No.158 of 2018)

For the Appellant/s : Mr. Mritunjay Kumar (Ac To AAG 6)

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE**and****HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD****ORAL JUDGMENT****(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)****Date: 11-07-2018**

Challenge in the present Letters Patent Appeals is to the common judgment dated 21.08.2017 passed by the learned writ Court in a batch of writ applications which were heard together as analogous matters.

The writ petitioners, who are now private respondents in these appeals, moved this Court in its writ jurisdiction for quashing the order dated 08.06.2017, as contained in Annexure-5 to the writ application, by which the petitioners were reverted from the post of Junior Accounts Clerk/Lower Division Accounts Clerk to the post of Lower Division Clerk on the ground that they were appointed on compassionate ground in the pay scale of Rs.3050-4590/- which is now corresponding scale of Lower Division Clerk. The petitioners contended before the learned writ Court that the pay scale is always attached to a post held by the employee and whosoever is holding the said post would be entitled for the pay scale on the post on which he was appointed and regularized.



It is a common contention of the writ petitioners that the impugned office order (Annexure-5) has been issued in the teeth of the decision taken by the District Appointment Committee as also against the mandate of the judgment of the Hon'ble Division Bench of this Court in L.P.A No.206 of 2014, as contained in Annexure-6, wherein the Government Resolution No.3111 dated 25.03.2015 came to be considered and thereupon it was held that all Accounts Clerk whether appointed on compassionate ground or otherwise will be entitled for the same pay scale.

The petitioners were appointed on compassionate ground and were regularized on completion of satisfactory service as Junior Accounts Clerk/ Lower Division Accounts Clerk. They were getting the pay scale and other allowances of Rs.3050-4590 in terms of their letters of appointment. They also figured in the seniority list of the Accounts Clerk of the concerned circle. It is their case that the pay scale of the Junior Accounts Clerk and Senior Accounts Clerk was a subject matter of dispute since merger of the two posts and re-designation of the post of Junior Accounts Clerk and Senior Accounts Clerk as Accounts Clerk. This dispute was settled by the resolution of the Finance Department bearing No.311 (V) dated 25.03.2015 whereby those who were appointed till 27.09.1999 were given the revised pay scale of Rs.4500-7000/- w.e.f. 01.01.1996, but those who



were appointed on or after 28.08.1999 were given the pay scale of Rs.4000-6000/- and revised pay in the pay band of Rs.2400/-. The petitioners were appointed after 28.09.1999, they came in the category of lower scale of Rs.4000-6000/- and its revised pay scale PB-1 with grade pay of Rs.2400/-. The consequential pay fixation order was issued and the District Accounts Officer confirmed the pay scale.

The present dispute arose only when the respondent Superintending Engineer, Building Circle, Muzaffarpur, issued impugned office order dated 08.06.2017 reverting the petitioners to the post of Lower Division Clerk on consideration that they were appointed on compassionate ground in the pay scale of Rs.3050-4590/-. The grade pay of the petitioners was reduced from Rs.2400/- to Rs.1900/- with effect from 01.01.2006 and a direction was issued for recovery of the alleged excess amount.

Before the learned writ Court a counter affidavit was filed on behalf of the respondent Department of Finance, Government of Bihar as also on behalf of the Administrative Department of the petitioners. The only plea taken in the counter affidavit is that the petitioners were appointed on compassionate ground on the post of Lower Division Accounts Clerk in between 2002 to 2006 in the pay scale of Rs.3050-4590/- and as per the policy decision of the Government there is no provision to appoint them against the post of



Junior Accounts Clerk/Accounts Clerk/Lower Division Accounts Clerk/Upper Division Clerk (Accounts) on compassionate ground. It is the stand of the Department that the appointment of the petitioners on compassionate ground on the post of Lower Division Accounts Clerk and to provide them pay scale of Lower Division Accounts Clerk are against the policy decision of the Government. Reliance was placed on Memo No.13293 dated 05.10.1995 and Memo No.3385 dated 20.06.2001 as contained in Annexures- A and B respectively to the counter affidavit of respondent no.4 to submit that in course of the said letters the Government had approved appointments on compassionate ground in the pay scale of Rs.1200-1800/- which replaced pay scale of Rs.580-860 and later on vide letter dated 20.06.2001 the pay scale of Rs.3050-4590 was provided to the compassionate appointees with effect from 20.12.2000.

The learned writ Court went through the entire materials and the pleadings available on the record and took a serious view of the statements made by the Principal Secretary, Finance Department, in the counter affidavit filed in the present case. Reference has been made to the pleadings available in CWJC No.9921 of 2017 in which while responding to the plea of the petitioners on the rejection of the pay scale based on the judgment of this Court in the case of **Ram Janam Jha vs. The State of Bihar and others** as also the judgment



of the Hon'ble Supreme Court in the case of **State of Punjab vs. Rafiq Masih** reported in (2015)4 SCC 334 a statement was made in the counter affidavit that the judgment of the Division Bench in **L.P.A No.206 of 2014 (State vs. Ram Janam Jha)** is *per incuriam* because it has failed to take note of the policy decision of the State Government on the issue of compassionate appointment as well as the land mark decisions on the issue. Paragraph 20 of the counter affidavit has been quoted by the learned writ Court and thereafter, learned writ Court has gone through the various judgments of the Hon'ble Supreme Court such as **A.R. Antulay vs. R.S. Nayak** since reported in (1988)2 SCC 602, **Punjab Land Development & Reclamation Corporation Ltd. Vs. Labour Court** reported in (1990)3 SCC 682 and **Government of A.P. vs. B. Satyanarayana Rao** reported in (2000)4 SCC page 262 wherein the principles on which a judgment may be said to be *per incuriam* have been discussed in detail. The learned writ Court observed that the Principal Secretary, Department of Finance has shown utter ignorance and contempt in using the term completely out of context. The learned writ Court also took note of the fact that the judgment of the Hon'ble Division Bench of this Court in **L.P.A No.206 of 2014 (State vs. Ram Janam Jha)** was subject matter of challenge before the Hon'ble Supreme Court. The challenge thrown to the said judgment by the State of Bihar in **S.L.P (Civil)**



No.2982 of 2017 (State of Bihar and others vs. Ram Janam Jha and others) failed and the S.L.P was dismissed by the Hon'ble Supreme Court vide judgment and order passed on 10.02.2017 finding no ground to interfere with the impugned judgment.

The learned writ Court accepted the arguments advanced on behalf of the petitioners that the impugned orders are unsustainable for the reason that they do not even made reference to the decision of the State Government in its Finance Department dated 25.03.2015 (Annexure-4 to the writ application). It was brought to the notice of the Court that the dispute regarding grant of pay scale to the appointees in the Accounts Clerical Cadre was put to rest in the said Resolution dated 25.03.2015 and the same has been affirmed in the order of the Hon'ble Division Bench passed in L.P.A No.206 of 2014 which was preferred by the State of Bihar along with the Department of Finance, Water Resources Department and the Rural Works Department. In the said judgment, the Hon'ble Division Bench took note of the resolution of the State Government dated 25.03.2015 and held that since the benefit of the pay scales as per the said resolution extend to all the Accounts Clerk whether appointed on compassionate ground or otherwise they were entitled to the benefits of the said resolution. This opinion of the Hon'ble Division Bench was not interfered with by the Hon'ble Supreme Court in the Special Leave



Petition filed at the instance of the State respondents.

The learned writ Court relied upon the judgment of the Hon'ble Supreme Court in the case of **M.S.M. Sharma vs. Shree Kirshna Sinha** reported in **AIR 1960 SC 1186**, the constitution Bench judgment of the Hon'ble Supreme Court in the case of **Daryao vs. State of U.P** reported in **AIR 1990 SC 1457** and another judgment of the Hon'ble Supreme Court in the case of **Supreme Court Employees Welfare Association vs. Union of India** since reported in **AIR 1990 SC 34** and took a view that a party to a decision cannot be permitted to reopen a concluded issue on grounds that certain issues which could have been raised by the department, were either not raised or has escaped the notice of the Bench. It is held that law is well settled and any issue finally decided between the parties cannot be permitted to be reopened at the instance of either of the parties, inter alia, on grounds of deficient reasoning or any other grounds, on the principle of *res judicata* which equally applies to writ proceedings.

As regards the recovery aspect of the matter, the learned writ Court has quoted Paragraph 19 from the judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) to take a view that the recovery as ordered by the impugned office orders is pathetic as also contemptuous.



While assailing the impugned judgment of the learned writ Court, Mr. P.N.Shahi, learned A.A.G-6 submits that in a similar matter this Division Bench upheld the office order dated 24.09.2012 and the order dated 09.04.2013 issued by the Superintending Engineer, Road Construction Department, Road Circle, Saharsa, whereby the petitioner was reverted and the 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/-. A copy of the judgment dated 23.02.2018 passed in LPA No.1303 of 2014 (arising out of Civil Writ Jurisdiction Case No.12147 of 2013) has been placed before us.

Learned A.A.G.-6 further submits that the learned writ Court has made various observations and remarks against the conduct of the Principal Secretary, Department of Finance, Government of Bihar without giving him any opportunity of hearing and further in the facts and circumstances of the case only because in the opinion of the learned writ Court the Principal Secretary, Department of Finance, was not aware of the legal intricacies and had made certain statements which were found not to be in accordance with the settled judicial norms and procedure, it was not just and proper for the writ Court to impose cost of Rs.5,00,000/- which has been ordered to be paid in the Patna High Court Legal Aid Committee, Patna.



On the other hand, learned counsel representing these private respondents submits that the reliance placed on behalf of the State referring the judgment of this Court in L.P.A No.1303 of 2014 is wholly misconceived and misplaced submission in order to get rid of their own illegal acts or omissions which have been deprecated by the learned writ Court in the impugned judgment. It is submitted that no interference is called for at this stage with the impugned judgment.

We have considered the rival submissions at the Bar and perused the pleadings available on the records. We are not inclined to accept the submission of Mr. Shahi, learned A.A.G-6 that the judgment of this Court in the case of Pankaj Kumar vs. The State of Bihar & Ors. (supra) would apply in the facts of the present case. A reading of the judgment dated 23.02.2018 would show that in the said case the impugned office orders were issued on 24.09.2012 and 09.04.2013 respectively when the Finance Departments' resolution No.3111 dated 25.03.2015 was not in existence. Further it is a matter of record that the judgment of the Hon'ble Division Bench of this Court in the case of **Ram Janam Jha and others**(supra) came in **L.P.A No.206 of 2014** was decided on 24.08.2016. In the said judgment, the Honble Division Bench had held that by virtue of the resolution dated 25.03.2015, the State Government had itself decided to do away with the distinction between the Junior Accounts Clerk



and Senior Accounts Clerk and a decision was taken to grant the pay scale meant for Senior Accounts Clerk to all Account Clerks whether appointed on compassionate ground and otherwise and all of them were made entitled to the same pay scale. In the case of **Sri Pankaj Kumar** (supra) the contention of the State was that the petitioner was appointed on compassionate ground in the pay scale of Rs.3050-75-3950-80-4590/- but at the relevant time no post was available for the appointment of the petitioner on compassionate ground and, in fact, only as a matter of indulgence and compassion, the State-respondents had appointed the petitioner in the pay scale of Rs.3050-4590/- to provide financial assistance to the family of the deceased employee. It was contended that the compassion shown to the petitioner of the said case shall not create a right to claim the pay scale admissible to the Junior Accounts Clerk, the pleadings of the said case were not identical to the present case will also be crystal clear from the judgment dated 23.02.2018 in the case of **Pankaj Kumar** (supra) because this Court in the said case was called upon to examine the judgment rendered by a Division Bench of this Court in L.P.A No.167 of 2016 and upon examining the said judgment it has been held in the case of **Pankaj Kumar** (supra) that in LPA No.167 of 2016 the action of 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 they were included in the category of Assistant, there was no dispute after the merger in the matter of grant of pay scale and pay revision. The distinction on facts are apparent in Paragraph 8 of the judgment of this Court in the case of **Pankaj Kumar** (supra) and, therefore, we are not inclined to accept the submissions of learned A.A.G-6 representing the State.

We are, however, willing to accept the submission of learned A.A.G-6 to the extent that the observations and remarks made against the conduct of the Principal Secretary, Department of Finance, Government of Bihar, and imposition of cost of Rs.5 Lakhs against the State are required to be set-aside in the facts and circumstances of the case. We are, however, of the view that while filing an affidavit on behalf of the State, caution and care be taken in the matter of assailing any judgment of this Court or by the Hon'ble Apex Court. We can understand the unhappiness expressed by the learned writ Court for certain reasons indicated in the impugned judgment but considering the submissions of the learned A.A.G.-6 that such observations were given and made without giving any opportunity to the Principal Secretary, Government of Bihar, we think it just and proper to expunge all such remarks and observations which are in the nature of personal remarks against the Principal Secretary, Department of Finance, Government of Bihar, those are thus expunged.



In the circumstances stated above, we also set aside the part of the order by which the cost of Rs.5 Lakhs has been imposed upon the State. We, however, do not find any reason to interfere with the impugned judgment of the learned writ Court in setting-aside the impugned office orders passed by the respondent authorities in the different cases. The writ petitioners are held to be fully covered under the resolution of the State Government dated 25.03.2015 as also under the judgment of this Court in the case of **Ram Janam Jha** (supra). The consequential orders passed by the learned writ Court shall be complied with within a period of two months from the date of receipt/production of a copy of this judgment.

Save and except, the modifications made with respect to the remarks and observations against the Principal Secretary, Department of Finance, Government of Bihar and the cost, we are not inclined to entertain the present batch of Letters Patent Appeals, hence these are dismissed but without any cost.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	
CAV DATE	
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