

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13144 of 2017

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Raghvendra Pratap Singh, Son of Late Kedar Singh, Resident of Village-
Daniyawar, P.S.- Telhara, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Rural Works Department, Bihar, Patna.
3. The Deputy Secretary, Rural Works Department, Bihar, Patna.
4. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
5. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
6. The Chief Engineer-1, Rural Works Department, Bihar, Patna.
7. The Superintending Engineer, Works Circle, Nalanda.
8. The Executive Engineer, Works Division, Hilsa, Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak, Adv.

For the Respondent/s : Mr. Prabhat Ranjan, AC to GP-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-01-2018

Heard Mr. Prabhu Nath Pathak, learned counsel appearing for the petitioner and Mr. Prabhat Ranjan, learned Assisting Counsel to Government Pleader No.6 for the State.

The petitioner is aggrieved by the order bearing Memo No.12402 dated 2.11.2016 of the Additional Secretary, Rural Works Department, Bihar, Patna, whereby the petitioner has been reverted from the post of Junior Accounts Clerk on grounds that he is a compassionate appointee and thus not entitled to the scale so granted to him in view of the Circular No.531 dated 22.1.2003 of the Department of Finance, Government of Bihar, Patna. The petitioner is also aggrieved by the order bearing Memo No.9297 dated 3.8.2017 of the Deputy Secretary, Rural Works Department, Bihar, Patna confirming the position as also



the order contained in Memo No.1430 dated 19.8.2017 of the Superintending Engineer, Works Circle, Nalanda, whereby the petitioner has been reverted from the post of Accounts Clerk to Treasure Guard. The petitioner is also aggrieved by his posting order on the post of Treasure Guard passed by the Executive Engineer, Rural Works Department, Works Division, Hilsa bearing Memo No.1305 dated 28.6.2017. The orders also envisage recovery of alleged excess amount paid to the petitioner. Copies of the orders are impugned at Annexures 1, 2, 3 and 4 respectively.

A counter affidavit is filed and the admission at paragraph 8 of the counter affidavit is sufficient to allow the writ petition together with consequential reliefs for the respondents do admit that the very order of the Additional Secretary bearing Memo No.12402 dated 2.11.2016 was also impugned in CWJC No.1276 of 2017 (**Rakesh Kumar Pandey & Ors. Vs. The State of Bihar**) which was heard analogous with a batch of writ petitions arising from CWJC No.9921 of 2017 (**Binit Kumar & Ors. Vs. The State of Bihar & Ors**) and vide judgment and order passed by this Court on 21.8.2017 the said order was quashed and set aside, a copy of which has also been placed on record vide Annexure 19 to the supplementary affidavit. The said writ petition was allowed with the following directions:

“It is not in dispute that although these petitioners were appointed as against different post in the accounts clerical cadre, they were put in the scale of Rs.3050-4590/- which was the replacement scale of a Lower Division Clerk and not the replacement scale of the Junior Accounts Clerk. It is because the rightful scale was being denied to some of those who were appointed in the Accounts Clerical Cadre at



the instance of the Department of Finance in relying upon the recommendations of the 4th, 5th and 6th Pay Commission that they were forced to come before this Court in CWJC No.12124 of 2011 (**Ram Janam Jha & others vs. State of Bihar**) and their claim was upheld which judgment was confirmed by the Division Bench as well as the Supreme Court. In fact the State Government taking note of the anomaly in the backdrop of the judgments passed on the issue, has passed the resolution dated 25.3.2015 present at Annexure P/4 allowing all the appointees against different posts in the Accounts Clerical Cadre, after 28.9.1999, the pay-scale of Rs.4000-6000/- with effect from 31.12.2005 and in Pay Band 1 with grade pay of Rs.2400/- with effect from 1.1.2006. On promotion to the post of Senior Accounts Clerks, these appointees were found entitled to the scale of Rs.4500-7000/- and with effect from 1.1.2006 in Pay Band 1 with grade pay of Rs.2800/-.

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.

The petitioners having been appointed against different posts in the accounts clerical cadre post after 28.9.1999 they are fully covered under the resolution of the State Government dated 25.3.2015 as also under the judgment of this Court as affirmed by the Supreme Court.

In result, the order bearing Memo No.638 dated 8.6.2017 impugned at Annexure P/5 in CWJC No.9921 of 2017;

the order bearing Memo No.629 dated 10.4.2017 impugned at Annexure P/5 in CWJC No.9745 of 2017;

the order bearing Memo No.12402 dated 2.11.2016 impugned at Annexure-5 in CWJC No.19392 of 2016;

the order bearing No.746 dated 28.10.2016 impugned at Annexure 7 and the consequential order dated 16.11.2016 impugned at Annexure-8 in CWJC No.1679 of 2017;

the order bearing Memo No.398 dated 13.4.2016 impugned at Annexure 19 and the order bearing Memo No.733 dated 8.11.2014 impugned at Annexure 1/4 in CWJC No.8538 of 2016;

the order bearing Memo No.629 dated 10.4.2017 impugned at Annexure P/5 and 5 respectively in CWJC No.7597 of 2017 and CWJC No.7027 of 2017;

the order dated bearing Memo No.12402 dated 2.11.2016 of the Additional Secretary, Rural Works Department impugned at Annexures 1, 5 and 1 respectively in CWJC No.19506 of 2016, CWJC No.8031 of 2017 and CWJC No.1276 of 2017; and

the order bearing Memo No.4025 dated 15.5.2017 impugned at Annexure 6 in CWJC No.8726 of 2017, resting on such advisory of the Principal Secretary of the Finance Department dated 11.7.2016 which is contrary to the State Government's resolution dated 25.3.2015 as well as the judgment of this Court, are accordingly held illegal and are quashed and set aside.

The petitioners are restored to their respective post together with pay-scale attached thereto and any recovery made from the petitioners should be refunded to them within three months from the date of receipt/production of a copy of this judgment. In case any arrears of salary is due to the petitioners as against the post held by them in the Accounts Clerical Cadre, the same should also be paid to them within three months from the date of receipt/production of a copy of this judgment.

The writ petitions are allowed and in the nature of resistance put up by the Finance Department despite the



resolution of the State Government dated 25.3.2015 and the judgment of this Court in the case of **Ram Janam Jha** (supra), I impose a cost of Rs.5,00,000/- (Five lacs) to be deposited by the State through the Chief Secretary in the Patna High Court Legal Aid Committee, Patna within 3 months from today. The State in turn would be at liberty to recover the said amount from all those found responsible for inviting such a cost by engaging its employees in protracted unwarranted litigation.”

Paragraph 13 of the counter affidavit admits that following the judgment, consequential orders have been passed granting relief to the petitioners of CWJC No.1276 of 2017.

Having heard learned counsel for the parties and considering the legal position reflecting from the judgment and order of this Court passed in the case of **Binit Kumar** (supra) placed at Annexure 19 to the supplementary affidavit which applies to the case in hand on all fours, this writ petition is allowed and the order bearing Memo No.12402 dated 2.11.2016 of the Additional Secretary, Rural Works Department, Bihar, Patna in so far as it concerns the petitioner together with the order bearing Memo No.9297 dated 3.8.2017 of the Deputy Secretary, Rural Works Department, Bihar, Patna, the consequential order bearing Memo No.1430 dated 19.8.2017 of the Superintending Engineer, Works Circle, Nalanda and the order dated 28.6.2017 of the Executive Engineer, Rural Works Department, Works Division, Hilsa, Nalanda impugned at Annexures 1, 2, 3 and 4 respectively are quashed and set aside.

The petitioner is restored to his post together with the pay-scale attached thereto and any recovery made from the petitioner be refunded to him within three months from the date of receipt/production of a copy



of this judgment. In case any arrears of salary is due to the petitioner as against post held by him in the Accounts Clerical Cadre the same be also paid to him within three months from the date of receipt/production of a copy of this judgment.

The writ petition is allowed in terms of the judgment and order passed in the case of **Binit Kumar** (supra) and the directions issued in the same which would govern the present case and bind the respondents.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20-01-2018
Transmission Date	NA

