

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5612 of 2019

1. Umesh Kumar Chaudhary, son of Late Aditya Choudhary, at Superintending Engineer, N.H. Works Circle, Patna.
2. Markandey Sharma, son of Late Sidh Nath Sharma, at Superintending Engineer, N.H. Works Circle, Patna.
3. Umesh Kumar, son of Late Kapil Deo Pandit, at Executive Engineer, N.H. Division-2, Biharsharif.
4. Lakshman Kumar, son of Late Sadhu Sharan Gupta, at Superintending Engineer, N.H. Works Circle, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Road Construction Department, Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Bihar, Patna.
3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
4. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
5. The Engineer-in- Chief-cum- Special Secretary, Road Construction Department, Bihar, Patna.
6. The Superintending Engineer, National Highway, Works Circle, Road Construction Department, Bihar, Patna.
7. The Executive Engineer, National Highway Division No.- 2, Road Construction Department, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Adv Mr. Sunil Kumar, Adv
For the Respondent/s	:	Mr. Ramashray Roy, AC to AAG-11

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 11-04-2019

Heard the counsel for the parties.

2. The petitioners have approached this Court for
quashing of the office order Nos. 08, 09, 10 dated
24.01.2018 and office order No. 82 dated 15.09.2017



issued by the Superintending Engineer, National Highway, Works Circle, Road Construction Department, Bihar, Patna (respondent No. 6) whereby the petitioners' pay scale has been lowered down from the existing pay scale of 5200-20200 (grade pay 2400) to the pay scale of 5200-20200 (grade pay 1900); as also the office order Nos. 78, 79, 80 dated 04.09.2018 and office order No. 17 dated 27.12.2017 whereby the excess amount paid has been directed to be deducted from the salary of the petitioners.

3. The petitioners had approached this Court earlier vide C.W.J.C. No. 16908 of 2018, aggrieved by the fact that their pay-scale was lowered in view of the erstwhile resolution of the government, directing all compassionate appointments to be made on the post of Lower Division Clerks only.

4. While addressing the Court in the aforesaid instance, the petitioners had pointed out that their cases were similar to the one which was decided in the case of The State of Bihar & Ors versus Ram Janam Jha & Ors in LPA No. 206 of 2014 (arising out of C.W.J.C. No. 12124 of



2011).

5. Considering the aforesaid submissions, a Bench of this Court, vide order dated 06.09.2018 passed in C.W.J.C. No. 16908 of 2018, referred to above, directed the concerned authorities to examine the case of the petitioners and if it was found that the case of the petitioners is squarely covered by the judgment delivered in LPA No. 206 of 2014 (The State of Bihar & Ors versus Ram Janam Jha & Ors), referred to above, same benefit should be extended to the petitioners also.

6. Strengthened by and pursuant to the aforesaid observation made by a Bench of this Court in C.W.J.C. No. 16908 of 2018, the petitioners represented before the Superintending Engineer, National Highway, Works Circle, Road Construction Department, Bihar, Patna (respondent No. 6) on 13.09.2018. The concerned respondent thereafter has passed orders dated 04.09.2018 and 27.12.2017, contained in Office order Nos. 78, 79, 80 and 17 respectively (Annexure-2 series), rejecting the prayer of the petitioners for being treated in the like manner to the



petitioners in L.P.A. No. 206 of 2014 (The State of Bihar & Ors versus Ram Janam Jha & Ors).

7. The aforesaid orders are under challenge in the present writ petition.

8. From the perusal of the orders impugned, it appears that the benefit of the Resolution No. 3111 dated 25.03.2015 (Annexure-6) of the Finance Department, Government of Bihar, was not given to the petitioners on the sole ground that the petitioners were the appointees on compassionate ground and not through the regular process of appointment. The Resolution No. 3111 of 25.03.2015 (Annexure-6) *inter alia* directed that any employee appointed after 28.09.1999 on whichever post, may be Junior Accounts Clerk or Lower Division Clerk (Accounts), shall, for all purposes be treated as Accounts Clerk as the distinction of the aforesaid circular was erased.

9. The impugned orders have, it has been argued, erroneously been passed by taking a reference to an order passed by the Principal Secretary, Finance Department, Government of Bihar (Memo No. 5483 dated 11.07.2016,



Annexure-8) in the case of a particular employee pursuant to an order passed in a writ petition by such employee.

10. In the aforesaid order which was contained in Memo No. 5483 dated 11.07.2016, a distinction was made by the Principal Secretary, Finance Department that the Resolution No. 3111 dated 25.03.2015 (Annexure-6) was applicable only to the employees who came through regular mode of appointment and not for the appointees on compassionate ground for which appropriate decision was yet to be taken. The aforesaid order which was case specific and pursuant to the orders passed in a writ petition was wrongly taken to be a resolution/policy decision of the government.

11. Mr. Sidhharth Prasad, learned counsel for the petitioners has submitted that the concerned respondent did not at all take into account that in LPA No. 206 of 2014 (The State of Bihar & Ors versus Ram Janam Jha & Ors), it has clearly been stipulated that as per the Resolution No. 3111 dated 25.03.2015, the pay-scale of Junior Accounts Clerk and that of Senior Accounts Clerk were merged with effect from 01.05.1980 and one scale was given to all the



Clerks. However, subsequently, there was an anomaly in granting revised pay-scale consequent upon the recommendation of 4th 5th and 6th Pay Commission but the State Government by this time had decided that all the Accounts Clerks shall be given pay-scale meant for Senior Accounts Clerks. It was also made clear in the aforesaid judgment/order that the benefit is available to all, which would include appointees on compassionate ground.

12. The Bench while deciding L.P.A. No. 206 of 2014 (The State of Bihar & Ors versus Ram Janam Jha & Ors) has categorically held that once the distinction between Junior and Senior Accounts Clerks had been done away with and all the Accounts Clerks had been granted pay-scale of Senior Accounts Clerks, therefore, no distinction could be made on the basis of source of appointment.

13. In that view of the matter, it has been urged before this Court that the office order Nos. 08, 09, 10 dated 24.01.2018 and office order No. 82 dated 15.09.2017 issued by the Superintending Engineer, National Highway, Works Circle, Road Construction Department, Bihar, Patna



(respondent No. 6) whereby the petitioners' pay scale has been lowered down from the existing pay scale of 5200-20200 (grade pay 2400) to the pay scale of 5200-20200 (grade pay 1900); as also the office order Nos. 78, 79, 80 dated 04.09.2018 and office order No. 17 dated 27.12.2017, are not sustainable in the eyes of law as it is based upon an opinion of the Principal Secretary, Finance Department in a particular case with respect to a particular employee.

14. Neither the petitioners nor the State has been able to point out whether the order contained in Memo No. 5483 dated 11.07.2016 (Annexure- 8) has been challenged or has been upheld.

15. In any view of the matter, finding that the basic reason for the concerned respondent in limiting the benefits of the Resolution No. 3111 dated 25.03.2015 to only to the regular employees and not the petitioners who have been appointed on compassionate ground presumably and ostensibly because of a so called policy decision which was not exactly a policy decision, the orders impugned



cannot be sustained in the eyes of law.

16. For the aforesaid reasons, the orders so impugned in the writ petition are set aside.

17. The concerned respondent is directed to pass a fresh order in accordance with law after verifying all facts.

18. To facilitate an early disposal of the claim of the petitioners, the petitioners are directed to make a fresh representation in the light of this order as well as the earlier order dated 06.09.2018 passed in C.W.J.C. No. 16908 of 2018 before the concerned respondent within a period of four weeks from today, who, on receipt of such representation shall dispose it off by reasoned order within a period of four weeks thereafter.

19. With the aforesaid observations/directions, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16/04/2019

