

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12893 of 2013

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Shalini Priyadarshini Daughter Of Late Vivekanand Verma, Wife Of Vijay Kumar Karn, At Present Posted As Assistant In Establishment Section of Araria Collectorte, Town and District Araria.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, General Administration Department, Government of Bihar, Secretariat, Patna
3. The Special Secretary, Finance Department, Government of Bihar, Secretariat Patna, District - Patna
4. The District Magistrate, Gopalganj, District - Gopalganj
5. The District Magistrate, Araria, District - Araria

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kishore Kumar Thakur, Adv. Mr. Braj Kishore Singh, Adv.
For the Respondent/s	:	Mr. Sushil Kr. Singh, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 25-06-2019

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

In this case, the petitioner is seeking relief of quashing the order dated 5.7.2012 contained in Memo No. 801 dated 9.7.2012, whereby, the District Magistrate, Gopalganj has held that the petitioner was appointed after the cut-off date of cadre de-merger of Clerk, as Lower Division Clerk and Upper Division Clerk having different pay-scale, will be entitled to the pay-scale of Lower Division Clerk of Rs. 3050-4590/- and further that as the petitioner has been appointed along with others on the basis of



recommendation dated 16.12.1999, except the petitioner, others have been granted the pay-scale of Rs. 4,000-6,000/- and, as such, the petitioner is entitled to the same pay-scale.

The short fact of this case is that the father of the petitioner, namely, Vivekanand Verma was a Deputy Collector and was posted at Gopalganj as Executive Magistrate Nazarat during the year 1994, died on 1.7.1994 in harness leaving behind his wife Mrs. Manju Bala Verma and four daughters and one son, out of them, Dolly Verma is mentally retarded, Priyanka Verma was then married and Shalini Priyadarshini (petitioner), Shipra Verma were unmarried and son Mayank Gaurav was minor son. The petitioner has done B.S.E.B. with first division and also acquired the qualification of Intermediate (Science) in first division with distinction. After the death of her father, the petitioner in the year 1997 applied for her appointment on compassionate ground and, accordingly, filed an application in the prescribed format and manner attaching necessary documents but, the matter remained pending for long time without any fault on her part without any reason as she was never asked to supply any document on account of some defect in her application. For consideration of her appointment on compassionate ground along with others, the District Compassionate Appointment Committee, Gopalganj



convened the meeting on 16.12.1999 in the office of the District Magistrate, Gopalganj who was the Chairman of the Board along with the members. The compassionate Appointment Committee considered the candidature of each person including the petitioner was at serial no.24, recommended for her appointment but, referred the matter to the Personnel and Administrative Department for consent as having view that her case is connected with that Department. The petitioner enquired about her appointment and she was informed that her matter was referred to the Personal Administrative Department at Secretariat, started pursuing the matter where she was informed that her matter has been relegated back to the District Compassionate Appointment Committee of district level and, during that period, she had to move from pillar to post. The District Compassionate Appointment Committee has convened another meeting dated 23.12.2000 in connection with consideration for appointment on compassionate ground, the Committee recommended 47 candidates for their appointment on compassionate ground. After a long delay, on the basis of recommendation of the District Compassionate Appointment Committee, the petitioner was handed over a letter of her appointment contained in Memo No. 1161 dated 30.12.2000 showing the pay-scale of Rs. 4000-6000/- and was directed to join



before the Establishment Deputy Collector, Gopalganj and, there, her appointment has been made on the basis of recommendation dated 23.12.2000 and, according to the letter, she had gone and joined the place of posting and but, later on, she was paid salary in the pay-scale of Rs. 3050-4590/- below to pay-scale of Rs. 4000-6000/-, she was surprised to receive the pay in the said pay-scale when the other persons, who were recommended by the District Compassionate Appointment Committee in the recommendation dated 16.12.1999, the persons name in the paragraph no.12, were appointed in the scale of Rs. 4000-6000/-. She requested to the District Magistrate, Gopalganj to make payment of her salary as per appointment letter but, that letter was modified, reduced the pay-scale to Rs. 3050-4590/- having stated that it was a typographical error as the pay-scale of Rs. 4000-6000/- was wrongly mentioned, whereupon, she filed an application for correction of the pay-scale to the Commissioner in the shape of representation. The District Magistrate vide Memo No. 424 dated 26.3.2007 rejected the prayer of the petitioner for rectification of the pay-scale to Rs. 4000-6000/-. When nothing favourable came out, the petitioner approached this Court in C.W.J.C. No. 6610 of 2010, this Court considered her case and found the petitioner did have a arguable case for protection of her pay-scale, if the



recommendation had its clarity as it appears from the enclosure to the rejoinder but, if for valid reason, the respondents have reconsidered her candidature and recommendation has taken effect on 23.12.2000. In that event, the issue will be different, conversely, if there was a recommendation in favour of the petitioner on 16.12.1999 and certain other persons came to be appointed from amongst the petitioner considered for the same relief and recommendation of the petitioner was knowingly was not acted upon for no justifiable reason, the mere fortuitous date of appointment letter shall not be sufficient to distinguish, in such circumstances, it can safely be held that the petitioner has wrongly been subjected to hostile discrimination. As the material was not sufficient before the Court to record a positive finding or negative finding on that issue, hence the Court has remanded back for fresh consideration in the following manner:-

“It is not possible for the Court to hold either ways on the recommendation dated 16.12.1999. The petitioner does have an arguable case for protection of her pay scale if the recommendation had clarity as it appears from the enclosure to the rejoinder. But if for valid reasons the respondents were required by law to re consider that recommendation leading to a fresh recommendation on 23.12.2000 the issue may be entirely different.

Conversely if there was a recommendation in favour of the petitioner dated 16.12.1999 and certain others came to be appointed from amongst the person considered in



the same meeting, and the recommendation of the petitioner only was not appropriately acted upon for no justifiable reasons, the mere fortuitous date of appointment letter shall not be sufficient to distinguish her case when it has to be held that the petitioner has been subjected to hostile discrimination. The petitioner has not placed any material on record that any other appointees in pursuance of the recommendation dated 16.12.1999 have been granted higher pay scale of Rs. 4000 –6000/-.

The reliance on the case of Ganesh Singh (Supra) is not wholly appropriate as it related to a case where persons came to be recommended and appointed in pursuance of one recommendation and the appointment of the petitioner therein was delayed singularly causing issues of hostile discrimination. It has already been noticed that there are no such allegations in the present case. Additionally in that case the issue had also arisen of an earlier advertisement and the subsequent advertisement without cancellation of the earlier advertisement, all of which are sufficient for distinguishing the case.

The Court therefore directs the respondents to first examine if there is a recommendation by the Compassionate Appointment Committee dated 16.12.1999 in favour of the petitioner. If it be so, if any others from the same recommendation been appointed in the pay scale of Rs. 4000 –6000/-. Even if there was a recommendation in favour of the petitioners and others came to be appointed in pursuance of the same, was the case of the petitioner deferred for any valid reason leading to fresh consideration on 23.12.2000. Was such delay attributable to the petitioner or the respondents. In the former case the petitioner may not



have a claim while in the latter she shall have a sustainable claim.

In a situation where the pleadings of the parties are not clear, the Court finds it difficult to pass any positive order allowing the claim or rejecting the claim. The matter has necessarily to be referred to Respondent no. 4, who is also the chairman of the District Compassionate Appointment Committee, to examine the matter in light of the present discussion. Matters for grant of a pay scale are continuing wrong. Every month that the pay scale is reduced furnishes a cause of action. Therefore it cannot be held that the claim of the petitioner is belated.

In the event that the District Magistrate finds justification in the claim the Court holds that because the petitioner represented only on 13.11.2006 she shall be entitled to the arrears of the pay scale from that date only and not from the date of appointment. The Court expects the District Magistrate to pass a reasoned and speaking order so that the petitioner is able to appreciate and understand in the event that she is denied relief so that she may be able to apply her mind to decide whether it would be in her interest to pursue matters further or not.

Let the District Magistrate pass such fresh appropriate orders within a maximum period of four months from the date of receipt and/or production of a copy of this order.

The writ application stands disposed.”

Now the fresh representation was filed by the petitioner and that has been rejected by the impugned order having stated that as she has been appointed after the due date of de-merger, whereby, the split has taken place in Lower Division Clerk and



Upper Division Clerk, at the initial stage of appointment, she will be at the last ladder in the hierarchy i.e. the Lower Division Clerk in the pay-scale of Rs. 3050-4590/-.

Learned counsel for the petitioner submits that the Collector, while passing the order, has not considered the aspect of the matter that the Court while remanding the matter, has called upon him to consider as to whether on a valid reason, the case of the petitioner was re-considered and recommended by the subsequent Compassionate Appointment Committee or consideration was not based upon on any valid material but, if the consideration is based on the invalid reason, in such circumstances, the delay cannot be attributed upon the petitioner then, in that circumstances, distinction cannot be made to those who have been appointed in the scale of Rs. 4,000-6,000/- on the basis of recommendation made by 16.12.1999. In the present case, as stated herein above, the name of the petitioner find its place in the recommendation dated 16.12.1999 where the name of the petitioner is standing at item no.24 and the counsel for the petitioner had drawn attention to the recommendation 23.12.2000 where the name of the petitioner is absent and, inasmuch as, he has given the name of the persons in paragraph no.12 wherein large number of persons, who, on the basis of recommendation dated



16.12.1999, having been appointed on the clerical cadre in the pay-scale of Rs. 4000-6000/- but, because of fortuitous circumstances, the date of appointment of the petitioner has fallen after the due date of de-merger, she cannot be deprived of the scale of pay of Rs. 4,000-6,000/-. In support of the submission, reliance has been placed on two judgments of this Court in C.W.J.C. No. 15956 of 2006 (Umesh Prasad & Ors. Vs. The State of Bihar & Ors.) disposed of on 11.3.2011 and in L.P.A. No. 167 of 2016 (Avinash Kumar Chakerwarty & Ors. Vs. The State of Bihar & Ors.) disposed of on 23.6.2017. In the aforesaid cases also, the situation was identical, having held that if the persons from the same recommendation were granted the pay-scale of Rs. 4000-6000/-, as because the appointment has been made after the date of de-merger, cannot be a basis for granting lower pay-scale when others have been granted the higher pay-scale. The relevant portion of the orders reads as follows:-

“CWJC No. 15956 of 2006

The LPA Bench dismissed the appeal finding no merit in it. I find that case of these five petitioners is fully covered by the reported decision in 2007(1) PLJR 159 and order passed by the LPA Bench. The process of appointment was initiated and concluded on 22.8.2000. The recommendation in favour of the petitioners was for the post of Clerk. They cannot be denied benefit of this recommendation for the simple reason, that appointment letters were issued subsequent to 20.12.2000.



Petitioners could not have been appointed on the post of Lower Division Clerk, since there was no such recommendation of the District Establishment committee. Petitioners could not have been deprived of the same pay scale, which was available for the post, for which they were recommended by the District Establishment Committee. Petitioners' appointment as such should have been on the post of Clerk prior to its de-merger. Any appointment on the post of Clerk prior to de-merger will be deemed as an appointment on Upper Division Clerks' post. Persons working on the post of Upper Division Clerk post, as per the Finance Department's resolution, are entitled for pay scale of Rs. 4500-6000. Petitioners could not have been penalized for the laches on the part of the respondent, if appointment letters were issued subsequent to 20.12.2000.

Accordingly, respondents are directed to treat the petitioners' appointment on the post of Clerk as per resolution dated 22.8.2000. After de-merger the appointment of the petitioners will be treated on the post of Upper Division Clerk with pay scale of Rs.4500-6000/-. Respondents are directed to allow these petitioners all consequential benefits on account of grant of pay scale of Rs. 4500-6000 with effect from the date of their initial appointment."

"LPA No. 167 of 2016

We have heard learned counsel for the parties at length and we find that all the petitioners in the writ petition and the employees, who were appointed by virtue of the order passed in CWJC No.17566 of 2006 and the employees, who were originally working in the non-formal education scheme and who were given fresh appointment vide Annexure-4 dated 23rd July, 2005 and Annexure-5 dated 20th July, 2006, are all working in the same office, namely the Collectorate at Siwan, all are discharging identical function, but except the five petitioners,



the other employees indicated herein above are getting higher pay in the scale of Rs.4000/--Rs.6000/-. The only reason for giving the benefits are that they were appointed after the circular was issued on 20th December, 2000. However, the fact remains that even in the case of employees, who were petitioners in CWJC No.13755 of 2006, they were appointed after 20th December, 2000, but they have been granted the benefit in the higher scale of pay of Rs.4000/--Rs.6000/-on account of the fact that the process of appointment initiated in the year 1999 was delayed because of the procedural delay. In the case of the petitioners also, as is evident from the records, their appointment process was also initiated in the year 1999-2000 and in the case of the petitioner Ashok Kumar Sinha, he filed the writ petition claiming compassionate appointment way back in the year 1999 in CWJC No.9934 of 1999 and it was only after the order was passed in the aforesaid MJC in the year 2005 that the appointment order was issued. That being so, we see no much difference between the employees, who were petitioners in CWJC No.13577 of 2006 and the present petitioners. Even if for the sake of argument may be assumed that the petitioners and the employees, who were petitioners in CWJC No.13577 of 2006 form two different categories, there is no justification in the matter of discrimination between the present petitioners and the retrenched employees who were working in the non formal education scheme. It is clear that the non-formal education scheme came to an end and large number of Class-III and Class IV employees was retrenched and thereafter in the year 2005 and 2006 as is evident from Annexures 4 and 5, they were re-appointed as a fresh appointee in the year 2005 and 2006, that is much after 20th December, 2000 and in their case, they have been granted the higher pay scale of Rs.4000/--Rs.6000/-. If that be so, there is a discrimination in the matter of granting similar



benefit to the petitioners when more than 300 employees have been granted such benefit of higher pay scale in the grade of Rs.4000/--Rs.6000/-even after they were appointed in the year 2005 and 2006, there is no reason as to why similar benefits should be denied to the petitioners when the petitioners are also doing similar work and were appointed after 20th December, 2000. To that effect, there is discrimination in the matter and the petitioners are entitled to equal treatment. That apart, the petitioners are working in the Collectorate at Siwan and many employees identically situated, like the petitioners, who were appointed after 20th December, 2000, as is indicated herein above, are being granted pay in the scale of Rs.4000/-Rs.6000/- and if that be the factual position, there is no reason why a similar benefit should not be extended to the petitioners.

Keeping in view the aforesaid, this appeal is allowed, the order impugned dated 29.10.2015 passed in CWJC No.1498 of 2011 is quashed. The said writ petition is allowed and the petitioners are directed to be paid the benefit in the scale of pay Rs.4000/--Rs.6000/-retrospectively with effect from the date of appointment. However, arrears of the petitioner are only to be granted with effect from the date they filed the writ petition before the High Court, i.e. with effect from 21.01.2011.”

And, as such, on that basis, the petitioner is claiming that she should be granted the same benefit as has been given to others.

Learned counsel for the State has tried to persuade this Court that the case of those persons who have been granted higher pay-scale is different to the present petitioner as their date of appointment is prior to the date of de-merger and, at the relevant



point of time, only the post of Clerk was available in the pay-scale of Rs. 4000-6000/-, so, they were granted the benefit of pay-scale of Rs. 4000-6000/- but, in the case of the petitioner, her case is quite different as the recommendation was made for her appointment but, as the father of the petitioner was very much attached to the Personnel and Administrative Department, on that account, the matter was referred to the Personnel and Administrative Department, which relegated the matter to the Collector, Gopalganj and, later on, the appointment letter was issued but wrong pay-scale which was later on rectified. So, it does not require any interference by this Hon'ble Court.

Having considered the rival contentions of the parties, from the record, it appears that after the death of her father, she applied for the post of Class-3 and Class-4. Her application was considered, her name was recommended for her appointment on Class-3 but, the said appointment could not fructify in reality, as the matter was referred to the Personnel and Administrative Department where the matter remained pending and, later on, it was referred back and, accordingly, the letter of appointment was issued in favour of the petitioner. There is no denial of the fact that the Committee recommended in her favour is dated 16.12.1999 whereas the name of the petitioner does not exist in the subsequent



recommendation dated 23.12.2000. Had the Committee would not have sent her matter to the Personnel and Administrative Department, which has ultimately remanded back the matter to the Collector, in that circumstances, she would have been appointed along with others in the pay-scale of Rs. 4000-6000/-. In a similar and identical situation, this Court in the aforesaid judgments have taken a view that if the others have been granted the benefit who have been recommended along with the petitioner, then, in that circumstances, there would not have been any discrimination in the pay-scale while making appointment and, all these aspects of the matters were not taken into consideration by the Collector in his impugned order but, merely has given a reason as because her appointment has taken place after the due date of de-merger, so, she cannot get the scale of Rs. 4000-6000/- which cannot be accepted to be a valid reason as he was required to examine other aspects of the matter as to when others who have been recommended along with the petitioner have been granted higher pay-scale of Rs. 4000-6000/-, there is no justifiable reason why she was not accommodated in the pay-scale of Rs. 4000-6000/-.

In view of the aforesaid discussion and findings, the order dated 5.7.2012 contained in Memo No. 801 dated 9.7.2012, whereby, the District Magistrate, Gopalganj is quashed.



Accordingly, this Court directs that the pay-scale of the petitioner of Rs. 4000-6000/- should be restored and should be given the replacement pay-scale of Rs. 4000-6000/- but, this Court is not giving any direction for payment of the arrear of salary as well as the scale of pay will be applicable prospectively.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.07.2019
Transmission Date	

