

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19863 of 2019

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Awadh Nandan Kumar, S/o Late Arjun Prasad Singh, R/v-Agiaon, P.S. Agiaon, District-Bhojpur (Arah), Presently working as accounts clerk in the officer of Engineer in Chief, Minor, Irrigation Department, Govt. of Bihar, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Finance Department, Bihar, Patna.
3. The Principal Secretary, Minor Water Resources Department, Bihar, Patna.
4. The Engineer in Chief, Minor Water Resources Department, Bihar, Patna.
5. The Superintending Engineer, in the officer of Engineer in Chief, Minor Water Resources Department, Bihar, Patna.
6. The Executive Engineer, Minor Water Resources Department, Bihar, Patna. Rising Road Jal Bhawan, Shikhpura, Patna-14.
7. The Treasury Officer, Secretariat Treasury, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Aditya Nath Jha, Advocate
For the State : Mr. Arvind Kumar Sinha, A.C. to SC-14.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 09-12-2019

Heard learned counsel for the parties.

2. This writ application has been filed for quashing of an order dated 05.07.2019 (Annexure P-3) issued under the signature of Superintending Engineer, in the office of the Engineer-in-Chief, Minor Water Resources Department, Government of Bihar, whereby, the post of the petitioner of Lower Division Accounts Clerk, which he was holding, has been re-designated as Lower Division Clerk, with effect from



the date of his initial appointment, and, accordingly, his grade pay has been reduced to 1900 from 2400. Consequent upon re-designation of the petitioner's post and reduction of Grade Pay from the very initial date of his appointment, recovery of a sum of Rs. 11,15,678/- has been ordered from the petitioner's salary in 59 installments of Rs.18,595/-. This is not in dispute that the petitioner was appointed on 29.01.2002 on compassionate ground as Lower Division Accounts Clerk, under the orders of the Chief Engineer, Minor Irrigation Department, Patna, who was the competent authority to appoint. It is, however, the case of the State Government that as per the scheme of the State Government framed for appointment on compassionate ground, no such appointment could be made against the post of Lower Division Accounts Clerk. The petitioner's appointment as Lower Division Accounts Clerk on compassionate ground was bad, *ab initio*, being contrary to the scheme of the State Government. It is, therefore, the case of the State Respondents that the petitioner was not entitled to Grade Pay of Rs.2400 rather he was entitled to Grade Pay of Rs.1900.



3. Learned counsel for the petitioner has submitted that his case is squarely covered by a decision of this Court dated 21.08.2017 passed in ***CWJC No.9921 of 2017 (Binit Kumar Vrs. State of Bihar & Ors.)*** for the purpose of fixation of his pay and grant of Grade Pay of Rs.2400. The said decision of the learned Single Judge has been approved by a Division Bench of this Court, he contends.

4. It is noteworthy that in paragraph-11 of the counter affidavit filed on behalf of the Respondents State of Bihar, it has been stated that there has been tampering with the Service Books/documents and irregularities have been committed in pay fixation, which conclusion is based on an inquiry report submitted on 31.05.2019. It is, however, evident from the impugned order that no action was ever initiated against the petitioner in that regard. Without giving the petitioner any opportunity of representation, no decision adverse to his interest, ought to have been taken, in my opinion.

5. In any view of the matter, since the consequence of the impugned order is annulment of the very initial appointment of the petitioner as Lower Division Accounts



Clerk, the same cannot be allowed to sustain, the same having been done without any authority law and without following due procedure.

6. The respondents are, therefore, directed to proceed with the fixation of petitioner's pay-scale treating his initial appointment against the post of Lower Division Accounts Clerk. I have kept in mind the fact that there is no stand taken in the counter affidavit filed on behalf of the State of Bihar that any action has been taken against the person who had appointed the petitioner on compassionate ground on a post, against which, he could not have been appointed in terms of the State Government Policy. There is no material on record to suggest that the petitioner was in any manner responsible for securing his appointment illegally on the post of Lower Division Accounts Clerk against the policy of the State Government.

7. This writ application is, accordingly, allowed. The impugned order dated 05.07.2009, is hereby quashed.

8. Consequences shall follow.



9. If any amount has been recovered on the basis of the impugned order, the same shall have to be refunded to the petitioner forthwith.

10. It will, however, be open for the State Respondents to proceed against the petitioner in accordance with law, if there has been any tampering in the Service Book made by him or at his instance or his continuance in the said post is otherwise not desirable on the charge of misconduct. It is made clear that present order doesn't amount to giving clean chit to the petitioner in respect of allegation against him to the effect that he has tampered with official records, for his benefit.

11. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	20/12/2019
Transmission Date	N.A.

