

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3438 of 2019

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Satish Kumar, Male, aged about 52 years, son of Late Navin Chandra Verma,
resident of Village- Chandpura Khurd, P.S.- Goraul, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. Principal Secretary, Co-operative Department, Government of Bihar, Vikas Bhawan, Baily Road, Patna.
3. The Registrar, Co-operative Societies, Government of Bihar, Vikas Bhawan, Baily Road, Patna.
4. Principal Secretary, Department of Finance, Government of Bihar, Main Secretariat, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Kishore Kumar Thakur, Advocate
For the State : Mr. Anil Kumar Singh, G.P.26

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 05-10-2020 Heard Mr. Kishore Kumar Thakur, learned counsel for

the petitioner and Mr. Anil Kumar Singh, learned G.P.26 through

video conferencing.

The petitioner in this writ petition seeks following
reliefs:

(i) For a direction to the respondents to make payment
of salary to the petitioners in the pay scale of Rs.4000-6000 and its
corresponding revised pay scale, i.e. in the grade pay of Rs.2400/-,
in the light of the policy decision of the respondent state circulated
by letter contained in Memo no.2424 dated 11.03.2013 and letter
contained in Memo no.7780 dated 30.07.2013, both issued by the
Finance Department of the respondent state of Bihar as well as in
the light of the judgment and order dated 23.06.2017, passed by a



Division Bench of this Hon'ble Court in LPA No.167/2016, and the judgment and order dated 03.10.2018 passed by a single bench of this Hon'ble Court in C.W.J.C. No.252 of 2018.

(ii) The petitioner further prays for a direction to the respondents to make payment of arrears of the difference amount of salary in the pay scale of Rs.4000-6000 and its corresponding revised grade pay of Rs.2400/- from the date such similarly situated Lower Division Clerks selected through the Bihar Public Service Commission are being paid, considering the fact that such Lower Division Clerks appointed after being selected through Bihar Public Service Commission joined the cadre of Lower Division Clerk after bifurcation of the cadre of Lower Division Clerk and Upper Division Clerk, much after the appointment and joining of the petitioner.

The admitted fact is that Navin Chandra Verma, the father of the petitioner, who was working in the office of Deputy Superintendent of Police, Co-operative Vigilance Cell, Muzaffarpur of the Co-operative Department died on 21.03.2000. The petitioner being the only son of his late father submitted his application for consideration for appointment on compassionate ground before the Joint Registrar, Co-operative Department, Muzaffarpur. The application of the petitioner was forwarded to the Registrar, Co-operative Department on 6th May, 2000. The



application of the petitioner was sent to the District Magistrate, Muzaffarpur for appointment of the petitioner on a suitable post on compassionate ground vide Memo No.3156, dated 31.05.2000. The District Compassionate Appointment Committee, Muzaffarpur in its meeting dated 10.01.2001 found the petitioner eligible for appointment against a Class III post and made recommendation accordingly. Accepting the recommendation of the District Compassionate Appointment Committee, the Joint Registrar, Muzaffarpur by his order No.242, dated 24th May, 2001 appointed the petitioner on the post of Lower Division Clerk in the then available pay scale of Rs.3050-4500 and the petitioner joined in the office of District Co-operative Officer, Motihari. The petitioner was transferred to the headquarter of Co-operative Department where he is presently working.

The Finance Department issued one Letter No.3734, dated 07.04.1977 by which the cadre of Lower Division Clerk and Upper Division Clerk was merged and they were known as Assistants with a common pay scale. Thereafter the State vide Letter No.8826, dated 20.12.2000, issued under the signature of the Special Secretary, Finance Department again decided to demerge the different cadres into Lower Division Clerk and Upper Division Clerk w.e.f. 20.12.2000 and accordingly cadre were bifurcated.



Mr. Kishore Kumar Thakur, learned counsel for the petitioner submits that before demerger of the cadre of Assistants into Lower Division Clerks and Upper Division Clerks, Bihar Public Service Commission issued a notification in the year 1999 for appointment in different Class III posts in the existing pay of Rs.1200-1800 but before issuance of appointment letters pursuant to their selections and recommendation by the Bihar Public Service Commission, the cadre of Assistants in the offices of the Government of Bihar was bifurcated by letter dated 20.12.2000 and in view of the aforesaid fact the selected candidates were provided with appointment to the post of Lower Division Clerk, the pay scale of which was fixed as Rs.3050-4500. Such selected candidates moved before this Court in CWJC No.13577 of 2006. A Bench of this Court vide order dated 17.12.2007 allowed the writ petition holding that since the advertisement was published much prior to demerger of the cadre of Assistants and, therefore, delay was caused on account of fault of the Commission and the State Government, therefore, such selected candidates are entitled to get salary in the pay scale of Rs.4000-6000 (Annexure-P6). In pursuance of the order passed in CWJC No.13577 of 2006, the petitioners of CWJC No.7730 of 2009 were also granted the same pay scale issued under the signature of the District Magistrate, Patna vide Memo No.2390, dated 23.11.2009 passed in pursuance



of the order in CWJC No.7730 of 2009. It is further submitted that the petitioner is senior to the appointees made on the recommendation of the Bihar Public Service Commission as the petitioner joined in the month of May, 2001 whereas Bihar Public Service Commission recommended for appointment of the petitioners of CWJC No.13577 of 2006 and CWJC No.7730 of 2009 in the year 2002 and thereafter and, therefore, the petitioner should have been placed in the scale of Rs.4000-6000. It is further submitted that some persons who were appointed on compassionate ground after 2000 filed CWJC No.1498 of 2011, which was dismissed by a Single Bench of this Court. The order passed in CWJC No.1498 of 2011 was challenged in LPA No.167 of 2016. LPA No.167 of 2016 was allowed by order dated 23.06.2017 holding that the appellants were also entitled to the benefit of Rs.4000-6000 from the date of their appointment.

It is further submitted that the Finance Department had circulated one letter contained in Memo No.2424, dated 11.03.2013, issued under the signature of the Additional Secretary, Finance Department. The Finance Department clarified and reiterated that if any junior member in a particular cadre is drawing more salary in comparison to a senior member of that cadre, the salary of such senior member in the cadre has to be stepped up and upgraded at par with the salary drawn by such



junior incumbent in the cadre so that such senior incumbent may get salary equal to the salary drawn by the junior incumbent. The Additional Secretary, Finance Department issued another letter as contained in Memo No.7780, dated 30.07.2013 by which the Finance Department clarified the provision with regard to the appointees in a particular cadre on or after 01.01.2006. Mr. Thakur further submits that in pursuance of the aforesaid letters, subsequent Letter No.6573, dated 24.07.2015 was issued by which proposal for up-gradation of pay scale of senior members of different cadres to the level of junior members of the same cadre was called for from all the District Magistrates. It is further submitted that some of the applicants filed CWJC No.252 of 2018, which was disposed of by order dated 03.10.2018 with a direction to the respondents to examine the case of those persons in the light of the policy decision of the State of Bihar. It is further submitted that the petitioner although had earlier filed CWJC No.2574 of 2007, which was dismissed on 26.08.2011 (Annexure-P15) but the petitioner has got fresh cause of action to renew his prayer for grant of such pay scale of Rs.4000-6000 in view of the fact that he was appointed in the cadre of Clerk much prior to such persons who were recommended by Bihar Public Service Commission for appointment in the same cadre and they were granted in pursuance of the different order of this Court the pay scale of Rs.4000-6000



and thus, the petitioner has filed the fresh writ petition once again for the same relief.

Respondents no.3 and 4 filed separate counter affidavits. Learned counsel for the respondents opposed the prayer of the petitioner firstly on the ground that the present writ petition is barred by principle of res-judicata. The petitioner had earlier filed CWJC No.2574 of 2007, which was dismissed on 26.08.2011 holding that since the petitioner was appointed in the cadre of Lower Division Clerk on compassionate ground after demerger of the cadre of Assistant-cum-Typist on 20.12.2000 and, therefore, the petitioner is not entitled to get pay scale of Rs.4000-6000, the scale of Upper Division Clerk.

It is further submitted that the case of the petitioner is quite different from the case of other persons appointed on the basis of the recommendation made by Bihar Public Service Commission as the advertisement for appointment was issued much prior to demerger of the cadre of Assistant-cum-Typist. It is further submitted that many other persons similarly situated with the petitioner filed CWJC No.10441 of 2010, CWJC No.10449 of 2010 and CWJC No.18070 of 2010 (Annexure-F). All the writ petitions were dismissed on 03.11.2011 holding that such persons, who were appointed on compassionate ground in the cadre of Lower Division Clerk after demerger of the cadre of Assistant-



cum-Typist into Lower Division Clerk and Upper Division Clerk, are not entitled to get the scale of Rs.4000-6000 which is meant for Upper Division Clerk. The petitioners of the aforesaid writ petitions filed LPA No.100 of 2012 and LPA No.188 of 2012 (Annexure-G). A Division Bench of this Court dismissed the aforesaid Letters Patent Appeals on 19.02.2014 holding that persons like the petitioners are not entitled to get scale of Rs.4000-6000, which was meant for Upper Division Clerk in the 5th Pay Revision but against the judgment and order dated 19.02.2014, passed in LPA No.100 of 2012, the appellants of those LPA filed Civil Appeal No.3965 of 2017 in the Hon'ble Supreme Court, which is pending. It is further submitted that the earlier judgment of Division Bench of this Court passed in LPA No.100 of 2012 was not considered in LPA No.167 of 2016 and, therefore, the judgment passed in LPA No.167 of 2016 is *per incuriam*, therefore, the writ petition being *de void* of merit is fit to be dismissed.

Having considered the submissions of both sides and on perusal of the records, I find that the petitioner was admittedly appointed on the post of Lower Division Clerk on compassionate ground after death of his father in the scale of Rs.3050-4500 in the year 2001. Thereafter many persons were appointed on the post of Lower Division Clerks on the basis of the recommendation of



Bihar Public Service Commission, which was entrusted with the work of recruitment and the Commission issued notification in the year 1999. The cadre of Assistant-cum-Typist was demerged vide Notification/Resolution dated 20.12.2000 much before the appointment of the petitioner on compassionate ground. The petitioner had earlier filed CWJC No.2574 of 2007 for exactly the same relief for granting the petitioner to higher scale of Rs.4000-6000 instead of Rs.3050-4500 and the same was dismissed on 26.08.2011. The petitioner did not file any appeal against the order passed in CWJC No.2574 of 2007. Many persons similarly situated with the petitioner had earlier filed CWJC No.10441 of 2010 and CWJC No.10449 of 2010 with CWJC No.18070 of 2010 and all the writ petitions were dismissed vide order dated 03.11.2011 holding that the persons who were appointed on compassionate ground after demerger of the cadre of Assistant-cum-Typist are not entitled to get higher pay scale of Rs.4000-6000, which was granted to many other persons who were appointed on the basis of the recommendation of the Commission in pursuance of an advertisement issued much prior to the date of demerger of the cadre. In the notification for appointment on the post of Assistant-cum-Typist the scale was given and it was held that the appointment was delayed on account of laches of the Government, therefore, the appointees in pursuance of the



notification, which was published much prior to demerger of the cadre, are entitled to be appointed in the scale of Rs.4000-6000 and the petitioner and like persons are not entitled to get the same treatment. The petitioners of CWJC No.10441 of 2010, CWJC No.10449 of 2010 and CWJC No.18070 of 2010 filed LPA No.100 of 2012 and LPA No.188 of 2012. A Division Bench of this Court also held that such persons who are like of the petitioner are not entitled to get the scale of Rs.4000-6000 and they were appointed in Lower Division Clerk after demerger of the cadre on 20.12.2000, but this Division Bench judgment has not been considered in the later Division Bench judgment of this Court in LPA No.167 of 2016, therefore, the later judgment of the Division Bench is *per incuriam* and, therefore, I find that the present writ petition is barred by principle of *res-judicata* and de void of any merit.

However, it is made clear that the Finance Department issued notification as contained in Letter No.2424, dated 11.03.2013 and Letter No.6573, dated 24.07.2015 for protecting the interest of such persons, who are senior to those persons who are getting higher scale in the same cadre, and in pursuance of the aforesaid letter, the petitioner is entitled to get the benefit of pay protection in the next stepped up to the level of his junior in order to provide pay protection and for that the petitioner may file



representation before the authority who shall consider the same in
accordance with law.

Having considered the facts aforesaid, I do not find any
merit in this writ petition and accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

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