

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20183 of 2019

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Rupak Kumar, Son of Late Ramanuj Chaudhary, resident of Village- Manki,
P.S.-Bagen, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. Additional Chief Secretary, Department of Finance, Government of Bihar, Main Secretariat, Patna.
3. Principal Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
4. District Magistrate, Jamui.
5. Chief Engineer, Sichi Srijan, Water Resources Department, Biharshariff, Nalanda.
6. Executive Engineer, Irrigation Division, Rajauli, District- Nawadah.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kishore Kumar Thakur, Advocate Mr. Braj Kishore Singh, Advocate Mr. Rajesh Kumar, Advocate
For the Respondent/s	:	Mr. Harish Kumar, G.P. - 8

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 13-01-2020 Heard learned counsel for the parties.

2. This writ application has been filed seeking following reliefs:-

(i) For a direction to the respondents to make payment of salary to the petitioner in the Pay Scale of Rs.4000-6000, taking into account the fact that even though recommendation for appointment of petitioner on compassionate ground was forwarded by the respondent District



Magistrate by his letter contained in Memo No. dated 28.12.1999, i.e., much before the bifurcation of Cadre of Lower Division Clerk and Upper Division Clerk, it was only on account of delay and laches on the part of the respondents, that the actual appointment letter was issued in favour of the petitioner on 09.08.2001, appointing him to the post of Lower Division Clerk in the pay Scale of Rs.3050-4500.

(ii) For a further direction to the respondents to make payment of arrears of salary to the petitioner 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 their salary in the said Pay Scale, in the light of the judgment and order rendered in C.W.J.C. No. 15956 of 2006 as well as the judgment and order rendered by the Division Bench of this Hon'ble Court in L.P.A. No. 167 of 2016 and C.W.J.C. No.252 of 2018, as also in the light of the policy decision of the respondent State circulated by letter dated 11.03.2013, and reiterated by the recent letter dated 07.12.2018.

2. It is the case of the petitioner that in similar



circumstance, a Division Bench of this Court in its decision dated 23.06.2017 passed in LPA No. 167 of 2016 has allowed the employees appointed on compassionate ground, scale of pay of Rs.4000-6000/-. Reliance on following portion of the said order is being placed:-

“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 it 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 hereinabove, 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.

With the aforesaid, the appeal stands allowed and disposed of.”

3. A counter affidavit has been filed on behalf of the State-Respondents in response to this Court's order dated 19.11.2019. The respondents were required to inform this Court as to whether the petitioner's case is covered by the decision of this Court in case of **Avinash Kumar Chakerwarty and Ors.** or not.

4. Learned G.P.-8 has agreed that the case of the petitioner is covered by the said decision of Division Bench of this Court. It has however been stated that there is clear stipulation in the circular dated 20.12.2000 that all appointments made after 20.12.2000 shall be done in the Pay-Scale of Rs.3050-4500, which stipulation is causing difficulty in allowing the pay-scale as has been allowed by the Division Bench of this Court.

5. Be that as it may, the law laid down by the Division Bench is binding on this Court. The petitioner is, accordingly, held to be entitled to all benefits in terms of the Division Bench decision of this Court in case of **Avinash**



Kumar Chakerwarty and Ors. Vs. State of Bihar (supra) as stipulated in the said order of the Division Bench, though, the petitioner can be paid benefit of the said scale retrospectively, but arrears shall be granted with effect from the date of filing of the present writ application i.e. 26.09.2019.

6. This writ application is, accordingly, disposed of.

(Chakradhari Sharan Singh, J)

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