IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20755 of 2018

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1. Laxman Ram Son of Late Ram Briksh Ram, Resident of Village and P.O.- Dhurlakh, P.S.- Samastipur Muffasil, District- Samastipur.
2. Baijnath Das, Son of Late Karley Mistry, resident of Laxmi Chown Police Line Road, SBI ATM Gali, Near Urban Primary Health Centre, Brahmpura, P.S.- Brahmpura, District- Muzaffarpur.
3. Kant Lal Paswan, Son of Late Jhagru Paswan, resident of Basant Vihar Colony, Dighi Kala Paschim, P.S.- Sadar, Hazipur, District- Vaishali at Hazipur.
4. Sikandar Ram, Son of Late Yadu Ram, Resident of Amrud Bagan, Jail Chowk, Chandwara, P.S.- Town Muzaffarpur, District- Muzaffarpur.

5.1. Smt. Shila Devi Wife of Late Satya Narain Ram Resident of Village- Dhepura, P.O.- Pandaul, P.S.- Sakri, District- Madhubani.

6. Ranjan Prasad, S/o Late Bishnu Prasad, resident of Mali Ghat, Near Dr. Shiv Shankar Prasad Singh, Police Line Road, P.O.- Ramna, P.S.- Mithanpura, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. The Bihar State Power Holding Company Ltd. through its Chairman.
2. The Chairman, Bihar State Power Holding Company Ltd., Patna.
3. The Deputy General Manager Personnel, Bihar State Power Holding Company Ltd., Patna.
4. The North Bihar Power Distribution Company Ltd. Patna through its Managing Director.
5. The Managing Director, The North Bihar Power Distribution Company Ltd., Patna.
6. The South Bihar Power Distribution Company Ltd., Patna through its Managing Director.
7. The Managing Director, the South Bihar Power Distribution Company Ltd., Patna.
8. The Bihar State Power Generation Company Ltd., Patna through its Managing Director.
9. The Managing Director, the Bihar State Power Generation Company Ltd., Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prashant Sinha, Advocate
For the Respondent/s	:	Mr.Vinay Kirti Singh, Sr. Advocate
		Mr. Vijay Kumar Verma, Advocate
		Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 06-12-2021

Heard the learned counsels for the parties.

2. In the instant petition, petitioners have prayed for following reliefs:

> "(i) For issuance of writ in the nature of certiorari for quashing of the letter No. 1086 dated 12.09.2018 issued by the Deputy General Manager (Personnel), Bihar State Power Holding Company Ltd. whereby the representation made by the Petitioners for grant of officiating allowance for working on the post of Accounts Officer (Look After) has been denied to the Petitioners.
>
> (ii) For necessary direction upon the respondent authorities to pay 20% officiating allowance to the Petitioners as the Petitioners while working on the substantive posts of Accountant were posted on a higher post of Accounts Officer in the name of Accounts Officer (Look After) but the benefit of 20% officiating allowance has not been paid to the Petitioners, while a similarly situated employee, namely, Sri Ganesh Lal has been paid with 20% officiating allowance in terms of the order passed by this Hon'ble Court in CWJC No. 3687/2013, which has been affirmed by the Hon'ble Supreme Court.
>
> (iii) For holding that the respondents cannot discriminate between the employees while the similarly situated employee has been paid with 20% officiating allowance, the Petitioners are being deprived of the same benefit on the ground that the case of Ganesh Lal does not create a precedence.
>
> (iv) For issuance of an alternative direction upon the respondent authorities to pay the salary and allowances attached to the post of Accounts Officer to the Petitioners as the Petitioners holding the post of Accountant were posted to discharge the duty of Accounts

Officer (Look After), which is a higher post carrying the higher responsibility. Further, the respondents may be directed to revise the pension and other retiral benefits of the Petitioners.

(v) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case."

3. The petitioners are holders of the post of the Accountants and they have been asked to look after the next higher post of Accounts Officer in the year 2006 and such arrangement has been continued till their attaining the age of superannuation and retirement from service. In this backdrop, the petitioners have sought for certain allowances against the post of Accounts Officer as they were asked to look after in terms of Rule 103 of the Bihar Service Code, 1952 (For short "Code").

4. Learned counsel for the petitioner vehemently contended that petitioners are entitled to additional allowances in terms of Rule 103 of the Code. Further he relied on two decisions of this Court in the case of ***Ganesh Lal Vs. the Chairman, Bihar State Power Holding Company Limited and Others*** reported in ***2016(2) PLJR***. The other one is ***Rajendra Mahto and Ors. Vs. The Bihar State Power Holding Company Limited*** reported in ***2021(2) PLJR***. Yet another decision in LPA No. 1166 of 2016, ***the Chairman Bihar State Power Holding Company Limited Vs. Ganesh Lal*** reported in ***2017(4) PLJR***

(para-8).

5. Per contra, learned counsel for the respondents submitted that having regard to the language employed in Rule 103 for the purpose of extending additional allowances, if any, to such of those persons who were asked to look after the higher post, they are entitled for allowances provided, they fulfill the requisite eligibility to hold the higher post. In the present case, none of the petitioners are eligible to be promoted to the post of Accounts Officers. Therefore, they are not entitled for allowances.

6. Crux of the matter in the present petition is whether petitioners are entitled to additional allowances on account of the fact that they were asked to hold the post of Accounts Officer while they were working as an Accountant with the Respondent- Organization or not? Undisputed facts are that petitioners are holders of the post of Accountant. They were asked to look after the post of Accounts Officer which is the promotional post to the Accountant. Such arrangement was continued from 2006 to till the age of the petitioners attaining the age of superannuation and retirement.

Rule 103 of the Bihar Service Code reads as under:

> "103. The pay of the Government servant appointed by the

> State Government to hold substantively, as a temporary measure, or to officiate in, two or more independent post at one time shall be regulated as follows:-
>
> (a) the highest pay to which he would be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of that post;
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> (b) for each other post he may draw such reasonable pay, in no case exceeding half the presumptive pay (excluding overseas pay) of the post, as the State Government may fix; and
>
> (c) if a compensatory allowance is attached to one or more of the posts he may draw such compensatory allowance as the State Government may fix provided that such allowance shall not exceed the total of the compensatory allowance attached to all the posts."

7. Reading of the aforesaid Rule, it is crystal clear that for the purpose of allowances in a higher post, Government servant was eligible to hold a substantive or temporary measure or to officiate in one and more independent post at one time. The petitioners are not disputing that they are not eligible to be promoted to the post of Accounts Officer. The aforesaid Rule 103 has not been interpreted in the earlier decisions cited on behalf of the petitioners. In particularly, the language employed in Rule 103 that the pay of a Government Servant appointed by the the State Government to hold substantively as a temporary

measure or to officiate in two or more independent post means one must be eligible to hold the post of additional post, like he is eligible to be promoted for want of other administrative reasons he was not promoted. In such circumstances, a person who is holding a higher post on *adhoc* basis is entitled to additional allowances. In the light of Rule 103 read with the fact that petitioners are not eligible to be promoted to the post of Accounts Officer, they are not entitled to the benefit of additional allowances as sought in the present case only on the ground that they are not eligible to be promoted to the post of Accounts Officer from the post of Accountant from the year 2006 till their attaining the age of superannuation and retirement from service. Thus, the cited decisions are distinguishable to the extent that Rule 103 has not been interpreted with reference to the conditions stated therein.

8. In the light of these facts and circumstances, the petitioner has not made out a case. Accordingly, the instant petitions stands dismissed.

(P. B. Bajanthri, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	13.12.2021
Transmission Date	