

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4065 of 2020

1. Radha Shyam Son of late Nawal Kishor Retired Clerk in the Office of District Education Officer, At Jehanabad, P.S. and District- Jehanabad.
2. Subodh Kumar, Son of late Ramdas Singh, Working as Clerk in the office of Deputy School Inspectress, at Jehanabad, P.S. and District- Jehanabad.
3. Dharmendra Kumar, Son of Late Girija Prasad, Working as Clerk in the Office of District Education Officer, at Jehanabad , P.S. and District- Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director (Secondary Education), Govt. of Bihar, Patna.
2. The Director, Secondary Education, Govt. of Bihar, Patna.
3. The Regional Deputy Directro of Education, Magadh Gaya.
4. The District Education Officer, Jehanabad.
5. The Deputy School Inspectress, Jehanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Singh, Adv.
For the Respondent/s : Smt. Shilpa Singh (GA12)

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 25-02-2021

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

The petitioners have filed the instant application for a direction to the respondents to pay current and arrears of salary to the petitioners in revised scale i.e. Rs. 4000-6000 in place of the current pay scale of Rs. 3050-4590 in light of the order dated 23.6.2017 passed in L.P.A. no. 167 of 2016 by this Court.



The case of the petitioners, in brief, is that the petitioner no. 1 retired on 31.1.2016 while getting scale of Rs. 3050-4590 although they were entitled to the scale of Rs. 4000-6000. Further the petitioner nos. 2 and 3 are still working and getting the scale of Rs. 3050-4590 in place of Rs. 4000-6000. While the petitioner no. 1 was appointed as clerk on 10.1.2004, the petitioner nos. 2 and 3 were appointed as clerk on 29.8.2005 and 29.6.2003 respectively. Referring to the judgment dated 23.6.2017 (Annexure-2) passed in L.P.A. no. 167 of 2016 (Avinash Kumar Chakerwarty and others vs. State of Bihar and others) it is stated that the case of the petitioners herein are covered by the ratio of the said judgment. It is submitted that the persons whose case stood similar to that of the petitioners and who had been appointed after 20th December, 2000 had been granted the benefit of higher pay scale in the grade of Rs. 4000-6000 and thus, the petitioners should also be granted the same benefit.

A counter affidavit was filed on behalf of the District Education Officer, Jehanabad. It is submitted by learned counsel for the State that so far as the petitioners herein are concerned, they were appointed on the post of clerk between 19.6.2003 and 1.10.2004 i.e. much after 20.12.2000 when the cadre was demerged, reviving two cadres of Lower Division Clerk and



Upper Division Clerk. Learned counsel for the State further relying on the counter affidavit filed on behalf of the Director Secondary Education refers to order dated 19.2.2014 passed in LPA no. 100 of 2012 (Smt. Mosarrat Arra Khanam and others vs. State of Bihar and others) to submit that in the said order it was held that the claim of pay scale of Rs. 4000-6000 was accepted by the Court as they were direct recruits, who constituted one isolated group and the appellants in the said case could not legitimately claim parity of pay with the direct recruits.

Having heard learned counsel for the parties and on going through the judgment dated 23.6.2017 passed in the case of Avinash Kumar Chakerwarty (Supra) it transpires that this Court took note of the facts of the case and opined that even if for sake of argument it is assumed that the petitioners and employees are from two different categories, when more than 300 employees had been granted the benefit of higher pay scale in the grade of Rs. 4000-6000, there was no reason as to why similar benefits be not granted to the petitioners. Relevant portion of the order dated 23.6.2017 is quoted hereinbelow for ready reference :-

“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.”



Thus in view of the facts and circumstances stated hereinabove as also in view of the Division Bench judgment of this Court dated 23.6.2017 (Annexure-2), this Court is of the opinion that the case of the petitioners also is covered by the said judgment and thus, is allowed with a direction to the respondents to grant benefit to the petitioners in similar terms as the directions contained in judgment dated 23.6.2017 passed in LPA no. 167 of 2016. The consequential benefits shall be paid to the petitioners within three months of filing of the representation along with a copy of this order.

(Partha Sarthy, J)

sushma/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	8-3-21
Transmission Date	

