

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19587 of 2019

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Rakesh Kumar Son of Late Anil Kumar Singh Resident of Village- Manjhauri,
P.S.- Vikram, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. Principal Secretary, Department of Finance, Government of Bihar, Main Secretariat, Patna.
3. District Magistrate, Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kishore Kumar Thakur
For the Respondent/s : Mr.Raghwendra Kumar (Sc22)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 07-12-2021

In the instant petition, petitioner has prayed for following relief/reliefs:

“(i) To set aside the order no. 36, communicated by Memo No. 654 dated 29.07.2019, issued under the signature of respondent District Magistrate, Bhojpur at Ara, by which, in compliance of the order passed by This Hon’ble Court in one writ application C.W.J.C. No. 15068 of 2017, without going through the statements made in the writ application and thereby ignoring the policy decision circulated by the Finance Department of the respondent State, has rejected the claim of higher pay scale of Rs. 4000-6000 prayed for by the petitioner of higher pay scale of Rs. 4000-6000 as prayed for by the petitioner, in a completely mechanical manner, that too, without even cursorily applying his mind to the judgement rendered by This Hon’ble Court in L.P.A. No. 167 of 2016 (Avinash Kumar Chakrovarty and Others vs. The State).

(iii) For a further direction to the respondents to make payment of salary to the petitioners in the pay scale of Rs 4000-6000 and its corresponding revised 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 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 L.P.A. No. 167 of 2016 and 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.

(iii) 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 Police Service Commission joined the cadre of Lower Division Clerk after bifurcation of the cadre of Lower Division Clerk and Upper Division Clerk much after appointment and joining of the petitioner.”

Petitioner was a candidate for the recruitment to the post of Assistant. During the process of selection to the post of Assistant it was re-designated as Upper Division Clerk and Lower Division Clerk respectively. The pay scales are different. Thereafter, petitioner was appointed on 18.09.2001 (Annexure 2) to the post of Lower Division Clerk in the pay scale of 3050-4590. His grievance is that he is entitle to Upper Division Clerk pay scale at Rs. 4000-6000 in the light of the decision passed in LPA 167 of 2016 (Avinash Kumar Chakrovarti and Others vs. State of Bihar and Others). In this regard he has submitted representation to the concerned authority and it was rejected by the concerned authority. Thus the petitioner has presented this petition.

Learned counsel for the petitioner submitted that he is entitled to Upper Division Clerk scale in the light of the fact that he had participated in the selection process to the post of Assistant, therefore, appointing him to the post of Lower Division Clerk and



extending lower pay scale is not warranted. Similarly situated persons have approached this Court and obtained orders. In the light of the order passed in L.P.A. No. 167 of 2016, petitioner is entitled to the benefit of higher pay scale namely Upper Division Clerk. It is further submitted that similarly situated persons have been extended the benefit of higher pay scale.

At the outset petitioner has not questioned the validity of his appointment dated 18.09.2001 to the post of Lower Division Clerk. He should have questioned the validity of his appointment for the reasons that his application is for the post of Assistant. Post of Assistant was re-designated as Upper Division Clerk and Lower Division Clerk during the process of selection as on 20th December, 2000. As long as portion order of appointment is not challenged petitioner is not entitled to higher pay scale with reference to Upper Division Clerk post. In fact, petitioner should have questioned the validity of portion order of appointment to the post of Lower Division Clerk as his initial selection and process was with reference to Assistant post. Even assuming that the post of Assistant was bifurcated into two namely Upper Division Clerk and Lower Division Clerk, still the process of selection to the post of Assistant was to be completed in the light of the Apex Court decision of ***N.T. Devin Katti and Others. vs. Karnataka Public Service Commission and Others (1990) 3 SCC 157*** In other words petitioner should have



insisted for appointing him to the post of Assistant in terms of advertisement issued prior to 20th December, 2000, the date on which the post Assistant was bifurcated into Upper Division Clerk and Lower Division Clerk. The petitioner has not questioned the validity of his appointment to the post of Lower Division Clerk. In the result petitioner is not entitled to the relief sought in the present petition. The cited decision do not assist the petitioner having regard to the factual aspects of the matter that the petitioner has failed to questioned the validity of his appointment to the post of Lower Division Clerk read with particular pay scale, as long as his appointment is intact. In the absence of modification of the order of appointment, petitioner is not entitled to Upper Division Clerk pay scale. If the pay scale of Upper Division Clerk is granted to the petitioner, there would be chances of administrative chaos as he is entitled to seniority in the Upper Division Clerk and 3rd party right created in the cadre of Upper Division Clerk is to be revised after lapse of two decades.

Accordingly, petition stands dismissed.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2021
Transmission Date	NA

