

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.255 of 2020

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1. Shiv Shankar Lal S/o Late Dharm Narayan Yadav Resident of Village- Jarail, P.S.- Triveniganj, Distt.- Supaul, presently residing at Mohalla- Shivpuri, Ward No. 9, P.S.- Araria Sadar, Distt.- Araria
 2. Arun Kumar Ram S/o Late Yogendra Ram Resident of Village- Khurha, Baijnathpur, P.S.- Bhargama, Distt.- Araria

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Main Secretariat, Patna
2. Principal Secretary Department of Finance, Govt. of Bihar, Main Secretariat, Patna
3. The District Magistrate Araria
4. Deputy Collector (Establishment) Collectorate of Araria

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Kishore Kumar Thakur, Advocate
For the Respondent/s	:	Mr.Subash Chandra Yadav (GP-15)
		Mr. Rakesh Kumar Shrivastava, AC to GP-15

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 26-03-2021 The present petition has been filed seeking the 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, taking into account the fact that even though process of appointment of the petitioners on compassionate ground was initiated before the bifurcation of cadres of Lower Division Clerk and Upper Division Clerk, and even though the recommendation of District Compassionate Appointment Committee at least with respect of petitioner no. 1 was received in December, 1998, 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 petitioners on



10.05.2001 and 27.07.2001 respectively, appointing them to the post of Lower Division Clerk in the pay scale of Rs. 2050-4500.

(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 CWJC No. 15956 of 2006 as well as the judgment and order rendered by the Division Bench of this Hon'ble Court in LPA No. 167 of 2016 and CWJC 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."

The learned counsel for the petitioners has submitted that similarly situated employees have already been granted the benefit of pay-scale of Rs. 4000-6000/- since the issue in question is no longer *res integra* inasmuch a coordinate Bench of this Court, by a judgment dated 11.03.2011, passed in CWJC No. 15956 of 2006, in the case of **Umesh Prasad & Ors. vs. the State of Bihar & Ors**, has held as follows:-

"So far the petitioners are concerned, their process of appointment was initiated on 2.6.2000 when after scrutiny their applications were placed in the meeting of



the District Establishment Committee. Finally recommendation for their appointment on the post of Clerk was made on 22.8.2000, only appointment letter was to be issued. The issuance of appointment letter was delayed and finally it was issued on 6.9.2001. Petitioners' case is that admittedly recommendations for their appointment had been made by the District Establishment Committee for the post of Clerk. At the relevant time, there was one post of Clerk and no such provision for Upper Division Clerk and Lower Division Clerk. Entire process of appointment except issuance of appointment letter had been completed by 22.8.2000. In their case there was no compliance of sub-clause (ii) Clause 5 of letter dated 22.12.2000, issued by the Finance Department. The process of appointment was not cancelled and no fresh process was initiated for their appointment. Only recommendation in their favour for compassionate appointment was dated 22.8.2000 which was for the post of Clerk. In this circumstance, their appointment letters should not have been issued for Lower Division Clerk in the pay scale of Rs. 3050-4500. Their names had been recommended for the post of Clerk prior to 22.12.2000, as such they must be treated to be appointed as Upper Division Clerk in the pay scale of Rs. 4500-6000/-.

*The LPA Bench dismissed the appeal finding no merit in it. I find that case of these five petitioners is fully covered by the reported decision in **2007(1) PLJR 159** and order passed by the LPA Bench. The process of appointment was initiated and concluded on 22.8.2000. The recommendation in favour of the petitioners was for*



the post of Clerk. They cannot be denied benefit of this recommendation for the simple reason, that appointment letters were issued subsequent to 20.12.2000. Petitioners could not have been appointed on the post of Lower Division Clerk, since there was no such recommendation of the District Establishment committee. Petitioners could not have been deprived of the same pay scale, which was available for the post, for which they were recommended by the District Establishment Committee. Petitioners' appointment as such should have been on the post of Clerk prior to its de-merger. Any appointment on the post of Clerk prior to de-merger will be deemed as an appointment on Upper Division Clerks' post. Persons working on the post of Upper Division Clerk post, as per the Finance Department's resolution, are entitled for pay scale of Rs. 4500-6000. Petitioners could not have been penalized for the laches on the part of the respondent, if appointment letters were issued subsequent to 20.12.2000.

Accordingly, respondents are directed to treat the petitioners' appointment on the post of Clerk as per resolution dated 22.8.2000. After de-merger the appointment of the petitioners will be treated on the post of Upper Division Clerk with pay scale of Rs. 4500-6000/-. Respondents are directed to allow these petitioners all consequential benefits on account of grant of pay scale of Rs. 4500-6000 with effect from the date of their initial appointment."

The learned counsel for the petitioner has also relied on a judgment rendered by the learned Division Bench of this



Court dated 23.06.2017 passed in ***LPA No. 167 of 2016 (Avinash Kr. Chakerwarty & ors. vs. The State of Bihar & Ors.)***, relevant portion whereof is reproduced herein below:-

“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. "

It is further submitted that the petitioners were issued appointment letter dated 10.05.2001 belatedly, whereafter they were posted vide letter dated 27.07.2001 along with one Akhilesh Kumar Nirala, nonetheless the fact remains that the process of selection/appointment of the petitioners, up to the stage of recommendation by the District Compassionate Committee, had been completed prior to 20.12.2000, hence the case of the respondents is squarely covered by the judgments



rendered in the cases of Umesh Prasad & Ors. (supra) and Avinash Kumar Chakerwarty & Ors. (supra).

At this juncture, the learned counsel for the petitioners has submitted that out of the three persons posted vide the aforesaid letter dated 27.07.2001, one of the incumbent namely Akhilesh Kumar Nirala has already been granted the benefit of the aforesaid pay-scale of Rs. 4000-6000, by an order dated 23.11.2013 passed by the District Magistrate, Araria.

Having regard to the facts and circumstances of the case and considering the aforesaid submissions made by the learned counsel for the petitioners, I deem it fit and proper to direct the District Magistrate, Araria to consider the case of the petitioners for grant of pay-scale of Rs. 4000-6000/-, in light of the law laid down by this Court in the case of ***Umesh Prasad & Ors.*** (supra) & ***Avinash Kumar Chakerwarty & Ors.*** (supra), and pass appropriate orders within a period of four weeks from the date of receipt/production of a copy of this order.

The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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