

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4550 of 2016

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Anil Kumar son of Late Shivnandan Paswan, resident of Village-Yashwantpur, P.O.- Rukhari, P.S.- Chandi, District- Nalanda.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Finance, Government of Bihar, Old Secretariat, Patna.
3. The Joint Secretary, Department of Finance, Government of Bihar, Old Secretariat, Patna.
4. The Principal Secretary, General Administration Department, Government of Bihar, Old Secretariat, P
5. The Joint Secretary, General Administration Department, Government of Bihar, Old Secretariat, Patna
6. The Commissioner, Patna Division, Patna.
7. The District Magistrate, Nalanda at Biharsharif.
8. The Deputy Collector, Establishment, Nalanda Collectorate, Nalanda at Biharsharif.
9. The Sub Divisional Officer, Hilsa, Nalanda, Biharsharif.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Tej Bahadur Singh, Sr. Advocate Mr. Ajey Kumar, Advocate Mr. Mantu Kumar, Advocate
For the Respondent/s	:	Mr. S.D. Yadav, AAG-3

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date : 11-05-2022

The petitioner has been granted grade pay of Rs. 2800 in the pay scale of Rs. 5200-20200 upon grant of first Modified Assured Career Progression (MACP) with effect from 01.01.2009. It is the petitioner's claim that he is entitled to the grade pay of Rs. 4200 in place of Rs. 2800.



2. The factual background in which the petitioner claims grade pay of Rs. 4200 is pleaded in the writ petition and other pleadings on record are as under:-

3. Based on a limited competitive examination held for class IV employees for promotion to class III posts, the petitioner's name was recommended by the Bihar Public Service Commission and, admittedly, he was appointed against the post of clerk in the pay scale of Rs. 1200-1800 with the issuance of an office order dated 03.12.1998 by the office of District Magistrate-cum-Collector, Nalanda, Bihar Sharif. The said pay scale of Rs. 1200-1800 was subsequently revised to Rs. 4000-6000 with effect from 01.01.1996 and to Rs. 5200-20200 with grade pay of Rs. 2400/- (P.B.-1) with effect from Rs. 01.01.2006.

4. Previously, there were two different cadres of Lower Division Clerk and Upper Division Clerk working in the Collectorate and Mufassil Office. Both the cadres were merged into one cadre of Assistant with effect from 01.05.1980. However, subsequently by a notification dated 20.12.2000, the merged cadres of clerks was de-merged with the creation of Lower Division Clerk and Upper Division Clerk carrying two different pay scales. It was, however, clearly mentioned in the



said letter dated 20.12.2000, issued by the Finance Department that all clerks working before the issuance of the said letter dated 20.12.2000, will be treated as Upper Division Clerks.

5. It is, thus, not in dispute that the petitioner's initial appointment, for the purpose of adjudication of his claim in the present writ application, is to be treated against the post of Upper Division Clerk. The fact that the petitioner was appointed on the post of Upper Division Clerk in the year 1998 is admitted in the counter affidavit filed on behalf of the State-respondents.

6. Earlier, there was scheme of Assured Career Progression, 2003 which allowed grant of first A.C.P. after completion of 12 years of service to get next higher pay scale which remained effective till 12.07.2010. There was no question of the petitioner getting benefit of A.C.P. under the aforesaid scheme till the same was in force as he had not completed minimum 12 years of required service. The MACP scheme came to be introduced with effect from 01.01.2009, whereby and whereunder, an employee, upon completion of 10 years of his service has been made entitled to the next pay instead of next promotional post.

7. It is pertinent to notice at this stage that the State Government of Bihar framed Bihar Collectorate Clerical Cadre



(Recruitment and Condition of Service) Rules, 2011 in exercise of powers under Article 309 of the Constitution of India. The Cadre of clerks, under the said Rules, which came into force with effect from 23.03.2011, has four grades, namely, L.D.C., U.D.C., head Clerk, and Assistant Administrative Officer. In terms of the said Rules, grade of U.D.C. has been placed in P.B.-1 with pay band of Rs. 5200-20200 and grade pay of Rs. 2400. For the purpose of clarity, Clause 3 (c) is being reproduced hereinbelow:-

3. Cadre Structure.-

The Cadre structure of the clerical cadre shall be as follows:-

Sl. No.	Name of grades	Level	Name of pay Band	Pay Band	Grade
(a)	Lower Division Clerk	Basic grade	PB-1	5200-20200	1900
(b)	Upper Division Clerk	First Promotion Level	PB-1	5200-20200	2400
(c)	Head Clerk	Second Promotion Level	PB-1	5200-20200	2800
(d)	Assistant Administrative Officer	Third Promotion Level	PB-2	9300-34800	4600

8. Next higher grade, i.e., Head Clerk carries in pay band of Rs. 5200-20200 with grade pay of 2800. The said Rule



3 of the Rules was amended with the issuance of notification dated 02.09.2013, whereby the same has been substituted by the following:-

(c)	Head Clerk	Second Promotion Level	PB-1	9300- 34800	4200
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9. It is pertinent also to note that the Rules as well as the amending provision apparently have become operative with prospective effect.

10. It is petitioner's specific case, as clearly pleaded in the second rejoinder to the counter affidavit, that the petitioner was placed in PB-1 with grade pay of 2800 which came to be subsequently substituted by PB-2, i.e. 9300-34800 with grade pay of 4200 and, therefore, the petitioner is entitled to get grade pay of 4200 from the first MACP itself since when the respondents have granted grade pay with higher pay scale while granting second MACP.

11. The petitioner's claim of grant of grade pay of 4200 is apparently with effect from 01.01.2009. In the Rules, post of Head Clerk had been placed in PB-1 with grade pay of 2800. The said grade pay was subsequently amended in 2013 with effect from 02.09.2013, as has been noticed above. The petitioner, in the Court's opinion, cannot claim benefit of grade



pay of Rs. 4200 with effect from a date prior to 02.09.2013 when for the first time the grade pay of Rs. 2800/- was substituted by Rs. 4200. The petitioner, in his representation, dated 09.02.2016, a copy of which has been brought on record by way of Annexure-5, claimed grade pay of Rs. 4200 on the basis that similarly circumstanced employees in Begusarai, Siwan and other districts were granted grade pay of Rs. 4200. There was no legal basis disclosed in his representation.

12. In my view, in the present writ application, the petitioner has not been able to demonstrate any legal basis for grant of higher grade pay of Rs. 4200 with effect from the date when he became entitled to the first MACP.

13. The petitioner in the present writ application has challenged his pay fixation done by the Sub-Divisional Officer, Hilsa (Nalanda) which has been brought on record by way of Annexure-4/1. The petitioner's salary as on 01.01.2009 has been determined at Rs. 12,970/- upon grant of Grade pay of Rs. 2800 in P.B.-1. The said fixation of pay, in my opinion, cannot be said to be suffering from any infirmity.

14. The petitioner may, however, claim grant of higher pay band upon amendment in the Rule 3(c) of the Rules with effect from 02.09.2013. Apparently he has not raised such claim



nor he has developed his case in the present writ application on that line. In such circumstance, while holding that the Court does not find any infirmity in determination of the petitioner's pay with effect from 01.01.2019 allowing him pay band of Rs. 2800, it is observed that the petitioner shall be at liberty to raise his claim before appropriate authority for grant of higher grade pay consequent upon amendment in the Rules with effect from 02.09.2013.

15. With the aforesaid observation, this application is disposed of.

(Chakradhari Sharan Singh, J)

K.K.RAO/-

AFR/NAFR	NAFR
CAV DATE	20.04.2022
Uploading Date	11.05.2022
Transmission Date	N/A

