

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21881 of 2014

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Tribhuwan Jha S/o Late Radhika Raman Jha resident of village and P.O.
Nawada, P.S. Bahera, District Darbhanga. Petitioner/s
Versus

1. The Union of India.
2. The Registrar General of India, Kotah House Annexe, 2/A, Man Singh Road,
New Delhi - 110011.
3. The Deputy Director of Census Operations, Bihar, Boring Canal Road, Patna
- 800011.
4. The Assistant Director of Census Operations , Bihar, Boring Canal Road,
Patna - 800001. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. M.P. Dixit, Advocate
	:	Mr. S.K. Dixit, Advocate
	:	Mr. Sanjay Kr. Chaubhay, Advocate
	:	Mr. Swastika, Advocate
For the Respondent/s	:	Mr. Awadhesh Kumar Pandey, Sr Panel Counsel
	:	Mr. Ravinder Kumar Sharma, CGC
	:	Mr. Saket Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 05-07-2022

Heard learned counsel for the respective parties.

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

*“a) A writ of Certiorari for quashing the
impugned order dated 30.04.2014 of the
learned Central Administrative Tribunal,
Patna bench, Patna in O.A. No. 157 of
2006 by which the O.A. was dismissed
due to non application of mind to the
facts and circumstances of this case and
for non application of the relevant
documents and citations on records.*

*b) That this Hon’ble Court be pleased to
direct the respondent to fix the initial pay*



of the applicant on the post of Lower Division Clerk w.e.f. 07.04.1981 to 05.12.1986 in the pay scale of Rs. 1200-2040/-(scale fixed in Rs. 1290/-) w.e.f. 06.12.1986 as per F.R 22(1)(a)(2).

c) That this Hon'ble Court be pleased to direct the respondents to calculate and grant the increment from 06.12.1986 to 08.06.1992 on the post of Lower Division Clerk and to fix the basic pay accordingly on the post of Lower Division Clerk w.e.f. 09.06.1992.

d) That this Hon'ble Court also be pleased to direct the respondents to protect the pay as per pay protection rules, the junior Md. Eqbal Hassan, U.D.C is getting Rs. 5600/-(basic pay) per month but the senior applicant is getting only Rs.4700/- w.e.f. 17.03.2005 (the date of regularization of junior Md. Eqbal Hassan on the post of U.D.C.).

e) That this Hon'ble Court be also pleased to direct the respondent to pay the arrears of differences of salary on the post of Lower Division Clerk from 09.06.1992 to 16.04.1998 and on the post of Upper Division Clerk from 17.04.1998 to till date, with interest at 12% per annum.

f) Thjat the applicant be given the pay protection with effect from 06.12.1986 in view of the recommendation of the Departmental Promotion Committee pursuant to the office note date 05.04.1999 whereby and where under the said Departmental Promotion Committee has held that the applicant in entitled for regularization on the post of Lower Division Clerk with effect from 06.12.1986.



g) An appropriate writ for grant of pay protection as per Pay protection Rule vide F.R. 22(1)(a)(2) or F.R. 22 (1)(b) or F.R. 15(a) holding that the basic pay of the applicant cannot be less than Rs. 1290/- w.e.f. 06.12.1986 on the basis of date of regularization w.e.f. 06.12.1986 with all consequential benefits.

h) Any other writ / writs to which the petitioner is found entitled to in the facts and circumstances of this case and with cost.”

Short question for consideration is whether petitioner is entitled to pay protection of Rs. 1200-2040 with reference to the post initially held by the petitioner as Junior Stenographer in the year 1981 or not?

Undisputed facts are that petitioner was initially appointed as Junior Stenographer in the year 1981. He had submitted an application for regularization in the year 1984. Before considering his grievance relating to regularization his services were terminated on 11.04.1994 and it was subject matter before the Central Administrative Tribunal and it was dismissed. Further, feeling aggrieved and dissatisfied with the order of termination read with the order of the Tribunal dated 05.12.1986 and 17.08.1984 respectively, petitioner preferred petition before the Apex Court. The Apex Court dismissed the petition on 11.12.1989 with the following observations:-



“Heard Sri A.K. Ganguli, learned Senior Advocate for the petitioner.

Apart from other contentions, Sri Ganguli sought to stress the point that the temporary-officials who, like the petitioner, were not successful in the examination for regularization to the post of Stenographer were entitled, consistent with the policy of Government, to be considered for regularization to the lower post of Lower Division Clerks and petitioner has been deprived even of this benefit. There is however, no material to hold that the authorities before terminating Petitioner’s services did not apply the guidelines in the policy. There is no justification for interference with the order of the High Court. The Special Leave Petition is dismissed.

However, it is open to the petitioner to make a representative to Government for consideration of his case for regularization as Lower Division Clerk, if that has not already been considered.”

Pursuant to the observations made by the Apex Court, petitioner submitted representation on 11.5.1997 and it was rejected on 21.02.2017. The petitioner once again approached Tribunal in O.A No. 420 of 1990 and it was disposed off on 10.04.1992 in favour of the petitioner with observation to consider his name for appointment against the Lower Division Clerk (LDC) post, the respondents have appointed petitioner against one of the LDC Post on 06.06.1992.

In this backdrop, the petitioner has sought for pay protection with reference to the post held by the petitioner against



one of the Junior Stenographer post read with LDC. Undisputedly LDC pay-scale is lesser than Junior Stenographer Grade. The petitioner is not entitled to have the benefit of pay protection with reference to the fact that he had held the post of Junior Stenographer and he was terminated from the post and none of the judicial pronouncements is in respect of protecting the Junior Stenographer Cadre. In fact, perusal of the records it is evident that Apex Court has taken sympathetic view while making an observation to accommodate the petitioner to one of the LDC post with reference to termination order dated 11.04.1994 and termination order was not interfered.

In the light of these facts and circumstances, the present petition stands dismissed with cost of Rs. 10,000/- (Ten Thousand). Cost shall be paid to the respondent within a period of four months, failing which Respondent is at liberty to take appropriate steps to recover the cost.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Vikash/-

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



