IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.951 of 2016

In

Civil Writ Jurisdiction Case No.4501 of 2014

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1. Akhileshwar Prasad and Ors Resident Of Deepak Bhawan, Harishchandra Nagar, Patel Colony, Police Station - Beur, District Patna And At Present Posted As Principal Private Secretary In Law Department Government Of Bihar, Patna
2. Awadh Prasad Harishchandra Nagar, Patel Colony, Police Station - Beur, District Patna And At Present Posted As Principal Private Secretary In Law Department Government Of Bihar, Patna
3. Hira Lal Resident Of House No. N.A. 4/6 New Alkapuri, Police Station - Beur, District Patna And At Present Posted As Principal Private Secretary In Industry Department Government Of Bihar, Patna
4. Uma Shankar Prasad Quarter No. L- 2/82, Bit Colony, Police Station Patrakar Nagar, District Patna And At Present Retired Principal Private Secretary, State Information Commission, Bihar, Patna
5. Ranjit Kumar Verma Resident Of Officers Flat No. U/5, Police Station - Shastrinagar, District Patna And At Present Retired From Principal Private Secretary, Energy Department, Government Of Bihar , Patna
6. Sudarshan Chaudhari Resident Of New Mainpura, Saguna More, Behind Of Radhaswami Satsang Bhawan, Police Station - Danapur, District Patna And At Present Posted As Principal Private Secretary In Animal And Fisheries Department, Government Of Bihar, Patna
7. Pradip Kumar Sinha Resident Of D-68, Police Colony, Police Station - Gardanibagh, District Patna And At Present Posted As Principal Private Secretary In Planning And Development Department Government Of Bihar, Patna
8. Krishna Kumar Thakur Flat No. 201, Akancha Poonam Palace, Rukanpura , District Patna And At Present Posted As Principal Private Secretary In The Office Of Divisional Commissioner, Patna
9. Naresh Prasad Guru Sahay Lal Nagar, House No. -33, Road No. 1 Police Station - Rajiv Nagar, District Patna And At Present Retired From The Post Of Principal Private Secretary, Sugar Cane Department, Bihar, Patna
10. Karu Ram Resident Of Vishnupuri, Police Station - Gardanibagh, District Patna And At Present Posted As Principal Private Secretary In State Information Commission, Government Of Bihar, Patna
11. Vijay Prasad C/O Uday Shanker Upadhyay, House No. 187, New Mainpura, Balaji Nagar, Near Saguna More, Police Station - Danapur Cant, District Patna And At Present Posted As Principal Private Secretary In State Information Commission, Government Of Bihar , Patna
12. Shakti Nath Sinha Resident Of Flat No. B-24, Capital Residency, Sri Nath Nagar, Ram Nagari Road, Police Station - Rajiv Nagar, District Patna At Present Posted As Principal Private Secretary In Chief Minister Secretariat, Patna
13. Kishore Kumar Deewan Muhalla , Ram Jani Chauraha, Police Station

Khajekalla, District Patna And At Present Posted As Private Secretary, State Election Authority, Government Of Bihar, Patna

14. Ravindra Prasad Resident Of F/160, Shri Krishnapuri, Boring Road, Police Station - Shri Krishnapuri, District Patna And At Present Posted As Principal Private Secretary Public, Health And Engineering Department, Government Of Bihar, Patna
15. Bijendra Prasad Resident Of 1/18 Shivpuram, Police Station Rupaspur, Bailey Road, District Patna And At Present Posted As Principal Private Secretary, Disaster Management Department, Government Of Bihar, Patna
16. Dwarika Prasad Resident Of Mohalla Shital Tola, Police Station - Ara Tower, District Bhojpur At Present Posted As Principal Private Secretary, Minor Irrigation Department, Government Of Bihar, Patna
17. Pandit Kedar Prasad Resident Of Village New Vishunpur Pakri, Via - Anishabad, Police Station - Beur, District Patna And At Present Retired From The Post Of Private Secretary, Rural Development Department, Government Of Bihar, Patna
18. Brahmdeo Prasad Resident Of Road No. 3, Quarter No. C/8, Punaichak, Police Station And P.O. Shashtri Nagar, District Patna And At Present Posted As Principal Private Secretary, General Administration Department, Government Of Bihar, Patna
19. Raghunath Prasad Resident Of Village Paharpura, Near Pairu Mahto Somary College, Biharsharif, Police Station Biharsharif, District Nalanda And At Present Posted As Private Secretary, Backward Class Welfare Department, Government Of Bihar, Patna
20. Shashi Bhushan Prasad Resident Of 1/14, Shiwpuram, Police Station Rupaspur, District Patna At Present Posted As Private Secretary, Planning And Development Department, Government Of Bihar, Patna
21. Jai Kumar Sah Road No. 3b, Via Road No. 3, House No. 1, Indrapuri, Police Station - Patliputra, District Patna And At Present Posted As Private Secretary, Board Of Revenue, Bihar,Patna
22. Kailash Pati Resident Of Flat No. 201, Upendra Villa, Vijay Nagar, Police Station Rupaspur, District Patna At Present Posted As Private Secretary Education Department, Government Of Bihar, Patna
23. Lalit Kumar Shrivastava Resident Of B-69, Mitra Mandal Colony, Saket Vihar, Police Station - Phulwarisharif, District - Patna And At Present Posted As Private Secretary, Disaster Management Department, Bihar, Patna
24. Ramjee Prasad Resident Of B-73, Mitra Mandal Colony, Saket Vihar, Police Station - Phulwarisharif, District - Patna At Present Posted As Private Secretary, Law Department, Goverment Of Bihar, Patna
25. Salim Akhtar Resident Of A/193, Peoples Co-Operative Colony, Police Station - Kankarbagh, District - Patna And At Present Posted As Private Secretary, Law Department, Government Of Bihar, Patna
26. Arun Kumar Sinha Resident Of Village Nihura, Police Station - Janipur Phulwarisharif, District - Patna At Present Posted As Personal Assistant, Rural Works Department, Government Of Bihar, Patna
27. Ashok Kumar Singh Resident Of B-38 Mitra Mandal Colony, Saket Vihar,

Police Station - Phulwarisharif, District - Patna And At Present Posted As Private Secretary, Revenue And Land Reforms Department, Government Of Bihar, Patna

28. Braj Bihari Prasad Verma Resident Of Sakehul Lane, Railway Hunder Road, East Lohanipur, Police Station - Kadam Kuan, District - Patna And At Present Retired Private Secretary, Governor's Secretariate, Bihar, Patna
29. Smt. Pramila Singh W/o Late Naresh Prasad Singh Resident Of New Patna Police Station - Beur, District - Patna.

... ... Appellant/s

Versus

1. The State Of Bihar
2. The Commissioner, Department Of Personnel And Administrative Reforms, Government Of Bihar, Patna
3. The Principal Secretary, Finance Department, Government Of Bihar, Patna
4. The Principal Secretary, General Administration Department, Government Of Bihar, Patna
5. The Officer On Special Duty, General Administration Department, Government Of Bihar, Patna

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Kaushik, Advocate

For the State : Mr. Saroj Kumar Sharma, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 28-11-2022

Heard learned counsels for the respective parties.

2. In the instant appeal, appellants have assailed the order of the learned Single Judge dated 18.02.2016 passed in C.W.J.C. No. 4501 of 2014.

3. The appellants are in the cadre of Personal Assistants and they were appointed during the intervening period from the year 1978 to 1986.

4. On 01.03.1977 holders of the post of Stenographers Grade I and Grade II had the benefit of passing certain examination. Such of those Stenographers Grade I and Grade II who have passed their examination, their services were merged with Personal Assistants with effect from 01.03.1977. The second class of persons are those who were directly recruited to the post of Personal Assistants (petitioners/appellants). Third class of persons are such of those who were initially appointed as Steno Typist were required to pass certain examination in order to have the benefit of merger with the Personal Assistants' cadre. The Steno Typist who have not passed examination in order to have the benefit of merger with the Personal Assistants' cadre were given upgradation on 07.08.1987. Therefore, source of recruitment to the post of Personal Assistants are from three categories. In this backdrop, it is to be noted that appellants who were directly recruited to the post of Personal Assistants during the period from the year 1978 to 1986, they form a class of persons and they are claiming pay fixation on par with Personal Assistants who were

initially appointed to the post of Steno Typist and who were given upgradation.

5. Respondents/ State have introduced A.C.P. Scheme. The third category of persons namely Steno Typist whose services have been upgraded on 07.08.1987 have been extended initially 2nd A.C.P and thereafter, they have been extended 1st A.C.P. Similar benefit has not been extended to class of persons like appellants who were directly recruited to the post of Personal Assistants during the year 1978 to 1986. In other words, there was alleged to be pay anomaly among appellants who were directly recruited to the post of Personal Assistants and such of those Steno Typist whose services have been upgraded to the post of Personal Assistants on 07.08.1987. In other words, Steno Typist who entered the cadre of Personal Assistants after awarding 1st and 2nd A.C.P., they have drawn more pay than the pay of the appellants who were directly recruited to the post of Personal Assistants. In this backdrop, whether the appellants are entitled to claim stepping up of pay on par with such of those persons namely Steno Typist whose services were upgraded to that of Personal Assistants on 07.08.1987 or not?

6. Learned counsel for the appellants cited two decisions. One is ***Commissioner and Secretary to Government of Haryana***

and Ors vs. Ram Swarup Ganda and Ors decided on 02.08.2006, paragraph Nos. 10, 14 and 15 are reads as under:

> **"10.** In the cases before us, most of the Respondents joined the service as Group 'D" employees. They were later promoted to Group "C" posts and when the ACP scales were introduced on 01.01.1996, they had a total service of 20 years. They had also got two upgradations during that period. Since all these Respondents had started their career as Group "D" employees, they were given the benefit of ACP scales which were applicable to Group "D" employees. This is evident from the judgment rendered in Suraj Bhan's case (supra). For Group "D" post, the first ACP scale was Rs. 3050-75-3950-EB-80-4350 and second ACP scale, on completion of 20 years, was 4000-100-4800-EB-100-6000, whereas the ACP scales for Group "C" post was 4000-100-4800-EB100-6000 and second ACP scale was 5000-150-7100-EB-150-7850. As noted above, the Respondents herein were given the ACP scales which were applicable to Group "D" posts. For example, Suraj Bhan, referred to in the impugned judgment, joined service as Group "D" employee on 7.12.1972. He became a Group "C" employee on promotion to the post of Clerk on 1.2.1984. As he had completed 20 years of service on 1.1.1992, he was initially granted the benefit of the second ACP scale, that is, 5000-150-7100-EB-150-7850. As the audit raised an objection to the effect that Suraj Bhan had already got the benefit of two upgradations, viz., from the pay scale of 750-940 to 800-1150, he was not entitled to the ACP scales applicable to Group "C" posts and his pay was sought to be reduced.
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> **14.** Rule 9 reads thus:
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> "9. Non-admissibility of stepping up in certain cases: If the service rules provides or circumstances warrant direct recruitment at the level of promotional post, in addition to the filling up of such posts through promotion, no benefit of pay upgradation to the Senior Government servant who happens to be a direct recruit to a post other than the post on which the junior government

servant is a direct recruitee, on the plea that the junior promotee is drawing more salary based on the benefit of ACP upgradation shall be admissible."

(Emphasis supplied)

15. Rule 9 quoted above only says that the senior Government servants, who are direct recruits, are not entitled the to get any stepping up in case any anomaly arises regarding the receipt of lesser pay by them. However, same is not applicable to the Respondents herein who joined the service as Group "D" employees and later got promotion to Group "C" post by selection. If there is any anomaly to the effect that the senior Government servants are receiving lesser pay than their juniors, who entered the service from a different source of recruitment, certainly such senior Government servants are entitled to stepping up of their pay in order to bring them on par with the salary which is being received by their juniors. There is no clause in the scheme which prohibits such stepping up of salary which is a common practice applicable to all Government employees in case there is anomaly in the pay structure of the employees.

17. In the result, all the appeals are partly allowed. The Appellants shall revise the pay scales of the Respondents. In case of any anomaly, if the employees who, on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/post, then their salary shall be stepped up accordingly. Revised orders shall be passed within a period of two months of the receipt of the copy of this Order by the Government. However, if upon revision of the pay-scales, any employee is liable to refund any amount, the Government shall not insist on refund of such amount. If any employee is entitled to get any amount by way of pay revision, the said amount shall be made available to him within a period of six months from the date of receipt of the copy of this order by the Government."

7. He has cited yet another decision of Delhi High Court i.e. ***Tejbir Singh Dagar and Ors. vs. Union of India and Ors.,*** **W.P. (C) No. 7841/2012** decided on 03.01.2014.

8. Heard learned counsel for the appellants.

9. Undisputed facts are that appellants form a class of persons who were directly recruited to the post of Personal Assistants. Their claim is that the other class of persons namely such of those Steno Typist whose services have been upgraded to the post of Personal Assistants and who were drawing higher pay than the appellants are entitled to set right pay anomaly or not?

10. The policy of the Government in respect of extending A.C.P benefit is with reference to an employee/officer who is stagnated in a particular post for 12/14 years (in the present case) is entitled to A.C.P. benefit. In other words, an employee/officer who is stagnated in a particular post without further promotion is entitled to 1st A.C.P and 2nd A.C.P respectively. The object or purpose of the A.C.P./M.A.C.P. scheme is to relieve the frustration on account of stagnation and the scheme does not involve the actual grant of promotional post to the employee, but to maintain monetary benefits in the form of next higher grade subject to fulfillment of qualification and eligibility criteria. In respect of extending A.C.P. benefit, service particulars of each of the

employee/officer is required to be taken note of. There cannot be a pay anomaly among two classes of persons. In the present case, the appellants were directly recruited to the post of Personal Assistants during the year from 1978 to 1986. Other class of persons against whom pay anomaly is sought to be rectified in favour of the appellants are such of those persons who were initially appointed as Steno Typist and whose services have been upgraded on 07.08.1987 to the post of Personal Assistants. In other words, service particulars of the appellants and such of those Steno Typist whose services have been upgraded in the year 1987 cannot be compared so as to draw inference that there is pay anomaly among employees of a particular cadre read with junior and senior pay. Steno Typist services must have been taken note of while granting benefit of A.C.P. to third category (source), whose services were upgraded in the post of Personal Assistants whereas appellants were direct recruitee to the post of Personal Assistants.

11. Nodoubt, if such of those employees are holding a common cadre, however, source of recruitment and service particulars are entirely different. In this regard, Government of India have issued a circular under what circumstances stepping up of pay principle is required to be invoked. In the circular it is made clear that pay anomaly to be set right on par with juniors would be

with reference to service particulars including date of entry into service and earning increments, passing of examination and various criteria. If each and every service particulars are one and same in such circumstances only pay anomaly can be set right on the principle of stepping up of pay on par with junior.

12. The benefit of stepping up of pay is permissible in cases where senior and junior employee/officer stands on equal footing where all the conditions and instances are identical and the anomaly in their pay is solely attributable to some situations like revision of pay scale and promotion. In the present case, anomaly of pay has not occurred due to revision of pay scale or promotions. On the other hand it is due to personal service particulars of class of persons to that of another class of persons.

13. The cited decisions have no assistance to the appellants' case for the reasons that factual aspect of the matter is required to be taken note of. In the present case, it is a clear case that the appellants form a class of persons (direct recruited to the post of Personal Assistants) and whose claim is on par with the another set of class of persons like whose initial appointment is to the post of Steno Typist and further they have entered Personal Assistant cadre by means of upgradation on 07.08.1987.

14. In the light of these facts and circumstances, the appellants' have not made out a case. Accordingly, present appeal stands dismissed while affirming order of the learned Single Judge dated 18.02.2016 passed in C.W.J.C. No. 4501 of 2014.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	02.12.2022
Transmission Date	