

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2883 of 2020

Mukesh Kumar, S/o Late Ram Sharan Singh, Resident of Mohalla- Bhusunda
Near Devi Sthan, P.S.- Manpur, District- Gaya, at present posted as Junior
Accounts Clerk, Minor Irrigation Division, Gaya.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
4. The Additional Secretary, Minor Water Resources Department, Government of Bihar, Patna.
5. The Chief Engineer, Minor Water Resources Department (Minor Irrigation), Government of Bihar, Patna.
6. The Superintendent Engineer, Minor Irrigation Department, Works Circle, Gaya.
7. The Executive Engineer, Minor Irrigation Division Circle, Gaya.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ram Sevak Choudhary, Advocate Ms. Shally Kumari, Advocate
For the Respondent/s	:	Mr. Sita Ram Yadav, GP-16 Mr. Yatindra Narayan, AC to GP-16

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 11-05-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

2. Petitioner in the present case is seeking the following
reliefs:-

“(i) For issuance of an appropriate writ for
quashing of the office order dated 18.8.2017
as contained in Annexure-4 whereby the
petitioner has been reverted from the post of
Junior Account Clerk/Lower Division
Accounts clerk to the post of Lower Division
clerk on the ground, that he was appointed on



compassionate ground in the pay scale of Rs.3050/4500/- which is now corresponding scale of Lower Division Clerk.

(ii) For issuance of an appropriate writ for quashing of order dated 19.12.2019 contained in Annexure-15 whereby rejected the claim of the petitioner by the respondent no.4.

(iii) For declaration that the pay scale is attached to the post held by employee are entitled for the pay scale for the post on which he was appointed and regularized.

(iv) For issuance of appropriate writ declaring the action of the respondent to be in the teeth of decision taken by District Appointment Committee so also in the teeth of order of the Hon'ble Division Bench of this Hon'ble Court in LPA No. 1702 of 2017 as contained in annexure-5/1 whereby the Hon'ble Court upheld that order dated 21.8.2017 passed in CWJC No. 9921 of 2017 and its analogous cases contained in annexure'5 the Hon'ble Court has been pleased to hold that all accounts clerk whether appointed on compassionate ground or otherwise to be entitled for the same pay scale.

(v) Any other order/orders for which the petitioner is found entitled to in the facts and circumstances of the case.”

Brief facts of the case

3. It is the case of the petitioner that he was appointed as Junior Accounts Clerk/Junior Division Accounts Clerk under Minor Irrigation Division, Gaya on compassionate ground vide Order No. 216 dated 29.01.2002 issued under the signature of the Chief Engineer, Minor Irrigation Department, Patna.



4. The further case of the petitioner is that the matter relating to the pay scale of Junior Accounts Clerk and Senior Accounts Clerk was in dispute since merger of the two posts and de-merger of the post of Junior Accounts Clerk and Senior Accounts Clerk. This dispute was settled by the Resolution No. 3111(V) dated 25.03.2015 issued by the Department of Finance, Government of Bihar by which those who were appointed till 27.09.1999 were given the revised pay scale of Rs.4500-7000/- with effect from 01.01.1996 and the corresponding revised pay scale but those who were appointed on or after 28.09.1999 were given the pay scale of Rs.4000-6000/- and revised pay in pay band of Rs.2400/-.

Submissions on behalf of the petitioner

5. It is the case of the petitioner that since he was appointed after 27.09.1999, so he comes in the category of lower scale of Rs.4000-6000/- as per government's decision. The petitioner was given the said scale and its revised pay scale by order as contained in Annexure '3' and '3/1' to the writ application. The District Accounts Officer confirmed the pay scale and consequential pay fixation order was also issued.

6. It is the case of the petitioner that the Executive Engineer took a unilateral decision whereunder the petitioner has



been reverted from the post of Junior Accounts Clerk to the Lower Division Clerk on the ground that the scale of Lower Division Clerk is corresponding to the scale of Rs.3050-4500/- on which compassionate appointment is to be given.

7. It is submitted that the identical controversies which were raised with similarly situated persons like the petitioner came for consideration before this Court in the case of **Binit Kumar and Others Vs. The State of Bihar and Anr. (in CWJC No. 9921 of 2017 and other analogous matters)** and in the case of **State of Bihar Vs. Ram Janam Jha and Others (LPA No. 206 of 2014).**

8. It is submitted that in case of **Binit Kumar** (supra) a learned coordinate Bench of this Court had occasion to consider the Finance Department resolution no. 3111 dated 25.03.2015. This Court found the action of the State in reverting the persons similarly situated to the petitioner illegal and the impugned orders by which they were reverted to the Lower Division Clerk were quashed.

9. Learned counsel submits that recently in a similarly situated matter in the case of **Roushan Kumar Jha and Others Vs. the State of Bihar and Anr. (in CWJC No. 13990 of 2018),** this Court vide its order dated 05.04.2023 directed the Principal



Secretary, Water Resources Department and the Principal Secretary, Finance Department, Govt. of Bihar to sit together and resolve the issues after finding out as to whether the case of the petitioners in the said case were covered by the judgment of this Court in the case of **Binit Kumar** (supra) or not. This Court has also shown concern for the departments of the government not acting in terms of the Bihar Litigation Policy by applying the judgments which have settled the legal position in a particular subject.

10. It is submitted that pursuant to the direction of this Court, reliefs have been granted to the petitioners in CWJC No. 13990/2018. Similar directions have been prayed for.

Submissions on behalf of the State

11. Mr. Yatindra Narayan, learned AC to GP-16 was given an opportunity to examine as to whether the case of the petitioner would be covered by the judgment of this Court in **Binit Kumar & Others** (Supra) or not.

12. Learned counsel for the State has admitted at the bar that the case of the petitioner would be covered by the judgment of this in case of **Binit Kumar** (supra) and **Ram Janam Jha** (supra).



Consideration

13. In the aforesaid view of the matter, there being an admitted position that the issue has been resolved in the aforementioned judgments of **Binit Kumar and others** (Supra) and **Ram Janam Jha** (Supra).

14. This writ application is allowed.

15. The impugned orders are set-aside. The respondents are directed to return the amounts which have been recovered from the petitioner within a period of three months from today. The petitioner shall be entitled for all the consequential benefits.

(Rajeev Ranjan Prasad, J)

lekhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.05.2023
Transmission Date	

