

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20997 of 2021

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Md. Gani Haseen Qurni Son of Late Saud Ahmad Jafry Resident of Ward
No.- 32, Gali No.13, P.S.- Kasim Bazar, P.O. and Distt- Munger.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Building Construction Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
4. The Engineer-in-Chief, Building Construction Department, Govt. of Bihar, Patna.
5. The Chief Engineer, Building Construction Department, Govt. of Bihar, Patna.
6. The Superintending Engineer, Building Circle- Darbhanga.
7. The Executive Engineer, Building Division, Begusarai.

... .. Respondents

With
Civil Writ Jurisdiction Case No. 23432 of 2019

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John Shabbar, S/o Late Syed Taqui Raza, Resident of Village- Minapur, P.O.-
Hazipur, District Vaishali.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Road Construction Department, Bihar, Patna.
3. The Principal Secretary, Finance Department Govt. of Bihar, Patna.
4. The Principal Secretary General Administration Department, Bihar, Patna.
5. The Engineer in Chief, Road Construction Department, Bihar, Patna.
6. The Superintending Engineer, National Highway Works Circle, Patna.
7. The Executive Engineer, Mahatma Gandhi Setu Division, Patna.
8. The Treasury Officer, Vishveshraiya Bhawan, Patna.

... .. Respondents

With
Civil Writ Jurisdiction Case No. 1377 of 2022

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Devendra Kumar Son of Dineshwar Prasad Singh, Resident of Soruri Khagaul
Near Durgasthan, P.S. - Khagaul, District – Patna.

... .. Petitioner

Versus

1. The State of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Bihar, Patna.
3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.



4. The Principal Secretary, General Administration Department, Bihar, Patna.
5. The Engineer in Chief, Road Construction Department, Bihar, Patna.
6. The Superintending Engineer, Road Construction Department, Road Circle, Darbhanga.
7. The Executive Engineer, Road Division, Begusarai.
8. The Treasury Officer, Begusarai.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 20997 of 2021)

For the Petitioner/s : Mr.Siyaram Pandey, Advocate

For the Respondent/s : Mr.Narendra Kumar Singh, AC to GP-22

(In Civil Writ Jurisdiction Case No. 23432 of 2019)

For the Petitioner/s : Mr.Rajesh Kumar Sinha, Advocate

For the Respondent/s : Mr.Mahtab Alam, AC to SC-20

(In Civil Writ Jurisdiction Case No. 1377 of 2022)

For the Petitioner/s : Mr.Rajesh Kumar Sinha, Advocate

For the Respondent/s : Mr.Tripurari Nath Ambastha, AC to SC-26

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 03-03-2023 On the request of learned counsel for the petitioners

and with consent of learned counsel for the State, these matters

have been taken up for consideration together.

2. For purpose of discussion this Court has taken the
prayer of the lead case being CWJC No. 20997/2021 for
consideration.

3. The petitioner prays for the following reliefs:

“(i) Writ of mandamus or an appropriate writ/writs, order/orders or direction/directions commanding the respondents to reinstate the petitioner on his initial post of appointment i.e. on the post of Junior Accounts Clerk and grant him the pay-scale meant for the scale of Junior Accounts clerk i.e. grade pay-5200-20200/- with P.B1+2400 since 01/01/2006 in the light of the letter no. 3111 (finance) Department, Govt. of Bihar, Patna (annexure-3) (Respondent no.3) with all consequential benefits including arrears of pay.
(ii) And/or be pleased to pass such other order or orders which may be deemed fit and proper in the facts and circumstances of the case.”

4. Learned counsel submits that in all the writ



applications the petitioners are seeking the identical reliefs. The contention of the petitioners is that these cases are squarely covered by the judgment of this Court in CWJC No. 9921/2017 (Binit Kumar and others Vs. The State of Bihar and others) along with other analogous cases.

5. It is the case of the petitioners that they have been appointed on the sanctioned and vacant posts of Junior Accounts Clerk by the competent authorities. They have enclosed their appointment letters to substantiate their claim.

6. The grievance of the petitioners at this stage is that even as they were appointed on the post of Junior Accounts Clerk but have been wrongly given the scale of Lower Division Clerk i.e. Rs. 3050-4590/- which was corrected by the Department later, on the recommendation of the High Level Committee of the Finance Department, Government of Bihar. In this connection, Memo No. 192 dated 24.02.2012 issued by the Department of Finance, Govt. of Bihar has been relied upon.

7. The petitioners are further relying upon the Finance Department letter no. 3111 dated 25.03.2015 (Annexure '3') to submit that by this resolution all the Junior Accounts Clerk and the Lower Division Accounts Clerk were given the designation of Junior Accounts Clerk and they have been held



entitled for the scale of pay in Rs. 4000-6000/- till 31.12.2005 and PB1+2400 w.e.f. 01.01.2006.

8. In paragraph '8' of the writ application, it is specifically stated that the pay of so many similarly situated employees were revised by the department in the light of the letter no. 3111 dated 25/03/2015 (Annexure '3'). It is their further grievance that the petitioner has been placed in a reduced pay scale and it has been lowered down from the post of Junior Accounts Clerk to the post of Lower Division Clerk. In paragraph '10', it is stated that in squarely same and similar matter this Hon'ble Court has passed order dated 21.08.2017 in CWJC No. 9921/2017 (**Binit Kumar and Others Vs. The State of Bihar and others**) along with other analogous cases in which this Court has been pleased to hold that the petitioners were appointed against the vacant and sanctioned post so they were entitled for the scale attached to the said post. The respondents have complied with the order passed in CWJC No. 9921/2017 as challenge to the same failed up to the Hon'ble Apex Court.

9. Learned counsel for the State has drawn the attention of this Court towards the statements made in paragraph '5' of the counter affidavit which though acknowledges that in



writ petition the petitioners are claiming that their cases are similarly situated with the petitioners in CWJC No. 9921/2017 but the counter affidavit states that the petitioners do not show as to how their cases are similar to those of the petitioners in CWJC No. 9921/2017. In course of hearing, however, learned counsel for the State does not deny that in identical matters this Court has taken note of the contention of the State where the State has admitted that those cases are similar to CWJC No. 9921/2017.

10. Having heard learned counsel for the petitioners and State as also on perusal of the records, this Court finds as under:-

(I) In CWJC No. 20997/2021, the specific statements of the petitioner in paragraph '8' to '11' where they are claiming parity on the line of the judgment of this Court in CWJC No. 9921/2017 have not at all been answered by the State respondents in their counter affidavit. In fact, perusal of the counter affidavit would show that vide Annexure 'C series' the Executive Engineer sought a clarification from the District Accounts Officer as regards the payability of the scale of pay to the petitioner. In response to the same, the District Accounts Officer vide letter no. 493 dated 03.08.2016 communicated that



the petitioner was appointed on compassionate ground and in accordance with letter no. 6958 dated 24.05.2012 issued by the General Administration Department, Government of Bihar only those with higher than matriculation qualification would be entitled to Grade Pay of Rs. 1900/-. As regards the petitioner, it was stated that he was entitled to Pay Band of Rs. 5830/- Plus Grade Pay 1900/- which came to total of Rs. 7730/- as on his date of appointment i.e. 26.12.2009 and subsequently he would be entitled for pay increase as per fulfillment of departmental conditions.

The counter affidavit further states that when the petitioner was transferred from Building Division, Begusarai to Madhubani a letter contained in Memo No. 847 dated 13.06.2017 was received pointing out towards payment of Grade Pay Rs. 2400/- to the petitioner while other clerks of accounts cadre are paid Rs.1900/- Grade Pay. In this light the pay of the petitioner was revised and it was forwarded to the District Accounts Officer vide Annexure 'F' and recovery of excess payment has been ordered vide Annexure 'G'.

(II) In CWJC No. 23432/2019, the petitioner has prayed for quashing of the office order/memo no. 592 dated 09.07.2019 issued by the Executive Engineer, Mahatma Gandhi



Setu Division, Patna whereby and whereunder the grade pay of the petitioner has been reduced from Rs. 2400 to Rs. 1900/-. In this case, one of the contentions of the petitioner is that this reduction in his grade pay has been given effect to without giving any opportunity of hearing to the petitioner and it is contrary to the provision/resolution dated 25.03.2015 of the government. In this case, the petitioner was appointed on compassionate ground as Junior Accounts Clerk and was given pay scale of Rs. 3050-4590/-in the National Highway Division and Road Construction Department, Govt. of Bihar vide letter no. 87 dated 23.09.2009.

In the counter affidavit the State respondents have come out with a statement that the petitioner was initially appointed on the post of Lower Division Clerk (Accounts) vide Annexure '1' to the writ application. It is admitted that he was given the grade pay of Rs. 2400/- which was rejected by the District Accounts Officer, on the ground that as per clause 5(ii) of memo no. 03 dated 11.07.2016 issued by the Finance Department, Government of Bihar, the appointment on compassionate ground be made on the post of Lower Division Clerk and not on the post of Accounts Clerk and in case the compassionate appointment is made against the post of



Accounts Clerk in that case the said post will be of Lower Division Clerk and not the post of Accounts Clerk.

It is further stated that the District Accounts Officer also pointed out that as per notification dated 24.5.2011 issued by the General Administration Department, Govt. of Bihar the Secretariat Assistants/Supervisor Cadres and the employees of Group 'C' are entitled for next pay increment only after passing the computer eligibility test which the petitioner has passed on 29.09.2015 but he has regularly been given the benefit of salary increment without passing the said examination.

The respondents have stated that the impugned letter has been issued in the light of the objection/suggestion of the office of the Accountant General. It is however stated that in view of the order dated 28.11.2019 passed by the this Court in the present writ application the salary of the petitioner has not been reduced. In the counter affidavit, there is no reply to the statements made in the writ application that prior to issuance of the impugned order no show cause or opportunity of hearing has been given to the petitioner.

(III) In CWJC No. 1377/2022, the petitioner has prayed for quashing of memo no. 1138 dated 16.12.2021 passed by the Executive Engineer, Road Construction Department,



Road Division, Begusarai whereby and whereunder the grade pay of the petitioner has been reduced since the date of his appointment w.e.f. 04.05.2007 to 01.07.2021 from Rs. 2400/- to 1900/-.

In this case also one of the contentions of the petitioner is that prior to issuance of the impugned orders contained in memo no. 1138 dated 15.12.2021 and the consequential order in memo no. 1205 dated 31.12.2021 issued by the Executive Engineer, Road Division, Begusarai seeking recovery of Rs. 10,72,162.00 from the petitioner, no show cause notice was issued to him and no opportunity of hearing has been given.

The petitioner in the present case is also an appointee on compassionate ground. He joined on the post of Junior Accounts Clerk in the Department of National Highway Works Circle, Road Construction Department vide office order as contained in Annexure '1' to the writ application. He was though appointed on the vacant post of Junior Accounts Clerk but was given the pay scale of Rs. 3050-75-3950-80-4590/- which was the pay scale of the Lower Division Clerk.

It is the case of the petitioner that he passed the Departmental Accounts Examination vide letter no. 754(2) dated



01.07.2008. He also passed the Departmental Hindi Noting & Drafting Examination vide memo no. 762 dated 30.07.2008. He also passed his second paper and third paper of accounts examination. It is his case that his pay was revised from time to time and the same was approved by the District Accounts Officer. He has passed the Departmental Accounts Examination in all the papers and in this connection he has relied upon a letter dated 26.07.2012 (Annexure '2').

The petitioner states that the Government of Bihar came out with a Gazette Notification No. 1202 dated 24.12.2018 and the cadre of Junior Accounts Clerk, Accounts Clerk and other have been merged in General Clerical Cadre, so the post of the petitioner has been merged in general clerical cadre. The petitioner, therefore claims that he is entitled to get grade pay of Rs. 2400/-. Petitioner refers the Gazette notification dated 21st December 2018 (Annexure 5 to the writ application).

It is his submission that the impugned office order has been passed by the Engineer-in-Chief, Road Construction Department in the light of the order passed by the Lokayukta in case no. 01 of 2019 dated 20.12.2020. The petitioner has challenged the jurisdiction of the Lokayukta and submits that he is being discriminated only because he has been appointed on



compassionate ground. This petitioner has also alleged violation of principles of natural justice.

In this case no counter affidavit is available on the record.

11. In the given facts and circumstances of the case this Court finds that there is no specific denial of the State respondents in response to the statements made in the writ application being CWJC No. 20997/2021 that the case of the petitioner stands on similar footing with others who have been allowed the grade pay of Rs. 2400/- and further that the case of the petitioner would stand on equal footing with the petitioners in CWJC No. 9921/2017 and other analogous cases. Further, finding that in all these writ applications the petitioners have contended that the impugned orders have been passed to the detriment of the petitioners in violation of principles of natural justice and had an opportunity of hearing been given to them by the State respondents, they would have established their case on the principles of parity; this Court is of the considered opinion that at this stage, these writ applications must succeed on the ground of the impugned action being in violation of principles of natural justice.

12. So far as the notification no. 1202 dated



24.12.2018 is concerned, it appears that now the cadre of Accounts Clerk would be a dying cadre and all the vacant post of this cadre would merge in clerical cadre. The junior Accounts Clerk/Senior Accounts Clerk working on that post would, however, continue on their respective post.

13. This Court finds that the impugned orders which have been passed have got civil consequences inasmuch as huge amounts have been sought to be recovered from the petitioners after more than 10 years. In such circumstances, it was incumbent upon the State respondents to give an opportunity of hearing to the petitioners and should have considered their cases on the ground of parity keeping in view the judgment of this Court in CWJC No. 9921/2017 and other analogous matters. Recently, this Court has heard and disposed of a batch of writ petitions being CWJC No. 14709/2022 and other analogous cases, in which this Court has followed the judgment in CWJC No. 9911 of 2022. The only difference which this Court finds in these cases is as to the date of appointment of the petitioner(s). They have been appointed by various office orders in the year 2009.

14. This Court, therefore, finds it just and proper to quash the impugned office orders in respect of these petitioners



and directs the respondent authorities to provide an opportunity of hearing to the petitioners in all these writ applications and consider their grievances and all the submissions in the light of the judicial pronouncements of this Court in CWJC No. 9921/2017 and CWJC No. 14709/2022. The State respondents shall after providing appropriate opportunity of hearing pass a reasoned order as respect the petitioners within a period of three months from the date of receipt/production of a copy of this order.

15. Since this Court has quashed the impugned orders, the amount, if any, recovered from the petitioners, shall be liable to be restored immediately.

16. These writ applications are disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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