

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6236 of 2023

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Jayant Prakash S/o Late Jai Prakash Narayan @ Jai Prakash Srivastava @
Late Jai Prakash Narayan Srivastava, Resident of Village B2, Satyam
Enclave, Judges Colony, East Saguna Khagual, Patna, Bihar - 801503.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Planning and Development, Govt. of Bihar, Old Secretariat, P.O. Sachivalay, Patna.
2. The Additional Chief Secretary, General Administration Department, Govt. of Bihar, Old Secretariat, P.O. Sachivalay, Patna.
3. The Additional Chief Secretary, Finance Department, Govt. of Bihar, Old Secretariat, P.O. Sachivalay, Patna.
4. The Director, Directorate of Economics and Statistics, Planning and Development Department, Old Secretariat, Patna, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar, Advocate

For the Respondent/s : Mr. Mr. Rewti Kant Raman, AC to SC 11

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 03-12-2024

Heard Mr. Dhananjay Kumar, learned counsel

appearing on behalf of the petitioner and Mr. Rewti Kant

Raman, learned AC to SC 11 for the State.

2. Petitioner has *inter alia* prayed for following reliefs

in the paragraphs No.1 of the writ petition:-

“a) To issue an appropriate writ in the nature of certiorari for quashing the order having memo number 274 (Annexure – P1) dated 03.08.2022 by respondent No.3 i.e. Director, Directorate of Economics and Statistics, Planning and Development Department, Bihar whereby and whereunder the petitioner’s representation has been rejected for recommending his name for addition in the central pool of common seniority list for Bihar Secretariat Clerical Cadre employees maintained by General Administrative department.

b.) To issue an appropriate writ in the nature of mandamus commanding the respondent No.3 to



declare the petitioner as Bihar Secretariat LDC employee as petitioner was appointed on recommendation of Personnel and Administrative Reforms department (now General administrative Department) which recommends only for appointment for secretariat services on compassionate ground and petitioner case is covered by clause 7(4) and 11(3) of notification 6216 dated 29.06.2006 known as Bihar Secretariat Clerical Service Rules 2006” as petitioner joined the service on 14.07.2005 as routine clerk.

c) To issue an appropriate writ in the nature of mandamus commanding the respondent No.3 to recommend name of the petitioner to General administrative Department (GAD) to be added in its central pool of common seniority list for Bihar Secretariat clerical Cadre employees by virtue of clause 7(4), Clause 11(3) and clause 13 of notification 6216 dated 29.06.2006 known as “Bihar Secretariat Clerical Service Rules 2006” issued by Personnel & Administrative Reforms Department.

d.) To issue an appropriate writ in the nature of mandamus commanding the respondents to grant all consequential benefits including ACP/promotion as granted by General administrative Department (GAD) to Bihar Secretariat clerical Cadre employees from time to time.

e.) Pass any other or further order as this Hon’ble Court may deem fit and proper in the interest of justice.”

3. Brief facts of the case are that the petitioner’s father had died in harness on 19.09.2003. Petitioner application was duly considered and he was appointed on compassionate ground on 05.07.2005 on the post of class III Lower Division Clerk as per the recommendation on 04.03.2005 by the Centralized Compassionate Committee (then Personnel and Administrative Reforms Department). The pay scale of the petitioner was Rs.3050-4590/- at the time of his appointment. The petitioner had filed his representation for recommending his



name to be added in central pool of common seniority list of Bihar Secretariat Clerical Cadre Employees maintained by the General Administrative Department but the same was rejected by the impugned order contained in memo No. 274 dated 03.08.2022, forcing the petitioner to file the present writ petition.

Submissions on behalf of the parties:

4. Learned counsel appearing on behalf of the petitioner submitted that the Petitioner is aggrieved by order contained in memo 274 dated 03.08.2022 by which his representation for recommending the name of the petitioner to be added in central pool of General administrative Department (GAD) clerical list has been rejected. Learned Counsel further submitted that petitioner was appointed on compassionate ground on recommendation of General Administrative Department's (Erstwhile Personnel and Administrative Reforms department) Central Compassionate Committee meeting dated 04.03.2005 issued vide Gyapank 2335 dated 21.03.2005 and as such he is member of central pool of General Administrative Department (GAD) clerical list. Moreover, neither recommendation of Personnel and Administrative Reforms department, nor appointment letter stipulates that he is member of Regional



Cadre.

5. Learned counsel in support of his contention that petitioner belongs to Secretariat Cadre, refers to the appointment letter dated 05.07.2005, which has been issued on the recommendation of Centralized Compassionate Committee. The said Centralized Compassionate Committee is headed by Principal Secretary, (then Personnel and Administrative Reforms Department now General Administrative Department) who is the chairman of the Committee, therefore, the petitioner cannot be held to be the member of Regional Cadre.

6. Learned counsel referring to clarification made by the General Administration Department vide Letter No. 2822 dated 27.04.1995 (then Personnel and Administrative Reforms Department) submitted that the Principal Secretary, General Administration Department is the Chairman of the Committee for appointment at Secretariat level and it is separate from Regional Committee, which is headed by the District Magistrate, who is the Chairman of the District Compassionate Appointment Committee.

7. No challenge has been made to Letter No.2822 dated 27.04.1995 issued by Personnel and Administrative Reforms Department clarifying therein that there is a separate committee



for appointment at Secretariat cadre and separate committee for Regional cadre.

8. In these background, learned counsel submitted that the very initial appointment of the petitioner was recommended by the Principal Secretary, Personnel and Administrative Reforms Department (Now, General Administration Department) and non consideration of the case of the petitioner as per Clause 12 (3) of Notification No. 6216 dated 29.06.2006, which provides that all the Typist, Routine Clerks and Bill Clerks working in the department and attached offices from their respective date of appointment, automatically became member of UDC of Secretariat Cadre. The petitioner, who was appointed as LDC and is now working on the post of Routine Clerk must be equally treated and should be included in Common Seniority List as per Clause 13 of the Notification No. 6216 dated 29.06.2006 by giving due position in the Seniority List.

9. Learned counsel further submitted that petitioner having been discriminated by not recommending his name, is in violation of Articles 14 and 16 of the Constitution of India. In support, learned counsel has relied on a Division Bench judgment passed in **CWJC No.3974 of 1992 (Prem Narayan**



& Anr. Vs State of Bihar & Ors.), reported in **(1995) 1 PLJR 216**, particularly on paragraph no. 8, which is reproduced hereinafter: -

“8. It may not be possible to make centralised selection in all cases irrespective of the cadre/class or the level of appointment of the deceased Government servants. For example, those working in the offices at the district level cannot be equated with those working in the Secretariat and its attached offices. Having regard to the size and proportion of the total employment under the State, it would not be possible to make centralised selection at one place. A centralised selection/consideration may make the whole scheme unworkable. The selection, therefore, has to be limited to some level. In my opinion, since distinction already exists between secretariat and its attached offices on the one hand and the district level offices on the other, all cases of compassionate appointment so far as Secretariat and its attached offices are concerned may be considered by one Committee at the Secretariat level. Similarly, so far as district level offices are concerned, the Committee headed by the Collector may consider all such cases. The dependant family member of Government servant dying in harness while posted in the Secretariat and its attached offices may submit application in the department/office where the deceased Government servant was last posted as provided in the circular dated October 5, 1991. After initial scrutiny, the applications should be sent to the Secretariat level Committee. The said Committee shall finally consider the claims, both as regards their genuineness and eligibility, and prepare and maintain list of all eligible applicants according to seniority to be reckoned strictly as per the date of death of the Government servant concerned. The control of the joint cadre of the Secretariat and its attached offices staff vests in the Personnel & Administrative Reforms Department, no doubt, with respect to only certain categories of posts beyond the purview of the appointments on compassionate grounds. Notwithstanding that, the Department may function as the Model Department. Likewise, the dependant family members of Government servants posted in the different offices in particular district at the time of their death in harness may submit application in the particular office where the



Government servant was last posted but the same should be processed by the District Level Compassionate Appointment Committee headed by the Collector of the District. The said Committee, like the Secretariat level Committee, shall prepare and maintain a list of all eligible applicants according to seniority as per the date of death of the Government servants concerned. The Committee shall forward the name(s) of the seniormost applicant(s) to the office/authority within whose jurisdiction vacancy occurs, according to the date of vacancy, where they may be appointed by the concerned appointing authority. The said Committees may be constituted by the State Government in the manner as it may deem fit and proper. If this procedure is followed, it would not only remove the anomalies but would also ensure a better and more cohesive procedure of compassionate appointment.”

(emphasis supplied)

10. In light of paragraph no.8 as quoted above, learned counsel contended that the petitioner can be considered to be in Secretariat Cadre and as per the notification no. 6216 dated 29.06.2006, issued by the Personnel and Administrative Reforms Department, Government of Bihar, which is known as Bihar Secretariat Clerical Service Rules, 2006 (hereinafter referred to as the Rules, 2006), the petitioner's name is required to be added in the central pool of common seniority List for Bihar Secretariat Clerical Cadre Employees, maintained by General Administrative Department.

11. *Per contra*, the learned counsel appearing on behalf of the State referring to the counter affidavit submitted that the petitioner was appointed as Class III Lower Division



Clerk and after recommendation of the Central Compassionate Committee, the petitioner was accordingly appointed by the office Order No.188, contained in Memo No.1167 dated 05.07.2005. The petitioner submitted his joining on 14.07.2005 in the office of the Directorate of Economics and Statistics, Bihar. It is also submitted that the petitioner was posted as Lower Division Clerk under the regional cadre and during his service period, the petitioner was transferred to different places in terms of the appointment letter and at the relevant time, when the writ petition was filed, the petitioner was posted in the office of District Statistical Office, Vaishali. Learned counsel further submitted that the notification No.6216 dated 29.6.2006, issued by the Personal and Administrative Reforms Department, Government of Bihar don't help the petitioner in the facts and circumstances of the case. Learned counsel further submitted that Clause 11(3) of Rules, 2006 is not in favour of the petitioner in view of the fact that sub-clause (4) of Rule 7 of the Rules, 2006 is self explanatory in view of the recruitment rules. Sub-rule(4) of Rule 7 provides that persons appointed and working as Lower Division Clerks, as well as, the persons appointed on compassionate ground in different department and attached offices on the appointed day shall be deemed to be



automatically included in this grade and the same has has been clarified by a Division Bench of this Court in CWJC No.3974 of 1992 and other analogous cases. Learned counsel has referred to paragraph no.8 in this regard, to contain that a centralized Selection/consideration may make the whole scheme workable in view of the fact that there is distinction between Secretariat and its attached offices on the one hand and the district level offices on the other hand. All cases of compassionate appointment so far as Secretariat and its attached offices are concerned, the same may be considered by one committee at the Secretariat level. Similarly, so far as district level offices are concerned, the committee headed by the Collector may consider all such cases. Learned counsel at the same time, also tried to distinguish the case of the petitioner on the ground that it is admitted that the petitioner had appeared in the examination conducted at the sub-division and Muffasil level and suggested that the petitioner is not an employee of secretariat service and therefore he is not entitled to benefit accrued to the secretariat staff. Referring to clause 11(3) of Rules, 2006, learned counsel informs that subsequently it has been clarified by the said notification particularly clause 11(3) of the Rules, 2006 will not be attracted in the case of the petitioner, who was appointed on



compassionate ground and posted at regional offices.

Analysis and Conclusion:

12. Heard the parties.

13. Having heard the rival submissions made on behalf of the parties, before I proceed to discuss on merit, I find it relevant to refer clauses 7, 11, 13 and 14 of Rules, 2006, which are reproduced hereinafter:-

7. Recruitment in the grade of Lower Division Clerk-(1) For appointment in the Lower Division Clerk the minimum educational qualification and recruitment procedure shall be according to the provisions of the Regulations.

(2) The requisition for vacancies of each calendar year shall be sent to the Commission latest by the month of December of the preceding calendar year. The qualification of age shall be according to 1st January:

(3) Eighty five per cent (85%) of the authorised strength of the LDC grade shall be filled up by direct recruitment on the basis of result of competitive examination held for this purpose by the Commission.

Provided that, maximum five per cent (5%) of the post to be filled up by direct recruitment shall be filled up from amongst the dependents of the Government Servants who have died in harness, on compassionate basis in accordance with the prescribed procedure and on fulfilling all requisite qualifications for being appointed to this grade for which recommendation of the Commission shall not be required.

4. Persons appointed and working as Lower Division Clerks as well as the persons appointed on compassionate ground in the different department and attached offices on the appointed day shall be deemed to be automatically included in this grade:

Provided that such Lower Division Clerks,



who have been deemed to be automatically included in this service and whose age is less than 50 years on the appointed day shall be required to obtain competency in Typing and Computer, as determined by the State Government, within two years from the appointed day. In case of not obtaining such competency within the said period they will become deprived of further annual increments.

(5) Remaining Fifteen per cent (15%) of the authorised strength shall be filled up from the group 'D' employees working in the regular establishment of Secretariat Departments and attached offices having qualifications determined by Regulation, on the basis of Limited Competitive examination held for this purpose by the Commission.

(6) On the basis of vacancies reported by the concerned department, reservation category wise requisition shall be sent to the Commission by the Personnel & Administrative Reforms Department. The allotment of candidates on the basis of results of competitive examination to each cadre shall be made by the said department on the basis of merit-cum-option. The procedure for allotment on the basis of merit -cum-option shall be made under Regulations.

(7) The qualification, rules, syllabus etc., for competitive examinations referred to in sub-rule (3) and (5) shall be as determined by regulations made by the State Government in the Personnel & Administrative Reforms Department.

11. Determination of Seniority in the Lower Division Clerk grade.-

(1) The seniority list shall be departmentwise separately.

(2) The inter-se seniority of the persons appointed on recommendation of the Commission under sub- rule (3) of rule-7 shall be in accordance with the merit list recommended by the Commission.

(3) The inter-se seniority of the employees appointed on compassionate basis shall be according to their date of appointment.

(4) All the employee appointed in a year on the basis of competitive examination held by the commission under rule-7 (3) or appointed under rule-7 (5) shall be senior to all the employees en bloc appointed on compassionate basis in that year.



5) The inter-se seniority of the employees appointed under sub-rule (5) of Rule-7 shall be in accordance with the merit list of the result of the Limited Competitive examination.

(6) All the employees appointed under sub-rule (5) of Rule -7 in a year shall be junior to the employees en bloc appointed on recommendation of the Commission under sub rule (3) of Rule- 7 in that year.

13. Common Seniority List.-The Common Seniority List of this service shall be prepared and maintained b Personnel and Administrative Reforms Department according to the principles and procedure determined under Regulations.

14. Interpretation.- Should any doubt arise as to the interpretation of any of the provision of these Rules the matter shall be referred to the Personnel & Administrative Reforms Department whose decision thereon be final.”

14. The admitted facts are that the petitioner was appointed on compassionate ground on account of the death of his father who had died in harness on 19.09.2003. The Petitioner was appointed vide office order No.188 contained in Memo No.1167 dated 05.07.2005 on the basis of recommendation of the then Principal Secretary, Personnel Administrative Reforms Department, (now General Administration Department), who had headed the committee of compassionate appointment for the secretariat cadre. The petitioner was posted at Secretariat in Directorate of Economic and Statistic Planning and Development Department. The then personnel Administrative Reforms Department, Government of Bihar had clarified vide letter no.2822 dated 27.04.1995 that there are separate



committee for appointment of Secretariat level cadre and separate committee for Regional cadre. The Compassionate Appointment Committee at the secretariat level is headed by the Principal Secretary of General Administrative Department (then Personnel and Administrative Reforms Department) who is Chairman of the Committee. The District Magistrate is the Chairman of the District Appointment Committee. The petitioner was appointed as Lower Division Clerk and was working as routine clerk. The appointment of the petitioner was made by the Compassionate Appointment Committee at the secretariat level. Provision of sub-rules (5) and (7) confirms the fact that petitioner is a member of secretariat cadre. To ascertain, as to whether, the petitioner's case is covered by clause 7(4) and 11(3) of Rules, 2006 in background of the fact that the petitioner had joined service on 14.07.2005 as routine clerk and the Rule, 2006 came into effect from 29.06.2006. It can be said that the same is applicable in the case of the petitioner as well and the person whose name has not been included in central pool of common seniority list for Bihar Secretariat Clerical Cadre by virtue of Clause 7(4), call for interference of this Court even on account of the admitted facts and in respect of clarification contained in Letter No. 2822 dated 27.04.1995 which was



issued much before the petitioner was appointed on compassionate ground on 05.07.2005. The above admitted facts can only lead to conclude that the representation of the petitioner was rejected on the sole ground that he cannot be included in secretariat cadre in view of Sub-Clause 4 of Clause 7 of Rules, 2006 can be sustained.

15. Now question arises whether determination of seniority of the petitioner in Lower Division Clerk is required to be considered in terms of Clause 11 of Rule, 2006. In this regard, I find it apt to reproduce the observation made by this Court vide order dated 13.04.2022 passed in CWJC No.7033 of 2021. The operative part of the said order is reproduced hereinafter:-

"3. In support of the aforesaid relief, petitioner is relying on The Bihar Secretariat Clerical Service Rules, 2006 notified on 29.06.2006. His grievance is required to be redressed under sub- Rule 4 of Rule 7 relating to recruitment in the grade of Lower Division Clerk read with Rule 13, Common Seniority List. Further a general communication dated 26.02.2019 of General Administrative Department. In this regard, petitioner is stated to have submitted representation on 19.04.2017 vide Annexure P/6. Therefore, respondent No. 3 – The Director, Directorate of Economics and Statistics, Planning and Development Department, Old Secretariat, Patna, Bihar is hereby directed to peruse the petitioner's service particulars read with Rules 2006 (Annexure P/4) and General Administration Department communication



to various departments and redress the petitioner's grievance within a period of four months from the date of receipt of this order while passing a speaking order and its communication to the petitioner.

4. Accordingly, writ petition stands disposed off."

16. I find that the impugned order, contained in Memo No.274 dated 03.08.2022 (Annexure P/1), passed by the Director, Directorate of Economics and Statistics, Planning and Development Department, Bihar, in the entirety of the facts and development which has taken place cannot be sustained and the same is set aside and quashed.

17. The petitioner, if so desire, may file detailed representation before the Additional Chief Secretary, General and Administrative Department, Government of Bihar, who will consider the representation of the petitioner in accordance with law, as well as, discussion made hereinabove.

18. The writ petition is, accordingly, disposed of.

19. Interlocutory Application(s), if any, also stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	11.12.2024
Transmission Date	NA

