

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.668 of 2023
In
Civil Writ Jurisdiction Case No.23092 of 2018

-
-
1. Sonalal Prasad Son of Shri Munilal Prasad Resident of Village- Pipra(Matiyariya) P.S.- Sidhi, District- East Champaran.
 2. Sanjay Kumar Son of Late Arjun Prasad Sah Resident of Village- Motipur (Purani Bazar), P.S.- Motipur District- Muzaffarpur.
 3. Pradip Kumar Singh Son of Late Tej Narayan Singh Resident of Village- Kotwa, P.S.- Kotwa District- East Champaran.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, main Secretariat, Patna.
2. Principal Secretary General Administration Department, Government of Bihar, Main Secretariat.
3. District Magistrate, East Champaran at Motihari.
4. District Magistrate, Siwan.
5. District Magistrate, Rohtas (Sasaram).

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Kishore Kumar Thakur, Advocate
For the Respondent/s : Mr. Sarvesh Kr. Singh, AAG-13

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 24-04-2024

We have heard Mr. Kishore Kumar Thakur,

learned counsel for the appellants and the learned Government

Advocate for the State.

2. The challenge in the present Letters Patent

Appeal is to an order/judgment of this Court dated 03.04.2023

passed by learned Single Judge in CWJC No. – 23092 of 2018

and other analogous cases. The claim of the appellants to grant

pay scale of Rs. 4,000-Rs. 6,000/- in place of Rs. 3,050-Rs.

4,590/- with effect from the date on which the juniors to the



appellants were appointed as Lower Division Clerk (in short LDC), has been turned down.

3. The short facts which led to the filing of the present appeal are that the Government of Bihar in the Department of Personnel and Administrative Reforms issued resolution no. 11243 dated 06.12.1995 for making appointment against Class III posts in Regional Offices. Fifty percent of the vacant seats were to be filled up from amongst the direct recruits, whereas the remaining 50% seats were to be filled up by conducting limited competitive examination from the Class IV employees. The resolution further provided that the examination was to be conducted by the Bihar Public Service Commission. It is to be noted that later on, after constitution of the Bihar Staff Selection Commission vide notification no. 3606 dated 31.05.2003 an amended resolution has been issued on 05.10.2005, stipulating that all the group III post will be filled up upon the recommendation of Bihar Staff Selection Commission.

4. In terms of the afore-noted resolution dated 06.12.1995, the State Government came out with advertisement no. 40 of 1998 inviting applications for appointment against the 50% vacant Class III earmarked to be filled up through direct recruitment. Simultaneously, the Government also took a



decision to fill up the remaining 50% vacant posts of Class III earmarked to be filled up through an Limited Competitive Examination (LCE), from amongst the Class IV employees by way of deputation. Aggrieved by such decision, some of the Class IV employees preferred CWJC No. 8076 of 1995.

5. The writ petition came to be disposed of vide order dated 04.11.1996 directing the respondent State to take appropriate steps for filling up such 50% class III posts from among the eligible Class IV employees in terms of resolution dated 06.12.1995. Despite such direction when the limited competitive examination for filling up the 50% Class III posts from amongst the eligible Class IV employees was not held, the aggrieved Class IV employees filed contempt petitions. Finally the respondent State came out with advertisement no. 1/2003 and 404/2004. The petitioners were declared successful and appointed by the different orders dated 27.04.2004, 20.02.2004 and 13.04.2007 as Lower Division Clerk in the pay scale of Rs. 3,050-Rs.4,590.

6. Mr. Kishore Kumar Thakur, learned Counsel representing the appellants adverting to the aforesaid facts submitted that even though the process of selection of the petitioners as well as other eligible candidates through direct recruitment started in terms of resolution dated 06.12.1995, the



BPSC published the advertisement for selection to the post of clerks through direct recruitment from open market in the year 1998. So far as the writ petitioners-appellants herein are concerned, in their cases the advertisement was published in the year 2003 and 2004 by the Bihar Staff Selection Commission.

7. It was also urged that so far the direct recruits are concerned, they were also appointed as a Lower Division Clerk subsequent to the writ petitioners but they approached this Court in CWJC No. 13577 of 2006 seeking a direction upon the State officials to allow them salary in the pay scale of Rs. 4,000-Rs. 6,000/- in view of the fact that the process of their selection was initiated much before the bifurcation of cadre of Lower Division Clerk and Upper Division Clerk. This Court allowed the writ petition granting them pay scale of Rs.4,000 to Rs.6,000.

8. Placing reliance on the judgment of the learned Single Judge passed in CWJC No. 13577 of 2006, learned Counsel for the appellants contended that the direct recruits were appointed to the post of Lower Division Clerk, after the appointment of the writ petitioners and they are also being shown seniors to the direct recruits who were appointed pursuant to advertisement of the year 1998. Nonetheless, the writ petitioners were allowed the pay scale only of Rs. 3,050-



Rs. 4,500 as against a higher pay scale to direct recruits, causing hostile discrimination. The direct recruits to the post of Lower Division Clerk have been allowed the pay scale of Rs. 4,000-Rs. 6,000 and, as such, it is submitted that the action of the respondent state officials is wholly arbitrary and contrary to the mandate of Article 14 of the Constitution.

9. Learned Counsel for the appellants, alternatively contended that the appellants having entered the cadre of Lower Division Clerk much before the direct recruits, they are atleast entitled to upgradation or stepping up their salary to the level of those Junior direct recruits who have been allowed salary in the pay scale of Rs.4,000-Rs.6,000 whereas appellants were appointed in the pay scale of Rs. 3,050-4,500. The aforesaid submission of the appellant is based upon a policy decision issued by the Finance Department as contained in letter no. 2424 dated 11.03.2013 which was subsequently reiterated by subsequent letter no. 7780 dated 30.07.2013 and letter no. 8921 dated 07.12.2018.

10. Per contra, learned Counsel for the State refuted the contention of the appellants and contended that any appointment pursuant to an advertisement of the year 1998 to the post of clerks, will be governed by the existing pay scale, prevalent at that time or before the date of demerger i.e.



20.12.2000. Thus, it is contended that the claim of the petitioner seeking parity to those who were appointed through direct recruitment to the post of class 3 post, is wholly unjustifiable and not tenable.

11. The learned Government Advocate referring to the order of the learned Single Judge has submitted that so far the contention of the appellant seeking relief based upon the upgradation of the pay scale at par with the direct recruits of 1998 is concerned, the same is not applicable to the appellants and rightly negated.

12. We have heard the rival submissions of the learned Counsel for the parties. Before coming to the judgment/order under appeal, it would be relevant to observe that the Finance Department vide letter no. 5206 dated 24.05.1980 had taken a decision for merger of the post of Upper Division Clerk and Lower Division Clerk working in collectorate and other mufassil offices. On account of merger of the post, both the posts were marked amalgamated and renamed as post of clerk.

13. Subsequently, as per the recommendation of the Fitment Committee, the State Government reconstituted the post and cadre in the light of the decision of the Finance Department letter no. 6389 dated 28.09.1999 and a decision was



taken for demerger of the post of clerk into Upper Division Clerk and Lower Division Clerk which had earlier existed. The Finance Department vide letter no 8826 dated 20.12.2000, passed an order for demerger of the post of clerk in Upper Division Clerk and Lower Division Clerk.

14. The aforementioned resolution dated 20.12.2000 indicated that for the post of Lower Division Clerk, pay scale of Rs. 3,050-Rs.4,500 was made applicable and for the post of Upper Division Clerk, pay scale of Rs.4,000-Rs.6,000/- was fixed. As per clause 5 of the letter dated 20.12.2000, it was made clear that persons being appointed on the post of Lower Division Clerk and all vacancies against the post of clerk subsequent to issuance of this letter will be deemed to be vacancy of Lower Division Clerk. Sub-clause 2 of clause 5 further made it clear that process of any appointment initiated prior to issuance of this letter, if completed, but no appointment letter issued shall stand cancelled. The candidates will have to undergo fresh appointment process against the vacancy in the Lower Division Clerk.

15. The afore-noted letter is produced as Annexure 5 to the writ petition. Now coming to the facts of the case in hand, undisputedly the writ petitioners-appellants were duly appointed pursuant to the advertisement bearing no. 01 of



2003 and 404 of 2004 duly published by the Bihar Staff Selection Commission for selection to the post of Lower Division Clerk through Limited Competitive Examination meant for Class IV employees. The copy of the advertisement which is marked as Annexure P/1 and P/3 to the writ petition, specifically stipulates the pay scale of LDC as Rs. 3,050-Rs.4,590.

16. Further, the appointment letter of the appellants produced as Annexure 2, 2/A and 4 make it clear that their appointments were made against the post of Lower Division Clerk in the pay scale of Rs. 3,050-Rs.4,590. All these appointments were made in between 2004 to 2007 but, the stipulation in relation to pay scale in question, has never been put to challenge and for the first time they filed the writ petition in the year 2018.

17. So far the claim of the appellants based upon parity to those who were appointed through direct recruitment to the post of Lower Division Clerk and thereby causing discrimination to the appellants are concerned, the same does not persuade this Court for the simple reason as the advertisement with respect to appointment to the post of Lower Division Clerk through direct recruitment was issued in the year 1998, much before the demerger of the post on 20.12.2000.



However, on account of certain reasons the selection process continued even after demerger and finally the direct recruits were appointed to the post of Lower Division Clerk in the year 2007 in the pay scale of Rs. 3,050-Rs.4,590. This led to filing of CWJC No. 13577 of 2006 and CWJC No. 7730 of 2009 resulting in grant of the higher pay scale of Rs. 4,000-Rs.6,000.

18. It is trite law that the terms and conditions of selection and appointment are to be governed on the basis of the advertisement and the rules and regulations which are prevalent at that point of time.

19. It is settled in umpteen number of decision that a candidate having applied for appointment in accordance with the terms prescribed in the advertisement acquires a vested right to be considered in accordance with the said advertisement. This consideration may not necessarily qualify into an appointment but certainly entitles the candidate to be considered for selection in accordance with the rules as they existed on the date of the advertisement. The right of a candidate for being considered in terms of the advertisement stands crystallized as per the rules/regulation, prevalent on the date of the advertisement. If the appointment is eventually made, then the appointment has to be as per the advertisement.

20. Needless to observe that the appointment



through direct recruitment was made pursuant to advertisement no. 1 of 1998 and at the relevant point of time, on account of merger, there was only one post i.e. clerk in the pay scale of Rs. 4000-Rs.6,000. Thus irrespective of the fact that appointment took place after the demerger of the post and in the year 2007 but in any event their claim for the pay scale of Rs.4,000-Rs.6,000 cannot be faulted.

21. In view of the discussions, this Court does not find any merit in the contention of the appellants, who are seeking parity with those who are appointed pursuant to advertisement no. 1 of 1998.

22. Now coming to the second contention of the appellants, seeking upgradation of their pay scale based upon the letters issued by the Finance Department, this Court would find that the resolution of the Finance Department dated 11.03.2013 produced as Annexure P/10 to CWJC No. 23092 of 2018 and subsequent letters on similar matter this Court would find that the said letters have been issued in order to remove the anomalies which may have cropped up during the revision of pay scale.

23. After careful consideration, in the opinion of this Court, there is no anomalies in the revision of the pay scale. It is not in dispute that the appellants were appointed to the post



of Lower Division Clerk under the advertisement no. 1 of 2003 and 404 of 2004 with the pay scale of Rs. 3,050-Rs.4,590. When the demerger of the post of clerk had already been done and the cadre again was bifurcated in Lower Division Clerk and Upper Division Clerk. Hence, the claim of the petitioner seeking pay scale of Upper Division Clerk which is made a promotional post, is wholly unjustified and not tenable in the eyes of law.

24. The contention of the appellant has been elaborately dealt with by the learned Single Judge whereby, it was held that the reliance of the writ petitioners based upon the letters issued by the Finance Department would not come to the rescue of the appellant as apart from the fact that the case of the petitioner is neither based on anomalies arising by virtue of revision of pay scale nor it is the case that the appellants were at any point of time drawing more pay than other Government servant junior to him in the same cadre. We affirm the finding of the learned Single Judge.

25. Learned counsel for the appellant further placed reliance upon a judgment of this Court in Letters Patent Appeal No. 766 of 2019 that in identical circumstances when the correspondence clerks made their claim of their pay scale at par with the pay scale of accounts clerks, their claims were recognized.



26. So far the reliance placed on a judgment of this Court in Letters Patent Appeal no. 766 of 2019 is concerned, the same appears to be wholly misconceived for the simple reason that the issue referred in Letters Patent Appeal No. 766 of 2019 was different to the present case. The appeal by the State of Bihar, challenging the order of the learned Single Judge which allowed the writ petition was in relation to grant of parity of pay to Correspondence Clerks qua Account Clerks; both appointed on compassionate ground. Thus the aforesaid judgment has no application in the present case.

27. This Court further finds that despite the appellants having taken a calculated chance of appointment in terms of advertisement no. 1 of 2003 and 404 of 2004, knowing very well the pay scale and subsequently appointed as a Lower Division Clerk in the pay scale of Rs. 3,050-Rs.4,590; they never made any complaint and after 12 years they filed the writ petition, seeking pay parity to those who were appointed through the direct recruitment, pursuant to an advertisement published in the year 1998, much prior to the merger i.e. on 20.12.2000.

28. The direct recruits agitated their claim in time and based on the terms prescribed in the advertisement which led to their selection and appointment. The appellants



with open eyes applied to the post which at that time had a lower pay scale. The parity with the direct recruits were claimed after long delay.

29. On all the counts, this Court does not find any merit in the Letters Patent Appeal and thus, the same stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2024
Transmission Date	NA

