

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.429 of 2021**

**In**

**Civil Writ Jurisdiction Case No.7988 of 2020**

Abhay Kumar, Son of Late Rajeshwar Prasad Singh, Resident of Village-Sarotar, P.S.-Dumariya Ghat, District- East Champaran (Motihari).

... .. Appellant

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. Additional Chief Secretary, Department of Finance, Government of Bihar, Main Secretariat, Patna.
3. District Magistrate, Samastipur.
4. Deputy Collector, Establishment, Samastipur.
5. District Magistrate, East Champaran at Motihari.
6. Deputy Collector Establishment, East Champaran at Motihari.

... .. Respondents

**Appearance :**

For the Appellant/s : Mr.Kishore Kumar Thakur, Advocate  
Mr. Braj Kishore Singh, Advocate  
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG-13  
Mr. Parijat Saurav, AC to AAG-13

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**

**and**

**HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**

**ORAL JUDGMENT**

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

**Date : 10-05-2024**

The appellant has assailed the order of the learned Single Judge dated 06.04.2021 passed in C.W.J.C. No. 7988 of 2020. The appellant's father was stated to have been died on 13.04.1997. Appellant was appointed on 22.01.2001 against post of Assistant in the pay scale of Rs. 4000-6000/-.

2. The post of Assistant was introduced on



07.04.1977 and it was in vogue till 20.12.2000. In other words, the post of Assistant has been re-designated as a Lower Division Clerk (LDC) and Upper Division Clerk (UDC). In this backdrop, on 02.03.2001, the official respondent proceeded to extend pay scale of Rs. 3050-4500 (LDC Scale) to the Appellant. The appellant did not agitate that he is entitled to pay scale of Rs. 4000-6000/- till 2011. In other words, C.W.J.C. No. 12373 of 2011 was filed and it was disposed on 14.02.2012 along with C.W.J.C. No. 3516 of 2011. There were certain observation were made by this Court in the aforementioned petitions resultantly, petitioner has failed to exercise his grievance and for the first time, once again, he has approached the respondents to set right the pay scale from Rs. 3050-4500/- to Rs. 4000-6000/- on 25.11.2019. Grievance of the petitioner was rejected on 15.02.2020 resulted in filing C.W.J.C. No. 7988 of 2020 and it was dismissed on 06.04.2021. Hence the present L.P.A.

3. Learned counsel for the appellant submitted that appellant was appointed on compassionate ground in the light of (various decisions) Hon'ble Supreme Court that whatever the rule existing as on the date of death of government servants/employee were required to be taken into consideration



for the purpose of appointment on compassionate ground. It is submitted that appellant's father died on 13.04.1997, if there is a belatedly order of appointment issued in that event new service condition cannot be taken into consideration for the purpose of assigning Lower Division Clerk and its pay scale of Rs. 3050-4500 that to after issuance of order of appointment on 20<sup>th</sup> December, 2000 in the pay scale of Rs. 4000-6000/-. No doubt, appellant has not approached timely, however, in extending higher pay scale, which was already granted to the appellant and it has been taken note of namely, Rs. 4000-6000/- and extending the same even to this day there is no third party right has been created. In support of this contention, learned counsel for the appellant cited Hon'ble Supreme Court decision in the case of ***M.R. Gupta Vs. Union of India & Others*** reported in ***AIR 1996 SC 669***. Thus, learned Single Judge has committed error in not taking note of the fact that appellant was appointed on compassionate ground and whatever the Rules or executing order governing for appointment on compassionate ground as on the date of death of his father was required to be taken into consideration. If such a date is taken into consideration, in that event, bifurcation of Assistant post to that of LDC and UDC on 20<sup>th</sup> December, 2000 the date on which appellant was appointed



is not applicable having regard to the fact that the Hon'ble Supreme Court time and again held that compassionate appointment is required to be examined in the light of the Rules existing as on the date of death of a government servant/employee. This legal issue has not been considered by the learned Single Judge.

4. *Per contra*, learned counsel for the Respondent resisted the aforementioned contention and submitted that as on the date of appellant's appointment on 22.01.2001 and on the very same date, the post of Assistant was bifurcated into LDC and UDC. While issuing order of appointment to the appellant, the concerned authority has not taken note of the fact that post of Assistant has been bifurcated into LDC and UDC. Therefore, there is an error committed by the authority while issuing order of appointment to the extent that appellant is entitled to pay scale of Rs. 4000-6000/-. It is further submitted that there is a delay on the part of the appellant in claiming insofar as restoration of pay scale of Rs. 4000-6000/-. On this ground alone, the present appeal is liable to be dismissed. It is also submitted that in C.W.J.C. No. 12373 of 2011, this Court has upheld the decision of the official respondent insofar as alteration of pay scale extending to the appellant from Rs. 4000-



6000/- to Rs. 3050-4500/-

5. Heard the learned counsel for the respective parties.

6. Core issue involved in the present *lis* is whether appellant is entitled pay scale of Rs. 4000-6000/- read with the fact that he was appointed as a Clerk or Assistant on 22.01.2001. Brief facts of the case are that on 13.04.1997 appellant's father died. He had submitted application there was a delay in issuing order of appointment and order of appointment was issued on 20<sup>th</sup> December, 2000 pursuant to various proceedings stated to have been held in the month of May, 2000 and December, 2000. As on 20<sup>th</sup> December, 2000, the State Government have evolved a policy decision to the extent that bifurcating the post of Assistant to that of LDC and UDC. On the very same day, appellant was appointed against the post of Assistant in the pay scale of Rs. 4000-6000/-. On 20<sup>th</sup> December, 2000 LDC pay scale is Rs. 3050-4500/- taking note of bifurcation of the post of Assistant, the appellant has been extended LDC pay scale at Rs. 3050-4500/- in the month of March, 2001. In other words, appellant has been extended pay scale of Rs. 4000-6000/- for about 10 days in the month of December, 2000, January, 2001 and February, 2001. In other words, he has drawn salary with



reference to pay scale of Rs. 4000-6000/- for a period of two months and ten days. No doubt, the post of Assistant was bifurcated into LDC and UDC while fixing the pay scale of Rs. 3050-4500/- to LDC cadre. However, on 20<sup>th</sup> December, 2000, the date on which appellant was appointed on compassionate ground. However, appellant was appointed on compassionate ground. The relevant Rules or executive order governing as on 13.04.1997 was required to be applied for the reasons that on 13.04.1997 appellant's father died. Therefore, as on 13.04.1997 and the date on which the application for compassionate appointment was made the post of Assistant was existing in the eye of law and it was carrying pay scale of Rs. 4000-6000/-. Therefore, denial of pay scale of Rs. 4000-6000/- to the appellant would be arbitrary and illegal.

7. In fact, Hon'ble Supreme Court time and again held in respect of compassionate appointment, whatever the Rules existing as on the date of death of government servant/employee read with the relevant Rules existing as on that day were required to be taken into consideration for the purpose of issuing order of appointment and consequential service benefits. Therefore, the appellant has made out a case that he is entitled to pay scale of Rs. 4000-6000/-.



8. The appellant is entitled to notional fixation of pay of Rs. 4000-6000/- and he is also entitled to increment from time to time with effect from 20<sup>th</sup> December, 2002 the date on which he completes one year of service (Annual Increment). The annual increment would be w.e.f. 20.01.2002 from that day onwards pay is required to be refixed at pay scale of Rs. 4000-6000/-. However, appellant is not entitled to any arrears of pay prior to three years from the date of filing C.W.J.C. No. 7988 of 2020 i.e. he is entitled to arrears from 06.03.2017 onwards. This principle has been laid down by the Hon'ble Supreme Court in the case of *M.R. Gupta Vs. Union of India & Others* (cited supra) the same is taken note of for the purpose of extension of monetary benefits to the appellant. Even the delay has been discussed and principle has been laid down, if the 3<sup>rd</sup> party right is not affected delay may not be hurdle.

9. The concerned Authority is hereby directed to undertake the exercise of re-fixation of the pay of the appellant at the rate of Rs. 4000-6000/- from the date of his initial appointment and increments from time to time including, if he is entitled to any time bound advancement/ACP all those benefits shall be taken into consideration and refix his pay. The above exercise shall be completed within a period of six months from



the date of receipt of this order. Arrears shall be disbursed within the aforementioned period. Consequently, order of the learned Single Judge dated 06.04.02021 passed in C.W.J.C. No. 7988 of 2020 is set aside. C.W.J.C. No. 7988 of 2020 filed by the Appellant stands allowed.

10. With the above observations and directions, the present Letters Patent Appeal No. 429 of 2021 stands allowed.

**(P. B. Bajanthri, J)**

**( Alok Kumar Pandey, J)**

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| AFR/NAFR          | N.A.F.R.   |
| CAV DATE          | N.A        |
| Uploading Date    | 16.05.2024 |
| Transmission Date | N.A        |

