IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 2054 of 2024

1. Birendra Nath Mahto, son of Kshetra Mohan Mahto, Resident of Village – Gangudih, P.O. – Chandil, P.S. – Chandil, District – Seraikela – Kharsawan, Jharkhand.

2. Durgesh Pandey, son of Brajesh Pandey, Resident of – Village – Semoura, P.O. – Semoura, P.S. – Kandi, District – Garhwa, Jharkhand.

3. Prabhat Kumar Singh, son of Late Shiv Kumar Singh, Resident of – Village – 3A, Ashiyana Apartment, Subhash Chowk of Indlcata, P.O. – Jamtara, P.S. and District – Jamtara, Jharkhand.

4. Mukesh Kumar, son of Late Manaki Thakur, Resident of – Village – Babhanbay, P.O. – Babhanbay, P.S. – Muffasil, District – Hazaribagh, Jharkhand.

5. Anil Kumar Sahu, son of Binu Sahu, Resident of – Village – Lower Chutia, Sahu Toli, P.O. – Chutia, P.S. – Chutia, District, Ranchi, Jharkhand.

6. Mithilesh Kumar, son of Dhrual Kumar Mandal, Resident of – Village – Sarouni Bazar, P.O. – Sarouni Bazar, P.S. – Godda (Muffasil), District – Godda, Jharkhand.

7. Ravi Kant Gupta, son of Late Satya Narayan Gupta, Resident of – Village – Nonihat, P.O. – Nonihat, P.S. – Hansdiha, District – Dumka, Jharkhand.

8. Bishwajit Shaw, son of Dhiren Chandra Shaw, Resident of – Village – Kuldiha, P.O. – Rakhaminesh, P.S. – Jadugoda, District – East Singhbhum, Jharkhand

9. Amrendra Bharti, son of Surendra Jha, Resident of Village – Basukinath, P.O. – Basukinath, P.S. – Jarmundi, District – Dumka, Jharkhand

10. Ram Lakhan Singh, son of Indradev Singh, Resident of – Village – Bandhipar, P.O. – Gurgaiya Karma, P.S. – Aurangabad, District – Aurangabad, Bihar

11. Kaushal Kishore Bhagat, son of Late Shreelal Bhagat, Resident of Village – Poraiyahat, P.O. – Poraiyahat, P.S. – Poraiyahat, District – Godda, Jharkhand.

12. Ram Lochan Sharan, son of Late Ram Charitra Sahu, Resident of – Village – Flat No. 112, 2nd Floor, 2nd Phase, Platina Dream City, P.O. – Adityapur, P.S. – Adityapur, District – Saraikela Kharsawan, Jharkhand.

13. Braj Kishor Mahto, son of Aghanu Ram Mahto, Resident of – Village – Sadriyadih, P.O. – Nadkhurkee, P.S. – Baghmara, District – Dhanbad, Jharkhand.

14. Niranjan Kumar Singh, son of Awadh Bihari Singh, Resident of – Village – Flat No. G/1, Navya Sen Naman Vatika, Mul Niwasi Lane, Belabagan, P.O. – Deoghar, P.S. – Deoghar, District – Deoghar, Jharkhand.

15. Manoj Kumar, son of Late Uttam Prasad Sah, Resident of – Village – Thana Road, Near Sidhu Kanu High School, P.O. + P.S. _ District – Dumka, Jharkhand.

16. Nitin Kumar Sah, son of Late Naresh Prasad Sah, Resident of – Village – Indira Nagar Road, Dangal Para, P.O. – H.O. Dumka, P.S. – Dumka Town, District – Dumka, Jharkhand.

17. Arjun Mahto, son of Late Jiwadhan Mahto, Resident of Village – Sastaki, P.O. – Sataki, P.S. – Angara, District – Ranchi, Jharkhand.

18. Arjun Mahto, son of Late Jiwadhan Mahto, Resident of – Village – Sataki, P.O. – Sataki, P.S. – Angara, District – Ranchi, Jharkhand.

19. Praful Kumar Mahto, son of Goverdhan Mahto, Reside4nt of – Village – Bhakuwadih, P.O. – Sonahatu, P.S. – Sonahatu, District – Ranchi, Jharkhand.

20. Rajesh Kumar, son of Motilal Prasad, Resident of – Village – Kund Muhalla, Old Garhwa Road, P.O. – Daltonganj, P.S. – Daltonganj, District – Palamau, Jharkhand.

21. Praveen Kumar, son of Gopal Prasad Jee, Resident of – Village – Gita Kunj, Bank Colony Bajra, P.O. – Hehal, P.S. – Pandra, District – Ranchi, Jharkhand.

22. Chalchitt Kumar Mahto, son of Late Balram Mahto, Resident of – Village – Indkata, P.O. – Chakradharpur, P.S. – Chakradharpur, District – West Singhbhum, Jharkhand.

23. Harilal Prasad, son of Ram Raj Saw, Resident of – Village Bairiya, P.O. – Sudna, P.S. – Sadar, District – Palamau, Jharkhand.

24. Shree Krishna Gonjhu, son of Newalal Gonjhu, Resident of – Village Barisaldih, P.O. – Sonahatu, P.S. – Sonahatu, District – Ranchi, Jharkhand.

25. Parshuram Bhandari, son of Late Gunadhar Bhandari, Resident of – Village – AN College Road, Near Railway Station, P.O. – Kulharia, P.S. – Muffasil, Dumka, District – Dumka, Jharkhand.

26. Zamil Akhtar, son of Abdus Salam, Resident of – Village – Narayanpur, P.O. – Agloi, P.S. – Barharwa, District – Sahibganj, Jharkhand.

27. Anand Kumar Tiwari, son of Late Ram Briksh Tiwari, Resident of – Village – Baralota Housing Colony, P.O. – Sudna, P.S. – Sadar, District – Palamau, Jharkhand.

28. Manoj Kumar Singh, son of Late Yamuna Singh, Resident of – Village – Bilari, P.O. – Silari, P.S. – Kargahar, District – Rohtas, Bihar.

29. Ratnesh Kumar, son of Munder Purbey, Resident of – Village – Darghatti, P.O. – Dumariya, P.S. – Godda, District – Godda, Jharkhand.

30. Kumar Brajesh, son of Ganesh Yadav, Resident of – Village – Saradhu, P.O. - Saradhu, P.S. – Tandwa, District – Chatra, Jharkhand.

31. Rupendra Kumar, son of Shyam Lal Sahu, Resident of – Village – Nawagarh Patra Toli, P.O. – Nawagarh, Patra Toli, P.O. – Nawagarh, P.S. – Raidih, District – Gumla, Jharkhand.

32. Mahendra Singh, son of Rajanand Singh, Resident of – Village – Soni, P.O. – Kramaini, P.S. – Sanjhauli, District – Rohtas, Bihar.

33. Navin Mahto, son of Kishori Mohan Mahto, Resident of – Village – Baruna, P.O. – Chipri, P.S. – Ichagarh, District – Seraikela Kharsawan, Jharkhand.

… Petitioners

- V E R S U S -

1. The State of Jharkhand through the Chief Secretary, having its office at Project Building, Dhurwa, Ranchi.
2. The Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Govt. of Jharkhand, Project Building, Dhurwa, Ranchi
3. The Principal Secretary, Water Resources Department, Government of Jharkhand, Nepal House, Doranda, Ranchi.
4. The Principal Secretary, Department of Finance, Govt. of Jharkhand, Project Building, Dhurwa, Ranchi.

… … Respondents.

CORAM: HON'BLE DR. JUSTICE S. N. PATHAK

For the Petitioner : Mr. Amritansh Vats, Advocate
Mr. Amartya Choubey, Advocate
Mr.Ashish Choudhary, Advocate
For the Respondents : Mr. Aditya Raman, AC to GA-III

08/04.12.2024 Heard the parties.

PRAYER

2. Petitioners have knocked door of this Court with a prayer for a direction upon the respondents to grant and disburse officiating pay to them of the post of Assistant Engineer with effect from 25.03.2022 in terms of provision contained in the Jharkhand Service Code in view of the fact that they have been given current charge of the said post vide order no. 02/Estt. (Promotion)-09-05/2021-1801, dated 25.03.2022 (Annexure-1) at the rate of 10% per annum from the date of entitlement till the date of payment, including other consequential benefits.

FACTUAL MATRIX

3. According to petitioners, they were appointed as a Junior Engineers in the Water Resources Department, Government of Jharkhand vide Notification as contained in Memo No. 2984, dated 13.11.2007. Petitioners joined the post of Junior Engineers under the Grade Pay of Rs.4,200 and for the promotion under Kalawadhi for the post of Assistant

Engineer under the Grade Pay of Rs.5,400, the petitioners as per the Resolution No. 3286, dated 04.04.2014 of Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, regarding determination of ***Kalawadhi*** for the post of Assistant Engineers under the Grade Pay of Rs.5,400, they were required to complete eight years of service on the post of Junior Engineers, which they completed in the year 2015 itself and thus were entitled for consideration for promotion after completion of eight years.

4. It is further case of the petitioners that the respondent no. 3 had written a letter regarding promotion of Junior Engineer (Civil) to Assistant Engineer (Civil) to different concerned authorities through its letter as contained in Memo No. 2606, dated 22.06.2021, calling for updated bio-data, updated property statement as well as annual character report of the petitioners along with other persons by 27.06.2021. However, due to certain queries with respect to reservation in promotion, entire promotion process was stayed by way of letter as contained in Memo No. 6752, dated 24.12.2020, which was challenged in W.P.(S) No. 1390 of 2021. The said writ petition was disposed of vide order dated 13.01.2022 and thereafter, clarification was made by the respondents – State and impediments in consideration of promotion was ruled out.

5. It is further case of the petitioners that they were fulfilling the requisite conditions for promotion including Kalawadhi and their matters were considered before the competent departmental promotion committee but promotion was not considered through the posts were lying vacant. In the meeting of the Departmental Establishment Committee held on 11.01.2022 and in light of recommendations made in the said meeting, the petitioners were given charge of the post of Assistant Engineers from the post of Junior Engineer under the same pay scale vide order no. 02/Estt. (Promotion) – 09 – 05/2021 – 1801, dated 25.03.2022, under the signature of respondent no. 3. Thereafter, a Notification was also issued with respect to the petitioner with the nomenclature of “Current Charge” and “Ïn the same pay scale”. The petitioners were made to work on the higher post of Assistant Engineer (Current Charge) and since the date of their joining on the said higher

post, they have been diligently performing their duties but were getting the salary of lower post of Junior Engineers. Petitioners represented before the authorities for grant of regular promotion from the post of Junior Engineer to the post of Assistant Engineer but no heed was paid to the same. Since the benefits were not extended, petitioners have been constrained to knock door of this Court.

ARGUMENTS ON BEHALF OF THE PETITIONERS

6. Mr. Amritansh Vats, learned counsel strenuously urges that petitioners are entitled for officiating pay/difference of salary to the post of Assistant Engineer. Learned counsel further argues that petitioners were working as Assistant Engineers during the particular period but they were extended the benefits of pay scale of Junior Engineers. Learned counsel further argues that petitioners are very much entitled for the pay scale of Assistant Engineers since they have worked in view of orders and directions of the superior and not of their own.

7. Learned counsel further brings on record that the promotion of the petitioners was due from the year 2015 itself and as such very comfortably it can be inferred that the petitioners were working as Assistant In-charge during the period in question and as such pay scale cannot be given to them as a Junior Engineers as they were entitled for the pay scale of Assistant Engineers. Even the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, vide its Resolution No. 3286, dated 04.04.2014, has resolved regarding determination of ***Kalawadhi*** for promotion in various services and on that basis also, petitioners are entitled for promotional benefits. Learned counsel submits that the petitioners had completed their Kalawadhi period of eight years in the year 2015 itself and otherwise also the Departmental Establishment Committee had found them suitable for the higher post. The petitioners were fully entitled for promotion but were not granted promotion though they were working on higher post on in-charge capacity.

8. To buttress his arguments, learned counsel submits that the issue regarding grant of pay scale of the post the employee has worked has

already been set at rest in the case of ***Arindam Chattopadhyay and others Vs. State of West Bengal and others*** reported in ***(2013) 4 SCC 152*** [Paras-13 to 15]. Similar view has been reiterated by this Court in the case of ***Shambhu Nath Singh Vs. The State of Jharkhand and others*** passed in ***W.P.(S) No. 367 of 2024*** and also by Division Bench of this Court in ***L.P.A. No. 79 of 2022*** and ***L.P.A. No. 735 of 2019***. Learned counsel submits that in the facts and circumstances of the case, a direction may be given to the respondents to consider case of the petitioners for extending the benefits of pay scale i.e. difference of salary of Assistant Engineer and Junior Engineer, as petitioners have discharged the duties of Assistant Engineers but getting the salary of Junior Engineers. Referring to paragraph-34 of the writ petition, learned counsel submits that a detailed chart has been furnished which ought to have been considered by the respondents for consideration of pay scale of the petitioners.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

9. Mr. Aditya Rama, AC to learned GA-III opposes the contention of the learned counsel for the petitioners and further submits that petitioners on their own had agreed to perform duties of Assistant Engineers in the same pay scale they were getting i.e. the pay scale of Junior Engineers and, therefore, at this stage they cannot claim salary of Assistant Engineers to which they are not entitled for. Learned counsel further argues that the Judgments relied upon by the petitioners is not at all applicable in the facts and circumstances of the case. The Judgment rendered and relied upon in the case of ***Shambhu Nath Singh (Supra)*** has been challenged before the Hon'ble Division Bench and subject to outcome of the same. Though petitioners have worked as Assistant Engineers but on in-charge basis and it is the stop-gap arrangements in order to smooth functioning of the department and on the basis of work arrangement, the petitioners cannot claim salary of higher pay scale.

FINDINGS OF THE COURT

10. Having heard counsel for the parties it appears that though petitioners have worked on the post of Assistant Engineers but in the pay

scale of Junior Engineers on in-charge basis. The respondents have taken work from the petitioners as Assistant Engineers. They have been working on the said post in view of order and direction of the respondent authorities and not on their own and as such on the ground of equity, they are entitled for the pay scale on the post for which they have worked. There cannot be different classification for different persons.

11. The issue regarding entitlement of pay scale fell for consideration before the Hon'ble Apex Court in the case of ***Arindam Chattopadhyay and others Vs. State of West Bengal and others*** reported in ***(2013) 4 SCC 152*** and their Lordship has clearly decided and held that the appellants in that case were entitled for pay and allowances in pay scale of the posts they were discharging their duties. In the instant case the petitioners were promoted as Assistant Engineers and continued to work on the said post and as such, they are also entitled for the salary and there is no legal or other justification for denying them salary and allowances for the post they have worked.

12. Similar issue fell for consideration before the Hon'ble Apex Court in the case of ***State of Punjab and another Vs. Dharam Pal*** reported in ***(2017) 9 SCC 395*** and upholding the Judgment rendered by the High Court, it was held that the Rules do not prohibit grant of pay scale and the decision of the High Court granting the benefits gets support from the principles laid down in ***P Grover Vs. State of Haryana*** reported in ***(1983) 4 SCC 291***. Similar view has been reiterated by this Court in ***L.P.A. No. 79 of 2022*** and ***L.P.A. No. 735 of 2019***. This Court, considering the Judgment rendered in the case of ***Arindam Chattopadhyay and others (Supra)*** reiterated the same view in the case of ***Shambhu Nath Singh Vs. The State of Jharkhand and others*** [W.P.(S) No. 367 of 2024]. It has not been denied by the respondents that petitioners have not worked on the said post as Assistant Engineers. It is relevant to quote para-13 of the Judgment rendered in the case of ***Arindam Chattopadhyay and others (Supra),*** which reads as under:

> *"13. Reverting to the facts of this case, we find that although the appellants were recruited as ACDPOs, the State Government transferred and posted them to work as CDPOs in ICDS Project. If this would have been a stopgap arrangement*

for few months or the appellants had been given additional charge of the posts of CDPO for a fixed period, they could not have legitimately claimed salary in the scale of the higher post i.e. CDPO. However, the fact of the matter is that as on the date of filing of the original application before the Tribunal, the appellants had continuously worked as CDPOs for almost 4 years and as on the date of filing of the writ petition, they had worked on the higher post for about 6 years. By now, they have worked as CDPOs for almost 14 years and discharged the duties of the higher post. It is neither the pleaded case of the respondents nor has any material been produced before this Court to show that the appellants have not been discharging the duties of the post of CDPO or the degree of their responsibility is different from other CDPOs. Rather, they have tacitly admitted that the appellants are working as full-fledged CDPO on the pretext that they have not been promoted in accordance with the Rules. The convening of the Promotion Committee or taking other steps for filling up the post of CDPO by promotion is not in the control of the appellants. Therefore, they cannot be penalized for the Government's failure to undertake the exercise of making regular promotions."

13. It has also been brought on record that the promotion of the petitioners was due from the year 2015 itself and though seats were vacant but they were not granted promotion. It can thus be inferred that the petitioners were working as Assistant In-charge during the period in question and are entitled for pay scale of Assistant Engineers and not as a Junior Engineers.

14. Admittedly, petitioners were working as In-charge Assistant Engineer Engineers in light of Notification dated 25.03.2022 but were getting the pay scale of Junior Engineers. Considering the ratio laid down by the Hon'ble Apex Court in the cases mentioned hereinabove, petitioner are entitled for difference of salary from date of assuming the charge/joining as In-charge Assistant Engineer mentioned in tabular chart of paragraph-34 of the writ petition till the date of joining as Assistant Engineer on regular basis.

15. As a sequitur to the aforesaid rules, guidelines and judicial pronouncements, this Court is of the considered view that petitioners are entitled for difference of salary working as In-charge Assistant Engineers. Since petitioners have received salary as Junior Engineers during the period in question, considering the ratio decided in aforementioned cases,

it is hereby held that petitioners are entitled for difference of salary for the period from date of joining as In-charge Assistant Engineer as mentioned in tabular chart of paragraph-34 of the writ petition in terms of provision contained in the Jharkhand Service Code in view of the fact that they have been given current charge of the said post vide order no. 02/Estt. (Promotion)-09-05/2021-1801, dated 25.03.2022 (Annexure-1). Accordingly, respondents are directed to pay difference of salary to the petitioners from the date when they were joined as In-charge-Assistant Engineers till the date of joining as Assistant Engineers on regular basis within a period of eight weeks from the date of receipt/ production of a copy of this order.

16. With the aforesaid order and direction, the writ petition stands allowed.

(Dr. S.N. Pathak, J.)