

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 1128 of 2023

In

Civil Writ Jurisdiction Case No.8157 of 2021

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1. The State of Bihar through Principal Secretary, Minor Water Resources Department, Govt. of Bihar, Patna.
 2. The Principal Secretary, Minor Water Resources Department, Govt. of Bihar, Patna.
 3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
 4. The Engineer-in-Chief, Minor Water Resources Department, Govt. of Bihar, Patna.
 5. The Chief Engineer (Planning, Monitoring, Ground Water) Minor Water Resources Department, Govt. of Bihar, Patna.
 6. The Chief Engineer, Minor Water Resources Department, Govt. of Bihar, Patna.
 7. The Superintending Engineer, Minor Irrigation Circle, Patna.
 8. The Executive Engineer, Minor Irrigation Division, Ara.
 9. The Executive Engineer, Minor Irrigation Division, Patna.
 10. The Executive Engineer, Minor Irrigation Division, Nawada.

... .. Appellant/s

Versus

1. Rakesh Raushan son of Late Awadhesh Kumar, resident of Village-Belahi, Post Office-Lohat, P.S.-Pandal, Dist-Madhubani, Pin-847231.
2. Vijay Kumar Singh, son of Late Ranjan Dhari Singh, R/o Jayanti-21, Vastu Vihar Colony, Village-South Ekauna, P.s. Udwant Nagar, Ekauna, Bhojpur, Pin-802210.
3. Rakesh Kumar, son of Late Arbind Kumar Verma, R/o Ganga Vihar Nagar, Road No. -3A, Nawratanpur, Postal Park, Patna, Pin-800001.
4. Ram Ashok Singh, son of Late Devnarayan Singh, R/o Vill-Bichachhan, PO-Malwan, P.S.-Khudawan, Block-Obra, Dist-Aurangabad, Pin-824124.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Manoj Kumar Sinha, AC to GA-9
For the Respondent/s : Mr. Siyaram Pandey, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA



ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

12 12-11-2025 Following are the reliefs sought in the present
appeal:-

“That, the instant appeal is directed against the Oral Judgment dated 02.03.2023 passed by the learned Single Judge in CWJC No.- 9621 of 2021 by which writ application of the petitioner has been allowed with cost of Rs. 10,000/- in terms of the Order dated 24.02.2023 passed in CWJC No. 14709/2022 and other analogous matters quashing the order dated 18.11.2021 with direction that the petitioner shall be entitled to get back his money recovered under the said order.”

2. The relevant paragraph nos.6, 7 and 8 of the order passed by the learned Single Judge are quoted hereinbelow:-

“6. Learned counsel for the State are present. They have made a statement that these cases are covered by the order dated 24.02.2023 passed in CWJC No. 14709/2022 and other analogous matters.

7. In the aforesaid view of the matter, this Court finds that these writ applications are to be disposed of in terms of the order dated 24.02.2023 passed in CWJC No. 14709/2022 and other analogous matters.



8. In order to place the reasons and rationale provided by this Court in the said order, readily available in this case, this Court deems it just and proper to reproduce paragraph '16' to '26' of the order dated 24.02.2023 as under:

“16. On bare perusal of sub-paragraph (ii) of paragraph '5' of Annexure-3 it would appear that for those who came to be appointed in the cadre of Accounts Clerk on or after 28.09.1999, they will be known as Junior Accounts Clerk and upto 31.12.2005 they would be entitled for pay scale of Rs. 4000-6000 and with effect from 01.01.2006 they would be entitled for PB-1+2400 pay scale. On their promotion to the Senior Accounts Clerk, they would be placed in the pay scale of Rs. 4500-7000 and after 01.01.2006 PB-1+2800 would be admissible.

17. The aforementioned resolution as contained in Annexure '3' came to be considered by the learned coordinate Bench of this Court in C.W.J.C. No. 9921 of 2017 and other analogous matters. A bare perusal of the facts of those cases briefly noted in the judgment of the learned coordinate Bench would show that the petitioners in those cases were also the compassionate appointees, they entered in the cadre of



Junior Accounts Clerk and were placed in the pay scale of Rs. 3050- 4590. The petitioner in one of the analogous matters being CWJC No. 8538 of 2016 had been reverted to the post of lower division clerk vide memo no. 733 dated 08.11.2014 i.e. prior to the Finance Department's resolution dated 25.03.2015. The writ petitioners in those cases had been reverted to the scale of lower division clerk and orders of recovery had been issued for the excess salary drawn by them in the accounts cadre. The State- respondents contested the writ petitions on the ground that the benefit of the resolution no.3111 dated 25.03.2015 of the Finance Department did not cover the case of compassionate appointees rather was applicable only to direct recruits who had entered service after facing regular selection process.

18. The learned writ court noticed that this issue had earlier drawn attention of this Court in C.W.J.C. No. 12124 of 2011 (Ram Janam Jha and ors. versus the State of Bihar). A learned coordinate Bench of this Court had quashed the order of the Finance Department dated 03.08.2010 passed on similar lines and held that the petitioners of those cases would be treated as accounts



clerk throughout with all consequential benefits. A direction was also issued to give the pay scale so granted to them and no recovery shall be permissible. An Intra-court appeal giving rise to LPA No. 206 of 2016 (State of Bihar & Ors. Vs. Ram Janam Jha and Ors.) did not succeed. The Division Bench took note of the Finance Department's resolution no. 3111 dated 25.03.2015 and held that since the State Government itself has decided to do away with the distinction between the junior accounts clerk and senior accounts clerk and since a decision was taken to grant the pay scale meant for senior accounts clerk to all accounts clerk whether appointed on compassionate ground or otherwise, all of them would be entitled to the same benefit.

19. The State of Bihar went to the Hon'ble Apex Court in S.L.P. © No. 2982 of 2017, the same was dismissed by the Hon'ble Supreme Court vide judgment and order passed on 10.02.2017. The learned writ Court also noticed that while Letters Patent Appeal of the State was pending before the Hon'ble Division Bench, the Finance Department had tried to preempt the decision by issuing resolution no.5483 dated 11.07.2016 to hold that the benefit of resolution no. 3111 dated 25.03.2015 would



not cover the case of the compassionate appointees. This conduct of the department was heavily deprecated by the learned writ Court.

20. This Court finds substance in the submissions of the learned counsel for the petitioners that once the judgment of the learned writ Court in CWJC No. 9921 of 2017 has been affirmed by the Hon'ble Division Bench in LPA No. 1702 of 2017 and other analogous matters and a challenge to the same has already failed before the Hon'ble Supreme Court, there was no reason for the State-respondents to repeat the same mistake again and again. From Annexure '11' to CWJC No. 14709 of 2022, it is evident that the then Secretary (Expenditure), Finance Department had earlier considered several judgments of this Court and asked for compliance with those judgments.

21. This Court has also come across an order of the Hon'ble Supreme Court in petition for Special Leave to Appeal (c) No. 19255 of 2021 arising out of final judgment and order dated 17.09.2021 in SAD No.335 of 2021 passed by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench (State of UP & Anr. Vs. Aishwarya Pandey) in which the fact was that the petitioner was



appointed on the post of officer on special duty on compassionate ground, she was placed in the pay scale of Rs.6500-10,500/- which was lower than the pay scale required to be paid to Officer on Special Duty. A writ petition was filed before the High Court and the same was allowed directing the State-respondents to pay Rs. 8000-13500/- pay scale which pay scale was available for the post of Officer on Special Duty. The State went in appeal before the Hon'ble Supreme Court and tried to draw a distinction saying that the writ-petitioner was appointed on compassionate ground. This was rejected by the Hon'ble Supreme Court. It was held inter alia that "there cannot be two different pay scales for the employee appointed on compassionate ground and the employee appointed on regular basis. The moment a person is appointed on a particular post, that person is entitled to the pay scale of the very post, even if the appointment is on compassionate ground. ..." This judgment of the Hon'ble Apex Court is being quoted here only to further strengthen the view of this Court based on the judgment of the learned coordinate Bench in CWJC No. 9921 of 2017 and other analogous matters.

22. As regards the reasons shown in CWJC No. 9911 of 2022 in Annexure '6', this Court



finds that the respondents have made factual mistake in saying that this case is different from one decided by the learned co-ordinate Bench in CWJC No. 9921 of 2017 and other analogous cases. This Court has purposely pointed out from the judgment of the learned co- ordinate Bench itself that CWJC No. 8538 of 2016 which was one of the analogous matters pertaining to P.H.E.D. was a case in which the petitioner had been reverted to the post of lower division clerk prior to the Finance Department's resolution dated 25.03.2015. The same department cannot be expected to remain unmindful of the factual aspects of the judgments of the Court which are available on the record. A learned writ court in C.W.J.C. No. 17888 of 2019 has already held in similar circumstance that the reason shown is factually and legally unsustainable. This Court takes the same view as regards Annexure '6' to C.W.J.C. No. 9911 of 2022.

23. In the light of the aforementioned discussions, this Court would come to a conclusion that the impugned orders in these writ applications have been passed without application of judicious mind and are dehors to the judgments of this Court which have already attained finality. This



Court is at pain to record that the conduct of the respondent authorities of this departments in repeating the same and one mistake cannot be said to be a mere case of unawareness on their part, rather these are the matters which compel this Court to take a view that the respondents are not acting with a positive bend of mind. They have no respect for their own litigation policy and they are multiplying the litigations burdening their own employees and the whole system.

24. This Court finds that the case of these petitioners are squarely covered by the judgment of this Court in C.W.J.C. No. 9921 of 2017 which has been tested up to the Hon'ble Apex Court. These are also similarly situated with C.W.J.C. No. 12703 of 2019 in which the Rural Works Department has already redressed the grievance of the petitioners.

25. The petitioners would, thus, be entitled for the same benefit and the consequential reliefs as have been granted to the petitioners in those writ applications.

26. This Court, therefore, while quashing the impugned orders in terms of the prayers made in these writ applications, allow these writ applications with a cost of Rs. 10,000/- each. The State would be at liberty to



*recover these costs from the erring officials
in accordance with law.”*

3. Considering the above referred facts, it is evident that the case of the writ petitioners was disposed of in terms of the order dated 24.02.2023 passed in CWJC No. 14709 of 2022, where the issue was of reversion to the post of Lower Division Clerk.

4. CWJC No. 14709 of 2022 was disposed of in terms of the order dated 21.08.2017, passed in CWJC No.9921 of 2017, and against that an intra court appeal was preferred. The Division Bench of this Court affirmed the order dated 21.08.2017 in LPA No.1702 of 2017 vide order dated 11.07.2018. Against the said order, further an appeal was preferred before the Hon’ble Supreme Court vide SLP No. 23778 of 2018 and the said appeal was dismissed by the Hon’ble Supreme Court vide order dated 28.09.2018.

5. Upon perusal of records of the case, it is evident that the issues raised herein are identical to the issues which have been raised in CWJC No. 9921 of 2017, and in CWJC No. 14709 of 2022.

6. Considering the fact that the issue has already been settled by the Division Bench of this court, and further affirmed by the Hon’ble Supreme Court, we find no reason to interfere



with the order passed by the learned Single Judge.

7. Accordingly, the present writ petition stands dismissed.

8. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, ACJ)

(Rajesh Kumar Verma, J)

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