

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20478 of 2018

1. Rajendra Mahto, Son of late Balo Mahto, Resident of Panjiyar Tola, P.O. and P.S.-Rosera, District-Samastipur, Presently residing at Surya Chandra Vihar, Flat No. 203D, near Sonu Market, Gola Road, P.S.-Rupaspur, District-Patna.
2. Suresh Chaudhary, Son of Late Chaturbhuj Chaudhary, Resident of Ram Krishna Nagar, Pokhariya Peer, New Colony, Sadpura, P.S.-Kazi Mohammadpur, Distirct-Muzaffarpur.
3. Ram Chandra Chaudhary, Son of late Chaturbhuj Chaudhary, Resident of Gannipur Pokhariya Peer, P.S.-Kazi Mohammadpur, District-Muzaffarpur.

... .. **Petitioners**

Versus

1. The Bihar State Power Holding Company Ltd. through its Chairman.
2. The Chairman, Bihar State Power Holding Company Ptd., Patna.
3. The Deputy General Manager Personnel, Bihar State Power Holding Company Ltd. Patna.
4. The Bihar State Power Transmission Company Ltd., though its Managing Director,
5. The Managing Director, Bihar State Powe Transmission Company Ltd., Patna.

... .. **Respondents**

Appearance :

For the Petitioner/s : Mr.Prashant Sinha, Advocate
For the Respondent/s : Mr.Ranjit Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 25-02-2021

Heard Mr. Prashant Sinha, learned counsel for the petitioners and Mr. Ranjit Sinha, learned counsel for the respondents.

2. Petitioners in the present case are praying for the following reliefs:



“(i) For issuance of writ in the nature of certiorari for quashing of the letter No. 975 dated 29.08.2018 issued by the Deputy General Manager (Personnel), Bihar State Power Holding Company Ltd. whereby the representation made by the petitioners for grant of officiating allowance for working on the post of Accounts Officer (Look After) has been denied to the petitioners.

(ii) For necessary direction upon the respondent authorities to pay 20% officiating allowance to the Petitioners as the Petitioners while working on the substantive posts of Accountant were posted on a higher post of Accounts Officer in the name of Accounts Officer (Look After) (Petitioner No.2 was given the additional charge of much higher post of Deputy Director of Accounts) but the benefit of 20% officiating allowance has not been paid to the Petitioners, while a similarly situated employee, namely, Sri Ganesh Lal has been paid with 20% officiating allowance in terms of the order passed by this Hon’ble Court in CWJC No. 3687/2013, which has been affirmed by the Hon’ble Supreme Court.

(iii) For holding that the respondents cannot discriminate between the employees while the similarly situated employee has been paid with 20% officiating allowance, the Petitioners are being deprived of the same benefit on the ground that the case of Ganesh Lal does not create a Precedence.

(iv) For issuance of an alternative direction upon the respondent authorities to pay the salary and allowances attached to the post of Accounts Officer to the Petitioners as the Petitioners holding the post of Accountant were posted to discharge the duty of Accounts Officer (Look After), which is a higher post carrying the higher responsibility. Further, the respondents may be directed to revise the pension and other retiral benefits of the Petitioners.

(v) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case.”

3. Earlier while hearing the writ application, this Court



has summarized the facts of the case and the submissions on behalf of the parties in it's order dated 04.02.2021 which reads as under:

“Heard Mr. Prashant Sinha, learned counsel for the petitioners and Mr. Ranjit Sinha, learned counsel representing the Bihar State Power (Holding) Company Limited (hereinafter referred to as the ‘BSPHCL’).

Petitioners in the present case are seeking to challenge the decision communicated by the Deputy General Manager (Personnel), ‘BSPHCL’ vide letter no.975 dated 29.08.2018 by which the representation of the petitioners for grant of officiating allowance for working on the post of Accounts Officer (Look After) has been denied to the petitioners. The petitioners also seek a direction to the respondent authorities to pay 20% officiating allowance to the petitioners as according to them while working on the substantive post of Accountant, they were posted on a higher post of Accounts Officer in the name of Accounts Officer (Look After). Petitioner no.2 was given the additional charge of much higher post of Deputy Director of Accounts. The common grievance of the petitioners is that while in the case of one of the employees Sri Ganesh Lal the ‘BSPHCL’ has paid him the officiating allowance in terms of the order passed by this Hon’ble Court in CWJC No.3687/2013, the same has been refused to the petitioners.

Mr. Sinha, learned counsel representing the petitioners submits that so far as petitioner no.1 is concerned, he had officiated during the period 04.05.2010 to 31.03.2013 when he retired from service. Petitioner no.2 was posted as Accounts Officer (Look After) on 26.08.2006, thereafter he was relieved to work as Accounts Officer and he submitted his joining on the post of Accounts Officer on 06.09.2006, while working as Accounts Officer, he was given the additional charge of Deputy Director of Accounts vide memo no.155 dated 17.09.2009. He retired from service on 31.01.2015 as Accountant. Petitioner no.3 had



also served on the post of Accounts Officer (Look After) since 26.08.2006 till his superannuation on 31.07.2008.

Learned counsel submits that in the case of Ganesh Lal reported in 2016(2) PLJR 370 the learned writ court has allowed his writ to the extent that he was found entitled for 20% of the officiating allowance. The said judgment has been affirmed in the Letters Patent Appeal and the Special Leave Petition preferred against the same stood dismissed.

Mr. Ranjit Sinha, learned counsel representing the 'BSPHCL' submits that the case of these petitioners are distinguishable from the case of Ganesh Lal (supra). It is submitted that in the case of Ganesh Lal it was found that he had been officiating for 14 years continuous till the date of his retirement, moreover the most important distinguishing factor in the case of Ganesh Lal was that he had raised the issue of officiating charges allowance during his service period and in fact he had filed the writ application in the year 2013 itself, prior to his retirement on 31.01.2014. It is submitted that so far as these petitioners are concerned, they had never raised any issue of officiating allowance. No representation at all was ever submitted to the respondent Company and even after their superannuation from service the petitioners did not claim the officiating allowance.

Learned counsel further points out from the clarifications given to Rule 103 of the Bihar Service Code that the additional post, duties of which are combined but should not be in the same Establishment or Office and should not also fall in the line of normal promotion. He has drawn the attention of this Court towards the example rendered under the clarification. For example the post of Under Secretary, Deputy Secretary, Deputy Directors, Deputy Commissioner, accountants, Assistants and Clerks etc. in the same office or establishment are not independent of each other for this purpose. It is thus his submission that the post of Accounts Officer (Look After) was in the same line and in the same establishment, therefore the Rule 103 of the Bihar Service Code read with clarifications does not



provide for the officiating benefits to the petitioners.

Learned counsel further submits that the judgment rendered in the case of Ganesh Lal (supra) cannot give rise to a cause of action to the petitioners and if they have not raised any claim in this regard during their service period or immediately after their retirement, at this stage, they are not entitled for the reliefs prayed in the writ application. According to him, the delay is such that it would make the petitioners disentitle for the reliefs prayed in the writ application.

Mr. Prashant Sinha, learned counsel for the petitioners admits that during their service period or immediately after their retirement the petitioners had not submitted any claim to the respondents and at least to that extent there is no pleading in the writ application. Learned counsel, however, prays for some time just by passing over the matter to enable him to come out with some judicial pronouncement on the subject.

Let this matter be passed over for the day.

List on 11.02.2021.”

4. On the next date of hearing, Mr. Prashant Sinha, learned counsel for the petitioners submitted that so far as the case of the present petitioners are concerned, the respondents are deviating from their own stands in the subsequent case of one Ganauri Paswan who had moved this Court for identical reliefs in CWJC No. 16750/2019. This Court having perused the supplementary affidavit filed on behalf of the petitioners and after noticing the judgment passed by the learned Coordinate Bench in CWJC No. 16750/2019 passed the following order on 11.02.2021 which reads as under:

“Although in the present writ application, learned



counsel for the respondents have raised some issues for consideration but learned counsel for the petitioners has brought to the notice of this Court the deviating standard of consideration on the part of the respondents and the inconsistent stand which they are said to be taking in respect of different employees. On record is now a supplementary affidavit of the petitioners in which they have brought on record a copy of the judgment dated 02.09.2019 passed by a learned coordinate Bench of this Court in CWJC No.16750 of 2019. The said writ application was filed by one Ganauri Paswan for identical reliefs and the learned coordinate Bench having noticed the earlier order of this Court in CWJC No.3687 of 2013 affirmed by Hon'ble Division Bench in LPA No.1166 of 2016, set aside the order passed on 07.09.2018 by the Deputy General Manager (Personnel), Bihar State Power (Holding) Company Limited, Patna (hereinafter referred to as 'the BSPHCL') and directed him to write out a fresh order in accordance with law in view of the judgments referred to by the learned coordinate Bench.

It appears that though in the said writ application the pleas which are being taken on behalf of the respondents in this writ application were not taken, the fact remains that the respondents has now allowed the same benefit to Ganauri Paswan, but surprising to this Court is the contents of the office order no.997 dated 08.12.2020 issued under the signature of the Additional Secretary of the BSPHCL, Patna. The said letter is being reproduced hereunder:-

“ बिहार स्टेट पावर (होलिडिंग) कंपनी लिमिटेड, पटना।
कार्यालय आदेश संख्या-997

दिनांक: 08.12.2020

समादेश याचिका संख्या 16750 / 2019 गनौरी पासवान बनाम बिहार स्टेट पावर (होलिडिंग) कंपनी लिमिटेड में माननीय पटना उच्च न्यायालय, पटना द्वारा पारित आदेश दिनांक 02.09.2019 के अनुपालन में श्री गनौरी पासवान सेवानिवृत्त लेखा पदाधिकारी (देख-रेख) बिहार स्टेट पावर ट्रांसमिशन कंपनी लिमिटेड को दिनांक 23.05.2006 से 31.12.2015 तक लेखा पदाधिकारी (देख-रेख) का कार्य किया जाने हेतु 20% स्थापन भत्ता की राशी रु0 5,71,011/- (पाँच लाख इकहत्तर हजार ग्यारह रुपये) मात्र के भुगतान की स्वीकृति प्रदान की जाती है।

इसमें सक्षम प्राधिकार का अनुमोदन प्राप्त है। अन्य के मामले के लिए इसे पर्वादाहरण के रूप में नहीं माना जाएगा।

आदेश से,

ह0/-

(सुरेन्द्र शर्मा)



अपर सचिव
दिनांक: 08.12.2020”

This Court finds that the order has been issued saying that the payment is being sanctioned in compliance of the order of this Court passed in CWJC No.16750 of 2019. This is not the correct fact, the learned coordinate Bench of this Court had directed the respondent Deputy General Manager (Personnel), BSPHCL, Patna to write out a fresh order in accordance with law, examine the judgments and then in case the claim of the petitioner is found to be tenable, the necessary sequel order providing the admissible amount shall also be passed.

Learned counsel for the respondents submits that he is not aware of any such exercise and the pleas which are being taken before this Court are required to be considered because order if any passed in respect of Ganauri Paswan cannot be taken as in accordance with law and that does not confer negative parity and the plea of negative discrimination cannot give rise to a right in favour of the petitioner.

Let the respondent Deputy General Manager (Personnel), BSPHCL file his affidavit saying as to how Annexure-10 is in compliance of the order of this Court and whether prior to issuance of Annexure-10 a reasoned order has been passed by him as per direction of this Court in CWJC No.16750/2019. Let complete facts be brought on record.

As prayed by Mr. Ranjit Sinha, learned counsel for the respondents, let this matter be listed on 25th February, 2021.”

5. Today, Mr. Ranjit Sinha, learned counsel representing the respondents has filed an affidavit sworn by the Deputy General Manager (Personnel), BSPHCL. The order passed by him as contained in Memo No. 313 dated 12.11.2020 has been annexed as Annexure ‘A’ to the supplementary counter affidavit. This Court would reproduce the same as under:



“आदेश

माननीय उच्च न्यायालय, पटना द्वारा समादेश याचिका संख्या 16750/2019 गनौरी पासवान बनाम बिहार स्टेट पावर (होल्डिंग) कम्पनी लिमिटेड एवं अन्य में दिनांक 02.09.2019 को निम्न आदेश पारित किया गया :-

“In such view of the matter, the order impugned is set aside and remitted to the Deputy General Manager (Personnel), Bihar State Power (Holding) Company Ltd. Patna (Respondent no. 03) to write out a fresh order in accordance with law and in view of the judgments referred to above within a period of four weeks of the production of a copy of this order. In case the claim of the petitioner is found to be tenable, necessary sequel order providing the admissible amount shall also be passed. While passing the order, Deputy General Manager (Personnel), Bihar State Power (Holding) Company Ltd., Patna shall also look at the fact whether the case of the petitioner is squarely covered by the judgments which have brought on record.”

उपर्युक्त आदेश के आलोक में याचिकाकर्ता श्री गनौरी पासवान द्वारा दिनांक 09.09.2019 को आवेदन समर्पित करते हुए लेखा पदाधिकारी (देख-रेख) के पद पर कार्यरत अवधि का 20% स्थानापन्न भत्ता, समादेश याचिका संख्या 3687/2013, गणेश लाल बनाम बिहार स्टेट पावर (होल्डिंग) कम्पनी लिमिटेड एवं अन्य में पारित न्याय निर्णय के आलोक में देने की मांग की गयी।

न्यायादेश दिनांक 02.09.2019 के आलोक में सम्पूर्ण मामले की समीक्षा की गई और पाया गया कि श्री गणेश लाल, सेवानिवृत्त लेखापाल के द्वारा उनके सेवाकाल में लेखा पदाधिकारी (देख-रेख) के पद पर कर्तव्य निर्वहन के लिए 20% स्थानापत्र भत्ता (Officiating Allowance) के भुगतान हेतु माननीय पटना उच्च न्यायालय में समादेश याचिका 3687/2013 दायर किया गया था, जिसमें माननीय न्यायालय द्वारा दिनांक 03.02.2016 को पारित आदेश में लेखा पदाधिकारी (देख-रेख) के पद कर्तव्य निर्वहन के लिए 20% स्थानापन्न भत्ता (Officiating Allowance) के भुगतान हेतु निदेश



दिया गया। कम्पनी द्वारा माननीय न्यायालय के आदेश के विरुद्ध LPA No- 1166/2016 दायर किया गया जिसे माननीय न्यायालय ने दिनांक 19.07.2017 को पारित आदेश के द्वारा खारिज कर दिया गया। पुनः कम्पनी द्वारा उक्त LPA को माननीय न्यायालय द्वारा खारिज किये जाने के उपरान्त माननीय सर्वोच्च न्यायालय में SLP दायर किया गया जिसे माननीय सर्वोच्च न्यायालय द्वारा खारिज कर दिया गया। न्यायादेश के आलोक में श्री लाल को लेखा पदाधिकारी (देख-रेख) के रूप में कार्यरत अवधि का स्थानापन्न भत्ता स्वीकृत किया गया।

श्री लाल की भांति याचिकाकर्ता श्री गनौरी पासवान को भी पूर्ववर्ती बिहार राज्य विद्युत बोर्ड के अधिसूचना संख्या 218 दिनांक 23.05.2006 के द्वारा लेखा पदाधिकारी (देख-रेख) का कार्यभार प्रदान करते हुए लेखा पदाधिकारी, संचरण अंचल, पटना के रूप में पदस्थापित किया गया। श्री पासवान दिनांक 31.12.2015 को लेखा पदाधिकारी (देख-रेख) के रूप में बिहार स्टेट पावर ट्रांसमिशन कम्पनी लिमिटेड से सेवानिवृत्त हुए।

न्यायादेश दिनांक 02.09.2019 के अनुपालन में की गयी समीक्षा में याचिकाकर्ता श्री गनौरी पासवान का मामला श्री गणेश लाल, सेवानिवृत्त लेखापाल के सदृश्य पाते हुए सक्षम प्राधिकार से प्राप्त अनुमोदन के आलोक में श्री गनौरी पासवान, सेवानिवृत्त लेखापाल को दिनांक 23.05.2006 से 31.12.2015 तक लेखा पदाधिकारी (देख-रेख) का कार्य सम्पन्न किये जाने हेतु देय 20% स्थानापन्न भत्ता की राशि रु0 5,71,011/- (पाँच लाख इकहत्तर हजार ग्यारह रुपये) मात्र के भुगतान की स्वीकृति प्रदान की जाती है।

उपर्युक्त स्थानापन्न भत्ता माननीय न्यायालय द्वारा पारित न्यायादेश के आलोक में अनुमान्य किया गया है। अतएव पूर्वोदहारण के रूप में अन्य किसी मामले में मान्य नहीं होंगे।

सुनील कुमार सिंह
उप महाप्रबंधक (कार्मिक)

ज्ञापांक संख्या- 331

दिनांक:12/11/2020

प्रतिलिपि:- श्री गनौरी पासवान लेखा पदाधिकारी (देख-रेख), ग्राम पोस्ट- लंगरपुर, स्टेशन रोड, थाना- बाढ़, जिला- पटना, पिन कोड- 803213 को सूचनार्थ प्रेषित।

(सुरेन्द्र शर्मा)
अवर सचिव



6. Learned counsel for the respondents submits that

again the case of Ganauri Paswan has been treated as an exception on the ground that he was also given the charge of Accounts Officer while discharging his duties on the post of Accounts Officer (Look After) vide the same notification no. 218 dated 23.05.2006 by which Sri Ganesh Lal had been given the officiation. Sri Ganauri Paswan had also retired from service on 31.12.2015 and during the period from 23.05.2006 to 31.12.2015 he was in officiating charge of the post of Accounts Officer.

7. Learned counsel is, however, categorical in his submission that except the fact that Sri Ganauri Paswan was also given the officiation along with Sri Ganesh Lal, no other ground has been noticed by the competent authority. According to learned counsel, the question of law involved in this case has been left open by the Hon'ble Supreme Court, but, he had no opportunity to look into the matter of Sri Ganauri Paswan when the competent authority granted Ganauri Paswan the similar benefits as had been granted to Sri Ganesh Lal.

8. Learned counsel for the petitioners submits that the case of these petitioners stand on identical footing with that of Sri Ganesh Lal and Sri Ganauri Paswan. According to him, the authorities of the 'BSHPCL' cannot play fast and loose and they cannot be allowed to take one view in respect of one of the employees and another view in respect of another employee. That



would be discrimination.

9. Learned counsel submits that these petitioners have also discharged their duties of the higher post for several years before their retirement. Petitioner no. 1 has served from 04.05.2010 to 31.03.2013 when he retired from service. Petitioner no. 2 had been given additional charge of Deputy Director of Accounts vide Memo No. 155 dated 17.09.2009, while he was working as Accounts Officer w.e.f. 06.09.2006. Similarly the petitioner no. '3' has served on the post of Accounts Officer (look-after) since 26.08.2006 till his superannuation on 31.07.2008.

10. It is submitted that the Corporation is not taking a stand that payments made to Sri Ganesh Lal or Sri Ganauri Paswan is against the law, therefore, there is no occasion for this Court to go into that aspect of the matter. In his submission, if the Corporation is of the view that Sri Ganauri Paswan would be entitled for the same benefit which Sri Ganesh Lal, there is no reason why the petitioners who have rendered service in identical manner on a higher post but by different notifications would not be entitled for the same benefit.

11. It is his submission that the plea which is being taken on behalf of the Corporation/BSPHCL that it will open a Pandora Box was required to be considered while granting benefit to Sri Ganauri Pawan but once the authorities have found that Sri



Ganauri Paswan is entitled for the same benefit, there is no point of distinction in between the case of the Sri Ganauri Paswan and that of these petitioners. The date of issuance of notification would be wholly irrelevant.

12. Having heard learned counsel for the parties and taking into consideration the submissions noticed hereinabove, this Court finds that during pendency of this writ application since the respondents have considered the case of Sri Ganauri Paswan in compliance of the order passed by the learned Coordinate Bench of this Court in CWJC No. 16750/2019 and has found Sri Ganauri Paswan entitled for the benefit of 20% of the officiating allowances for rendering service on the higher post, the respondents are now obliged to consider the case of the petitioners as well for similar benefits in the light of the discussions here-in-above.

13. To be fair to the learned counsel for the respondents, the Court observes, that, had the competent authority of the Corporation while passing the order in the case of Sri Ganauri Paswan acted with caution and in tandem with the stand of learned counsel for the respondents in the pending writ petition for similar reliefs, perhaps all issues could have been taken care of by the concerned authorities and this Court would have benefit of knowing the stand of the authorities on various aspects. In such



circumstance, this Court would have been able to consider all the submissions at this stage itself. Since the respondents have considered the case of Sri Ganauri Paswan and has found him fit for the benefits without looking into any other aspect save and except that he was given officiation vide the same notification with Ganesh Lal, this Court is of the view that the same respondents should now take upon themselves to look into the case of these petitioners.

14. Let such consideration be given within a period of eight weeks from today by passing an appropriate order and for this purpose the pleadings in the writ application shall be considered as the representation of the petitioners.

15. This Court would also make it clear that the competent authority will write an independent order as this Court has not expressed any opinion on the merit of this case.

16. This writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.03.2021
Transmission Date	

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

