

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23831 of 2018

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Ravi Shankar Kumar son of Late Jagdish Ram resident of Village - Baghi, P. S. - Maniyari, District - Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna
2. Principal Secretary, Department of Finance, Government of Bihar, Main Secretariat, Patna.
3. General Administration Department, Government of Bihar, Main Secretariat, Patna.
4. The District Magistrate, Nawadah.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 8389 of 2018

=====

Sanjay Kumar Son of Late Janeshwar Prasad Singh, Resident of Village-Sarsa, P.O. Risiap, P.S. Risiap, District-Aurangabad.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Chief Engineer, National Highway, Wing, Road Construction Department, Government of Bihar, Patna
3. The Superintending Engineer, N.H. Circle, Dehri-on-Sone.
4. The Executive Engineer, Road Construction Department, National Highway Division, Aurangabad.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 2804 of 2020

- =====
1. Mateen Akhter, Son of Late Md. Sayeedur Rahman, Working as Clerk in the Office of District Treasury, at Kishanganj, P.S.-Town, District-Kishanganj.
 2. Sarita Devi, Wife of Late Malik Chandra Sah, Working as Clerk in the Office of District Treasury, at Kishanganj, P.S.-Town, District-Kishanganj.

... .. Petitioners

Versus

1. The State of Bihar through the District Magistrate, Kishanganj.
2. The District Magistrate, Kishanganj.
3. The District Treasury Officer, Kishanganj.



... .. Respondents

with

Civil Writ Jurisdiction Case No. 7321 of 2023

1. Vijendra Kumar Son of Late Jitbahan Yadav, Resident of Village- Balhma, P.O.- Babu Amouna, P.S.- Daudnagar, District- Aurangabad.
2. Subhash Kumar Son of Late Rajaram Yadav, Resident of Village- Catara, P.S.- Fesar, District- Aurangabad.
3. Bipul Kumar Son of Late Mritunjay Prasad Karn, Resident of Village- Kal Bhairav, P.S.- Jamhor, District- Aurangabad.
4. Kishor Kumar Goutam Son of Late Koushlendra Singh, Resident of Village- Banskehap Tola Dhibra, P.O.- Chauriya P.S.- Fesar, District- Aurangabad.
5. Manoj Kumar Son of Late Shrawan Kumar, Resident of Village- Bhawanokhap, P.O. and P.S.- Nabinagar, District- Aurangabad.
6. Priye Ranjan Kumar Son of Late Lalan Yadav, Resident of Village- Kalen, P.O. and P.S.- Khudwan, District- Aurangabad.
7. Dipak Kumar Son of Late Kaushal Kishor Sharma, Resident of Village and P.O.- Babu Amouna, P.S.- Daudnagar, District- Aurangabad.

... .. Petitioners

Versus

1. The State of Bihar through its Principal Secretary of the Finance Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Govt. of Bihar, Department of Revenue and Land Reforms, Patna.
3. The District Magistrate, Aurangabad.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 9794 of 2023

Nagendra Prasad Yadav Son of Late Indrajeet Rai Resident of Village- Pokhrera, P.S.- Taraiya, District- Saran.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Personnel and Administrative Reforms, New General Administrative Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
4. District Magistrate, Saran at Chapra.

... .. Respondents



Appearance :

(In Civil Writ Jurisdiction Case No. 23831 of 2018)

For the Petitioner : Mr. Kishore Kumar Thakur, Advocate
Mr. Rajesh Kumar, Advocate
Mr. Braj Kishore Singh, Advocate
Mr. Amit Kumar Singh, Advocate
Mr. Amit Kumar Prajapati, Advocate
Mr. Sanjay Kumar Ghosarvey, Advocate
Mr. Dineshwar Singh, Advocate

For the Intervenor/s : Mr. Mrigank Mauli, Sr. Advocate
Mr. Gyan Shankar, Advocate
Ms. Ankita Roy, Advocate
Mr. Sudhanshu Ranjan, Advocate
Mr. Amaresh Kumar Singh, Advocate
Mr. Onkar Kumar, Advocate
Mr. Dineshwar Prasad Singh, Advocate

For the Respondents : Mr. P.K. Shahi, Advocate General
Mr. Manish Kumar, GP-4
Mr. Ajay Kumar, AC to GP-4
Mr. Kinkar Kumar, SC-9
Mr. Ranjan Kumar Jha, Advocate
Mr. Avanindra Kumar Jha, Advocate

(In Civil Writ Jurisdiction Case No. 8389 of 2018)

For the Petitioner/s : Mr. Rajeev Kumar Singh, Advocate
Mr. Prabhojot Singh, Advocate
Ms. Rushali, Advocate
Mr. Siyaram Pandey, Advocate

For the Respondent/s : Mr. Manoj Kumar Ambastha, SC-26
Mr. Subodh Kumar, AC to SC 26

(In Civil Writ Jurisdiction Case No. 2804 of 2020)

For the Petitioner/s : Mr. Amaresh Kumar Singh, Advocate
Mr. Onkar Kumar, Advocate
Mr. Dineshwar Prasad Singh, Advocate

For the Respondent/s : Mr. Anil Kumar Singh, GP-26

(In Civil Writ Jurisdiction Case No. 7321 of 2023)

For the Petitioner/s : Mr. Amit Anand, Advocate
Mr. Lalan Kumar Singh, Advocate

For the Respondent/s : Mr. P. K. Shahi, Advocate General
Mr. Raghwendra Kumar, SC-22

(In Civil Writ Jurisdiction Case No. 9794 of 2023)

For the Petitioner/s : Mr. Dhananjay Mishra, Advocate
Mr. Arun Kumar, Advocate
Mr. Surendra Pd. Singh, Advocate
Mr. Nitesh Kumar Nirala, Advocate
Mr. Amit Prakash, Advocate

For the Respondent/s : Mr. P. K. Shahi, Advocate General
Mr. Sheo Shankar Prasad, SC-8
Mr. Amit Kumar, AC to SC-8

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

C.A.V. JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-08-2025

Pursuant to the order dated 01.10.2021 passed in C.W.J.C. No. 23831 of 2018 and order dated 15.07.2021 passed in C.W.J.C. No. 2804 of 2020 by the learned Single Judge, observing therein that the matter is required to be considered by a Larger Bench in view of the conflicting views taken by the Division Benches of this Court, these matters were placed before the then Hon'ble Acting Chief Justice in the administrative side. The then Hon'ble Acting Chief Justice directed the matters to be listed before this Full Bench. Along with the above two matters, i.e., the other three writs i.e. CWJC No. 8389 of 2018 (Sanjay Kumar Vs. The State of Bihar & Ors.), CWJC No. 7321 of 2023 (Vijendra Kumar & Ors. Vs. The State of Bihar & Ors.) and CWJC No. 9794 of 2023 (Nagendra Prasad Yadav Vs. The State of Bihar & Ors.), which involve identical issues, have been tagged with C.W.J.C. No. 23831 of 2018, hence, Registry has listed these three matters also for consideration by this Bench.

2. By order dated 01.10.2021 passed in CWJC No. 23831 of 2018, the learned Single Judge, while referring the matter before the Larger Bench, has observed in paragraphs 17, 18 and 19 as under: -



“17. The only question which requires determination, in the present matter, is as to whether the persons appointed on compassionate ground as Lower Division Clerks after demerger in the scale of Rs. 3050-4590/- can claim by way of right, a higher pay-scale of Rs. 4000-6000/-. The Division Bench of this Court in case of Smt. Mosarat Arra Khanam (supra) has, in no uncertain terms, held as under :-

“The claim of the appellants for parity of pay with those lower division clerks is ex facie unsustainable. It is not in dispute that the appellants were appointed during the years 2001 to 2004 and are placed in the pay-scale approved for the cadre of lower division clerks. Therefore, appellants’ claim to a higher pay-scale sanctioned for the higher post of Upper Division Clerks cannot be accepted. The petitions are rightly rejected.”

18. The said Division Bench decision in case of Smt. Mosarat Arra Khanam (supra) was evidently not brought to the notice of subsequent Division Bench in case of Avinash Kumar Chakerwarty (supra). The Division Bench in case of Avinash Kumar Chakerwarty (supra) has allowed the scale of Rs. 4000- 6000/- for persons appointed on compassionate basis after the date of demerger, applying the doctrine of parity in the pay-scale.

19. In my opinion, in view of the conflicting views taken by the Division Benches of this Court in case of Smt. Mosarat Arra Khanam (supra) and Avinash Kumar Chakerwarty (supra) on the question as to whether the persons appointed on compassionate basis in



the scale of Rs. 3050-4590/- can claim by way of right a higher pay-scale of Rs. 4000-6000/- on the doctrine of parity in pay-scale, the matter needs to be place before Hon'ble the Chief Justice for referring the same to a Larger Bench.

3. The learned Single Judge has, vide order dated 15.07.2021 passed in CWJC No. 2804 of 2020, referred following questions for consideration by the Larger Bench: -

“(i) Whether the law laid down by the learned Division Bench in case of **Pankaj Kumar** (supra) and **Smt. Mosarrat Aara Khanam & Anr.** (supra) is the correct law or the judgments rendered by the learned Division Bench in the cases of **Binit Kumar** (supra) and **Avinash Chakerwarty & Anr.** (supra) lay down the correct law?

(ii) Whether in terms of the letter of the Finance Department Dated 20.12.2000, the compassionate appointees, like the petitioners, are entitled to the pay scale of Rs.4000-6000/- or to the pay scale of Rs.3050-4590/-, especially taking into account the fact that they have been appointed after the cut-off date, i.e., 20.12.2000?

(iii) Whether at all, the compassionate appointees, like the petitioners, are entitled to the pay scale of Rs.4000-6000/- instead of the basic pay scale of Rs.3050-4590/-?

4. As the issues involved in all these petitions are similar, all the petitions are being taken up together for final



disposal with the consent of the learned Advocates appearing for the parties.

5. For the sake of convenience, we are referring the facts narrated in CWJC No. 23831 of 2018 and the said matter is treated as the lead matter.

FACTUAL MATRIX:

C.W.J.C. No. 23831 of 2018

6. It is the case of the petitioner that he along with others was appointed as Lower Division Clerk in the pay scale of Rs.3050-4590/- on compassionate ground vide order dated 06.09.2001 issued by the office of the District Magistrate, Nawada. It is also stated that the meeting of District Compassionate Appointment Committee was convened under the chairmanship of the District Magistrate and the case of the petitioner was taken up for consideration in the said meeting for his appointment on compassionate ground. Thereafter, the petitioner was found fit for appointment against a Class-III post and the committee recommended him for such appointment. The recommendation was made on 25.11.2000. It is the further case of the petitioner that his father died while functioning as Revenue Karmchari in the Collectorate Nawada, on 19.01.2000 and, therefore, the petitioner had submitted his application for compassionate appointment.



7. It is the case of the petitioner that the policy decision of the Government to demerge the cadre of Assistant in different posts to Lower Division Clerk (in short 'LDC'), Upper Division Clerk (in short 'UDC') and the Assistant in different pay scales came into effect on 20.12.2000 but his name was under consideration prior to the cut off date and the recommendation was made as back as on 25.11.2000, therefore, he would be entitled for the post of Assistant which existed prior to demerger in the scale of pay of Rs. 4000-6000/-. The petitioner has based his claim on the judgment of the learned Writ Court in C.W.J.C. No. 13577 of 2006 (*Manish Kumar Pathak and Others vs. The State of Bihar and Others*) decided on 17.12.2007.

C.W.J.C. No. 2804 of 2020

8. In this case though the District Compassionate Appointment Committee recommended the name of the petitioners for appointment prior to the date of demerger i.e. on 20.12.2000, both of them were appointed vide letters issued on 04.10.2001 in the pay scale of Rs. 4000-6000/- which was subsequently modified on 12.04.2001 to Rs. 3050-4590/-. It is thus, the case of the petitioners that their recommendations being that of a date prior to the date of demerger, they would have been entitled to be appointed on the post of Assistant in the pay scale of Rs. 4000-



6000/-. From the averments made in the writ application, it does not appear that the petitioners raised any grievance against the modified scale of pay granted on 12.04.2001 to Rs. 3050-4590/-. Two representations on the record (Annexure '9' series to the writ application) seems to have been presented few days before filing of the writ application.

C.W.J.C. No. 8389 of 2018

9. The sole petitioner in this case was appointed on compassionate ground as a correspondence clerk vide Memo No. 20 dated 17.01.2001 in the National Highway Division, Aurangabad in the office of Dobhi Sub-Division. He was given pay-scale of Rs. 4000-100-6000/- but vide Memo No. 67 dated 10.02.2001, a corrigendum was issued by the Superintending Engineer, National Highway Circle, Dehri On Sone in which the pay scale of Rs. 4000-100-6000/- was amended/corrected as Rs.3050-75-3950-80-4590/- which was the pay scale of Lower Division Clerk (in short 'LDC'). The petitioner raised a grievance against the same after 17 years just few days before filing of the writ application in this Court.

C.W.J.C. No. 7321 of 2023

10. In this case, there are altogether seven writ petitioners who were appointed as Clerk on compassionate ground in the year



2016 and onwards in the different offices under the district of Aurangabad. It is their contention that they have been arbitrarily and illegally given the pay-scale of Rs. 3050-4590/- in place of Rs. 4000-6000/-. Their contentions are based on the directions issued by this Court in L.P.A. No. 167 of 2016 (**Avinash Kumar Chakerwoty Vs. The State of Bihar & Ors.**) which has been followed in C.W.J.C. No. 17151 of 2018, C.W.J.C. No. 188 of 2021, C.W.J.C. No. 4065 of 2020, C.W.J.C. No. 11759 of 2021, C.W.J.C. No. 822 of 2023, C.W.J.C. No. 2092 of 2023 and other analogous cases.

C.W.J.C. No. 9794 of 2023

11. The sole petitioner in this writ application was appointed on 12.03.2003 by order of the District Magistrate, Saran in the Establishment Section and later on, he was appointed in the Block Development Office, Dariyapur, Saran. He was given the post of 'LDC' in the scale of Rs. 3050-4590/-. The submission is that Sanjeev Kapoor along with others had filed C.W.J.C. No. 15978 of 2010 which has been decided on 20.02.2023 by a learned Single Judge of this Court (one of us Rajeev Ranjan Prasad, J.) in the light of the judgment of the Hon'ble Division Bench of this Court passed on 23.06.2017 in L.P.A. No. 167 of 2016. The learned Single Judge noticed the judgment in C.W.J.C. No. 17 of



2023 which was in the light of the judgment of the Division Bench in L.P.A. No. 167 of 2016 in which the Division Bench took a view that the appointees on the compassionate ground would also be entitled for the scale of Rs. 4000-6000/-. Emboldened by this judgment in the case of **Sanjeev Kapoor & Ors.** (supra), the present writ application has been filed after about 20 years of his appointment.

12. In course of hearing of these matters, this Court was informed that the judgment of this Court in the case of **Smt. Mosarrat Arra Khanam and Others vs. The State of Bihar and Others (LPA No. 100 of 2012)** is subject matter of challenge in Civil Appeal No. 3965 of 2017 presently pending before the Hon'ble Supreme Court. This Court was of the view that in such circumstance, it would not be appropriate to consider the same judgment in the Full Bench but then the learned Advocate General has produced before this Court a copy of the order dated 28.04.2025 passed by Hon'ble Supreme Court in Civil Appeal No. 3965 of 2017 which reads as under:-

- “1. The instant case is listed for directions.
2. It is brought to our notice that a Full Bench of the High Court of judicature at Patna has been constituted to adjudicate the issues as involved in this case. The Full Bench is awaiting the decision of this appeal.
3. In the facts of the case, it is suffice to observe that the Full Bench may proceed with the hearing



of the case and decide the issues in accordance with law uninfluenced by the pendency of this appeal. ”

13. In the aforementioned background, this Court heard learned counsel for the petitioners and learned Advocate General for the State.

Submissions on behalf of the petitioner in CWJC No. 23831 of 2018:

14. Learned counsel appearing on behalf of the petitioner in C.W.J.C. No. 23831 of 2018 would mainly contend that this court has granted pay scale of Rs. 4000-6000/- to the similarly situated persons and the said order has been implemented. However, so far as the case of the petitioner is concerned, the respondents have denied the pay scale of Rs. 4000-6000/-. Learned Advocate has placed reliance upon the order dated 11.03.2011 passed by this Court in C.W.J.C. No. 15956 of 2006 in the case of *Umesh Prasad and others vs. State of Bihar and others*. Learned Advocate has further submitted that this Court has also passed an order in the case of *Manish Kumar Pathak (supra)*. By way of the said order, this Court has allowed the pay-scale of Rs. 4000-6000/- to the concerned petitioners, though the said petitioners were appointed subsequent to the letter dated 20.12.2000, issued by the Finance Department mainly on the



ground that the process of selection had begun before coming into the force of the decision of demerger. It is submitted that, therefore, so far as the case of the petitioner is concerned, his case is also on the similar footing and his application for appointment on compassionate ground was pending before the concerned authority before the decision of demerger was taken.

15. Learned counsel for the petitioner, at this stage, also placed reliance upon the decision rendered by a Division Bench of this Court on 23.06.2017 passed in LPA No. 167 of 2016 in the case of *Avinash Kumar Chakerwarty (supra)*. It is submitted that this Division Bench of the Court has held that the appellants of the said case were entitled to the pay scale of Rs. 4000-6000/- though they were appointed on compassionate ground after issuance of letter of demerger dated 20.12.2000.

16. Learned counsel, at this stage, submits that the decision rendered by the Division Bench of this Court in LPA No. 100 of 2012 in the case of *Smt. Mosarrat Arra Khanam vs. the State of Bihar* would not be applicable to the facts of the present case. Learned counsel submits that the judgment rendered by the learned Single Judge in the said case, which has been affirmed in the Letters Patent Appeal, does not deal with the relevant issue that at the time of initiation of selection process, the petitioner along



with petitioners of CWJC No. 15956 of 2006 as well as the initial recommendation of their appointment on compassionate ground, there existed only one cadre of Assistant in Muffasil offices. The said unified cadre of Assistant came to be separated/demerged on 20.12.2000, thereby the posts of Lower Division Clerk and Upper Division Clerk were reconstituted with separate pay scales of Rs.3050-4590/- and Rs. 4000-6000/- respectively. Thus, when the recommendation of the petitioner was tentatively forwarded on 25.11.2000, the petitioner could have been appointed in the merged cadre of Assistant in the pay scale of Rs. 4000-6000/-. At this stage, it is further submitted that the decision rendered by the Division Bench in LPA No. 167 of 2016 is not in conflict with the judgment rendered in LPA No. 100 of 2012.

17. Learned Advocate would further contend that once the dependents are appointed on compassionate ground on a post where there is also regular recruitment, there cannot be any discrimination insofar as applicable pay scale, from those regularly appointed, only on the basis of source of appointment. The appointment on compassionate ground is also a source of appointment. It is further submitted that the duty performed by the petitioner and the duty to be performed by the direct recruits is



similar and, therefore, the petitioner is also required to be granted the similar pay scale.

18. Learned counsel has placed reliance upon the decision rendered by the Hon'ble Supreme Court on 02.05.2025 in Civil Appeal No. 5842 of 2025 (**State of Odisha and Others vs Jita Luha** reported in **2025 INSC 813**) and allied matters.

19. Learned counsel referred the policy of the State, which has been produced at page '110' of the compilation of CWJC No. 23831 of 2018, and thereafter referred page '118' of the said compilation. Learned counsel has adopted the submissions canvassed by the other learned Advocates in the connected applications.

Submissions on behalf of the petitioner in CWJC No.

8389 of 2018:

20. Learned counsel appearing on behalf of the petitioner in CWJC No. 8389 of 2018 only submits that on 12.06.1999, the Executive Engineer, National Highway Circle forwarded the application of the petitioner for compassionate appointment before the District Magistrate, Aurangabad. Thereafter, on 28.03.2000, the meeting of Compassionate Appointment Committee was held. The said Committee recommended for appointment of the petitioner on Class-III post.



It is further submitted that the petitioner was appointed on the post of Correspondence Clerk in the pay-scale of Rs.4000-6000/- on 17.01.2001. However, thereafter, on 10.02.2001, the concerned authority reduced the pay-scale of the petitioner from Rs.4000-6000/- to Rs.3050-4590/-.

21. Learned counsel has placed reliance upon the decision rendered in the case of *Maharashtra State Financial Corpn. Ex-Employees Assn. v. State of Maharashtra*, reported in (2023) 11 SCC 186, more particularly paragraphs 2, 31, 32 and 89 thereof.

Submissions on behalf of the petitioner in CWJC No. 2804 of 2020:

22. Learned counsel for the petitioners submits that, in the present case, petitioner No. 1 was appointed on 04.01.2001 as Assistant on the basis of decision of the District Compassionate Appointment Committee taken on 11.01.1999. He was appointed in the pay scale of Rs. 4000-6000/-. Similarly, petitioner No.2 was appointed on 04.01.2000 on the basis of the decision taken by the concerned committee on 26.07.2000 in the pay scale of Rs. 4000-6000. Subsequently, it was changed to Rs.3050-4590/-. At the outset, learned counsel submits that the Division Bench of this Court in the case of *Avinash Kumar Chakerwarty* (supra) has



decided the issue and it was directed to grant the pay scale of Rs. 4000-6000/- as the Clerks appointed in the year 2005-06 were given the aforesaid scale in the Formal Education Department. Thereafter, various compassionate appointees were granted the pay scale of Rs. 4000-6000/- on the basis of the orders passed by the Division Bench. However, no decision was taken in the case of the petitioners despite representation filed by them. Learned counsel has referred the Bihar Litigation Policy and thereafter contended that it is the policy of the government to grant similar benefit to all in similar type of cases, despite which the same is not being granted to the petitioner.

23. At this stage, learned counsel submits that there is no conflict between the decisions rendered by the Division Bench in the case of *Smt. Mosarrat Arra Khanam* (supra) and in the case of *Avinash Kumar Chakerwarty* (supra). In fact, the first case was on the ground of candidates directly appointed after 20.12.2000 pursuant to the advertisement of the BPSC made prior to the aforesaid cut-off date. The advertisement was made for appointment in the pay scale of Rs. 1200-1800. However, the decision rendered in the case of *Avinash Kumar Chakerwarty* (supra) was on a different point. Learned counsel referred the same decision rendered in the case of *Avinash Kumar Chakerwarty*



(supra). Learned counsel has referred Clause 5(ii) of the circular dated 20.12.2000 and submitted that the said clause provides that if the selection for higher scale is pending, it has to be cancelled and fresh selection process was to be started, which was not done with respect to BPSC selection, which was advertised prior to 2012, and, in fact, the selection process was pending, which was completed in the year 2004 and 2006. In fact, circular dated 20.12.2000 relates to unification of cadre in all Regional Offices of Clerks, i.e., Accounts Clerks, Correspondence Clerks, Lower Division Accounts Clerks, Lower Division Correspondence Clerks and they were granted the same basic pay scale of Rs. 3050-4590/-. At this stage, it is contended that the compassionate appointment was made on the aforesaid posts depending on the available vacancies and the qualification was also the same. Further, by Notification dated 25.03.2015, Lower Division Accounts Clerks appointed after the year 1999 were given the pay scale of Rs. 4000-6000/-, but compassionate Lower Division Clerks were not being given the pay scale of Rs. 4000-6000/-. Thus, this Court in the case of ***Binit Kumar and Others vs. The State of Bihar and Others and allied matters*** (CWJC No.9921 of 2017), rendered decision on 21.08.2017. It is submitted that this Court directed to give pay scale of Rs. 4000-6000/- to



compassionate appointee Lower Division Accounts Clerks. In LPA No. 1702 of 2017, (*State of Bihar vs. Binit Kumar and Others*), the decision rendered in the case of *Binit Kumar and Others vs. The State of Bihar and Others* by the learned Single Judge was affirmed. The S.L.P. filed against the order passed by the Division Bench has been dismissed by the Hon'ble Supreme Court and thereafter Lower Division Accounts Clerk appointed after 20.12.2000 were granted pay-scale of Rs.4000-6000/-.

24. Learned counsel, at this stage, submits that in similar type of case, i.e., in the case of *State of Bihar vs. Biresh Kumar Singh*, the Division Bench in LPA No. 766 of 2019 passed an order dated 19.09.2023 relying upon the decision rendered in the case of *Binit Kumar and Others* (supra) and directed the respondent authorities to pay the same pay-scale to the petitioners of the said case.

25. Thereafter, learned counsel has submitted that the Hon'ble Supreme Court once again in case of *State of Bihar vs. Sunny Prakash* passed an order on 18.01.2013 in Civil Appeal No. 516 of 2013. Learned counsel has also relied upon the order passed by this Court in the case of *Radhe Shyam and Others vs. The State of Bihar* (CWJC No. 4065 of 2020) on 25.02.2021.



26. Learned counsel has lastly submitted that, as per Clause 4.C(1) of the Bihar Litigation Policy, 2011, if the similarly placed employees have been granted the benefit on the basis of the judgment of the High Court, then other similarly situated persons should also get the same benefits. The issue for implementation of Bihar Litigation Policy has already been decided in Full Bench decision in the case of *Amaresh Kumar Singh vs. The State of Bihar and Others*, reported in **2018 (2) PLJR 928**, wherein it has been observed that the Bihar State Litigation Policy would be applicable and the order of reinstatement of the concerned petitioner will be passed. Learned counsel, therefore, urged that appropriate directions be issued to the respondents.

Submissions on behalf of the petitioners in C.W.J.C.

No. 7321 of 2023 and C.W.J.C. No. 9794 of 2023

27. Learned counsel for the petitioners in these writ applications have adopted the submissions made in C.W.J.C. No. 23831 of 2018 and C.W.J.C. No. 2804 of 2020 which we have already taken note of hereinabove.

Submissions on behalf of Intervenors in C.W.J.C.

No. 23831 of 2018

28. Mr. Mrigank Mauli, learned Senior Counsel, appearing on behalf of the intervenors in CWJC No. 23831 of



2018 has also adopted the submissions canvassed by the learned Advocates appearing on behalf of the petitioner(s) in the connected applications. Learned Senior Counsel has placed reliance upon the following decisions: -

“State of Haryana v. Charanjit Singh, reported in (2006) 9 SCC 321; *State of Kerala v. B. Renjith Kumar*, reported in (2008) 12 SCC 219; *Bihar State Beverages Corpn. Ltd. v. Naresh Kumar Mishra*, reported in (2019) 5 SCC 110; *State of W.B. v. Pantha Chatterjee*, reported in (2003) 6 SCC 469; *Food Corporation of India v. Ashis Kumar Ganguly*, reported in (2009) 7 SCC 734; *State of Punjab v. Jagjit Singh*, reported in (2017) 1 SCC 148; *State of Punjab v. Surjit Singh*, reported in (2009) 9 SCC 514”. These are the judgments cited on the point of “equal pay for equal work”.

Submissions on behalf of the State in all the matters:

29. On the other hand, Mr. P.K. Shahi, Learned Advocate General appearing on behalf of the respondent State has mainly submitted that with a view to bring uniformity in the constitution of the cadres on the pattern of the Central Government, the State Government vide its letter No. 6389 dated 28.09.1999, took a decision to demerge and reconstitute the Clerical cadre. Thereafter, under Clause 5 of the decision



contained in Memo No. 8825 dated 20.12.2000, the Assistant cadre was demerged as Lower Division Clerk and Upper Division Clerk. The said demerger took place prior to the appointment of the petitioners. The pay-scale attached with the post of Upper Division Clerk was Rs.4000-6000/-, which is a promotional post for the Lower Division Clerks, carrying the pay-scale of Rs.3050-4590/-.

30. It is the specific contention of learned Advocate General that the petitioners in these writ applications came to be appointed in terms of the policy decision dated 20.12.2000 on the post of Lower Division Clerk in the pay-scale of Rs.3050-4590/- on compassionate ground after demerger. As regards the petitioner in C.W.J.C. No. 23831 of 2018, it is submitted that his final recommendation for appointment by the District Compassionate Appointment Committee was made on 17.01.2001 and the offer of appointment was issued on 06.09.2001.

31. Learned Advocate General invited the attention of the Court to the clarificatory letter issued by the Department of Personnel and Administrative Reforms dated 20.06.2001 clarifying that the appointments on compassionate ground on Class-III posts were to be made in the then existing pay-scale of Rs.1200-1800/-, which, upon revision of pay, is Rs.3050-4590/-. All the petitioners,



having been appointed after the demerger of the cadre cannot now claim the higher scale citing the decisions either of the Hon'ble Apex Court or of this Hon'ble Court, as the *ratio decidendi* in those matters are not applicable in the case of the present petitioners. The petitioner cannot claim parity with those appointed pursuant to the advertisement issued in the year 1998. They form an isolated group as has been held by the Hon'ble Division Bench in the case of **Smt. Mosarrat Arra Khanam (supra)**.

32. He has further contended that insofar as the submission canvassed on behalf of the petitioners that the persons appointed against due advertisement and selection have been allowed the higher pay-scale is concerned, the said plea is also not tenable in view of the fact that once the selection proceeded on the basis of the advertisement, the terms of advertisement could not be altered. After bifurcation of the cadre of Assistant-cum-Typist, the recruitment process proceeded without modification. The selected candidates were appointed as Lower Division Clerks in the revised pay-scale of Rs.3050-4590/-. Such direct recruits constitute an isolated group. It is submitted that the reasoning and rationale provided in the judgment of the learned Writ Court in **Manish Kumar Pathak's** case are clearly distinguishable.



33. He has lastly submitted that the writ petitioners have approached this Court after 16 to 20 years of their appointment as Lower Division Clerks in the pay scale of Rs.3050-Rs.4590/-. They are not being discriminated as alleged on the ground of their being appointed on compassionate ground. It is further contended that appointments of the retrenched employees of non-formal education were made under the schemes framed on the directions of the Hon'ble High Court. The writ petitions are devoid of merit and the same be dismissed.

34. Learned Advocate General has relied upon the judgment of this Court passed in C.W.J.C. No. 3516 of 2011 (**Sriman Narayan Singh & anr. vs. The State of Bihar & Ors.,**) to submit that this Court has dealt with the same controversy with regard to the persons appointed on compassionate ground after decision of demerger dated 20.12.2000 and the pay scale of Rs. 4000-6000. It has been held that there was no error in the decision granting pay-scale of Rs. 3050-4590/- for those appointed on compassionate basis after the date of the demerger. It is submitted that in C.W.J.C. No. 10441 of 2010 (**Smt. Mosarrat Arra Khanam & Ors. Vs. The State of Bihar & Ors.,**) the learned Single Judge of this Court held inter alia that the writ petitioners who were appointees of the year in between 2001-2004 in the scale of 3050-4590/- were



sanguine of their entitlement to the scale of Rs.3050- 4590/-, only under the Finance Department Letter dated 20.12.2000. They did not raise any grievance that any advertisement had been published in 1998 providing a pay-scale of Rs.4000-6000/- for the same post. The institution of C.W.J.C. No.13577 of 2006 by those recruited under the advertisement of 1998 cannot bring any succor to the petitioners who accepted their appointment on a specified pay-scale and continued on the same without demur for long years.

35. It is submitted that in *Avinash Kumar Chakerwarty (supra)* prayers were made on the basis of the judgment in C.W.J.C. No. 13577 of 2006 and order was passed on 17.12.2007. In the Letters Patent Appeal, the Hon'ble Division Bench could not take note of the circumstances under which the writ petition was allowed. In that case, there was an advertisement for the post of Clerk in the pay scale of Rs. 4000-6000/-, the advertisement was not cancelled in terms of sub-clause (ii) of Clause 5 of the subsequent Letter Dated 20.12.2000 rather appointments were made after demerger, in such circumstance, the writ court directed the Government to appoint the petitioners in the clerical cadre as existing prior to demerger in the pay-scale of Rs. 4000-6000/-. It is submitted that the judgment dated 17.12.2007 passed in C.W.J.C. No. 13577 of 2006 could not be cited in the facts of these cases.



All these writ petitioners are appointees of 2001 and thereafter they remained contented with the pay-scale given to them. Some of them have already retired from service, thereafter they started raising issue of pay-scale on the basis of judgment passed on 17.12.2007. Moreover, in *Avinash Kumar Chakerwarty*' case (*supra*) and the subsequent judgments relying upon that, the earlier Hon'ble Division Bench judgment in the case of **Smt. Mosarrat Arra Khanam & Ors** (*supra*) was not cited.

Consideration

36. Having heard learned counsel for the petitioners and learned Advocate General for the State, the members of the Hon'ble Full Bench have discussed the matter at length.

We will first examine the policy of compassionate appointment in existence prior to the de-merger of the cadre of Assistant as 'LDC' and Upper Division Clerk (in short 'UDC'). The guidelines in this regard issued by the General Administration and Reforms Department, Government of Bihar vide Memo No. 3/सी० 2-2067/90 का० 13293/पटना.15, दिनांक-5 अक्टुबर, 1991 provides that in case of death of a government servant in harness, his dependant would be appointed on certain posts of Class 3 and Class 4 Posts. Clause (8) talks of the posts and the pay-scale on



which compassionate appointment would be made. The same is being reproduced hereunder for a ready reference:-

“(8) किन पदों पर नियुक्ति की जा सकती है:-

(क) अबतक के निर्देश के अनुसार अनुकम्पा के आधार पर वर्ग-4 के अतिरिक्त वर्ग-3 के वैसे ही पदों पर नियुक्ति की जा सकती थी जिस् पर नियुक्ति बिहार लोक सेवा आयोग/बिहार राज्य अवर सेवा चयन पर्षद के माध्यम से नहीं होती हो ।

उपर्युक्त नियम को संशोधित करते हुएसरकार ने निर्णय लिया है कि निम्नलिखित पदों पर अनुकम्पा के आधार पर नियुक्ति की जा सकती है :

(i) वर्ग 4 के सभी पद ।

(ii) 1200-1800 तक के वेतनमान के वर्ग-3 के सभी पद ।”

37. The Finance Department’s Resolution No. -3-M-2-5-ve-Pu-11/99-3435 F (2) dated 8-6-1999 relates to the revision of scale of pay of 70 categories of Government Employees whose cases were referred to the Fitment Committee for reconsideration. It is stated thereunder that:-

“.... The State Government had notified the revised pay scales of it employees vide Finance Department’s Resolution No.-3-M-2-5-ve-Pu-01/99-669 (F/2) dated 8th February, 1999. As stated in para 2 of the said Resolution dated 8-2-1999 the matter of the pay scales of certain categories of employees as mentioned in Annexure V of the aforesaid Resolution was to be sent back to the Fitment Committee for re-consideration. Accordingly, the Fitment Committee was requested vide Finance Department’s Letter No. U.O. I. 244-F dated 12-2-1999.

The Fitment Committee reviewed the matter and suggested no change in the pay scales already recommended.

Accordingly, the State Government have accepted the recommendations of the Fitment Committee regarding the pay scales of 70 posts



mentioned in Annexure V of Resolution dated 8-2-99 Post wise revised scales are shown in Schedule I of this Resolution.

The pay of Government servant whose scale of pay is being revised by this Resolution will be fixed according to the principles and procedures laid down in the Finance Department's Resolution No. 660 dated 8-2-1999 read with its corrigendum issued vide Memo No. 3277 dated 2-6-1999 conditional recommendation of the Fitment Committee regarding these categories of employees will be equally applicable to the instance cases.....”

38. In Schedule 'I' against the designation of post of Cashier, Bill Clerk (Secretariat & Attached Offices), Sr. Bill Clerk, Lower Division Assistant in the pay scale of 1200-1800 the revised pay scale has been shown as Rs. 4000-6000/-.

39. It is an admitted position that on the recommendation of the Fitment Committee the different cadres of the services in the State Government were to be brought on the line of the Central structure. A decision in this regard was taken vide Finance Department's Letter No. 6389 dated 28.09.1999. The Finance Department, Government of Bihar came out with Memo No. 3-M-2/5-ve-pu-9/99-8825 vi (2) Patna dated 20th December, 2000 issued under the signature of the Special Secretary to the Government addressed to the Accountant General, Bihar. Paragraph '3' of the Memo provides that the post of Clerical cadre



would be de-merged into two posts namely, (i) Lower Division Clerk in pay scale of 3050-4590, (ii) Upper Division Clerk in the pay scale of 4000-6000/-. Clause 5(i) and (ii) are important to take note of. According to 5(i), after issuance of this memo direct appointments would be made on the post of Lower Division Clerk and the promotional avenue would be the post of Upper Division Clerk.

40. Sub-clause (ii) of Clause 5 specifically provides that if any appointment process for a post of Clerk in higher pay scale is in progress then the selection process shall be immediately cancelled. These candidates would be given another opportunity to participate in the selection process for the lower category/lowest category of posts without charging any fee from them for a second time.

41. Subsequently vide Letter No. 3M-2-5-9/99-8826 dated 20.12.2000, the State Government in its Finance Department decided to demerge the clerical cadre posts in different posts.

42. Paragraph '3' of the Memo provides that the post of Assistant would be de-merged into three posts namely, (i) Lower Division Clerk in pay scale of 3050-4590, (ii) Upper Division Clerk in the pay scale of 4000-6000/- and (iii) Assistant in the pay scale of Rs. 5500-9000/-. Clause 5(i) and (ii) are important to take



note of. According to 5(i), after issuance of this memo and till further order direct appointments would be made on the junior most post/lowest post falling in the demerged posts until a re-classification of the posts and the number of posts in different categories do not take place through the General Administration Department with the consent of the Finance Department. This also clearly says that by virtue of this decision, the vacancies for the present on the post of Assistant would be taken as the vacancies in the 'LDC; and the vacancies in the category of Personal Assistant would be taken as the vacancies in the post of Stenographer Group 'D'.

43. Sub-clause (ii) of Clause 5 specifically provides that if any appointment process for a post higher than the Junior most category of the post in terms of Clause (i) is in progress then the selection process shall be immediately cancelled even if the selection process has already been completed. Thus, candidates would be given another opportunity to participate in the selection process for the junior most category/lowest category of posts without charging any fee from them for a second time.

44. From the Government's decision as contained in Letter No. 8826 dated 20th December, 2000 issued by the Department of Finance, Government of Bihar, it is crystal clear that on and after



issuance of this letter whatever vacancies were available on the post of Assistant (prior to de-merger) would be taken as the vacancies available for the post of 'LDC' in the payscale of 3050-4590/-. It is the mandate of the letter which is in the form of a policy decision of the Government that any selection process going on for any higher posts than that of the lowest posts would be canceled with immediate effect even if the selection process has been completed.

45. In consonance with the decision as contained in Letter No. 8826 dated 20th December, 2000 of the Department of Finance, Government of Bihar, the General Administration and Reforms Department issued a Letter No. 3/M 1-03/2001 ka-3385 dated 20th June, 2001. This refers to the Memo No. 13293 dated 05.10.1991 which we have already referred hereinabove. The letter dated 20th June, 2001 is being reproduced hereinabove for a ready reference:-

“पत्र संख्या-3/एम 1-03/2001 का0-3385

बिहार सरकार,

कार्मिक एव प्रशासनिक सुधार विभाग

श्री हारुण रशीद,

सरकार के संयुक्त सचिव ।

सेवामें,

सभी विभाग / सभी विभागाध्यक्ष

सभी प्रमण्डलीय आयुक्त

सभी जिला पदाधिकारी ।



पटना-15, दिनांक 20 जून, 2001

विषयरू-वेतन पुनरीक्षण के कारण अनुकम्पा के आधार पर वर्ग-3 में नियुक्ति हेतु पुनरीक्षित वेतनमान का निर्धारण ।

महाशय.

उपर्युक्त विषय के संदर्भ में कार्मिक एवं प्रशासनिक सुधार विभाग के ज्ञाप संख्या 13293 दिनांक 05.10.91 की ओर आपका ध्यानाकृष्ट करते हुए निर्देशानुसार कहना है कि उक्त पत्र के अन्तर्गत यह सूचित किया गया था कि वर्ग-4 के सभी पद एवं 1200-1800 तक के वेतनमान के वर्ग-3 के पदों पर अनुकम्पा के आधार पर नियुक्ति की जा सकती है ।

राज्य सरकार के कर्मियों के छठे वेतनपुनरीक्षण के पश्चात् यह प्रश्न विचाराधीन था कि वर्ग-3 में अनुकम्पा के आधार पर नियुक्ति हेतु 1200-1800 के वेतनमान का प्रतिस्थानी वेतन (Replacement Scale) क्या हो । वित्त विभाग द्वारा उनके पत्रांक 8325 वि० (2) दिनांक 20.12.2000 तथा 1826 वि० (2) दिनांक 20.12.2000 के तहत सर्वगों का पृथक्करण करते हुए निम्नतम वेतनमान अर्थात् निम्नवर्गीय लिपिक (वेतनमान 3050-4590) के पदों पर ही सीधी नियुक्ति की कार्रवाई का निर्देश दिया गया है ।

अतः उपर्युक्त अनुदेश के क्रम में यह निर्णय लिया गया है कि वित्त विभाग के उक्तस्वीकृत्यादेशों के निर्गत होने के बाद एवं अगले आदेश तक अनुकम्पा के आधार पर भी वर्ग-3 में नियुक्ति के लिए वेतनमान की सीमा 3050-4590-रहेगी । तदनुसार वर्ष 1991 के उक्त परिपत्र में वर्ग-3 के लिए निर्धारित वेतनमान (1200-1800-) का पुनरीक्षित वेतनमान रु० 3050-4590-पढ़ा जाय ।

विश्वासभाजन,

हारुण रशीद

सरकार के सयुक्त सचिव ।”

46. It is evident on a conjoint reading of the Letter No. 8826 dated 20th December, 2000 and the Letter No. 3/M 1-03/2001 ka-3385 of the General Administration Department that on the one hand, it was made clear that all the vacancies prior to demerger would be taken as the vacancy available in the junior most/lowest post created after demerger, at the same time the General Administration Department made it clear that after the Sixth Pay revision, the State Government had taken a decision that for the purpose of appointment on compassionate ground against such Class III posts in the pay scale of Rs.1200-1800/-, the replacement scale would be Rs.3050-4590/-. It is evident that the decision of



the General Administration and Reforms Department, Government of Bihar specifically mentions the Finance Department's letter no. 8825 by which it was directed that after bifurcation of cadres, direct appointments would be made on the post of lower division clerk in the pay scale of Rs.3050-4590/-.

47. In the aforementioned policy already in existence, the writ petitioners came to be appointed on the post of lower division clerk in the pay scale of Rs.3050-4590/-. So far as the petitioner in CWJC No. 23831 of 2018 is concerned, he was appointed by the District Magistrate, Nawada vide Memo No. 94 dated 06.09.2001. The petitioners in CWJC No. 2804 of 2020 were appointed by letters issued on 04.01.2001 in the scale of Rs.4000-6000/- which was subsequently modified on 12.04.2001 to Rs.3050-4590/-. They are claiming their rights to get pay scale of Rs.4000-6000/- on the ground that the District Establishment Committee had recommended their names prior to the notification of demerger with effect from 20.12.2000. The fact remains that they accepted the pay scale of Rs.3050-4590/-. They claimed to have made their representation on 20.12.2019 and 06.01.2020 just before filing of the writ petition. They are now looking for their current and arrears of salary in the revised scale of Rs.4000-6000/-.



48. At this stage, we find that all these writ applications have a common contention. They relied upon the judgment of this Court passed on 17.12.2007 in 13577 of 2006 (Manish Kumar Pathak's case). A perusal of the judgment in the case of **Manish Kumar Pathak** (supra) would show that the petitioners in the said writ application were applicants for the post of Assistant-cum-Typist in the pay scale of 1200-1800/- pursuant to the advertisement no. 4/98 issued by the Bihar Public Service Commission, Patna (hereinafter referred to as the 'BPSC') in the district of Bhojpur at Ara.

49. They appeared in the selection test conducted by the BPSC whereafter, they were appointed under order No. 14 and 101 of 2004-2005 Memo No. 549 dated 7th June, 2004 and Memo No. 150 dated 21.03.2005 under the signature of the District Magistrate, Bhojpur, Ara. They raised a grievance that they were not appointed in the corresponding revised pay scale of Rs. 1200-1800 i.e. Rs. 4000-6000/- but in the lower scale of Rs. 3050-4590/- which was admissible to the LDC.

50. A learned Single Judge presiding over the writ Court perused the instructions of the State Government as contained in Letter Dated 20th December, 2000 and took a view that when the selection process had been initiated by issuance of advertisement,



there was one post of Assistant-cum-Typist in the scale of Rs. 1200-1800/- but the selection process was delayed unnecessarily which was beyond the control of the petitioners, hence, they cannot be allowed to suffer on account of delay of appointing authority. The learned Writ Court further observed that in view of Clause '5' of the instructions contained in Letter dated 20th December, 2000, if the authorities were not inclined to appoint the petitioners in the revised payscale of advertised post, they ought to have cancelled the advertisement and the selection process. In the opinion of the learned writ court, if the government had not chosen to cancel the advertisement and the selection process then they had to appoint the petitioners in the corresponding revised pay scale of the post.

51. It appears from the orders passed by different Benches of the learned Writ Courts in C.W.J.C. No. 15956/06 (Umesh Prasad and Others vs. the State of Bihar and Others); C.W.J.C. No. 5152/10 (Dheeraj Kumar and Others vs. The State of Bihar and Others); C.W.J.C. No. 11096/11 (Arbind Kumar and Others vs. The State of Bihar and Others) that the petitioners in these writ applications were the appointees on compassionate ground. They relied upon the views expressed by a Division Bench in the case of **Ganesh Singh & Ors. Vs. The State of Bihar and**



Others reported in **2007 (1) PLJR 159** wherein a view was taken that if the process of appointment was initiated and concluded on 22.08.2000 and the recommendation in favour of the petitioners was for the post of Clerk, they cannot be denied benefit of this recommendation for the simple reason that the appointment letters were issued subsequent to 20.12.2000 and the petitioners could not have been appointed on the post of Lower Division Clerk depriving them of the payscale on the post for which they were recommended.

C.W.J.C. No. 10441 of 2010 distinguished the case of compassionate appointment from that of the petitioners in C.W.J.C. No. 13577 of 2006

52. While the aforementioned writ applications were decided/disposed of with directions, a writ petition being C.W.J.C. No. 10441 of 2010 with other analogous matters came to be considered by a learned Single Judge of this Court. The learned Single Judge was apprised of the order dated 17.12.2007 passed in C.W.J.C. No. 13577 of 2006 which was affirmed in the Letters Patent Appeal and challenge to the same in the Hon'ble Supreme Court also failed. Attempt was made to demonstrate that the petitioners in C.W.J.C. No. 10441 of 2010 who were appointees on the compassionate ground possessed the minimum qualification



prescribed in the Advertisement for recruitment through the Commission, they were discharging the same nature of duties which those who have been recruited in terms of the advertisement were discharging. It was contended that there was no justification for grant of a lesser payscale to them. Principles of equal pay for equal work was cited before the learned Single Judge on the strength of the judgment of the Hon'ble Supreme Court in the case of **Nehru Yuva Kendra Sangathan vs Rajesh Mohan Shukla & Ors** reported in **AIR 2007 SC 2509**.

51. The learned Single Judge in C.W.J.C. No. 10441 of 2010 considered the submissions of the parties and held inter alia as under:-

“.....The petitioners were not recruited under any advertisement which mentioned any particular pay-scale. Had the petitioners been offered compassionate appointment in the pay-scale of Rs.4000-6000/-, but granted the scale of Rs.3050-4590/-, the matter may have been entirely different. On the contrary, the date on which they came to be appointed, a clear government instruction held the ground on 20.6.2001 that under the Finance Department Letter No.8925 dated 20.12.2000 compassionate appointments on Grade III was to be granted in the scale of Rs.3050-4590/- only. There is no challenge by the petitioners to this decision.....”

53. While rejecting the submissions of the petitioners on the ground of equal pay for equal work, the learned Writ Court observed thus:-



“.....The petitioners were appointed in the years 2001- 2004 in the scale of Rs.3050-4590/-. Quite obviously, they were sanguine of their entitlement to the scale of Rs.3050- 4590/- only under the Finance Department Letter dated 20.12.2000. They did not raise any grievance that any advertisement had been published in 1998 providing a payscale of Rs.4000-6000/- for the same post. The institution of C.W.J.C. No.13577/06 by those recruited under the advertisement of 1998 cannot bring any succor to the petitioners who accepted their appointment on a specified pay-scale and continued on the same without demur for long years. Merely because certain orders may have been passed by the Court with regard to another category of persons who are clearly distinguishable from the petitioners, superficial similarity cannot be sufficient to hold that they are entitled to parity in pay-scale. It has rightly been urged on behalf of the respondents that the pay-scale of Rs.4000- 6000/- was mentioned in the advertisement of 1998 and was thus the ground for relief to those recruited under the advertisement. The petitioners cannot be permitted to indulge in fence sitting to seek parity in relief with those from whom they are distinguishable.....”

54. We have noticed that on behalf of the petitioners, a number of judgments have been placed before us such as **State of Kerala vs. B. Renjith Kumar and Others** reported in (2008) 12 SCC 219, **State of W.B. and Others vs. Pantha Chatterjee and Others** reported in (2003) 6 SCC 469, **Food Corporation of India and Others vs. Ashis Kumar Ganguly and Others** reported in (2009) 7 SCC 734, **State of Punjab and Others vs. Jagjit Singh and Others** reported in (2017) 1 SCC 148 and **Bihar State Beverages Corporation Limited and Others vs. Naresh Kumar Mishra and Others** reported in (2019) 5 SCC 110 to



buttress the point of equal pay for equal work. Learned counsel for the petitioners have also placed reliance on the judgment in the case of **Nehru Yuva Kendra Sangathan** (supra), **State of Haryana v. Jasmer Singh** reported in (1996) 11 SCC 77 and **UT Chandigarh, Admn. v. Manju Mathur** reported in (2011) 2 SCC 452 to make a submission that the petitioners would be entitled for the same scale of pay on the principle of equal pay for equal work.

55. In our considered opinion the real issue involved in these matters are not to be resolved by applying the principles of equal pay for equal work. A question arises as to whether the petitioners could have been appointed on the post of Assistant which was a post prior to demerger in the revised pay scale of Rs.4000-6000/-. The petitioners are seeking parity with those direct recruits who had participated in the selection process pursuant to the advertisement of 1998 and in whose case despite the existence of sub-clause (ii) of clause (5) of the letter dated 20th December, 2000 no step for cancellation of the selection process was taken rather they were appointed in the year 2004-05 but were offered a lesser pay scale. The case of this petitioners are clearly distinguishable. We agree with the submissions of learned Advocate General that in this case, the pay scale of Rs.3050-



Rs.4590/- is of 'LDC' irrespective of source of appointment, thus there cannot be any argument on the principles of equal pay for equal work. We are of the considered opinion that this principle has no application at all in these cases.

Division Bench Judgment in Smt. Mosarrat Arra Khanam

56. The judgment of the learned Writ Court in **Smt. Mosarrat Arra Khanam (supra)** came to be challenged in LPA No. 100 of 2012 before the Hon'ble Division Bench of this Court. By its order dated 19.02.2014, the Hon'ble Division Bench presided over by the then Hon'ble the Chief Justice held that the direct recruits were appointed pursuant to the advertisement issued by the BPSC in 1998 for the recruitment on the post of Assistant-cum-Typist in the existing pay scale of 1200-1800. The selection process was completed in 2005 or thereabout but the cadre was bifurcated in the year 1999. After bifurcation of the cadre of Assistant-cum-Typist, the recruitment process was continued without modification. The Hon'ble Division Bench has observed interalia as under:-

“.....It is apparent that these direct recruits constitute one isolated group. The appellants cannot have legitimate claim of parity of pay with those direct recruits .

The claim of the appellants for parity of pay with those lower division clerks is *ex facie* unsustainable. It is not in dispute that the appellants were appointed during the years 2001 to 2004 and are placed in the pay-scale approved for the cadre of lower division clerks. Therefore, appellants' claim to a higher pay-scale sanctioned for the higher post of



Upper Division Clerks cannot be accepted. The Petitions are rightly rejected.....”

Judgment in case of Avinash Kumar Chakerwarty

57. Subsequently, **Avinash Kumar Chakerwarty** (**supra**) case came before a learned Writ Court for consideration. The petitioners in the said writ application made a prayer for directing the respondents for granting them pay scale of Rs.4000-6000 on the ground that in similar circumstances, other persons were granted same relief. The facts of this case revealed that all the petitioners were appointed in the clerical cadre of the Collectorate of Siwan on compassionate ground. The petitioner nos. 1 and 4 were appointed by the office order no. 86 dated 06.08.2002 and petitioner no. 5 was appointed as LDC by the office order dated 05th October, 2002. The petitioner nos. 2 and 3 were appointed by order no. 21 dated 23.10.2006. The learned Writ Court noticed that the petitioners have based their claim on the basis of the order dated 17.12.2007 passed in CWJC No. 13577 of 2006. It was argued by Shri Thakur, learned counsel for the petitioners that in the said case also, the petitioners were appointed after the post of LDC and UDC were demerged but this Court directed to grant them pay scale 4000-6000. On behalf of the State, the attention of the learned Writ Court was drawn towards clause 5(ii) of Resolution dated 20th December, 2000 and a distinction was



sought to be made from that of the case of the petitioners in **Manish Kumar Pathak** and that of **Ganesh Singh (supra)**. A perusal of the order of the learned Writ Court in **Avinash Kumar Chakerwarty (supra)** case nowhere shows that the judgment of the Hon'ble Division Bench of this Court in the case of **Smt. Mosarrat Arra Khanam (supra)** rendered on 19.02.2014 was brought to the notice of learned Writ Court. Still, it appears that the learned Writ Court took a view that the petitioners in **Avinash Kumar Chakerwarty (C.W.J.C. No. 1498 of 2011)** would not get the benefit of parity or equality with the petitioners of C.W.J.C. No. 13577 of 2006.

Judgment in Ganesh Singh - distinguished

58. As regards the judgment of this Court in the case of some of the employees in whose favour order as contained in Annexure '5' to the said writ application was passed granting them pay scale of Rs. 4000-6000/-, learned Writ Court in **Avinash Kumar Chakerwarty** took a view that the petitioners of Annexure '5' were admittedly retrenched employees and subsequently as per policy decision, they were given the pay scale of Rs.4000-6000/-. The writ petition was also dismissed on the ground that the petitioner nos. 1 , 4 and 5 were appointed in the year 2002 itself in



the pay scale of 3050-4590 but they had approached this Court after lapse of about nine years.

59. This Court finds that the judgment of the learned Writ Court in **Ganesh Singh (supra)** has no application in the present case. In the said case the petitioners had participated in limited examination in terms of a scheme approved by the Hon'ble Supreme Court. The said judgment has been reported in **(1998) 8 SCC 218**. The petitioners continued to be governed by Advertisement No. 1/2000 dated 19.04.2000. It was held that the Resolution dated 20.12.2000 had no application in the said case.

Division Bench Judgment in Avinash Kumar Chakerwarty

61. Being aggrieved by the decision of the learned writ court in **Avinash Kumar Chakerwarty (supra)**, the petitioners moved in a Letters Patent Appeal bearing No.167 of 2016. The Hon'ble Division Bench of this Court upturned the judgment of the learned writ court in C.W.J.C. No. 1498 of 2011 and allowed the appeal. What prevailed upon the Hon'ble Division Bench in LPA No.167 of 2016 are being reproduced as under:-

“We have heard learned counsel for the parties at length and we find that all the petitioners in the writ petition and the employees, who were appointed by virtue of the order passed in CWJC No.17566 of 2006 and the employees, who were originally working in the non-formal education scheme and who were given fresh appointment vide Annexure-4 dated 23rd July, 2005 and Annexure-5 dated 20th July, 2006, are all working in the same office, namely the Collectorate at Siwan,



all are discharging identical function, but except the five petitioners, the other employees indicated herein above are getting higher pay in the scale of Rs.4000/- - Rs.6000/-. The only reason for giving the benefits are that they were appointed after the circular was issued on 20th December, 2000. However, the fact remains that even in the case of employees, who were petitioners in CWJC No.13755 of 2006, they were appointed after 20th December, 2000, but they have been granted the benefit in the higher scale of pay of Rs.4000/- - Rs.6000/- on account of the fact that the process of appointment initiated in the year 1999 was delayed because of the procedural delay. In the case of the petitioners also, as is evident from the records, their appointment process was also initiated in the year 1999-2000 and in the case of the petitioner Ashok Kumar Sinha, he filed the writ petition claiming compassionate appointment way back in the year 1999 in CWJC No.9934 of 1999 and it was only after the order was passed in the aforesaid MJC in the year 2005 that the appointment order was issued. That being so, we see no much difference between the employees, who were petitioners in CWJC No.13577 of 2006 and the present petitioners. Even if for the sake of argument it may be assumed that the petitioners and the employees, who were petitioners in CWJC No.13577 of 2006 form two different categories, there is no justification in the matter of discrimination between the present petitioners and the retrenched employees who were working in the non formal education scheme. It is clear that the nonformal education scheme came to an end and large number of Class-III and Class IV employees was retrenched and thereafter in the year 2005 and 2006 as is evident from Annexures 4 and 5, they were re-appointed as a fresh appointee in the year 2005 and 2006, that is much after 20th December, 2000 and in their case, they have been granted the higher pay scale of Rs.4000/- - Rs.6000/-. If that be so, there is a discrimination in the matter of granting similar benefit to the petitioners when more than 300 employees have been granted such benefit of higher pay scale in the grade of Rs.4000/- - Rs.6000/- even after they were appointed in the year 2005 and 2006, there is no reason as to why similar benefits should be denied to the petitioners when the petitioners are also doing similar work and were appointed after 20th December, 2000. To that effect, there is discrimination in the matter and the petitioners are entitled to equal treatment. That apart, the petitioners are working in the Collectorate at Siwan and many employees identically situated, like the petitioners, who were appointed after 20th December, 2000, as is indicated hereinabove, are being granted pay in the scale of Rs.4000/- - Rs.6000/- and if that be the factual position, there



is no reason why a similar benefit should not be extended to the petitioners.

Keeping in view the aforesaid, this appeal is allowed, the order impugned dated 29.10.2015 passed in CWJC No.1498 of 2011 is quashed. The said writ petition is allowed and the petitioners are directed to be paid the benefit in the scale of pay Rs.4000/- - Rs.6000/- retrospectively with effect from the date of appointment. However, arrears of the petitioner are only to be granted with effect from the date they filed the writ petition before the High Court, i.e. with effect from 21.01.2011.”

62. It is evident from a bare reading of the order of the Hon'ble Division Bench in **Avinash Kumar Chakerwarty (supra)** that the judgment of another Division Bench in the case of **Smt. Mosarrat Arra Khanam (supra)** was not brought to the notice of the subsequent Division Bench deciding the same and one issue.

Opinion of the Court

63. Upon careful consideration of the entire submissions and the materials including the judicial pronouncements on the subject, we find at the first instance that even though the writ petitioners have given an impression that the cases are to be considered by applying the principle of “equal pay for equal work”, the real issue falling for consideration in these cases is as to whether the petitioners could have been appointed on the post of ‘Clerical Cadre’ which was the unified post existing prior to the demerger with effect from 20.12.2000. Some of the petitioners have contended that their names were under consideration before



the District Level Compassionate Appointment Committee prior to the date of demerger and that would confer a right upon them to claim their appointment on the post of Clerk and the pay-scale as existing prior to the demerger.

64. We are afraid that such contentions cannot be allowed by any stretch of imagination. In this regard we are of the opinion that a mere pendency of the applications of persons seeking appointment on compassionate ground or the recommendation by the establishment committee would not be a relevant date for taking into account the policy of the government with regard to the post on which the appointment could have been made after demerger and scale of pay would have been allowed to an appointee on the post after demerger irrespective of the source of appointment. So far as the policy on compassionate appointment is concerned, we have taken note of paragraph '8' of the guidelines as contained in the Memo No. 3/C 2-2067/90 ka 13293/Patna-15 dated 5.10.1991. There is no deviation from the policy on the appointment on compassionate ground. The post of LDC came into being on demerger of the post of Clerk and the pay scale attached to the same is Rs. 3050-4590/-.

65. We have already noticed that in the resolutions/letter dated 20th December, 2000 the government had already taken a



decision that after this date the vacancies existing in the post prior to demerger shall be taken as the vacancies available in the junior most category/lowest category as identified in the demerger notification.

66. In this case, the demerger notification has clearly brought in existence, the junior most category of post as LDC in the pay scale of Rs.3050-4590, therefore, all the vacancies which would have been available in the post of Assistant (prior to demerger) would be taken as the vacancies available in the post of LDC in the pay scale of Rs. 3050-4590. Once this decision was taken and notified, the petitioners whose names were under consideration for appointment on compassionate ground prior to demerger could not have been appointed on the post of Assistant. The only post which was available for their appointment was the post of LDC in the pay scale of Rs.3050-4590. In fact we have noticed that in C.W.J.C. No.23831 of 2018, the petitioner himself claims that the District Compassionate Appointment Committee recommended his name for appointment on 17.01.2001 and he was appointed as LDC in the pay scale of Rs.3050-4590. The petitioner accepted the same and continued to work without any demur or protest.



67. In CWJC No.2804 of 2018 in fact the petitioners were appointed on 04.01.2001 but they were given the pay scale of Rs.4000-6000/- which was immediately modified by issuing a corrigendum dated 12.04.2001. The petitioners were allowed the pay scale of Rs.3050-4590 which they accepted without any protest. The petitioners in other writ petitions have been appointed much thereafter and they have also accepted the post with the pay scale attached to the same.

68. In the kind of clarity which had already come by virtue of the specific stipulation in clause 5(i) of the resolution no. 8826 dated 20.12.2000, the petitioners cannot be allowed to contend that they were entitled to appointment on a post which did not exist after demerger. Sub-clause (ii) of clause 5 of the said resolution made it very clear that any selection process which may be going on or has been completed for filling up the vacancies in the erstwhile post be cancelled. The learned writ court in CWJC No.10441 of 2010 (**Smt. Mosarrat Arra Khanam**) has rightly appreciated the effect of non-cancellation of the advertisement published in the year 1998 for recruitment through BPSC in earlier clerical cadre post in the pay scale of Rs.4000-6000. In fact in CWJC No.13577 of 2006 also the learned writ court granted the



benefit of the pay scale to the direct recruits of the said writ application after observing as under:-

“Even in Clause(5) of the instructions contained in letter dated 20th December,2000, Annexure—5 if the authorities were not inclined to appoint the petitioners in the revised scale of the advertised post they ought to have cancelled the advertisement and the selection process but once they have not chosen to cancel the advertisement and the selection process then they have to appoint the petitioners in the corresponding revised scale of the post advertised in Annexure-1.”

69. It is for the aforesaid reason that in the Letters Patent Appeal No.100 of 2012, the Hon’ble Division Bench observed that these direct recruits constituted one isolated group and the appellants cannot have legitimate claim of parity of pay with those direct recruits. We find that the views expressed by the Hon’ble Division Bench in **Smt. Mosarrat Arra Khanam** is the correct view.

70. Having said so, we find that in course of hearing of the Letters Patent Appeal in case of **Avinash Kumar Chakerwarty**, neither learned counsel for the appellants nor learned counsel for the State brought the judgment in the case of **Smt. Mosarrat Arra Khanam** to the notice of the Bench. We have found from the judgment in the case of **Avinash Kumar Chakerwarty** that clause 5(i) and (ii) of the Resolution dated 20th December, 2000 were also not specifically brought to the notice of the Hon’ble Division Bench.



71. The circumstances under which the petitioners in C.W.J.C. No.13577 of 2006 were granted reliefs were completely different and distinct and this aspect of the matter could have been gone into by the Hon'ble Division Bench dealing with the case of **Avinash Kumar Chakerwarty**, if prior judgment of the Hon'ble Division Bench in the case of **Smt. Mosarrat Arra Khanam** could have been brought to the notice of the court hearing **Avinash Kumar Chakerwarty's** case.

72. In fact while hearing these matters one of us (Rajeev Ranjan Prasad, J.) pointed out to Mr. Kishore Kumar Thakur, learned counsel leading the argument in C.W.J.C. No.23831 of 2018 that he was the lawyer representing the petitioners in C.W.J.C. No. 1948 of 2020 (**Shankar Dayal Singh & Ors. Vs. The State of Bihar & Ors.**) in which the judgment of this Court in **Smt. Mosarrat Arra Khanam** was not cited. Same was the situation with the other writ applications on which reliance was placed in C.W.J.C. No. 17of 2023 and orders were obtained.

73. C.W.J.C. No.15978/2010 (**Sanjiv Kapoor and Ors. Vs. the State of Bihar) & ors.**) and 19 other analogous matters on which reliance has been placed on behalf of the petitioners, came for consideration before his Lordship on 20.02.2023. But even at this stage this Court was not informed about the judgment of the



Hon'ble Division Bench in case of **Smt. Mosarrat Arra Khanam**.

What is disturbing is that not only learned counsel for the petitioners in those writ applications did not inform this Court about the judgment of the Hon'ble Division Bench in the case of **Smt. Mosarrat Arra Khanam (supra)**, even the battery of law officers of the State some of whom were the Government Pleaders, Government Advocate and the Additional Advocate General did not point out the said judgment, as a result of this kind of half hearted assistance, the order dated 20.02.2023 was obtained from the writ court in **Sanjiv Kapoor's** case and other 19 writ petitions. In facts, the order dated 20.02.2023 contains the stand of the State which is being re-produced hereunder:-

“Today, learned counsel for the State were called upon by this Court to say as to whether there is any difference in the case of these petitioners with that of the petitioners in C.W.J.C. No. 17 of 2023. Learned counsel for the State do not dispute that all these writ applications are similarly situated with C.W.J.C. No. 17 of 2023 and that they would have no objection if these writ applications are also disposed of in similar terms.”

74. Even learned counsel for the State despite being specific query made by the writ court did not point out the earlier judgment of the Hon'ble Division Bench. It has been found that even though Mr. Kishore Kumar Thakur, learned Advocate was representing the petitioners in C.W.J.C. No. 7988 of 2020 (**Abhay Kumar Vs. State of Bihar**) and in the said case, the learned



Single Judge of this Court vide its judgment dated 06.04.2021 noticed two conflicting views taken by the Hon'ble Division Bench in L.P.A. No.100 of 2012 (Smt. Mosarrat Arra Khanam) and LPA No.167 of 2016 (**Avinash Kumar Chakerwarty**) and held that the subsequent Division Bench judgment in the case of **Avinash Kumar Chakerwarty** could not notice the earlier Division Bench judgment in the case of **Smt. Mosarrat Arra Khanam**, the same learned Advocate Mr. Thakur did not point out this to the learned writ court presided by one of us (Rajeev Ranjan Prasad, J.) in C.W.J.C. No.3658 of 2016 (**Pawan Kumar Sah & Ors. Vs. the State of Bihar & Ors**) and other analogous cases which were heard and decided on 03.04.2023. Once again the judgment in **Manish Kumar Pathak's** case was cited. The said writ application was, however, dismissed after finding that the case of the petitioners would not be covered by the judgment of this Court in C.W.J.C. No. 13577 of 2006 and C.W.J.C. No.7730 of 2009.

The case of Pawan Kumar Sah (supra)

75. In this case, the petitioners had appeared pursuant to an advertisement bearing no. 01 of 2003 which was published by the BPSC for filling up Class 3 post through limited competitive examination for the Class 4 employees. 125 posts were advertised



and the advertisement clearly provided that these appointments to be made on the post of LDC in the scale of 3050-4590. The petitioners appeared in the limited competitive examination pursuant to the said advertisement, they were appointed on the said post with the pay scale. The petitioners, however, claimed that by virtue of the judgment of this Court in C.W.J.C. No. 13577 of 2006 and C.W.J.C. No. 7730 of 2009, they were entitled to the pay scale of Rs.4000-6000. Thus, they raised the issue of parity in the pay scale after about twelve years. Their representations made before the District Magistrate was rejected. In the said case, the learned Writ Court presided over by one of us (Rajeev Ranjan Prasad, J.) distinguished the case of the petitioners from that of C.W.J.C. No. 13577 of 2006 and C.W.J.C. No. 7730 of 2009. Paragraph '20' and '21' of the judgment in the case of **Pawan Kumar Sah and others** are being reproduced hereunder for a ready reference:-

“20. To this Court, it appears that the case of the petitioners would not be covered under Note-2 for the simple reason that the facts which are required to be there for applicability of Note-2 are not present in the case of the petitioners. It is not their case that the petitioners were at any point of time drawing more pay than the another Government servant junior to him in the same cadre.

21. Again, it is not their case that by virtue of revision of pay, their pay band got fixed at a stage lower than that of stage of junior. The facts of the case are rather converse. In this case, the direct recruits who joined the service after the petitioners were given higher pay by virtue of the judgments of this Court in CWJC No. 13577 of 2006 and CWJC No. 7730 of 2009. The reason being that in their case the selection process had started in the year 1998 itself which



was prior to de-merger whereas in the case of the petitioners, they participated in the selection process by virtue of Advertisement No. 01 of 2003 after the de-merger of the post of LDC and UDC.”

In ultimate analysis, all those writ applications were dismissed.

76. In course of argument, since reliance has also been placed by learned counsel for the petitioners on the judgment of this Court in the case of **Satish Kumar Vs. The State of Bihar & Ors. (C.W.J.C. No. 3438 of 2019)** and **Binit Kumar (supra)** and other analogous matters, it would be apt to take a glance over the said judgments as well.

77. In the case of **Satish Kumar (supra)** a learned Single Judge of this Court held in its order dated 05.10.2020. It has been held inter-alia as under:-

“.....The petitioners of CWJC No.10441 of 2010, CWJC No.10449 of 2010 and CWJC No.18070 of 2010 filed LPA No.100 of 2012 and LPA No.188 of 2012. A Division Bench of this Court also held that such persons who are like of the petitioner are not entitled to get the scale of Rs.4000-6000 and they were appointed in Lower Division Clerk after demerger of the cadre on 20.12.2000, but this Division Bench judgment has not been considered in the later Division Bench judgment of this Court in LPA No.167 of 2016, therefore, the later judgment of the Division Bench is per incuriam.....”

78. The petitioners in case of **Binit Kumar** had moved this Court against the order of their reversion from the post of lower division accounts clerk /lower division clerk (accounts) in the pay scale of Rs.3050-4590 with effect from 2012.2000. Some of the petitioners were aggrieved by the order of the Additional Secretary,



Rural Works Department, Government of Bihar by which it was decided that all appointments made against the post of Accounts Clerk, Lower Division Clerk (Accounts) and the Junior Accounts Clerk in the grade pay of Rs.2400/- on compassionate ground would be re-designated as the LDC with effect from their initial appointment in the pay scale of Rs.3050-4590 and the excess salary drawn by them as clerks in the accounts cadre would be recovered. The petitioners were aggrieved by the Memo No. 5483 dated 11.07.2016 (Paragraph '7') whereby the Finance Department had tried to create a class in between those appointed through direct recruitment and those appointed on compassionate grounds to hold that the resolution no. 3111 dated 25.03.2015 does not cover the case of compassionate appointees. All the writ petitioners were appointed after 20.12.2000 and they were given the pay scale of Rs.3050-4590 and their scales were upgraded subsequently. The learned Writ Court found that this issue was raised for the first time in CWJC No. 12124 of 2011 (**Ram Janam Jha and others**) when a grievance raised on wrong fixation of the pay scale to the accounts clerks, the respondent was put to challenge before this Court. The learned Writ Court in the said case quashed the order of the Finance Department dated 03.08.2010 and held that the petitioners of the said case would be



treated as Accounts clerks throughout with all consequential benefits and the pay scale so granted to them are not refixed nor recovery permissible and the petitioners would be entitled to be paid on the basis of their designation as against accounts clerk and their retiral dues to be calculated accordingly.

79. In Letters Patent Appeal the Hon'ble Division Bench took note of the Finance Department's resolution no. 3111 dated 25.03.2015 and judgment and order passed on 24.08.2016 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 the accounts clerks, whether appointed on compassionate ground or otherwise, all of them would be entitled to the same pay scale. A challenge to the judgment of the Hon'ble Division Bench before the Hon'ble Supreme Court in SLP No. 2982 of 2017 was dismissed by the Hon'ble Supreme Court vide judgment and order passed on 10.02.2017. While the Letters Patent Appeal of the State was pending consideration before the Hon'ble Division Bench, the Finance Department has tried to pre-empt the decision vide 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



compassionate appointees. The learned Writ Court went into the resolution of the Finance Department contained in Letter No. 6389 dated 28.09.1999 which classified the appointees in the accounts clerical cadre in two categories. While category no. 1 consists appointment made in between 01.05.1980 to 27.09.1999, the other relates to appointment made after 28.09.1999. It was held that since the appointment of the petitioners were made after 28.09.1999, hence the decision of the State Government as contained in Resolution dated 25.03.2015 at the paragraph 5(ii) would be relevant for the issue and that provides for all appointments made in different departments in the accounts clerical cadre against the post of Junior Accounts Clerks/Lower Division Accounts Clerk/Lower Division Clerk (Accounts) would be designated as Junior Accounts Clerk and would be entitled to a pay scale of Rs.4000-6000 with effect from 31.12.2005 and to the pay scale in pay band with grade pay 2400/- w.e.f 01.01.2006. It further pointed out that on promotion to post of Senior Accounts Clerk they would be entitled to pay scale of Rs.4500-7000 and in pay band 1 with grade pay 2800/- w.e.f. 11.01.2006 respectively.

80. It is in the aforementioned background, the learned writ court considered the issue as to whether or not the compassionate appointees in the Accounts Clerk Cadre would be entitled to the



scale admissible under Resolution dated 25.03.2015 of the State Government. The Court found that the issue has been settled in the case of **Ram Janam Jha (LPA No. 206 of 2015)**. The judgment of the learned writ court in the case of **Binit Kumar** (supra) came to be challenged in LPA No. 1702 of 2017 before the Hon'ble Division Bench. The said LPA stood dismissed. It appears that a challenge to the judgment of the Hon'ble Division Bench of this Court before the Hon'ble Supreme Court failed. This fact finds mentioned in Memo No. 6012 dated 10.07.2023 issued under the signature of the under Secretary to the Government in the Department of Finance which is available with the compilation provided by Mr. Mauli, learned Senior Advocate.

81. We have noticed on going through the judgment in the case of **Binit Kumar and Others** that the same has no application in the facts and issues involved in the present set of writ applications.

82. In ultimate analysis, we proceed to answer the question referred to the larger Bench in C.W.J.C. No. 23831 of 2018 as under:-

(i) Any person appointed on the post of Lower Division Clerk after demerger in the scale of Rs.3050-Rs.4590/- cannot claim and would not be entitled to a higher pay scale of Rs.4000-Rs.6000/-. This Court has already noticed that the judgment of the Division Bench in the case of **Smt. Mosarrat Arra Khanam** (Supra) was not brought to the notice of the subsequent Division Bench in the case of **Avinash**



Kumar Chakerwarty) (supra). It is further held that the principle of “Equal pay for equal work” has no application in these matters.

83. In C.W.J.C. No. 2804 of 2020, three questions have been referred to the larger Bench, we answer the same in corresponding terms as under:-

(i) the views expressed by the Hon’ble Division in the case of **Smt. Mosarrat Arra Khanam and others** (supra) is the correct view. We do not approve the views expressed by the Division Bench in the case of **Avinash Kumar Chakerwarty and others**. The case of **Binit Kumar and Others** (supra) deals with altogether a different issue which is not falling for consideration in the present writ applications.

(ii) After Finance Department’s Resolution dated 20.12.2000, a demerger of the post of Assistant resulted in existence of three different posts i.e. (I) Lower Division Clerk (ii) Upper Division Clerk and (iii) Assistant. In terms of clause (5)(i) of the Resolution Dated 20.12.2000 the vacancies existing in the post of Assistant (prior to demerger) would be taken as the vacancies existing in the post of Lower Division Clerk which is the junior most/ lowest post available in that category. Thus, the petitioners who have been appointed after 20.12.2000 could have been appointed only against the post of Lower Division Clerk in the pay scale of Rs.3050/- Rs.4590/-.

(iii) All the appointees on the post of Lower Division Clerk after 20.12.2000, irrespective of their source of appointment are entitled to the pay scale of Rs.3050 – Rs. 4590/-.



84. Since we have heard the writ petitions with the consent of the parties for final disposal, these writ applications being devoid of merit are being dismissed. The petitioners are not entitled for any relief.

85. The parties shall bear their respective costs.

(Vipul M. Pancholi, CJ)

(Rajeev Ranjan Prasad, J)

(Arun Kumar Jha, J)

Pawan/Avin-

AFR/NAFR	AFR
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