

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7988 of 2020

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

... .. Petitioner

Versus

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

... .. Respondents

with

Civil Writ Jurisdiction Case No. 7965 of 2020

Digvijay Kumar Singh son of Late- Awdhesh Kumar Singh resident of Village- Parauna, P.S.- Taraiya, District- Saran (Chapara).

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. Additional Chief Secretary, Department of Finance, Government of Bihar, Main Secretariat, Patna.
3. Principal Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
4. Chief Engineer, Sinchai Srijan Water Resources Department, Govt. of Bihar, Motihari (East Champaran).
5. Superintending Engineer, Tirhut Canal Circle, Water Resources Department, Muzaffarpur.
6. Executive Engineer, Tirhut Canal Division, Water Resources Department, Hajipur.
7. District Magistrate, Nawadah.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 7988 of 2020)

For the Petitioner : Mr. Kishore Kumar Thakur, Advocate
: Mr. Rajesh Kumar, Advocate
: Mr. Braj Kishore Singh, Advocate



For the Respondents : Mr. Ajay Kumar Rastogi (AAG 10)
: Mr. Parijat Saurav (AC to AAG 10)
(In Civil Writ Jurisdiction Case No. 7965 of 2020)
For the Petitioner : Mr. Kishore Kumar Thakur, Advocate
For the Respondents : Mr. Harish Kumar, GP-8
: Mr. Binod Kumar Singh, AC to GP-8
: Mr. Shubham Prakash, AC to GP-8

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 06-04-2021

As both the writ applications involve same legal issues and facts of the two cases are also similar to a considerable extent, they have been heard together with the consent of the parties and are being disposed of by the present common judgment and order.

2. This is an admitted position that the posts of Lower Division Clerk and Upper Division Clerk under the State Government of Bihar were merged and rechristened as 'Assistant' with a common pay-scale with the issuance of letter No.3734 dated 07.04.1977. Subsequently, the post of Assistant was demerged into two different cadres, namely, Lower Division Clerk (LDC) and Upper Division Clerk (UDC) with effect from issuance of a letter No.8826 dated 20.12.2000 by the Finance Department, Government of Bihar. At the relevant point of time, the post of LDC carried pay-scale of Rs.3050-4500, whereas pay-scale of Rs.4000-6000 was made admissible to the post of Upper Division Clerk. Sub-clause (ii) of Clause 5 of the said letter of the Finance Department dated 20.12.2000, clearly stipulated that no direct



appointment on the post carrying higher pay-scale of Rs.4000-6000 shall henceforth be made and in case where process of selection is underway, the same should be cancelled with immediate effect, even if the process of selection had been completed.

3. The petitioner of C.W.J.C. No. 7988 of 2020 (Abhay Kumar) was appointed on compassionate ground against Class-III post of Clerk by an order dated 22.01.2001 in the scale of Rs.4000-6000, consequent upon death of his father. However, after noticing the said policy decision of the State Government of Bihar, as contained in the letter dated 20.12.2000, the District Magistrate, Samastipur, issued a subsequent order as contained in Memo. No. 283 dated 02.03.2001, modifying the pay-scale to Rs.3050-4590 in place of Rs.4000-6000.

4. The petitioner of C.W.J.C. No. 7965 of 2020 (Digvijay Kumar Singh) was appointed on compassionate ground vide letter dated 18.10.2001, issued under the signature of the Commissioner, Water Resources Department, in the pay-scale of Rs.3050-4500 against a Class-III post.

5. The petitioners of both the cases claim that they are entitled to higher scale of Rs.4000-6000.



6. It is relevant to note at this stage that the Bihar Public Service Commission (BPSC) can undertake a process of selection for appointment against Class-III posts in the then existing pay-scale of Rs.1200-1800 (pre-revised), which was revised with the corresponding pay-scale of Rs.4000-6000. Those, who were selected on the basis of said recruitment process, were appointed between 2005-2008 in the pay-scale of Rs.3050-4590 (being the replacement scale of Rs.1200-1800).

7. With a grievance that in terms of the advertisement, against which they had applied, they were entitled to pay-scale of Rs.4000-6000, some of the candidates had approached this Court by filing a writ petition, which gave rise to C.W.J.C. No. 13577 of 2006 (*Manish Kumar Pathak and Others Vs. The State of Bihar and Others*), which was allowed by an order dated 17.12.2007 with a direction to give them pay-scale of Rs.4000-6000 though they were appointed much after 20.12.2000. The decision of this Court dated 17.12.2007 in case of *Manish Kumar Pathak* (supra) was subsequently affirmed by the Supreme Court and accordingly those recruited on the basis of 1998 advertisement, as noted above, have been allowed pay-scale of Rs.4000-6000 despite their appointments having been made after the date of demerger, i.e., 20.12.2000.



8. The petitioners claim that despite the decision of the State Government, as contained in the letter of the Finance Department dated 20.12.2000, they are entitled for pay-scale of Rs.4000-6000, claiming parity with those appointed through process of selection pursuant to an advertisement issued by the BPSC in 1998 and granted the scale in terms of this Court's decision in case of ***Manish Kumar Pathak*** (supra).

9. The facts noted above, bereft of unnecessary details, are not in dispute and are, in Court's opinion, sufficient for resolution of the controversy involved in the present case.

10. Mr. Kishore Kumar Thakur, learned counsel appearing on behalf of the petitioners, has heavily relied on a Division Bench decision of this Court dated 23.06.2017 passed in L.P.A. No. 167 of 2016 (***Avinash Kumar Chakerwarty and Others Vs. The State of Bihar and Others***), wherein the Division Bench sustained the claim of parity in pay-scale of the persons appointed against Class-III posts on compassionate ground and those appointed on the basis of the advertisement issued in 1998. Relevant portion of the Division Bench decision, in case of ***Avinash Kumar Chakerwarty*** (supra), reads as under : -

“ 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.”



11. He has placed reliance on various other decisions of this Court, illustratively, orders dated 03.10.2018 passed in C.W.J.C. No. 252 of 2018 (***Pankaj Kumar and Others vs. The State of Bihar and Others***), dated 25.06.2019 passed in C.W.J.C. No. 12893 of 2013 (***Shalini Priyadarshini Vs. The State of Bihar and Others***), dated 04.03.2021 passed in C.W.J.C. No. 1335 of 2020 (***Kundan Kumar Singh and Others vs. The State of Bihar and Others***) by different coordinate Benches of this Court.

12. While allowing pay-scale of Rs.4000-6000 to persons appointed against Class III posts on compassionate ground after 20.12.2000, the coordinate Benches of this Court in the aforementioned case have relied on Division Bench decision in case of ***Avinash Kumar Chakerwarty*** (supra).

13. Mr. Harish Kumar, learned G.P.-8 representing the respondent State of Bihar, on the other hand, has placed reliance on an earlier Division Bench decision of this Court dated 19.02.2014 passed in L.P.A. No. 100 of 2012 (***Smt. Mosarrat Arra Khanam and Others vs. The State of Bihar and Others and another analogous case***), wherein the Division Bench had categorically rejected the claim of compassionate appointees to get



higher pay-scale of Rs.4000-6000, at par with the direct appointees.

14. He has submitted that the Division Bench of this Court, in case of *Smt. Mosarrat Arra Khanam* (supra), after having considered the entire aspect of the matter, had laid down clearly that compassionate appointees against Class-III post were entitled to the pay-scale of Rs.3050-4590, which remained unnoticed in subsequent Division Bench decision in case of *Avinash Kumar Chakerwarty* (supra) and other decisions, which are being relied on by Mr. Kishore Kumar Thakur. He has referred to a recent coordinate Bench decision dated 05.10.2020 passed in C.W.J.C. No. 3438 of 2019 (*Satish Kumar vs. The State of Bihar and Others*), wherein the Division Bench decision, in case of *Avinash Kumar Chakerwarty* (supra), has been held to be *per incurium* having not noticed the earlier Division Bench decision in case of *Smt. Mosarrat Arra Khanam* (supra).

15. He has further submitted that the petitioners upon their appointment on compassionate ground cannot claim parity with regularly recruited employees and they are entitled to pay-scale applicable on the dates of their respective appointments and not on the basis of the date of death of the Government servant, consequent upon which they had become entitled to be considered



for their appointment on compassionate ground. He has placed reliance on a Division Bench decision of this Court in case of ***State Bank of India v. Vindhwashini Devi***, reported in **2008(4) PLJR 668**.

16. He has submitted that a person, appointed on the basis of compassionate ground, which is an exception to the general rule of equality in the matter of employment, cannot invoke Articles 14 and 16 of the Constitution of India to claim parity in pay-scale.

17. In the aforesaid background of facts and various developments, the petitioner of C.W.J.C. No. 7988 of 2020 has challenged an order dated 15.02.2020 issued under the signature of the Deputy Collector (Establishment) under the Collectorate of East Champaran, Motihari, whereby his claim for grant of pay-scale of Rs.4000-6000 has been rejected by referring to an order dated 14.02.2012 passed in C.W.J.C. No. 12373 of 2011(***Abhay Kumar vs. The State of Bihar and Others***). It is evident from paragraph 22 of the writ application that for the same relief, the petitioner had approached this Court earlier by filing C.W.J.C. No. 12373 of 2011, which was disposed of by an order dated 14.02.2012.



18. The petitioner of C.W.J.C. No. 7965 of 2020 is seeking a direction to the respondents to allow him the pay-scale of Rs.4000-6000 in the facts and circumstances noted above.

19. It is evident from what has been pleaded and argued on behalf of the petitioners that pay-scale of Rs.4000-6000 was allowed to persons appointed after the date of demerger, i.e., 20.12.2000 on the basis of recruitment process, which was initiated by the BPSC in 1998, much before the decision of demerger was taken in the light of decision of this Court in case of ***Manish Kumar Pathak*** (supra). This Court noticed in the said case that since the advertisement was published and the posts were advertised much prior to demerger of cadre of Assistant indicating pay scale also, the delay caused on account of fault of the Commission and the State Government could not be allowed to adversely affect the entitlements in terms of pay-scale.

20. This controversy had earlier fallen for consideration by a coordinate Bench of this Court in case of ***Smt. Mosarrat Arra Khanam*** (supra), disposed of on 03.11.2011. Upon threadbare examination of the facts, the coordinate Bench, in the said judgment in case of ***Smt. Mosarrat Arra Khanam*** (supra), noticed that the compassionate appointees were entitled to, on the date of their appointment, pay-scale of Rs.3050-4590 and in no case they



can seek compassion upon compassion claiming a higher pay-scale on a misconceived claim of parity. The claim of compassionate appointees to the pay-scale of Rs.4000-6000 was specifically declined by the coordinate Bench in case of **Smt. Mosarrat Arra Khanam** (supra). The said decision came to be challenged before a Division Bench of this Court by way of appeal under Letters Patent of this Court giving rise to L.P.A. No. 100 of 2012. The Division Bench by a judgment and order dated 19.02.2014 passed in L.P.A. No. 100 of 2012, in exactly similar circumstance held as under :-

“In case of direct recruits, the advertisement was issued by the Bihar Public Service Commission in 1998 for recruitment for the posts of Assistant-cum-Typist in the existing pay-scale of Rs. 1200-1800/-. By the time the recruitment process was completed, in 2005 or thereabout, the cadre was already bifurcated in 1999. After bifurcation of the cadre of Assistant-cum-Typist, the recruitment process was continued without modification. The selected candidates were appointed as lower division clerks in the revised pay-scale of Rs. 3050-4590/-. However, the said direct recruits approached this Court under Article 226 of the Constitution in CWJC No. 1357 of 2006. According to the direct recruits, their appointment was made on the posts in pre-revised scale of Rs. 1200-1800/-. The said direct recruits were, therefore, entitled to the corresponding pay-scale of Rs. 4000-6000/-. The claim was accepted by this Court. Under orders of this Court those direct recruits have been placed in the pay-scale of Rs. 4000-6000/-.



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."

21. This is not in dispute that the said Division Bench decision, in case of **Smt. Mosarrat Arra Khanam** (supra), went unnoticed in subsequent cases including the Division Bench in case of **Avinash Kumar Chakerwarty** (supra). I am in full agreement with the view taken in the recent decision dated 05.10.2020 in case of **Satish Kumar** (supra), wherein the claim of the compassionate appointees to get pay-scale of Rs.4000-6000 has been rejected.

22. Mr. Harish Kumar, learned G.A.-8, has rightly placed reliance on a Division Bench decision in case of **Vindhwashini Devi** (supra), wherein it has been reiterated that an appointment on compassionate ground is an exception to the ordinary mode of recruitment, which cannot be claimed as a matter of right, rather it is governed by some rule or policy that may have been framed by the employer for the said purpose. The Division



Bench has held that date of death of deceased employee shall not determine the entitlement for appointment on compassionate ground. The date with effect from which a scheme is formulated, in my opinion, the petitioners could not have been granted pay-scale of Rs.4000-6000 in view of demerger of the cadre of Assistant with effect from 20.12.2000 as they could not have been appointed on the dates of respective appointments on compassionate ground against a post having pay-scale of Rs.4000-6000.

23. Situated thus, these applications, in my opinion, are meritless and are accordingly dismissed.

24. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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