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**(2011) 01 PAT CK 0005**  
**In the Patna High Court**  
**Case No : CWJC No. 3777 of 2006**

Gyan Ranjan Basak

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 17-01-2011

**Acts Referred:**

**Citation :** (2011) 01 PAT CK 0005

**Hon'ble Judges :** Ajay Kr. Tripathi, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Ajay Kr. Tripathi, J.—Annexure-1 is the speaking order dated 4.6.2005 passed by the Chief Secretary, Government of Bihar, on the basis of a direction issued by the High Court in CWJC No. 3216 of 2001. Since the speaking order has rejected the claim of the Petitioner for grant of promotion and pay-scale on the post of Deputy Secretary, the same has been challenged in the present writ application as Annexure-1. In other words this is the second visit of the Petitioner before the High Court for same or similar relief in the background now that the claim of the Petitioner has been rejected at the level of the Chief Secretary. The service history of the Petitioner which emerges from the pleadings is that the Petitioner was appointed as a Class-I Stenographer after he succeeded in the competitive examination on 11.3.1952. He was posted in the Political (Special) Department, now known as Home (Special) Department, Government of Bihar. He joined the post of a Personal Assistant on 1.1.1969 and as per the recommendation of the UPSC was promoted to the post of Private Secretary and deputed to work with the Chairman of Ganga Flood Control Commission as per the notification dated 5.5.1977 issued by the Personnel Department.

2. Vide memo dated 17.9.1980 Petitioner came to be appointed as a Private Secretary to the Governor of Bihar in the pay-scale of Rs. 670-1,155/-. There were two posts of Private Secretary one post of which was upgraded in the pay scale of Under Secretary with a pay scale of Rs. 890-1,415/- with effect from

26.5.1980 vide notification dated 20.8.1981 issued by the Cabinet Secretariat Department. Petitioner was absorbed against the said upgraded post of the Private Secretary with a pay scale of Under Secretary. The concerned notification has been annexed as Annexure-2 to the writ application.

3. Vide yet another notification dated 7.9.1981 issued by the Cabinet Secretariat Department Petitioner was given the pay-scale of Under Secretary w.e.f. 17.7.1980 i.e. the date Petitioner was appointed as a Private Secretary alongwith special pay of Rs. 200/-. This fact is evident from the notification annexed as Annexure-3. Petitioner came to be confirmed on the post of Private Secretary to the Governor of Bihar w.e.f. 14.9.1982 vide memo dated 11.10.1982 as would be evident from perusal of Annexure-4.

4. The post of Private Secretary to the Governor, Bihar was further upgraded to the pay scale of Deputy Secretary with the pay scale of Rs. 1,575-2,300/-. This notification granting the benefit is dated 24.9.1986 and is Annexure-5 to the writ application.

5. It is the contention of the Petitioner that the post of Private Secretary to Governor of Bihar, which was being occupied by the Petitioner, was redesignated as Principal Private Secretary to Governor of Bihar in terms of notification dated 3.10.1986 which is annexed as Annexure-6 to the writ application.

6. Vide yet another notification dated 14th October, 1986 (Annexure-7) the upgradation of the post of Private Secretary giving the benefit of the pay-scale of Deputy Secretary was made effective with retrospective date of 17.9.1985. Petitioner was confirmed on the post of upgraded post of Principal Private Secretary-cum-Deputy Secretary to the Governor in the pay scale of Rs. 1,575-2,300/- vide notification dated 18.4.1987 (Annexure-8). Petitioner is supposed to have been issued a pay slip showing the pay scale of Deputy Secretary authorizing him to draw salary on the post of Deputy Secretary.

7. The Department of Personnel and Administrative Reforms issued a notification dated 17.12.1987 by virtue of which lien of the Petitioner in the joint cadre of Personal Assistant in the Department was terminated w.e.f. 14.9.1982.

8. It is the assertion of the Petitioner that he was performing his duty on the post to the satisfaction of one and all and was drawing the pay scale of Deputy Secretary, by virtue of being Principal Private Secretary-cum-Deputy Secretary to the Governor of Bihar but all of a sudden vide order dated 23.3.1988 Petitioner was ordered to be compulsorily retired with immediate effect. It seems yet another employee of Raj Bhawan namely Panchanand Jha who was working as Deputy Secretary to the Governor was also given the same treatment.

9. Panchanand Jha challenged the order and a Division Bench quashed the order of compulsory retirement vide judgment dated 25.5.1989. The benefit of the decision of the Division Bench was extended to the present Petitioner as he was similarly situated on the advice of Advocate General of Bihar. Petitioner joined

the State Government (not the Governor Secretariat) on the basis of notification dated 17.11.1989 issued by Personnel and Administrative Reform Department but on the lower post of Under Secretary in the joint cadre of Assistants in the Home (Special) Department. This notification has been brought on record as Annexure-9 to the writ application. Petitioner is stated to have raised serious objection on his being posted on a lower post of Under Secretary when admittedly he was enjoying the status of a Deputy Secretary at the time of his compulsory retirement. According to the Petitioner, he was made to believe that since there was no post of Deputy Secretary available in the Department, therefore, his posting as an Under Secretary was a stop-gap arrangement till things were worked out. Petitioner therefore joined the post of Under Secretary as he had no option.

10. It is the further stand of the Petitioner that the Government was pleased to grant pay scale of Deputy Secretary to the Petitioner from the date of his compulsory retirement i.e. 23.3.1988 till the date of his rejoining on the post of Under Secretary i.e. 12th of September, 1989. Petitioner retired with effect from 31.7.1992 but he was not paid salary of the post of Deputy Secretary after his rejoining on the post as an Under Secretary till the date of his retirement. It is in this background that he was compelled to file a writ application which was CWJC No. 3216 of 2001. The same was disposed of with a direction upon the Chief Secretary to consider his case and pass a speaking order. Annexure-1 is the result thereof which is under challenge.

11. The primary submission of the Petitioner is that once Petitioner was reinstated by the Respondent State, he could not be put down in terms of hierarchy of pay scale by bringing him to the level of Under Secretary when admitted position was that Petitioner was working as Principal Private Secretary-cum-Deputy Secretary to the Governor.

12. The Respondent State have filed counter affidavit in support of the speaking order passed by the Chief Secretary. The stand of the State has been indicated in paragraph-8 of the counter affidavit. Since the same has vital bearing to the issue, it is being reproduced hereunder:-

It is submitted that actually the Petitioner was holding the upgraded post of Private Secretary in the pay scale of Under Secretary, that was designated as Private Secretary. The Petitioner was never granted the pay scale and status of Deputy Secretary. The claim of the Petitioner for scale and status of Deputy Secretary is not tenable on following grounds:-

(a) The post of Private Secretary to the Governor was upgraded in the pay scale of Under Secretary vide letter No. 3149 dated 20.8.81 of the Cabinet Secretariat and Co-ordination Department without obtaining the approval of the Cadre Controlling Department i.e. the Department of Personnel and Administrative Reforms.

(b) The Petitioner was the member of joint cadre of Personal Assistants of

Secretariat. The chain of promotion in the Joint Cadre of P.A. was from (I) Personal Assistant to Senior Personal Assistant, (II) S.P.A. to Private Secretary, (III) P.S. to Secretary whereas the chain of the promotion of Joint Cadre of Assistants of Secretariat and its Joint Offices was from (I) Assistant to Section Officer, (IV) Section Officer to Registrar/Under Secretary (the post of Registrar has been abolished w.e.f. 1.1.1996), (v) Under Secretary to Deputy Secretary.

Similarly the another chain of promotion to the Deputy Secretary is from the members of the Bihar Administrative Services.

It is submitted that the Petitioner was neither the member of the Bihar

Administrative Services nor the member of the Joint Cadre of Assistants of the Secretariat and its attached offices. Therefore, the claim of the Petitioner for the pay scale and status of Deputy Secretary can't be entertained.

(c) Considering the case of the Petitioner of similar nature of the order passed in CWJC No. 2321 of 1988 Panchanand Jha v. The State of Bihar and Others, the Petitioner was allowed to join after compulsory retirement. The Petitioner was also posted against the cadre post of Under Secretary conditionally in the Home (Special) Department vide notification No. 12605 dated 17.11.1989 of Department of Personnel and Administrative Reforms.

(d) That the Petitioner has also made a claim that shadow post of Deputy Secretary in the pay scale of Rs. 3,700-5,000/- has been created specifically for him by the Administrative Committee on creation of post vide its meeting on 18.9.2000. It is pertinent to mention here that decision of the above committee was not approved and implemented by the State Government was also admitted by the Petitioner in paragraph No. 26 of the instant writ petition.

13. In fact, a supplementary counter affidavit has further been filed rebutting the statements made in the rejoinder, which too has relevance and is being reproduced hereinbelow:-

5. That in reply to the statement made in paragraph Nos. 9 and 10 of the rejoinder, it is submitted that the statement in paragraph Nos. 8(a) and 8(b) of the counter affidavit is correct as no such record is available in the department that shows that the controlling department had given approval in the proposal of Cabinet Secretariat and Co-ordination Department.

6. That in reply to the statement made in paragraph No. 12 of the rejoinder, it is stated that the statement made in this paragraph is factually incorrect. The Petitioner has tried to misinterpret the language of notification dated 17.11.89. In that notification it has clearly mentioned that the Petitioner was temporarily posted against vacant cadre post of Under Secretary in the joint cadre of Secretariat Assistants. It does not mean that the Petitioner was taken into the cadre under the joint cadre of Assistants.

7. That in reply to the statement made in paragraph No. 13 of the rejoinder, it is

stated that the Petitioner claimed for the scale of Deputy Secretary but he did not try to understand the official procedure. It is pertinent to mention here that any committee of the Govt, is authorized only to make recommendation but not to take decision on the recommendation of the Committee. The State Govt, takes decision at its own level. Since the recommendation of the Committee was not implemented by the State Govt., the claim of the Petitioner has been denied as stated in paragraph No. 8(b) of the counter affidavit.

8. That in reply to the statement made in paragraph No. 14 of the rejoinder of the Petitioner, it is submitted that it has already been stated on behalf of the Respondent in para-9 of the main counter affidavit that the person junior to the Petitioner were never given promotion from the seniority list of the joint cadre of Personal Assistant by the Respondent. However, it is clarified that the seniority list published as on the 1st September, 1982 clearly shows that Sh. Lakhan Prasad at SI. No. 44 of the above said seniority list was junior to the Petitioner. That is why the claim raised by the Petitioner was not denied by the Respondent earlier. But Sh. Lakhan Prasad was never promoted on the post of Deputy Secretary from the seniority list of joint cadre of Personal Assistant as the records available with Respondent. It is pertinent to state here that it is not known to Respondent as to how as by whom Sh. Lakhan Prasad and other persons of Joint Cadre of Personal Assistant was promoted to the post of Deputy Secretary.

It is further submitted that the Petitioner has also not annexed any such documents related to the promotion of the above mentioned persons.

14. If what has been stated by the State in the counter affidavit and the supplementary counter affidavit is read with the reasoning given by the Chief Secretary in the impugned order contained in Anneuxre-1, then the Court has no hesitation in coming to a finding that the Petitioner has no claim to the post of Deputy Secretary or the pay scale which is being claimed by him. In fact, it seems that Petitioner was a beneficiary by giving a go-by to rules which is evident from the manner in which benefits kept coming his way by up gradation of posts and pay scales at times from back dates so long as he was working under His Excellency, the Governor of Bihar but the Petitioner cannot get a better right or position than what was decided by the Division Bench in the case of Panchanand Jha in CWJC No. 2321 of 1988. The Chief Secretary has quoted para 19 of the decision of the High Court rendered in the case of Panchanand Jha and the Petitioner's case therefore has been dealt with in light of the observation of the High Court. Once the Petitioner was treated to be an employee of the State Government, his right or position as well as his status will have to be determined by the State Government in accordance with the rules applicable to the State employees.. If what the High Court had decided in the case of Panchanand Jha was to be applied to the case of Petitioner by analogy then Petitioner can get benefit of the said decision only to that extent and he has no better claim now. The Chief Secretary has done no wrong in rejecting the claim of the Petitioner in

absence of similar post or similar promotional avenue being available in the joint cadre of Personal Assistants under the State Government more so since in the first place his lien on the post was terminated way back on 14.9.1982. Petitioner should thank his stars that he was taken back by the State Government in the job by due indulgence shown to him.

15. In the above factual matrix and the decision of the High Court rendered in the case of Panchanand Jha, there is no legal infirmity in the decision given by the Chief Secretary, Government of Bihar dated 4.6.2005, contained in Annexure-1. The order in question does not require any interference. The writ application is dismissed.