

**(2017) 08 PAT CK 0002**

**In the Patna High Court**

**Case No : 1700 of 2014**

Lallan Singh

APPELLANT

Vs

The State of Bihar & ors

RESPONDENT

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**Date of Decision :** 01-08-2017

**Acts Referred:**

**Citation :** (2017) 08 PAT CK 0002

**Hon'ble Judges :** Rajendra Menon, Anil Kumar Upadhyay

**Bench :** DIVISION BENCH

**Advocate :** Dayan Shanker Prasad, Sugandha Prasad, D.K. Prasad

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## **Judgement**

1. The instant Letters Patent Appeal has been filed by the appellant challenging the order of the Writ Court dated 17th of January, 2012 passed in CWJC No. 15395 of 2006.
2. The brief fact for the purpose of deciding the present Letters Patent Appeal lies in a narrow compass. The appellant, who was Treasury Guard, was asked to take over charge of Sub- Divisional Clerk vide Annexure-1 on account of relieving of one Kashi Nath Choudhary.
3. The appellant claims that he continuously discharged the duty and responsibility of a clerk on receiving charge from Shri Kashi Nath Choudhary and on the basis of the said dual discharge and responsibility of Treasury Guard and Sub-Divisional clerk he filed the writ application for a direction to the respondents to consider his case for promotion on the post of Sub-Divisional Clerk. In the writ petition he pleaded that notwithstanding the fact that he is officiating on the post continuously with effect from 24.1.1999 and satisfactorily discharging the duty and responsibility as clerk, his case for promotion on the post of Clerk was not considered.
4. The respondents filed counter affidavit wherein they have disputed the claim of the appellant for grant of promotion. In the counter affidavit it has been submitted that after the appointment of Jai Prakash Singh as Correspondence

Clerk, the appellant was transferred from Hilsa Building Division to Nalanda Building Division to carry his work of Treasury Guard. The respondents have also submitted that the appellant was granted 1st and 2nd ACP. However, they disputed the claim of the appellant for grant of promotion to Class-III post on the ground that from Class-IV post to Class-III post only four vacant posts were available for promotions and promotion was required to be granted in order of seniority and the name of the appellant was at Sl. No. 6 and as such his case could not be considered for promotion from Class-IV post to Class-III post.

5. The Writ Court after considering the rival submissions of the parties and on detailed consideration of the entire facts and circumstances held out that the petitioner was Treasury Guard which is Class-IV post and on sudden transfer of regular Sub-Divisional Clerk necessitated the receipt of a set of three keys of the chest from the Sub-Divisional Clerk and in this background the petitioner was asked to receive those set of keys from the transferred employee, namely, Kashi Nath Coudhary and accepting a bunch of keys of the safe by the petitioner who happens to be a Treasury Guard does not make him a Class-III employee. The writ court disbelieved the case of the petitioner that he has been made to work all these years on the post of a Sub-Divisional Clerk.

6. It is true that the post of Treasury Guard is a class IV post but the responsibility attached to the post of Sub-divisional Clerk to keep the bunch of the keys of the safe is a higher responsibility which the appellant was asked to perform. The responsibility assigned to the appellant on relieving of Kashi Nath Choudhary was not for a limited period but for nearly seven long years. This fact is evident from the pleading of the parties but the Writ Court declined to grant any relief to the appellant holding that the petitioner was given a charge of Sub-divisional Clerk on the basis of innocuous transaction. The Writ Court concluded that efforts have been made by the appellant but nothing tangible of having worked as such in the substantive post emerged and as such dismissed the writ application holding that in the absence of any rule or findings of unimpeachable material with regard to the appellant having been handed over charge and asked to officiate as a Sub- Divisional Clerk the writ petition filed for a claim or direction upon the respondents is misconceived and unwarranted.

7. During the course of hearing learned counsel for the appellant submitted that even till date the appellant is performing the duty of a clerk. Counsel appearing on behalf of the respondents has not been able to controvert the submission advanced on behalf of the appellant.

8. On consideration of the entire materials available on record and the submissions of the parties, we do not find any infirmity in the consideration of the Writ Court so far as rejection of the claim of the appellant for grant of promotion to a Class III post. Promotion in service is governed by set of rules. In the case of petitioner service seniority was the basis and the position of petitioner was below hence there was no illegality in not granting promotion as the petitioner was out of consideration zone. However, the claim of the appellant

for grant of officiating allowance or "equal wages for equal work" for discharging the higher responsibility of Clerk requires consideration. In view of the latest judgment of the Apex Court in the case of State of Punjab & Ors. Vs. Jagjit Singh and others: (2017) 1 SCC 148, wherein the Apex Court considering the constitutional mandate of equality in the matter of parity in pay scale and after considering almost all the judgment on the point of "equal wages for equal work" held out that equal wages for equal work has emerged as a constitutional doctrine. Paras 57 to 60 are clinching on the point and are quoted hereinafter for ready reference: " 57. There is no room for any doubt, that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charged, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situated, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

59. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

"Article 7 The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the

provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays." India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of "equal pay for equal work" constitutes a clear and unambiguous right and is vested in every employee - whether engaged on regular or temporary basis.

60. Having traversed the legal parameters with reference to the application of the principle of "equal pay for equal work", in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of "equal pay for equal work" summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post."

9. In the instant case the claim of the appellant is that he has discharged the duty of higher post and performed higher responsibility for approximately seven and half year and as such entitled to minimum of the pay scale of the post of clerk. In this connection the judgment of the Apex Court in the case of Arindam Chattopadhyay & Ors. Vs. State of West Bengal & Ors.: (2013) 4 SCC 152 is relevant. Para-13 of the judgment is clinching on the point that taking work of higher post for years together and denial of equal wage for equal work is impermissible. "13. Reverting to the facts of this case, we find that although the appellants were recruited as ACDPOs, the State Government transferred and posted them to work as CDPOs in ICDS projects. If this would have been a stop gap arrangement for few months or the appellants had been given additional charge of the posts of CDPO for a fixed period, they could not have legitimately claimed salary in the scale of the higher post, i.e., CDPO. However, the fact of the matter is that as on the date of filing of the Original Application before the Tribunal, the appellants had continuously worked as CDPOs for almost 4 years and as on the date of filing of the writ petition, they had worked on the higher post for about 6 years. By now, they have worked as CDPOs for almost 14 years and discharged the duties of the higher post. It is neither the pleaded case of the respondents nor has any material been produced before this Court to show that the appellants have not been discharging the duties of the post of CDPO or the degree of their responsibility is different from other CDPOs. Rather, they have tacitly admitted that the appellants are working as full-fledged CDPOs. since July, 1999. Therefore, there is no legal or other justification for denying them salary and allowances of the post of CDPO on the pretext that they have not been promoted in accordance with the Rules. The convening of the Promotion Committee or taking other steps for filling up the post of CDPO by promotion is not in the control of the appellants. Therefore, they cannot be penalised for the Government's failure to undertake the exercise of making regular promotions."

In view of the law laid down by the Apex Court in the case of State of Punjab Vs. Jagjit Singh (supra) and the judgment of the Apex Court in Arindam Chattopadhyay's case (supra) and considering the submissions of the appellant that the appellant has continuously discharged the responsibility of Clerk from 1999 to 2006 and thereafter till date, the respondents are required to consider the case for grant of "equal wages for equal work".

10. If it is found that the appellant has continuously discharged the responsibility of clerk, the respondents are obliged to pay minimum scale of the post following the judgment of the Apex Court discussed above. In the result the LPA is partly allowed to the extent indicated above.