

(1996) 04 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 5275 of 1995

Rajeshwar Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-04-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1996) 2 PLJR 204

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Shyam Kishore Sharma and Rameshwar Sharma, in 5275 and Sadanand Jha and Hemant Kumar Jha, in 4325, for the Appellant; Ganga Prasad Roy and Binod Kumar, in 5275 and G.N. Jha and M.N. Jha, in 4325, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—In both the writ petitions, as common points of law are involved, they were heard together and are being disposed of by this common order.

2. The Petitioners of both the writ Petitioner have challenged the letter bearing Memo No. 443 dated 26th May, 1995, issued by Special Officer-cum-Deputy Secretary of Water, Resources Department, by which all Deputy Collectors and Additional Collectors of different Revenue Division have been intimated to treat the erstwhile Muharrirs, as separate to that of the Lower Division Clerks. It has further been intimated that the erstwhile Muharrirs will be receiving the lower scale of Rs. 535- 765/- with effect from 1.4.1981, with revision in the scale of Rs. 970- 1540/- with effect from 1.1.1986. in effect, the scale of pay of the Petitioners, who were initially appointed as Muharrirs and subsequently designated as Lower Division Clerks, their scale of pay have been downgraded and it has been ordered to make recovery of excess amount from their salary, which was paid to them since 1.4.1981.

3. The brief facts of the case are, as follows:

Admittedly, most of the Petitioners were initially appointed as Muharrirs in between the years 1968 and 1970 in the Revenue Divisions of the Water Resources Department. The Respondents-State vide one Resolution No. 14636 dated 30th November, 1972, issued from Finance Department, accepted the recommendation of the 3rd Pay Revision Committee. The Muharrirs were redesignated as Lower Division Clerks. The persons, including many of the Petitioners were thereafter appointed against such Class-III posts, but in their order of appointment, it was shown as Muharrirs (Lower Division Clerks). This will be evident from order dated 19th April, 1976 (Annexure-3) to C.W.J.C. No. 5275/95); different orders dated 8th June, 1972, 28th August, 1994 etc., as contained in Annexure-5 series to the C.W.J.C. No. 5275 Of 1995.

It is to be taken into note that at that point of time, the scale of pay of Muharrirs and Lower Division Clerks were same and it was for the said reason, the 3rd Pay Revision Committee recommended to provide same designation to both the posts, which was accepted by the Government vide Resolution dated 30th November, 1972.

The Petitioners and other erstwhile Muharrirs were getting salaries, which was revised since 1.4.1981 on the recommendation of the 4th Pay Revision Committee and subsequently since 1st January, 1986 on the recommendation of the 5th Pay Revision Committee. They were provided with revised scale of Lower Division Clerks (subsequently known as Clerks). Suddenly, by the impugned order dated 26th of May, 1995, it has been observed that the erstwhile Muharrirs are entitled only for lower scale of pay than the scale of the pay of Lower Division Clerks (now Clerks) with effect from 1.4.1981.

4. For the purpose of proper appreciation of the case, certain old facts as well as scale of pay of different posts are to be taken into account. Under the Respondents State in its Water Resources (Irrigation Department) there were Revenue Divisions. In the Revenue Divisions, there were different Class-II posts. The posts like Assistant Clerk, Bench Clerk, Lower Division Clerk, Muharrir, Munsirim, Peshkar etc. had a lower scale of pay of Rs. 105-155/- with qualification of Matriculation. There were certain Muharrirs who were non-matric, their scale of pay were little lesser than that of the above, i.e. Rs. 100-130/-. Such scale of pay was available after the recommendation of the 2nd Pay Revision Committee. The 3rd Pay Revision Committee made the following recommendation with respect to Muharrirs:

At present there are posts of Muharrirs in the Irrigation, River Valley Projects and Revenue Departments. The work of Muharrir is mainly ministerial, namely, preparation, correction and checking of revenue, assessment and collection records. These posts, however, are in varying scales, such as Rs. 75-85, Rs. 100-130 and Rs. 105-155. There are matriculate Muharrirs as also non-matriculate ones. Revenue, Irrigation and River Valley Projects Departments

have suggested abolition of the present multiplicity and recommended two scales of Muharrirs, one for, matriculate muharrirs and Anr. for non-matriculate muharrirs. We agree with this view. We accordingly recommend that muharrirs be placed in the following scale of pay:

(1) non-matriculate Muharrirs Rs. 205-3-226-E.B.-4-254-5-284.

(2) Matriculate Muharrirs-Rs. 220-4-240-E.B.-5-290-E.B.-5-315.

This will be evident from the report of 3rd Pay Revision Committee at page 537.

A general recommendation was also made with respect to other Class-III posts including Muharrirs which are, as follows:

Correspondence Clerks, etc.

Although the pattern of the mufassiff, ministerial establishments under the Works Departments is broadly similar to that of such establishments in other departments, there are a few special features. Broadly, there are two wings of this establishment: (i) Correspondence Wing and (ii) Accounts Wing. On the Correspondence side, the lowest post is that of Correspondence Clerk in the scale of Rs. 105-155 i.e. the same scale of pay as of a Lower Division Clerk in other establishments. There are a large number of designations in the same scale of pay such as Junior Assistant Muharrir, Reception Clerk, Demand Clerk, Typist-Clerk, Bench Clerk etc. In Annexure 13.1 is given the distribution of various posts according to designations and departments. The present multiplicity of designations has no functional utility. In line with our recommendations regarding similar posts in other mufassil establishments, we recommend that the multiplicity should be substituted by a simple, single designation of Lower Division Clerk. For this post we recommend the following scale of pay:

Rs. 220-4-240-E.B.-5-290-E.B.-5-315

The aforesaid extracts were taken from the recommendation of the 3rd pay Revision Committee at page-539.

It will be evident from the general recommendation of the 3rd Pay Revision Committee that it has recommended to provide a common nomenclature of Lower Division Clerk to Muharrirs as well as other similar Class-III posts.

The Financial Department of the State of Bihar vide the Resolution No. 14636 dated 30th November, 1972 (Annexure-A to the counter Affidavit), accepted the recommendation of the 3rd Pay Revision Committee. In Schedule-3 attached with the aforesaid Resolution, the following acceptance was made:

Chapter of Report Para No. Name of the Departments Designation of Post
Recommendations of the Third Pay Revision Committee Decision of Government

1 2 3 4 5 6 7

2 9 102 Common category Lower Division Clerk? (a) Assistant Clerk. (b) Bench

Clerk. (c) Clerk-cum-Store-Keeper (d) Correspondence-Clerk (e) Godown Clerk. (f) Jails Clerk. (g) Lower Division Clerk. (h) Munsarlm. (i) Muharrir. (j) Peshkar. (k) Progress Assistant (l) Tour Clerk (m) Typist Cleark. Upper Division Clerk (a) Upper Division Clerk. (b) Establishment Clerk. (c) Factory Clerk. (d) Head Clerk. (e) Loan Clerk. Existing multiplicity of designation on the two categories should be replaced by uniform designations of Lower Division Clerk and Upper Division Clerk respectively. Accepted

It was on that basis, with effect from 1.1.1971, the matriculate Muharrirs were provided with revised scale of pay of Rs. 220-315/- like the Lower Division Clerk. The Muharrirs were also provided with the similar nomenclature of Lower Division Clerk.

5. It is for the said reason, the Petitioners who were appointed prior to 1972 were provided with the designation of Muharrirs (Lower Division Clerks) and those who were appointed after 1972, they were also provided with the designation of Muharrirs (Lower Division Clerks).

There was a separate cadre of Lower Division Clerks in the Muffasil Officers. The next higher post was Upper Division Clerks. The posts like the Establishment Clerk, Head Clerk were in the higher grade of Upper Division Clerks in the scale of Rs. 284-372/-as was prior to 1.4.1981.

6. After the redesignation of Muharrirs as Lower Division Clerks, the Respondent-State from its Water Resources Deptt. amalgamated the cadre of erstwhile Muharrirs (L.D.Cs.) with the original cadre of Lower Division Clerks, vide one letter No. 2644 dated 2nd December, 1975, issued under the signature of the Deputy Secretary of the Department. After such combined cadre of Muharrirs with Lower Division Clerks, the classification of posts in Selection Grades were also made and communicated to the Accountant General vide Water Resources Department's letter No. 3200 dated 15th January, 1976. A combined gradation list was also published. The State Government thereafter decided to upgrade the scale of pay of Lower Division Clerks and to merge the same with the higher grade of Upper Division Clerks with effect from 1.5.1980, with further decision to provide them with the common nomenclature of clerks. This decision was communicated vide Finance Department's letter No. 5206 dated 24th May, 1980. In effect, the scale of pay of Rs. 220-315/- which was provided to the Lower Division Clerks, including muharrirs, the same was upgraded and merged with the scale of Upper Division Clerks i.e. the scale of Rs. 284/- with effect from 1.5.1980. The Petitioners who were appointed by that time, their scale of pay were also upgraded to Rs. 284-372/-.

7. It appears that a writ petition (C.W.J.C. No. 3123/75) was filed by one Ramakant Pandey along with Ors. to challenge one order dated 1st February, 1975, by which it was ordered to prepare the seniority list of Lower Division Clerks alone, for the purpose of promotion to Selection Grade post, which were vacant in between 1.4.1964 and 31st December, 1970. The Government decided

not to promote the erstwhile Muharrirs against such Selection Grade post of Lower Division Clerks which were vacant during the aforesaid period. A Division Bench of this Court vide its judgment dated 25th January, 1978 dismissed the said writ petition (C.W.J.C. No. 3123/75), on the ground that the Muharrirs have been redesignated as Lower Division Clerks with effect from 1.1.1971, and thereby they had no claim for promotion to Selection Grade scales which were vacant prior to 1.1.1971 in the Lower Division Clerks cadre. The Court observed, as follows:

For reasons stated above I am of the opinion that the Petitioners cannot be considered for the post sanctioned and should not be at par with the revenue clerks. It has, however, been admitted in the counter affidavit that after the recommendation of the third pay revision committee that designation of the Moharrirs should be as Lower Dvn. Clerks has been accepted by the State Govt. The effect it appears, of the same has been given by the Govt, from 1.1.71. It has further been stated that therefore, the Moharrirs have no right to be promoted on the post sanctioned before 1.1.71. In extract of the said third pay revision f committee the note of acceptance of the Govt. has been annexed as Annexure "C" to the counter affidavit.

8. Another writ petition (C.W.J.C. 2433/76) was also filed by one Bipin Bihari Singh and Ors. . By this writ petition, they challenged the Notification by which cadre of Lower Division Clerks and Muharrirs were merged, after the redesignation of the post of Muharrirs. A Division Bench of this Court vide its judgment dated 21st September, 1978, did not choose to decide the correctness of the combined gradation list and Lower Division Clerks. The merger of the cadre was not set aside. The original Lower Division Clerks who were Petitioners in C.W.J.C. No. 2433/76 were declared to be senior to the erstwhile Muharrirs. This Court, In that case, observed, as follows:

In our opinion these Petitioners are certainly senior to the Muharrirs. They were appointed long ago as lower division clerks in the revenue division, Kosi Project, Purnea. They were confirmed on these posts. Their names also appear in the gradation list prepared by the department (Annexure-1). Even if the cadre of the Muharrirs has been amalgamated with the lower division clerics, the seniority of these Petitioners cannot be affected. In our opinion these Petitioners shall be treated as senior to the Muharrirs whose cadre has later been amalgamated with the lower division clerks. In this view we maintain the correctness of the gradation list as contained in Annexure-1.

As stated above, only thereafter the scale of pay of the posts of Lower Division Clerks which was Rs. 220-315/- was upgraded and merged in the higher scale of Upper Division Clerks i.e. the scale of Rs. 284-372/- with effect from 1.5.1980.

9. In the meantime, the State Government had forwarded the matter before the 4th Pay Revision Committee for consideration of revision of scale of pay of different posts, including the post of Lower Division Clerks, Muharrirs etc. It

appears that while so forwarding, the scale of pay of different posts, it was not brought to the notice of the 4th Pay Revision Committee that the cadre of Muharrirs and Lower Division Clerks were merged, which was confirmed by the Division Bench of this Court and the scale of pay was upgraded from Rs. 220-315/- to Rs. 284-372/- in the light of order of merger of the scale of Lower Division Clerks with the scale of pay of Upper Division Clerks made vide order dated 24th May, 1980. The effect was when the 4th Pay Revision Committee recommended the scale of pay, it recommended a different lower scale of pay for the post of Muharrirs and a separate higher scale of pay with respect to the erstwhile Lower Division Clerks. The old scale of pay of the post of Muharrirs were shown to be Rs. 220-315/-, and on that basis, the 4th Pay Revision Committee recommended the replacement scale of Rs. 535-765 with respect to the Muharrirs. On the other hand,, the scale of pay of the Lower Division Clerks because of merger was shown to be the scale of Rs. 284-372, and on that basis, it was given higher scale of Rs. 580-860/-. The 4th Pay Revision Committee's recommendation was accepted by the State Government from its Finance Department vide its Resolution dated 30th December, 1981.

10. However, in the meantime, the Petitioners were paid the replaced scale of Lower Division Clerks i.e. Rs. 580-860/-, as was recommended by the 4th Pay Revision Committee, treating them as Lower Division Clerks. So far as merger of cadre of the then Muharrirs with Lower Division Clerks, as was made vide letter No. 2644 dated 2nd December, 1975 is concerned, the same was not set aside by this Court in its earlier judgment, as referred above. Still for the reasons best known to the Director of Revenue-cum-Special Secretary of the Water Resources Department, it came out with a letter No. 1122 dated 2nd May, 1980, by which giving reference to the aforesaid two writ petitions (C.W.J.C. 3123/75 and C.W.J.C. 2433/76), it was ordered to demerge the cadre of the then Muharrirs with the cadre of the then Lower Division Clerks. This letter was never communicated to any of the Petitioners and/or any other the then Muharriras, and thereby it remained without any challenge. The effect was that of bifurcation of the then cadre of Muharrirs with the original cadre of Lower Division Clerks. However, the designation of Muharrirs which were changed to Lower Division Clerks, vide Finance Deptt.'s Resolution No. 14636 dated 30th November, 1972 and up gradations of the scale of pay of Lower Division Clerks with that of the scale of pay of Upper Division Clerks, as was made vide Finance Department's letter No. 5206 dated 24th May, 1980, they were never cancelled. The Petitioners and other Muharrirs, even after the recommendation of 5th Pay Revision Committee continued to receive the revised scale of pay as granted in favor of the then Lower Division Clerks (now Clerks) because of their change of nomenclature.

11. At this stage, it is also to be taken into note that in the meantime, the 5th Pay Revision Committee, also treated the Muharrirs as a separate cadre and treated them in their old scale of pay and thereby provided a lower scale of pay of Rs. 970-1540/-, whereas the other Lower Division Clerks were provided with

the revised scale of Rs. 1200-1800/-.

It is in this background, taking into note the recommendation of the 4th Pay Revision Committee and the recommendation of the 5th Pay Revision Committee, by impugned order dated 26th May 1995, it has been ordered to provide a lower scale to the then Muharrirs like the Petitioners with effect from 1.4.1981 and not the scale of pay of the post of Lower Division Clerks as revised on the recommendation of the Pay Revision Committee. If further ordered for recovery of excess amount. This impugned order is under challenge.

12. For proper appreciation, the pay scale of original Muharrirs, who were subsequently designated as Lower Division Clerks and the scale of pay of original Lower Division Clerks as well as the Upper Clerks are given hereunder:

Muharrirs (Lower Division Clerks) "

Lower Division Clerk/Upper Division Clerk- Clerk

Prior to 1.1.1970 Rs. 105-155.

L.D.C. Prior to 1.1.1971 Rs. 105-155.U.D.C. Prior to 1.1.1971Rs. 150-200

As on 1.1.1971Rs. 220-315.

L.D.C. As on 1.1.1971Rs. 220-315.U.D.C. As on 1.1.1971Rs. 284-372.

On the recommendation of 4th Pay Revision Committee, with effect from 1.4.1981Rs. 535-765, First Time Bound-Rs. 580-860, 2nd Time Bound Rs. 680-965.

With effect from 1.5.1980 on merger, Clerk-284-372. Clerk is on 1.4.1981, on the recommendation of the 4th Pay Revision CommitteeRs. 580-860, 1st Time Bound Rs. 680-965, and 2nd Time Bound-Rs. 730- 1080.

With effect from 1.1.1986 on the basis of the 5th Pay Revision Committee Rs. 970-1540. 1st Time Bound Rs. 1200-1800, 2nd Time Bound-Rs. 1320-2040.

With effect from 1.1.1986 on the basis of the 5th Pay Revision Committee- Rs. 1200-1800, 1st Time Bound-Rs. 1320-2040 and 2nd Time Bound-Rs. 1400- 2300.

13. The argument of the Counsel for the Petitioners can be summarised, as follows:

(a) The Petitioners and the then Muharrirs having been redesignated as Lower Division Clerks, all benefits including merger of scale of pay of the scale of Lower Division Clerks with Upper Division Clerks, the Petitioners are entitled for the same. The scale of pay as recommended by the Pay Revision Committees for the post of Lower Division Clerks, the Petitioners are also entitled for the same because of their designation. The same having been granted in favor of the Petitioners, no illegality was committed, and thereby the ground given in the impugned order dated 26th May, 1995 is completely illegal.

(b) The post of original Lower Division Clerks and the then Muharrirs were merged by State Government's letter No. 264 dated 2nd December, 1975. By such merger order, the Petitioners having come in the cadre of the original Lower Division Clerks which was also upheld by this Court vide its judgment passed in C.W.J.C. No. 2433/76 there was no occasion for bifurcation of the cadre giving reference to the said judgment. It was contended that the so called demerger order, as made vide letter No. 1122 dated 2nd May, 1980 itself is illegal, and thereby the Respondents cannot derive any benefit out of the same.

(c) The nature of job, the scale of pay etc. of Muharrirs and the then Lower Division Clerks being same, the State Government vide Resolution No. 14630 dated 30th November, 1972, provided them with same designation and pay. Such posts like the then Muharrirs and the Lower Division Clerks which were at par, for them in the name of revision of scale of pay, two different scales of pay cannot be granted otherwise, the same will be violative of Articles 14 and 16 of the Constitution of India.

(d) The impugned order has been is sued by the Respondents without giving any show cause notice to the Petitioners and/or any other erstwhile Muharrirs. The impugned order is violative of rules of natural justice.

14. The Counsel for the Respondents State, on the other hand, made the following submissions:

(i) The cadre of the then Muharrirs which was merged with the cadre of Lower Division Clerks was bifurcated by letter No. 1122 dated 2nd May, 1980, neither the Petitioners nor any other the then Muharrir challenged the same. Thereby, the Petitioners and the then Muharrirs" cannot be treated in the combined cadre of Lower Division Clerks and they cannot be provided with the same scale of pay.

(ii) The Pay Revision Committee are the best authorities to decide as to what scale of pay is to be provided to a particular post/cadre. A lower scale of pay having been provided by 4th Pay Revision Committee and 5th Pay Revision Committee with respect to the post of Muharrirs, they cannot be provided with the higher scale of pay as was recommended for Lower Division Clerks.

(iii) The Petitioners and other Muharrirs who where entitled for lower scale of pay of Muharrirs on the recommendation of the Pay Revision Committees, they having been given a wrong higher scale of Lower Division Clerks, because of mistake, there was no question of giving any show cause notice for the purpose of rectification of such mistake.

15. From the facts and submissions, as noticed above, the following admitted facts emerge:

(i) The post of Muharrirs and the Lower Division Clerks had same scale of pay of 220-315/- prior to 1.5.1980.

(ii) The Muharrirs were designated, as Lower Division Clerks since 1.1.1971, vide

Resolution No. 14636 dated 30th December, 1972, which has not yet been cancelled.

(iii) The cadre of erstwhile Muharrirs and erstwhile Lower Division Clerks were merged, vide letter No. 2644 dated 2nd December, 1975.

(iv) The High Court vide its judgment passed in C.W.J.C. No. 2433/76, held that the cadre of erstwhile Muharrirs and Lower Division Clerks merged.

(v) The Respondents bifurcated the cadre of erstwhile Muharrirs and the cadre of erstwhile Lower Division Clerks, vide letter No. 1122 dated 2nd May, 1980, but the designation of Muharrirs which was changed to Lower Division Clerks, the same continued to remain.

(vi) The scale of pay of the post of Lower Division Clerks, which was Rs. 220-315/- as on 1.5.1980, was upgraded and merged in the scale of pay of Upper Division Clerks i.e. Rs. 248-327/- vide Finance Department's Circular No. 5206 dated 24th May, 1980 and their nomenclature was changed to Clerk and the 4th Pay Revision Committee as well as the 5th Pay Revision Committee have given a specific pay of Rs. 580-860/- with the replacement scale of Rs. 1200-1800/- with respect to the Clerks with effect from 1.4.1981 and 1.1.1986 respectively.

16. In the aforesaid background, even if the contention of the Respondents is accepted that the cadres of the then Muharrirs and the then Lower Division Clerks were demerged, vide letter No. 1122 dated 2nd May, 1980, the admitted fact remains that the nomenclature of Muharrirs continued to remain as Lower Division Clerks. In effect, whatever, the benefits that was granted by the Respondent to a Lower Division Clerk after the issuance of Resolution No. 14636 dated 30th November, 1972, the then Muharrirs like the Petitioners became entitled for such benefit of Lower Division Clerks. The scale of pay of Lower Division Clerks which was Rs. 220-315/- having been upgraded and merged in the scale of Upper Division Clerks i.e. Rs. 248-372/-, the erstwhile Muharrirs who were redesignated as Lower Division Clerks were rightly provided with the higher scale of pay of Rs. 284-372/-. Further, as on 1.4.1981, as the Muharrirs were the clerks by their designation, according to me, they are entitled for replacement scale of pay, as recommended by the Pay Revision Committees for the Clerks. So, they were rightly provided with the replacement scale of Rs. 580-860/- with effect from 1.4.1981, with further replaced scale of Rs. 1200-1800/- with effect from 1.1.1986.

17. For the reasons stated above, I hold that the impugned order, as contained in Memo No. 443 dated 26th May, 1995, as illegal and set aside the same. In effect, all the consequential orders which have been issued in pursuance of the impugned order dated 26th May, 1995, they are also set aside.

18. The ultimate effect would be, if any amount that has been deducted from the salary of the Petitioners, or any other erstwhile Muharrirs (Clerks), on the basis

of the impugned order dated 26th May, 1995, the same would be refunded to the concerned persons. The Respondents are directed accordingly. They are directed to refund such amount within a period of one month from the date of receipt/production of a copy of this order.

19. Both the writ Petitioners are allowed with the aforementioned observations and directions.