

**(2000) 03 PAT CK 0163****Patna High Court****Case No:** C.W.J.C. No. 3587/9BR

Manindra Kumar Sinha

APPELLANT

Vs

Mineral Area Development  
Authority and Others

RESPONDENT

**Date of Decision:** March 31, 2000**Citation:** (2000) 4 PLJR 193**Hon'ble Judges:** M.Y. Eqbal, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

In this writ application the petitioner has prayed for quashing the order dated 8.3.97 as contained in annexure 17 to the writ application issued by respondent no.3, the Secretary Mineral Area Development Authority, Dhanbad whereby the petitioner has been reverted to class IV post after serving for more than 17 year's on class III post as typist-cum-clerk and for further direction to confirm the service of the petitioner as typist-cum-clerk as several junior persons have been given promotion from the post of disinfects (class IV post) to class III post. Petitioner's case is that he was appointed in 1981 as Disinfecto Sodhak at Jharia Mines at Dhanbad after following all the procedures of appointment. It is stated that there was enough vacancy of typist-cum-clerk at Jharia Mines Board and, therefore, the petitioner being qualified in all respects for working as typist-cum-clerk, was authorised/directed by the respondents to render his services on the post of typist-cum-clerk in terms of the office order dated 16.3.81. It is stated that since 1981 the petitioner started working as typist-cum-clerk and, therefore, he made representation on 28.1.83 before the authorities to pay him salary of the post of Assistant. It is stated that in spite of several representations the petitioner was not paid salary at par with typist-cum-clerk. However, after rendering services as such for 17 years, the

respondents issued the impugned order reverting him to the post of Disinfector (class IV).

2. A counter affidavit has been filed stating that the petitioner was initially appointed in class IV post and he is still continuing to his substantive post of Disinfects and was never promoted to class III post. It is further stated that there is no such vacant sanctioned post of typist-cum-clerk in the Building Division of Mineral Area Development Authority. The respondents, therefore, denied the entailment of the petitioner to get the pay scale of clerk specially because his substantive post is that of Disinfects (class IV post). It is contended that the substantive post of the petitioner is Disinfects and his services were returned back to the said post when he expressed his desire and/or he declined to work as typist-cum-clerk.

3. Admittedly the petitioner was appointed in class IV post in 1981 but at the same time he was allowed to work in class III post and since then he has been working as such. It has not been disputed by the respondents that the petitioner did not possess the requisite qualification of the post of typist-cum-clerk. In 1983 the petitioner filed representation for regularizing him in class III post and for payment of salary at par with the employees of that post. Inspite of repeated representation the respondents did not take any decision. In the year, 1990 the petitioner, therefore, made representation that if he was treated to have been holding class IV post, then he should be granted cycle allowance and other benefits payable to class IV employee. In reply to the request, the respondents issued letter dated 26.6.90 informing that the petitioner is not entitled to cycle allowance for the reason that he has been working as typist-cum-clerk. A copy of the said letter has been annexed as annexure 4. It further appears by office order dated 1.8.90, the petitioner was posted as typist-cum-clerk in the law department of the respondent-Authority. In 1991 by office order dated 20.2.91 the petitioner was again transferred and posted as typist clerk in Building Division for rendering services of typist-cum-clerk. All the office orders have been annexed as annexures-5, 6 and 7. The petitioner has also annexed copy of the certificate dated 4.1.83 showing that he passed Hindi Noting and Drafting examination conducted by the respondents. In para 15 of the writ petition it is categorically stated that one Arun Kumar Keshri who was also appointed as Disinfector, was also allowed to work as class 111 employee and subsequently he was regularized and was given regular pay scale of the post of typist-cum-clerk on 20.11.83. This fact has not been denied by the respondents, rather, it is stated that the petitioner was never given assurance for promotion or regularization in the post of typist-cum-clerk.

4. Having regard to the facts stated in the affidavits it is clear that although the petitioner was appointed in class IV post in 1981 but in the same year by office order, he was allowed to work as typist cum-clerk. It has also not been disputed that the petitioner did not possess requisite qualification for appointment to the post of typist-cum-clerk nor it has been disputed that the petitioner has not been working

as such for last 18-19 years. Simply it is stated that there is no vacant sanctioned post of typist-cum-clerk. In my opinion, the stand taken by the respondents is wholly arbitrary and unjustified. It is really surprising that the petitioner was allowed to work in class III post in 1981 and continued as such for about 18-19 years and now the respondents have issued impugned order reverting him to class IV post and that too without any plausible reason/ground. I am also of the view that in the facts of the case the petitioner has acquired indefeasible right to be regularized in class 111 post and also to get the pay scale of class III post. For the reasons aforesaid, this writ application is allowed and the impugned order as contained in annexure 17 is quashed. The respondents are directed to regularize the petitioner in the post of typist-cum-clerk and to pay him the scale at par of typist-cum-clerk. The petitioner shall be entitled to get difference of salary also from the date of filing of this writ application i.e. from December, 1998.