

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3021 of 1998

Unmeshwar Prasad Sinha, son of late Suraj Narayan Lal Permanent resident of Village Dumri, Police Station Barhaiya, District Lakhisarai, at present working in the office of the Superintending Engineer, Building Construction Department, Building Circle, Police Station Barari, District-Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Building Department, Government of Bihar, Patna
2. Superintending Engineer, Building Construction Department, Building Circle, Bhagalpur
3. Deewan Hansda son of not known to the petitioner, at present working as Selection Grade Clerk in the Building Construction Department, Building Circle, Bhagalpur
4. Adya Ram son of not known to the petitioner, at present working as Head Clerk in the Building Construction Division, Munger (attached in the office of the Executive Engineer, Building Construction Division, Munger).
5. Bindeshwar Prasad Sinha, son of not known to the petitioner, at present working as Superintending Engineer on current charge basis in Building Construction Department, Building Circle, Bhagalpur

.... Respondent/s

Appearance :

For the Petitioner/s :	Mr. Mohit Kumar Sah
	Mr. Sandeep Patil Lall
For the Respondent/s	Mr. Madhav Pd. Yadav
	Mr. Basant Kumar Singh-1

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 16-03-2015

1. Petitioner seeks quashing of the order dated 04.01.1998 issued under the signature of Respondent No.5 whereby, the petitioner's pay scale has been reduced from Rs. 1500-2750 to 1400- 2500/-. He has also sought for quashing of an order dated 27.01.1998 issued by the Superintending Engineer, Building Construction Department, Building Circle,



Bhagalpur whereby, petitioner's pay scale is said to have been further reduced from Rs. 1400-2600 to Rs. 1400-2300/-. By the said order it was also directed that the excess amount which was paid to the petitioner on account of wrong fixation of pay, be recovered. On the strength of the subsequent order dated 7.6.2007 (Annexure-39) of the supplementary affidavit filed on behalf of the petitioner, a sum of Rs. 27,664/- has been ordered to be recovered from the amount of gratuity payable to the petitioner, which order is also sought to be challenged in the present writ application.

2. It is the petitioner's case that he had joined the post of Correspondence Clerk at Jamshedpur in Ghatshila Bridge Division on 30.12. 1964 and was transferred to Ganga Bridge Pariyojana at Patna on the same post. The post of Correspondence Clerk was rechristened in 1979 as Lower Division Clerk (hereinafter referred to as LDC). It is his case that on 01.09.1973, he was promoted as Selection Grade Clerk in Ganga Bridge Project, North Circle, Hajipur, he being senior most Lower Division Clerk in the Circle and he was given the benefit of higher pay scale of Rs. 284-372/-. He was confirmed



on the post of LDC on 12.4.1978 by an order dated 27.11.1979. Thereafter, entire Ganga Bridge Circle, Hajipur merged with coal Road (work) Circle, Dhanbad which subsequently merged with Building Construction Department, Government of Bihar. On 15.1.1982, he was shifted to Bhagalpur as LDC. It is his further case that by an office order issued vide Memo no. 99 dated 21.1.1984, passed by the Superintending Engineer, Building Circle, Building Construction Department, Bhagalpur, the petitioner was given the scale of Junior Selection Grade with effect from 1.4.1981. According to him, one Suresh Prasad Sinha was holding the post of "First Grade Assistant" who was promoted to the post of Head Clerk and thus, the post of "First Grade Assistant" became vacant with effect from 30.8.1984.

3. It is the petitioner's claim that he being the senior most Clerk in the Department, he was appointed against the said vacant post of Selection Grade Assistant in the pay scale of Rs. 680-965, on ad hoc basis, in anticipation of approval by the Establishment Committee. It has been asserted in the writ petition that petitioner was given regular promotion to the post



of "First Grade Assistant" by Establishment Committee vide its letter No.2087 dated 7.11.1984. In support of this plea, the petitioner has annexed part of his service book but has not brought on record any order dated 7.11.1984 granting him regular promotion on the post of "First Grade Assistant". It is the petitioner's case that subsequently by an office order dated 31.3.1992, the Superintending Engineer (Respondent no.2) confirmed the service of the petitioner against the post of "First Grade Assistant" with effect from 1.2.1988. Thereafter, by an order dated 4.1.1998 as contained in Annexure-12, successor Superintending Engineer re-fixed the scale of the employees working under the Building Circle Bhagalpur of Building Construction Department including this petitioner on ad hoc basis. The petitioner's scale was brought to Rs. 1400-2600/- from Rs. 1500 to 2750/-. The successor Executive Engineer, as alleged by the petitioner, hastily granted promotion to Respondent No.3 Deewan Hansda to the reserve post of Head Clerk with effect from 2.9.1990 in the pay scale of Rs. 1400-2600/-. Again by another office order dated 27.1.1998, the Superintending Engineer reduced the petitioner's pay scale to



Rs. 1400-2300/-. By the said office order dated 27.1.1998, the Superintending Engineer cancelled the scale of Rs. 730-1080/- with effect from 1.3.1986 which was granted to the petitioner. Consequent upon cancellation of the said scale, which was wrongly granted to him with effect from 1.3.1986, recovery of the excess amount paid to him was also ordered. The Superintending engineer revised pay scale of the petitioner to Rs. 1400- 2300/- accordingly.

5. It is the petitioner's case that before issuance of the office order dated 27.1.1998 (Annexure-14) and office order dated 4.1.1998 (Annexure-12), no notice was given to the petitioner. In the background of these facts, it is the petitioner's case that the action of the Superintending Engineer (Respondent no.2) is tainted with bias and malafide and it also suffers from the violation of the principles of natural justice. Petitioner accordingly seeks quashing of Annexure-12 and Annexure-14 of the writ application as well as subsequent Office order dated 7.6.2007 seeking recovery of a sum of Rs. 27,664/- from the amount of gratuity admissible to the petitioner after his superannuation.



6. A counter affidavit has been filed on behalf of the Respondent State of Bihar stating therein that there was no post of Head Assistant in the Building Circle, Bhagalpur. It has also been averred that it is not the “Junior Grade Assistant” rather “Junior Selection Grade Clerk” which is a post equivalent to Head Clerk. Along with the counter affidavit, details of posts sanctioned in the Circles under Granga Bridge Project has been brought on record in support of the plea that no post of “Junior Grade Assistant” or “First Grade Assistant” existed under the Project. The petitioner’s claim that he was senior most Clerk in Bhagalpur Circle has been denied and it has been stated that he was not senior most amongst the Clerk under the Bhagalpur Circle where two other Clerks, namely, Lala Bhagwan Prasad and Jang Bahadur Yadav were senior to him and were posted as Head Clerk in Divisional Office. It has been asserted that the petitioner could not have been allowed to function on the post of “Assistant”. It has further been stated in the counter affidavit that the petitioner was wrongly placed at serial no.3 in Annexure-7, despite the fact that two more Clerks, namely, Sarvanand Singh and Siyaram Yadav were declared senior to



the petitioner by the Court of learned Sub-Judge, Bhagalpur in Title Suit No. 77 of 1985. It has been stated that the petitioner was also getting scale of Rs. 284-372/- and accordingly, he was entitled to replacement scale of Rs. 680-965/- and not the scale of Rs. 730-1080/- which was replacement scale of Rs. 340-490/- which the petitioner not entitled to at any stage.

7. The respondents have brought on record a representation of the petitioner by way of Annexure-B to the counter affidavit and it has been stated that the petitioner himself admitted that fixation of his pay scale in Rs. 1500-2750 was not proper. It has specifically been stated in the counter affidavit that fixation of pay in Scale of Rs. 1500-2750/- has been declared to be unlawful by the Department of Finance in case of Jang Bahadur Yadav, who was admittedly senior to the petitioner. It has been stated that the service book and fixation of pay of the petitioner has also been verified by the Department of Finance and it has accordingly been corrected by the order of the Deputy Secretary, Department of Finance, Government of Bihar and accordingly the petitioner's scale has been fixed as Rs. 1400- 2300/- with effect from 1.4.1989.



8. Denying the plea of the petitioner that his pay scale was revised to his detriment without giving him due opportunity, it has been stated in paragraph 19 of the counter affidavit that various letters were issued to the petitioner dated 30.3.1996, 26.10.1996, 4.12.1996 and 24.12.1996 to show cause as to why his pay be not re-fixed in the scale of Rs. 1400-2300/- instead of Rs. 1500-2750/-. It has further been stated that in compliance of such letters, the petitioner had submitted his reply dated 26.12.1996 which virtually amounts to an admission by him that he was not entitled to pay scale of Rs. 1500-2750/-. The plea of the petitioner that his pay scale was revised to his disadvantage by Respondent no.5 has been denied in paragraph 20 of the counter affidavit and it has been stated that re-fixation of petitioner's pay has been done by way of an order passed by the competent authority i.e. Deputy Secretary in the Department of Finance. It has been stated that the petitioner was never promoted from the Post of Junior Selection Grade to Senior Selection Grade and he was not at all entitled to the scale of Rs. 1400-2600/- which is the replacement scale of Rs. 730-1080/- which the petitioner was not entitled to.



It has been asserted in the counter affidavit that the petitioner being In-charge Head Clerk of the Circle wrongly got his pay fixed in the scale of Rs. 1400-2600/-. Supporting the validity of the promotion granted to respondent no.3, it has been stated that he was granted promotion by giving him benefit of reservation as he belonged to Scheduled Tribe category, in view of the Government Circular No. 288 dated 16.5.1997 and the Government letter No. 432 dated 12.9. 1985 to Junior Selection Grade after he fulfilled the requirement of "Kalavadhi" of (6-1)=5 years as one year exemption is applicable to S.T candidate with effect from 3.9.1988.

9. From the pleadings on record, I find that the decision to revise the petitioner's pay scale of Rs. 1400-2300/- is primarily based on the fact that upon his promotion to Junior Selection Grade, the petitioner was entitled for the scale of Rs. 680-965/- and he was wrongly given scale of Rs. 730- 1080/- on the basis of the petitioner's mis-representation as he himself was holding crucial position in the matter of fixation of pay etc,. It is the case of the respondent that on the basis of mis-representation and self recommendation, being In-charge of

the Office as Head Clerk, the petitioner had got his pay fixation done on the higher rate, which he was not entitled to. It has been reiterated by the respondents that it was wrongly shown in the service book of the petitioner that he was in the scale of Rs. 730-1080/- which was an act of manipulation.

10. At the very outset, I would reject the petitioner's claim that decision to revise the pay scale was taken without giving him any prior notice or opportunity of being heard. From the pleadings, I find that the petitioner was not only noticed, he had filed his response also, thereto. Secondly, I am of the view that fixation of pay scale is essentially an executive function and the question of judicial review in such matters will arise only in exceptional circumstance. In the present case, the petitioner has not been able to show that he held the post of "First Grade Assistant", which according to the respondents never existed. The petitioner has also not been able to satisfy this Court as to how was he given pay scale of Rs. 730-1080/- on the basis of which he was given subsequent replacement scale of Rs. 1500-2750/-. As a matter of fact, the petitioner had miserably failed to satisfy the Court that he was entitled for

replacement scale of Rs. 1500-2750/-.

11. As has been noted above, the petitioner has claimed that he was promoted to the post of "First Grade Assistant" by the establishment Committee and letter to this effect was issued vide no. 2087 dated 7.11.1984. He intends to support this fact by an entry made in his service book. He has, however, not brought on record the said letter dated 7.11.1984. The Respondents have denied the assertion that the petitioner was granted promotion as "First Grade Assistant" which post did not exist in the establishment in question. In such circumstance, the petitioner's plea that he was in fact granted promotion to "First Grade Assistant" and was therefore entitled for higher pay scale cannot be accepted, particularly as the respondents have denied the petitioner's averment and have specifically stated that no such post ever existed in the establishment in question.

12.1. In view of the above, I do not find any merit in this application. This application is accordingly, rejected.

(Chakradhari Sharan Singh, J)

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