

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5143 of 1998

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Pandey Venkatesh Pd.Sinha, son of late Bhairo Prasad Sinha, resident of village Makutpur P.S. Barhara, District Bhojpur at present posted as Child Development Project Officer, Pakari Barawan District Nawadah

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Department of Personnel and Administrative Reforms. Govt. of Bihar, Old Secretariate, Patn
2. Finance Commissioner-cum-Secretary, Deptt. Of Finance, Govt. of Bihar, Patna
3. Commissioner-cum-Secretary, Department of Welfare, Govt. of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Banwari Sharma
With Mr. Shiv Kumar &
Mr. Sahjanand Sharma

For the State : Mr. Arshad Alam, SC-3
For the Pvt. Respondent: Mr. Amrtesh Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 19-02-2015

1. The writ application has been filed seeking quashing of and order passed by the Personnel and Administrative Reforms Department, Government of Bihar, Patna issued vide letter no. 4098 dated 16.4.1998 by which his claim for grant of a particular pay scale has been rejected.

2. The facts are short. The petitioner had taken the 30th Combined Competitive examination conducted by Bihar Public Service Commission (Hereinafter referred to as the Commission). It seems that the Commission, despite the fact that petitioner was well

within the merit list did not recommend his name for appointment and persons below in the merit list were appointed.

3. The petitioner approached this Court by filing a writ application giving rise to CWJC 494 of 1984. The matter went up to the Supreme Court and ultimately on account of the order passed by the Court, the petitioner was recommended by the Bihar Public Service Commission and was appointed on the post of Child Development Project Officer in the Social Welfare Department on 22.6.1989.

4. The petitioner thereafter, approached this Court by filing CWJC No. 11167 of 2001 with a grievance that persons with lesser merit were appointed on 13.9.1985 and though he had better merit position, because of the wrong done by the Bihar Public Service Commission, he was not appointed and pursuant to orders of the Courts, he was appointed on 22.6.1989. Accordingly, in CWJC No. 11167 of 2001, which was filed during the pendency of this writ application, this Court held that pay of the petitioner must be notionally fixed at par with those who secured lesser marks but were appointed earlier. The Court held that in the matter of such notional pay fixation, basic pay as well as increments and other emoluments must also be kept in mind.

5. The grievance as raised in the writ application has



substantially been redressed in course of time and particularly in compliance of the order of this Court dated 22.9.2008 passed in CWJC No. 11167 of 2001. The only grievance of the petitioner now is that he has been given benefit of Assured Career Progression by treating his date of appointment as 27.7.1989, whereas the persons with lower merit who were appointed on 13.9.1985 have been given the benefits treating their initial appointment as 13.9.1985, which according to him is violative of Articles 14 and 16 of the Constitution of India.

6. Learned counsel for the petitioner has drawn my attention to Annexure-19 of the Interlocutory application to submit that the petitioner's initial date of appointment as Child Development Project Officer has been treated to be with effect from 14.12.1985 as per the notification issued by the Social Welfare Department, Govt. of Bihar vide memo no. 2467 dated 31.7.2009. Learned counsel has accordingly submitted that the petitioner should be given the benefit of first Assured Career Progression with effect from 9.8.1999 and second Assured Career Progression with effect from 1.1.2009.

7. I find substance in the submission made on behalf of the petitioner. The only question is to be determined in the present case is as to whether the petitioner had to be treated at par with the persons who were lower in the merit list on the basis of 30th

Combined Competitive Examination. The issue in fact has already been answered by this court in CWJC No. 11167 of 2001 by order dated 22.9.2008. The petitioner will have to be treated at par with those who were below in the merit list.

8. I accordingly direct that the petitioner's case for first Assured Career Progression and second Assured Career Progression shall be reconsidered treating his appointment to be 14.12.1985. He will be granted pensionary benefits of such promotion and consequent re-fixation of his pensionary benefits etc, in the light of the order of this Court passed in CWJC No. 11167 of 2001 dated 22.9.2008. The respondent will consider the case of the petitioner treating his appointment with effect from 14.12.1985 and grant first Assured Career Progression and second Assured Career Progression within a period of three months from the date of receipt/production of a copy of this order. If the petitioner is found entitled to be considered for grant of such notional ACP, the same shall be considered within a period three months and all pensionary benefits shall also be recalculated and paid to him within a further period of three months.

With the above observations, the writ application is disposed of.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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