

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14883 of 2006

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Krishna Kumar Panday, son of Late Bikramaditya Panday, resident of Mohalla-
New Jakkanpur, P.S. Jakkanpur, District- Patna

.... Petitioner

Versus

1. The State of Bihar
 2. The Special Secretary, Water Resources Department, Irrigation Building, Patna
 3. The Finance Commissioner, Old Secretariat, Patna
 4. The Deputy Director, Irrigation Research Division No.1(Khagaul), Patna
 5. The Chief Engineer, Water Research Department, Bhagalpur, District-
Bhagalpur
 6. The Superintending Engineer, Irrigation Circle, Kharagpur, District- Munger
 7. The Executive Engineer, Irrigation Division no.1, Laxmipur, District- Jamui
 8. The Accountant General, Birchand Patel Path, Patna Respondents
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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Adv.
Mr. Rajeev Kumar Singh, Adv.

For the Respondent/s: Mr. AC to AAG-15
Mr. J.P.Karn

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 24-03-2015

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Heard Sri Rajendra Narain, learned Senior Counsel,

who was assisted by Sri Rajeev Kumar Singh, learned counsel for

the petitioner and learned AC to AAG-15.

2. The petitioner, who retired on 30.11.2000, has filed

the present writ petition in the month of December, 2006 with a

prayer to direct the respondents to fix the pay of the petitioner in

the scale of Rs.6500 to 10,500/-. It has been claimed that the said

pay scale was applicable to the Assistant Engineer, Government

of Bihar. It has further been prayed to direct the respondents to

pay arrears of salary in terms of aforesaid pay scale.

3. Short fact of the case is that the petitioner was initially appointed as Sub Overseer in the Irrigation Department and subsequently his services were placed to the Minor Irrigation Department.

4. Learned counsel for the petitioner, while referring to Annexure-1 series to the writ petition, submits that the petitioner was subsequently promoted as Assistant Engineer/ Sub Divisional Officer and finally he retired as Assistant Engineer. Earlier since retiral dues was not paid to the petitioner, the petitioner had approached this Court by filing a writ petition vide C.W.J.C.No.12559 of 2001, which was disposed of on 03.12.2001 with a direction to pay retiral dues within specified time. Learned counsel for the petitioner, while placing order dated 03.12.2001 passed in C.W.J.C.No.12559 of 2001, submits that this Court had considered that admittedly the petitioner retired as Assistant Engineer, Irrigation Department. He submits that subsequently in the year 2005, the petitioner noticed that his pension was fixed on lower pay scale and, as such, the petitioner approached this Court by filing the present writ petition for directing to correct the pay scale of the petitioner. Learned counsel for the petitioner has also placed the fact disclosed in



reply to the counter affidavit and has placed reliance on Annexures-4, 5 and 6 of the reply. By way of referring to Annexure-4 i.e. order contained in Memo No.2194 dated 09.06.1981, it has been argued that the petitioner was made as permanent Junior Engineer with effect from 17.11.1969 against vacant permanent post of Junior Engineer. He has further argued that some other persons, who joined later than the petitioner, were given the benefit of promotion as Assistant Engineer, but the case of the petitioner has been ignored.

5. Learned State Counsel, opposing the prayer of the writ petitioner, at the very outset, submits that the petitioner was initially appointed as Sub Overseer. However, subsequently, the post of Sub Overseer was upgraded as Overseer. It has also been argued that though the parent department of the petitioner was the Irrigation Department, Annexure-1 was issued by the Minor Irrigation Department and the petitioner along with other Overseers were given charge of Assistant Engineer/Sub Divisional Officer. According to learned counsel for the State, the Minor Irrigation Department was not competent to pass order for promotion. Moreover, reliance has been placed by the learned State Counsel on two orders passed by this Court in C.W.J.C.No.2385 of 1994 (R) dated 20 -02-1995 and order dated



03.07.2006 passed in C.W.J.C.No.1416 of 2000. It has been argued that for appointment/promotion on the post of Junior Engineer/Assistant Engineer, recommendation of Bihar Public Service Commission (now Bihar Staff Selection Commission) was necessary. Since the petitioner was not having requisite qualification for appointment to the post of Junior Engineer/Sub Divisional Officer, there was no question for promoting the petitioner legally as Junior Engineer or Assistant Engineer. So far as the benefit of ACP is concerned, in paragraph-10 of the counter affidavit, it has been specifically stated that pay scale of Sub Overseer was Rs.3050-4590/- and corresponding pay scale under 1st ACP and 2nd ACP after completion of 12 years service and 24 years of service was Rs.4000-6000 and Rs. 4500-7000/- respectively. It has been indicated that the petitioner is already getting pensionary benefit in the scale of Rs.5000-8000, which, according to learned State Counsel, is higher than the 2nd financial upgradation under the ACP Scheme. According to learned counsel for the State, the pension of the petitioner has rightly been fixed and the relief sought for in the present writ petition is not tenable in the eye of law.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not in



dispute that the petitioner was initially appointed as Sub Overseer and finally retired in the year 2000. Though the petitioner retired in the year 2000, he never raised any objection regarding pay scale till the date of his retirement. Even after retirement, he had filed writ petition for pensionary benefit, which was allowed and subsequently entire retiral benefit has been given to the petitioner. The petitioner is getting his pension, as stated in the counter affidavit. After several years, in the month of December, 2006, the petitioner approached this Court for correction of the pay scale. This Court has also examined the Judgment and order passed by a Bench of this Court vide Annexures-C and D to the counter affidavit. In the Judgment of this Court, as contained in Annexure-C it has been categorically stated that there can't be other mode save and except recommendation by the Bihar Public Service Commission for appointment of Junior Engineer. Even this Court in its order passed in the year 1995 in C.W.J.C.No. 2385 of 1994 after noticing the fact that some Overseers were appointed as Junior Engineer, issued direction to the Chief Secretary, Govt. of Bihar to issue direction to the concerned Departments to undo the appointment of Junior Engineers made against the policy decision of the State Government.

7. In view of facts and circumstances, particularly the

Judgment of this Court passed earlier, I do not find any ground to pass any positive order in favour of the petitioner.

8. The writ petition stands dismissed.

(Rakesh Kumar, J)

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