

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9935 of 2015

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1. Sambhu Prasad S/o Late Chandradeep Gope, R/o Mohalla - Daud Bigha Kumhrar, P.S. - Agamkuan, District - Patna.
 2. Satrudhan Kumar, S/o Late - Surya Narayan Prasad, R/o D.N. Das Lane Bangali Akhara, P.S. - Kadamkuan, District - Patna.
 3. Akhileshwar Prasad, S/o Late Laleshwar Prasad, R/o Prithivi pur Chiraiyan Tand, P.S. - Jakkanpur, District - Patna.
 4. Shiv Lakan Mahto, S/o Late Devi Lal Mahato, R/o Maliya Mahadeo, P.S. - Alamgang, District - Patna.
 5. Rambalak Prasad, Son of Late Ramdayal Prasad, R/o Mandiri, P.s. - Budha Colony, District - Patna.
 6. Harikesh Jee Prasad Srivastwa, S/o Late.Vishwanatn Lal R/o - Anisabad New Bypass Road Yamuna Path, P.S.Beaur, District - Patna.
 7. Om Prakash , Son of Late Moti, R/o Yarpur Ambedkar Colony, P.S. - Gardanibagh, District - Patna.
 8. Munna Kumar, S/o Late Mahendra Ram, R/o- Yarpur, P.S. - Gardani bagh District - Patna.
 9. Parsuram Paswan, S/o Late Kishun Paswan, R/o Anisabad, New Bypass Road Yamuna Path, P.S. - Beaur, District - Patna, All are the presently posted in Nutan Rajdhani Anchal Patna Municipal Corporation, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner- cum - Secretary, Department of Finance, Old Secretariat, Government of Bihar, Patna.
2. Municipal Commissioner, Patna Municipal Corporation, Budh Marg, Patna.
3. Chief Accounts Officer, Patna Municipal Corporation, Budh Marg, Patna.
4. Executive Officer Nutan Rajdhani Anchal, Patna Municipal Corporation, 10 Harding Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Pandey
For the Respondent/s : Mr. GP-4- Uma Shankar

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 10-07-2015 Heard learned counsel for the parties as with

regard to the following relief, prayed in this writ

application:-

“for issuance of an appropriate writ , order or



direction particularly in the nature of writ mandamus directing the respondents to grant benefits of the 6th pay revision recommendation to the petitioners w.e.f. 1.1.1996 who is working in the Corporation on the different post in Patna Municipal Corporation in Nutan Rajdhani Anchal as a regularly appointed employee as has been granted to other employees of the corporation.

To direct the respondents to pay differences of pay in revised pay scale from 01.01.1996 to 31.10.2004 in the new scale as per implementation of 6th pay revision w.e.f. 01.01.1996.”

Learned counsel for the petitioner in support of the aforementioned prayer has submitted that now when the dust has already settled after the judgment of the Division bench in L.P.A. No. 960 of 2007 disposed of on 4th May, 2015, that the petitioner and other working employees of Patna Municipal Corporation apart from those who have retired with a cut off date shall be entitled for payment of arrears and current amount of the revised salary as per the 6th Pay Revision Committee recommendation for the period from 01.07.1997 to 31.10.2004, the action of the respondent-Patna Municipal Corporation in still denying the amount of arrears on account of such pay revision is



wholly arbitrary and illegal. In this regard, learned counsel for the petitioner has referred to an order passed by the authority of the Patna Municipal Corporation on 16.05.2015, which according to him is clearly discriminatory in nature, inasmuch as, while 60 persons have been allowed such benefit of pay revision by the Corporation on its own, similar benefit has not been given to the petitioners though they claim to be senior to few of them covered by the order dated 16.05.2015.

Learned counsel for the Patna Municipal Corporation on the other hand has submitted that the plea of petitioners that they are senior to the persons, who have been allowed such payment of revised salary as per the order dated 16.05.2015 is only oral, inasmuch as, not a word has been said in the averments made in this writ application. He has further submitted that the account of Patna Municipal Corporation is in financial crunch and therefore, it will not be possible for the Corporation to make payment of either arrears of salary



or the revised retirement benefit on account of such arrears of salary in one go. He also explains that for the time being such benefits has been extended to the employees who had retired on or before 31.03.2012, and for the rest of them the Corporation is making its own endeavours to make arrangement for found ensure payment. In this regard, he also relies on certain order passed by this Court, wherein, a direction has been given for payment of arrears of salary or retirement benefit strictly as per the date of entitlement by maintaining priority list based on either the date of appointment/retirement.

In the considered opinion of this Court, when there is no dispute as with regard to petitioners being eligible to get such amount of arrears, the only question would be as to whether such payment has to be made by the Patna Municipal Corporation to all its working employees in one go even if that may lead to closure and in process bring to an end, the employment of the



petitioners and others still working in Corporation? This Court keeping in mind that such payment of salary and emoluments including the arrears on account of pay revision has to be basically made from the internal resources of the Corporation and the entire money generated by the Corporation cannot be spent only on payment of salary and to its employees by suspending its main function of providing services to public at large, would once again reiterate its earlier direction for maintaining a balance by the authority of the Corporation. This court can not close its eyes that the internal resources for augmenting revenue by Corporation are very poor and in fact whatever amount is being collected by way of municipal tax by Corporation is not sufficient to even meet the expenses of establishment though such tax are never collected only for the purpose of making payment of salary. It was in this background this Court has earlier directed for making payment of arrears of salary by following a



priority list strictly as per the date of entitlement based on the date of appointment/retirement of the employees and the Patna Municipal Corporation has been following the same by making such a priority list based on date of appointment/retirement, for making payment of arrears no fault can be ascribed now on the head of the authorities of the Patna Municipal Corporation.

The plea that there was an order of this Court dated 21.08.2009 in C.W.J.C No. 10275 of 2009, is only a matter of past and now this Court would not be inclined to follow such judicial order as was explained by the Apex Court in the case of *State of Bihar Vs Upendra Narayan Singh*, reported in 2009(5) SCC 65 in the following words:-

"67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by



a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order – Chandigarh Administration and another v. Jagjit Singh and another reported in (1995) 1 SCC 745, Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others reported in (1997) 1 SCC 35, Union of India [Railway Board] and others v. J.V. Subhaiah and others reported in (1996) 2 SCC 258, Gursharan Singh v. New Delhi Municipal Committee reported in (1996) 2 SCC 459, State of Haryana v. Ram Kumar Mann reported in (1997) 1 SCC 35, Faridabad CT Scan Centre v. D.G. Health Services and others reported in (1997) 7 SCC 752, Style (Dress Land) v. Union Territory, Chandigarh and another reported in (1999) 7 SCC 89 and State of Bihar and others v. Kameshwar Prasad Singh and another reported in (2000) 9 SCC 94, Union of India and another v. International Trading Co. and another reported in (2003) 5 SCC 437 and Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others reported in (2007) 4 SCC 737."



Having thus regard to the law laid down by the Apex Court in the case of Upendra Narayan Singh (supra), and in the peculiar facts and circumstances of this case, this court would give liberty to the petitioners to file individual representation explaining his case of arrears of payment of revised pay scale vis a vis any person who has been included in the list of 60 persons and if in course of such representation, it is found that any person junior to the petitioners without there being any direction of any court has been already paid such amount, Patna Municipal Corporation would be under an obligation to also make payment to the petitioners. At the same time, if it is found that none of the junior to the petitioners had been paid such amount on the own violation of the authorities of the Corporation, (but only to comply any direction of any court), the petitioners will have to wait in the queue as per the priority list being followed by the Patna Municipal Corporation on the basis of date of appointment/retirement. This

exercise however must be completed by the authorities of the Patna Municipal Corporation within a period of four months from the date of receipt/production of a copy of this order.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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