

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.390 of 2013

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Punam Kumari, W/O Sri Sanjay Sharma, resident of Village- Raghapur,
P.S. Bihta, District- Patna

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna
2. The Secretary, Health Department, Govt. of Bihar, Patna
3. The Secretary, Department of Personnel and Administrative Reforms,
Government of Bihar, Patna
4. The Secretary, Department of Finance, Government of Bihar, Patna
5. The Joint Secretary, Department of Finance, Government of Bihar, Patna
6. The Special Secretary, Department of Health, Government of Bihar, Patna
7. The Executive Director, State Health Committee, Govt. of Bihar, Patna
8. The Director in Chief, Directorate Health Services, Govt. of Bihar, Patna
9. The Superintendent, Patna Medical College and Hospital, Patna

.... Respondents

with

Civil Writ Jurisdiction Case No.16898 of 2014

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1. Kanchan Kumari, aged about 42 years, w/o Arun Kumar, resident of
village- Dihra, P.S.- Rahui, District- Nalanda
 2. Sarita Kumari, d/o Sri Sanyug Prasad Singh, resident of village
Mahmadpur, P.S. Nagarnausa, District- Nalanda
 3. Mamta Kumari d/o Sri Ram Chandra Prasad, resident of village Gomhar,
P.S.- Jagai, District- Nalanda.
All are working as Grade-A Nurse in Indira Gandhi Institute of Cardiology,
P.M.C.H., Patna
 4. Rita Sinha w/o Sri Narendra Kumar, resident of village- Kolhara, P.S.-
Aungari, District- Nalanda, Grade- A Nurse P.M.C.H., Patna

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Secretary, Health Department, Govt. of Bihar, Patna
3. The Secretary, Department of Personnel and Administrative Reforms,
Government of Bihar, Patna
4. The Secretary, Department of Finance, Government of Bihar, Patna
5. The Joint Secretary, Department of Finance, Government of Bihar, Patna
6. The Special Secretary, Department of Health, Government of Bihar,
Patna
7. The Executive Director, State Health Committee, Govt. of Bihar, Patna
8. The Director-in-Chief, Directorate Health Services, Govt. of Bihar, Patna
9. The Superintendent, Patna Medical College and Hospital, Patna

.... Respondents

with

Civil Writ Jurisdiction Case No.14436 of 2015

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1. Kumari Sudha Sinha, daughter of Sri Anandi Prasad Akela, Resident of

Village and P.O. Dharhara P.S. Silao, District Nalanda at Biharsharif, presently working as Staff Nurse Grade "A" Anugrah Narayan Medical College and Hospital Gaya, District Gaya.

2. Shobha Kumari, wife of Sri Anil Kumar, Resident of Village and P.O. Dhandhar, P.S. Wazirganj, District Gaya, presently working as Staff Nurse Grade "A" Gautam Budha Leprosy Dispensary, Gaya, District-Gaya.
3. Sudha Kumari, wife of Sri Shiv Kumar Prasad, Resident of Village Mahimapur, P.O. Mathurapur, P.S. Guraru, District - Gaya, Presently working as Staff Nurse Grade "A" Anugrah Narayan Medical College and Hospital Gaya, District Gaya.
4. Jyoti Kumari, daughter of Sri Chhote Lal Chaudhary, Resident of Mohalla- Tel Bigha, Rang Bahadrapur, Gaya, P.O. and P.S. Gaya, District Gaya, presently working as Staff Nurse Grade 'A' Anugrah Narayan Medical College and Hospital Gaya, District Gaya.
5. Renu Singh, wife of Manjit Kumar Singh, Resident of Lal Babu Raod, Nai Godown, Gaya, P.O. and P.S. Gaya, District Gaya, presently working at Staff Nurse Grade "A" Gautam Budha Leprosy Dispensary, Gaya, District Gaya.
6. Rekha Sinha, wife of Sri Devendra Singh, Resident of Mohalla- Patel Nagar Harnaut, P.O. and P.S. Harnaut, District Nalanda at Biharsharif, presently working as Staff Nurse Grade "A" Anugrah Narayan Medical College and Hospital Gaya, District Gaya.
7. Indu Kumari, wife of Sri Jagat Narayan Choudhary, Resident of Mohalla- South Murli Hill, Purani Mal Godown, Station Road, Gaya, P.O. and P.S. Gaya, District Gaya, presently working as Staff Nurse Grade "A" Anugrah Narayan Medical College and Hospital Gaya District Gaya.
8. Veena Bharti Sinha, wife of Sri Girish Prasad, Resident of village -Hari Nagar, Kharizama, P.O. Chandhari, P.S. Islampur, District Nalanda at Biharsharif, presently working as Staff Nurse Grade "A" Patna Medical College and Hospital Patna District Patna
9. Pushplata Kumari, daughter of Sri Babuchand Prasad, Resident of Rajkiya Girls Inter Level School, Gulzarbag, P.O. and P.S. Gulzarbag, District Patna, presently working as Staff Nurse Grade "A" Patna Medical College and Hospital , Patna District Patna
10. Kumari Bindu Mala, daughter of Sri Briendra Prasad, Resident of village- Dariya Chak, P.O. Aungari, P.S. Ekangarsarai, District Nalanda at Biharsharif, presently working as Staff Nurse Grade "A" Patna Medical College and Hospital , Patna District Patna.

... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Bihar, Patna.
4. The Secretary, General Administration Department, Government of Bihar, Patna.
5. The Joint Secretary, Health Department, Government of Bihar, Patna.
6. The Joint Secretary, Health Department, Government of Bihar, Patna.

.... Respondents

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Appearance :

(In CWJC No.390 of 2013)

For the Petitioner/s : Mr. Ravindra Kumar

For the Respondent/s : Mr. P.N. Sahi

(In CWJC No.16898 of 2014)

For the Petitioner/s : Mr. Binod Kumar

For the Respondent/s : Mr. Sc17- Arvind Kumar No. 2

(In CWJC No.14436 of 2015)

For the Petitioner/s : Mr. Anita Kumari

For the Respondent/s : Mr. Gp16- Rajesh Singh

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**
ORAL ORDER

11 09-10-2015

Heard learned counsel for the petitioners and the respondents.

2. The petitioners, in these three writ applications, are staff Nurse Grade 'A' appointed on contract basis. They seek quashing of the order dated 08.11.2012 passed by the Director-in-Chief, Health Services, Bihar, Patna rejecting their application for fixing their honorarium at Rs.25,660/- after taking into consideration all the allowances mentioned in Government Resolution, contained in letter no. 2401, dated 18.07.2007 particularly Clause-4.

3. The Personnel and Administrative Reforms Department, Government of Bihar, vide Resolution dated 18.07.2007 laid down procedures and guidelines for appointment on contract basis in different departments on sanctioned posts for a maximum period of one year. The Honorarium of the contractual

employees were to be fixed as per the guidelines mentioned in Clause-4 of the Resolution.

4. As per Clause 4 of the guidelines, the Authorized Committee or the Empowered Committee comprising of the departmental Secretary, Secretary, Personnel and Administrative Reforms as well as an officer not below the rank of Joint Secretary would fix the upper limit of honorarium payable to contractual employees inclusive of dearness pay, dearness allowance and other allowances like house rent allowances, if such vacancy is available in the Government service.

5. In view of the Resolution dated 18.07.2007, the authorized committee of Secretary, Health Department, Secretary, Personnel and Administrative Reforms Department, Government of Bihar and Joint Secretary, Finance Department vide Resolution dated 13.11.2007 fixed the Parishramik (honorarium) of the employees of the Health Department including Staff Grade-A Nurse at Rs.7955/-. While fixing the Parishramik (honorarium), the authorized Committee did not take into account the Dearness Allowance and House Rent Allowance etc., whereas the Dearness allowance was granted to Professor, Associate Professor and Assistant Professor appointed on contract basis.

6. Pursuant to advertisement, dated 03.06.2007, the



petitioners were appointed against 850 posts of Staff Nurse Grade-A sanctioned in Patna Medical College and Hospital, Patna. However, they were denied other allowances while fixing the honorarium while allowing the same to Junior Engineer, Assistant Professor, Associate Professor and Professor moved this Court in C.W.J.C. No. 5611 of 2009. In some of the writ petitions, the State took a plea that dearness pay was being denied uniformly to certain categories of contractual appointees. This Court after hearing the parties disposed of the writ petition on 01.05.2009 with observation that if the petitioners represent, seeking such relief based on the policy guidelines, dated 18.07.2007, the respondents shall make available the reasons for denial of the different allowances.

7. In terms of the order, dated 01.05.2009, the petitioners represented to the authorities. In the meanwhile, in view of recommendation of 6th Pay Revision Commission, the Government felt the need of revising the Parishramik (honorarium) of the persons appointed on contractual basis. As such, the authorized committee met on 17.09.2009 and took a decision to enhance the Parishramik (honorarium) of Staff Nurse Grade-A to 12,000/- vide Memo dated 13.01.2010 (Annexure-9). The Committee also rejected the representation of the petitioners



vide Memo dated 10.02.2010 relying on Clause-X of its Policy contained in Resolution dated 18.07.2007 that persons appointed on contractual basis will not be treated as Government servant and would not be entitled to the benefits admissible to them. Later on, the Authorized Committee in view of the decision dated 03.03.2011, increased the Parishramik (honorarium) of the Staff Nurse Grade-A to Rs.20,000/-.

8. The authorized Committee again met on 03.09.2010 under the Chairmanship of Principal Secretary, Health Department, in which the honorarium to Grade-A Nurse was raised to Rs.20,000/-, which is evident from office, order contained in Memo no. 194 (6) dated 03.03.2011 (Annexure-11). In the meantime, Punam Kumari (petitioner of C.W.J.C. No. 390 of 2013) filed C.W.J.C. No. 13839 of 2012 challenging the order dated 13.01.2010, whereby the honorarium was initially fixed at Rs.12,000/-. The challenge was made on the ground that the respondent erred in not including the dearness pay and the dearness allowances while calculating the honorarium, which was the mandate of Clause IV of Resolution dated 18.07.2007 (Annexure-1).

9. The learned Single Judge noticed that while fixing the Parishramik (honorarium), the respondents referred to Clause-



X alone and it failed to notice Clause-IV of Resolution dated 18.07.2007. The learned Single Judge, as such held the order dated 10.02.2010 as unsustainable and at the request of the petitioner, the writ application was disposed of with liberty to pursue the remedy before the respondents, who were to dispose of the same within a period of three months after due consideration of Clause-IV. A copy of order dated 16.08.2012 passed in C.W.J.C. No. 13839 of 2012 is annexed as Annexure-13.

10. The petitioners again made representations. The Director-in-Chief, Health Services vide order dated 08.11.2012 rejected the representation of the petitioner for fixing the Parishramik (honorarium) at Rs.25,660/- instead of 20,000/- as fixed by the authorized committee.

11. The petitioners have again reiterated the submissions, which have been noticed by this Court in earlier writ applications. They submit that they are entitled to allowances as per terms of Clause IV of Resolution dated 18.07.2007 of Personnel and Administrative Reforms Department. They submit that they are not asking for any benefit beyond it. They submit that still some allowances have not been taken into consideration, while fixing the honorarium, which have been fixed at Rs. 25,000/-.

12. On the other hand, the case of the respondents is that the petitioners cannot seek parity with regular employees, as the mode of appointment and terms of service conditions would be different. He relied on the following observation of this Court dated 16.08.2012, passed in C.W.J.C. No. 13839 of 2012, which is quoted herein below:

“....A person appointed on contract therefore, to the mind of the Court, cannot ipsi-dixit seek parity in pay or fixation of stipend vis-à-vis the Government Scale. The Court declines any relief on that score but leaves the petitioner to pursue any representation, as he may advised.”

13. The rival submissions have considerably narrowed down in view of supplementary counter affidavit filed on behalf of respondent no.8, dated 29.09.2015, bringing on record, the order of Health Department contained in Memo No. 990 (4) dated 11.11.2014 by which the honorarium of the petitioners have been raised to Rs.25,000/- (contained in Annexure-B at page 115 of the brief). Para 9 of the supplementary counter affidavit is quoted herein below for easy reference:

“9. That so far as honorarium of the petitioner is concerned, who is working on the post of Nurse Grade ‘A’ that has also been calculated and revised accordingly, in the light of the above mentioned

provision contained in para no.4 by the Authorized Committee as thus:-

Name of post Honarium sanctioned earlier		Total honorarium on the basis of 6 th pay commission					
		Pay	Grade	Dearness	House	Total	Recommend-
		Band	Pay	allowances (100)	allowances (10%)		ed honorarium
Nurse Grade 'A'	20000	9300	4600	13900	1390	29,100	25,000

14. I would broadly agree with the stand of the State that there is nothing in Clause IV, which positively indicates that the petitioners would be entitled to Dress Allowances, City allowances, which accounts for a difference of a sum of Rs.560/- claimed by the petitioners and the one granted by the Department.

15. The writ applications are accordingly disposed of in the aforesaid terms.

(Samarendra Pratap Singh, J.)

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