

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19267 of 2013

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Dig Vijay Singh, Son of Madhu Singh, resident of 401 Saligram Complex, Ashok Raj Path, Patna (Near Kulharia Complex), Police Station - Pirbahore, District Patna at present posted as President, District Consumer Forum, Rohtas at Sasaram

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Bihar, Patna
3. The Joint Secretary, General Administration Department, Bihar, Patna
4. The Secretary, General Administration Department, Bihar, Patna
5. The Principal Secretary, Department of Finance, Bihar, Patna
6. The Accountant General (A & E), Bihar, Patna
7. The District & Sessions Judge, Patna
8. The Registrar, Civil Court, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Parijat Saurav,
Mr. Vipin Kumar Singh, Advocates
For the State : Mr. Ashok Kr. Choudhary, AAG 13
Mr. Akshansh Ankit, AC to AAG 13
For Accountant General: Mr. Rakesh Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 10-03-2015

The petitioner retired as Additional District & Sessions Judge on 31.08.2010 on attaining the age of superannuation. Even while in service, he submitted a representation claiming that he was drawing less amount of salary than his two juniors, namely, Ajit Kumar Sinha and Man Mohan Chaudhary.

2. To be precise his case is that he was promoted as Additional District Judge on 15.10.2003 and those two officers were



promoted as Additional District Judge on 13.02.2004 and 17.02.2004, respectively but their pay scale was fixed at Rs.17,550/- whereas his pay-scale was fixed at Rs.17,150/-. On 01.09.2010, the Joint Secretary of the General Administration Department of the State of Bihar, the 3rd respondent, passed an order extending the benefit of revision of pay-scale of the petitioner on par with that of the two officers aforesaid. However, three years thereafter, the 3rd respondent issued a letter dated 17.07.2013 withdrawing the benefit conferred upon the petitioner through order dated 01.09.2010. On the basis of that, proposals were made for recovery of the excess amount that was paid to the petitioner. Challenging the same, the present writ petition is filed.

3. One of the grounds urged by the petitioner is that no notice was issued before the impugned order dated 17.07.2013 was passed. On merits it is stated that once the juniors were found to be drawing the higher pay-scale, he is also entitled to be paid the same.

4. The respondents have filed a detailed counter affidavit opposing the writ petition. According to them, the benefit of revised pay-scale was extended without verifying the relevant facts and by citing the example of the petitioner, a large number of officers started making claims and in that view of the matter, the impugned order was passed.

5. Heard Sri Rajendra Prasaad Singh, learned senior counsel for the petitioner, Sri Ashok Kumar Choudhary, learned Additional Advocate General No.13 for the State and Sri Rakesh Kumar Singh, learned counsel for the Accountant General.

6. As observed earlier, the petitioner retired as Additional District Judge on 31.08.2010. Even before his pension was fixed, the 3rd respondent passed an order on 01.09.2010 extending the benefit of the enhancement of pay-scale to be on par with that of two officers, who are juniors to him. The order dated 01.09.2010 does not disclose that any consultation was made with the High Court, before the pay-scale of the petitioner was stepped up.

7. Be that as it may, once the petitioner was conferred the benefit of pay-scale through order dated 01.09.2010; the 3rd respondent could have withdrawn such benefit, only after issuing show cause notice, stating the reasons. Admittedly, no notice was issued to the petitioner before the impugned order dated 17.07.2013 was passed. Therefore, it is violative of Principles of Natural Justice. On this sole ground, the writ petition needs to be allowed.

8. In order to avoid further complication in the matter, we direct that the present impugned order shall be treated as show cause notice and the petitioner shall be entitled to submit his explanation within four weeks from today. The 3rd respondent shall pass a fresh

order in accordance with law in consultation with the High Court as well as the office of the Accountant General within two months thereafter.

9. No recovery shall be effected from the pension of the petitioner for a period of three months. The question as to whether the amount recovered from the petitioner shall be refunded to him, would depend on the nature of the orders that may be passed by the State Government.

10. We make it clear that henceforth no officer of the State of Bihar shall pass any order in relation to the service conditions of the Members of the Bihar Subordinate Judiciary, without consulting the High Court. We, accordingly, allow the writ petition to the extent indicated above. There shall be no order as to costs.

11. The interlocutory application, if any, shall stand disposed of.

12. A copy of this judgment shall be forwarded to the Chief Secretary, Government of Bihar, Patna, who, in turn, shall give necessary information to the concerned Departments.

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(L. Narasimha Reddy, CJ)

B.T/-

(Vikash Jain, J)

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