

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1691 of 2013

IN

Civil Writ Jurisdiction Case No 6602 of 2011

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Rai Sudhir Prasad, son of late Rai Udai Narain Prasad, permanent resident of 242
Patliputra Colony, PS – Patliputra, Patna

.... Appellant/s

Versus

- 1 The State of Bihar through Secretary to Government of Bihar, Health & Medical Education –cum- Family Welfare Department, Vikas Bhawan, Patna
- 2 Secretary to Government of Bihar, Health & Medical Education –cum- Family Welfare Department, Vikas Bhawan, Patna
- 3 Secretary to Government of Bihar, Finance Department, Main Secretariat, Patna
- 4 Accountant General, Bihar, Bir Chand Patel Path, Patna – 800 001
- 5 Joint Secretary, Health (Medical Education & Deshi Chikitsa) Department, Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : M/s Amit Shrivastava & Girish Pandey, Advocates

For the S t a t e : Mr Sanjay Prasad, AC to AAG VI

For the A G : Mr Kumar Priya Ranjan & Miss Gunja, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 14-10-2015

Heard the learned counsel for the appellant, learned counsel for the State and learned counsel for the Accountant General and with their consent, this appeal has been heard for its final disposal at this stage itself.

2 The appellant is aggrieved by the judgment and order dated 31.10.2013 passed in *CWJC No 6602 of 2011*. The case has a long

history.

3 The appellant Rai Sudhir Prasad was a Professor of Forensic Medicine at Patliputra Medical College, Dhanbad, a Government Medical College. In absence of Principal of the College, he was made to officiate as the Principal/Superintendent of the Medical College & Hospital for a period of 44 months immediately preceding his superannuation on 30.09.2000.

4 A dispute was raised by the appellant that though substantively, he was Professor and Head of the Department of Forensic Medicine, he having been made to work and discharged the duties and responsibilities of the Principal/Superintendent, he was entitled to the remuneration attached to the said post. He filed a writ petition before this Court which was dismissed by the learned Single Judge and Letters Patent Appeal was also dismissed. He went to the Apex Court. The Apex Court allowed the appeal and held that in terms of Rule 103 of the Bihar Service Code (for brevity, *the Code*), having officiated as the Principal/Superintendent, he would be entitled to 20% presumptive pay of that post in addition to his substantive pay. Then when his retiral dues and pay arrears were being calculated, he raised yet another dispute. He claimed that he was entitled to Dearness Allowance (for brevity *DA*) on this presumptive pay. He further claimed that he was entitled to non-practising allowance (for

brevity, *NPA*) on the total pay that he received. He then claimed that for working out his retiral dues, all these payments will be taken into account. The learned Single Judge did not accede to the prayers. Hence, this appeal.

5 We would take each issue separately for the sake of clarity. The first would be Rule 103 of the Code which, as per the judgment of the Hon'ble Supreme Court, inter party, would operate and entitle the appellant to 20% substantive pay, of the post he was made to work on, which would be post of the Principal/Superintendent of the Medical College. When the Rule talks of 20% of presumptive pay, it does not contemplate only 20% of the basic pay of the said post. Pay is the sum total of basic pay as increased by *DA*. It would be farcical to say that the pay of a person would be only 20% of the basic pay of the officiating post without *DA*, in respect of the said proportion. This presumptive pay or 20% thereof is payment as a compensation for being temporarily made to work on a higher post involving higher responsibility.

6 Thus, we have no option but to hold that once it is held that the appellant was entitled to 20% of pay of the higher post as presumptive pay, in addition to his substantive pay, it goes without saying that proportionate *DA* would have to be paid in respect of this 20% presumptive pay.

7 The next issue raised is with regard to *NPA*. For the relevant period, as per the Resolution of the State Government, a doctor was entitled to *NPA* which was about 25% of his basic pay. Learned counsel for the appellant submits that by virtue of Rule 103 of the *Code* if the appellant was entitled to 20% of presumptive pay then the *NPA*, which he was entitled, would stand increased proportionately. We are unable to accept this contention. An employee like the doctor is paid *NPA*. It is in proportion to his substantive pay. That would predicate in relation to his substantive post. It is a payment to “a person” as a compensation for not indulging in private practice. It has no co-relation with presumptive pay which is an independent compensation payable for working on a higher post temporarily. However, we may note that to the extent of *NPA* and his substantive pay that is otherwise payable, he would be entitled to 25% of the basic pay + proportionate *DA* thereof.

8 The next issue, that has been raised is, while fixing pension upon superannuation, the average pay drawn in the preceding 10 months have to be taken into account. Learned counsel for the appellant submits that for the last 44 months prior to his superannuation, the appellant was discharging the functions and the duties of the Principal/Superintendent of the Medical College, though substantively, he was Professor and Head of the Department of



Forensic Medicine. He was, thus, entitled to presumptive pay of 20% of the pay for the post of Principal/Superintendent. This would also form part of the remuneration relevant for calculation of his pensionary benefits. In other words, what is sought to be submitted is that apart from his substantive pay, the presumptive pay of 20% would be taken into account to fix his pensionary benefits. We regret our inability to agree with the said submission. The reason is simple. Pensionary benefits are proportionate to the substantive pay a person receives or is receivable by a person at the time of his superannuation. So far as the appellant is concerned, his substantive position was that of Professor and Head of the Department of Forensic Medicine and that would be his pay scale. What he received as presumptive pay was only compensatory for a temporary period where, in addition to his own post, he was exercising additional duties and responsibilities. It was a payment for a temporary work for a temporary period. It is not a part of his substantive duties nor his substantive post nor his substantive pay. Thus, he cannot legitimately claim that the presumptive pay would also form part of his remuneration for calculation of his pensionary benefits. We hold accordingly.

9 We, therefore, allow the appeal to the extent indicated above and direct the State and the Accountant General to proceed in accordance with our judgment and order and ensure its

implementation within a period of three months from today. If any amount is found due and payable, State and the Accountant General would ensure its payment within this period of three months considering the fact that the appellant is already above 70 years old. In case, full dues are not settled within the period of three months aforesaid, State would be liable to pay interest on the amounts found due and payable at the rate of 6% per annum from the time they were due to the time they are paid.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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