

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.2269 of 2014**

Hemant Kumar Singh S/O Late Chandra Shekhar Prasad Singh Resident At Village Karmaini, P.S- Sanjholia, District- Rohtas.

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. The Health Secretary, Govt. Of Bihar, Patna.
3. The Director-In- Chief, Department Of Health, Govt. Of Bihar, Patna.
4. The Finance Commissioner, Govt. Of Bihar, Patna.
5. The Principal, Patna Medical College, Patna, Bihar.

.... .... Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Uma Shankar Prasad, Sr. Advocate  
Mr. Kamala Kant Tiwary  
For the Respondent/s : Mr. GA-10 Nivedita Nirvikar  
Mr. Manish Dhari Singh, AC to GA-10

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**  
**ORAL JUDGMENT**  
**Date: 08-12-2015**

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**07.12.2015**

Heard learned counsels for the parties.

Petitioner moved the respondents State-authorities when he discovered that he is being short-changed in terms of payment of salary to him on the post of Cyto-technician viz-a-viz other similarly placed persons, working in different hospitals of the State of Bihar. According to the petitioner the pay-scale for them is supposed to be Rs. 4500-7000 /-, whereas the petitioner is getting only Rs. 3050-4590 /-.

The simplicity of the pleadings and arguments



on a deeper analysis of facts do not hold. There is a history behind engagement of the petitioner and his present status. Way back in the mid 80s there was a Programme, known as Post Partum Programme, which was introduced by the Central Government as well as funded by it. As part of that exercise, petitioner was engaged on the post of a Cyto-technician by virtue of Annexure-1, dated 17.11.1986 and the pay-scale given to him was Rs. 535-765/-.

This Programme came to an end. The funding stopped. An issue arose as to what is required to be done with all such employees, engaged under the said scheme. Whatever be the background, under which Annexure – 3 came to be issued, what is of importance is that vide notification, dated 16.09.2003 (Annexure – 3), the employees engaged under the said scheme came to be absorbed under the State. Name of the petitioner does figure in the category of Lab Technician. The Court, however, cannot lose sight of the fact that the notification with regard to most of these persons, including the petitioner, indicated that this adjustment will be made under the State, but with the same pay-scale which the petitioner or other employees drew at that point of time.



The matter rested at that. Since the year 2003, petitioner has drawn salary. The original pay-scale was replaced with Rs. 3050-4590 /-. All was well till the petitioner discovered after the 6<sup>th</sup> Pay Revision Committee's report that the pay-scale being given to Lab Technician or a Cyto-technician is Rs. 4500-7000 /-.

Petitioner filed representations. The same was finally considered and an order under signature of the Director-in-Chief, Health Services, Government of Bihar, Patna, rejecting the claim of the petitioner was passed on 26.06.2013 (Annexure – 6). It is this Annexure, which is being attacked and challenged in the present writ application.

Submission of learned Sr. Counsel is that there is discrimination and violation of Article 14 and 16 of the Constitution of India. Petitioner performed the similar nature of work as other similarly situated employees, therefore, he should be given the pay-scale of Rs. 4500-7000/-. He has also brought on record a notification, contained in Annexure-4, issued by the State Government, wherein certain pay-scales available to the different set of employees have been indicated. For Cyto-technician, the pay-scale is Rs. 4500-7000/-. For Lab Technicians also the pay-scale is Rs. 4500-

7000/-. There is clear discrimination, therefore, which is evident from materials on record. If this is so, the rejection of the claim of the petitioner in terms of Annexure – 6 requires to be interfered with.

In the counter affidavit, filed on behalf of the State-authorities, including the Finance Department, some serious question-mark has been raised with regard to the entry showing post of Cyto-technician in the notification, contained in Annexure-4. It is their stand that there is no post of Cyto-technician in existence, but why the same has figured in the notification, is not understood by the respondents. They suspect some mischief in this regard.

The Court is not required to go into the controversies surrounding the pay-scale of Cyto-technician. Petitioner is no longer a Cyto-technician. He was absorbed as Lab Technician. After the year 2003 he continues to be so till date. Therefore, Cyto-technician post is not referable as a point of comparison.

Coming to the issue as to what will be the pay-scale this petitioner should draw viz-a-viz Lab Technician. Entry of the petitioner in service under the State of Bihar was under the circumstances indicated in Annexure – 3. Annexure – 3 has been in existence for





the last 12 years. The petitioner never raised any finger on the terms and conditions imposed at that point of time. His absorption is not part and parcel of a regular exercise for recruitment of Lab Technician. It is a case of adjustment. The terms of adjustment has also been indicated in the notification itself i.e. Annexure-3. So long as the terms and conditions of engagement contained in Annexure-3 stand, it will be difficult for this Court to equate him for the pay-scale, which has been given to a regularly appointed Lab Technician.

Learned senior counsel, thereafter, submits that the Finance Department has also accepted that there was a mistake in not placing the case of the present petitioner before the last Pay Revision Committee and, therefore, advantage must accrue to the petitioner.

The law in this regard is well settled by the Hon'ble Apex Court in the case of *State of U.P. Versus J. P. Chaurasia, reported in (1989) SCC 21*. The replacement scales and pay-scales are the domain of a special body. Whatever be the reason, if the pay-scale for the petitioner was indicated as Rs. 3050-4590/-, the State Government cannot alter or modify the same on the ground that since similarly placed employees (which the

petitioner is not) are required to be extended same perks and privileges.

There is uniqueness in the engagement and absorption of the petitioner in service. His absorption or adjustment was subject to certain conditions. Those conditions cannot be wished away. However, the Court does give liberty to the petitioner that when the next Pay Revision Committee is formed for recommendation, which can be any time beginning 1<sup>st</sup> of January, 2016 onwards, the petitioner will be free to place / assert his claim for a parity, which may be considered by them.

At this juncture, no interference is warranted with Annexure – 6, because it does not suffer from any vice of violation of any of the provisions of the Constitution of India.

Writ application is dismissed with observation / direction as above.

**(Ajay Kumar Tripathi, J.)**

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