IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13951 of 2014

==

Dashrath Singh Son of Late Mugeshwar Singh Resident of Village- Teri, P.O. Sone Nagar, P.S. Barun, District- Aurangabad.

.... Petitioner

Versus

1. The Accountant General Bihar , Birchand Patel Path, Patna- 800001.
2. The Senior Accounts Officer under the Office of the Accountant General, Bihar, Patna-800001.
3. The State of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna- 800015.
4. The Chief Engineer, Water Resources Department, Dehri, District- Rohtas.
5. The Superintending Engineer, Sone Modernization Circle, Dehri.
6. The Executive Engineer, Sone Barrage Division, Indrapuri- 821308.

.... Respondents

==

Appearance :

For the Petitioner	:	Mr. Ajay Kumar, Advocate
		Mr. Vishwanath Ram, Advocate
For the State	:	Mr. Mujtabaul Haque, G.P.12
For the Accountant General:		Mr. Ram Yash Singh, Advocate

==

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 17-09-2016

Heard learned counsels for the petitioner, State and the Accountant General.

There is an Interlocutory Application (I.A. No. 1995/2016) filed by the petitioner bringing subsequent events on record. Let it be treated as a part of the writ proceedings. There is a counter affidavit on behalf of the State as well as the Accountant General, Bihar, Patna.

With consent of the parties, this writ petition is being disposed of at this stage itself.

The grievance of the petitioner is that he retired on 30.09.2013. Consequent to the retirement, his pensionary benefits had to be worked out by the Accountant General, Bihar, on the basis of the last pay certificate granted by the Department, instead, office of the Accountant General took a view that the petitioner had been granted the 1st A.C.P. with effect from 09.08.1999 and the 2nd A.C.P. was granted with effect from 27.08.1999, which was wrong as with effect from 01.01.1996, there were revision of pay scale and, consequently, an upward revision of pay. Thus, there being an upward revision of pay with effect from 01.01.1996. The grant of A.C.P. would be considered only after this. In other words, the Accountant General was of the view that there being a pay revision with effect from 01.01.1996, that would be taken to be a promotion granted and, therefore, the petitioner would not be entitled to 1st A.C.P. and the 2nd A.C.P. would be calculated from the said date. For this, they relied upon a State Government circular dated 25.01.2008. They, accordingly, recommended by their communication dated 27.12.2013 to the Government to correct the last pay, accordingly. Consequent to this, not only the department reduced the last pay drawn but ordered for substantial recovery from the petitioner. It is these actions that has brought the petitioner to this Court.

The consequence was not only petitioner's last pay was reduced, his pensionary benefits were calculated on this reduced pay scale substantially effecting petitioner.

The first thing, I would like to note is that, no reduction in pay scale or any action, which has adverse consequences, in respect of a person, can be taken without the person being heard. This is basic fundamental principles of administrative law and an integral part of principles of natural justice. Any action taken to the prejudice of a person, without hearing him, would be void *ab initio*. It is not disputed either by the Accountant General or by the State that at any point of time before petitioner's pay scale was refixed, reducing it or before ordering recovery, no show cause whatsoever was asked from the petitioner muchless any proceeding initiated. The Accountant General and the department acted most arbitrarily in total disregard to the rights of individual and, that too, a retired employee. Though on this point alone, the unsolicited advice of the

Accountant General and the actions of the State can be set aside. I do not propose to leave it at that, for even otherwise, the advice of the Accountant General is not legal and the State merely followed what was dictated by the Accountant General without application of mind.

Prior to Assured Career Progression Scheme, there was a Scheme for time bound promotion. This was introduced along with 4th Pay Commission of the State as an anti stagnation step. The whole object of the Scheme was that employees who did not get promotion or who could not get promotion because of lack of promotional avenue or post and stagnated for considerable period, they were to be given the next higher pay scale. The first and the second time bound promotion, depending upon the nature of service, was at the end of 10 years and 15 years. Subsequently, this time bound promotion scheme was replaced by Assured Career Progression Scheme (A.C.P.). Now, of course, even this has been replaced by what is known as Modified Assured Career Progression Scheme (in short “M.A.C.P.”). The whole basis was that a person though qualified for promotion, did not get promotion because of lack of promotional avenue or for lack of promotional post. Merely because a person got a pay revision as a consequence of general revision is not equivalent to and could never have been equivalent to a promotion.

I am sure the Accountant General also understood it in that manner, but for some strange reason chose to take a different view. This Court has earlier also in several cases held that pay revision is not equivalent to grant of promotion. Pay revision could not deprive a person of entitlement under the time bound promotion scheme or A.C.P. or M.A.C.P. Thus, on merit, the objection of the Accountant General is wholly without jurisdiction and contrary to the Scheme as prevalent at the time. Thus, the advice of the Accountant General to the State in respect of petitioner cannot be held to be legal and valid, and is, accordingly, set aside.

I may note that the State considering how the 2008 circular was misinterpreted, mis-utilized, recently on 12.05.2016, resolved and issued a clarification clearly pointing out that all earlier circulars which created the said anomaly would stand withdrawn. If anything the Accountant General whose office had given the unsolicited advice earlier should have corrected its unsolicited advice in view of the aforesaid circular which, of course, did not happen. Problems can be created, but when it comes to rectification, the same person would refuse to rectify and force litigation. I am surprised why, in spite of the circular, the Accountant General, this time, chose to keep quite in the matter and chose not to do justice by undoing the injustice done earlier.

In view of the aforesaid, Annexure-1 dated 27.12.2013, issued from the office of Accountant General, being unsolicited advise to the department, is set aside. Consequently, the consequential letter of the department (Annexure 10 series), unhesitatingly accepted the advice of the Accountant General and revising the pay scale and last pay and ordering recovery, is also set aside.

The Accountant General is directed to restore the pay scale and the pensionary benefits of the petitioner on the last pay drawn and not its revised version. All necessary calculations and restoration of financial benefits would be done by the Accountant General within a period of one month from today including refund of the amount as deducted from the pensionary benefits of the petitioner. Regarding GPF, which has not yet been released, the respondent no. 6, Executive Engineer, would act accordingly within the time as aforesaid, failing which serious consequences would follow.

Accountant General and the concerned department to comply with the order within one month.

Accordingly, with the aforesaid directions, the writ petition is allowed.

(Navaniti Prasad Singh, J.)

Rajeev/N.A.F.R.

U			