

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15721 of 2013

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1. Vijay Mistry Son Of Chandradeo Mistry Resident Of Village - Nagala, P.O. Nagla Kinjar, P.S. Karapi, District - Arwal, At Present - Nagar Panchayat Office, Rajgir, P.S. Rajgir, District - Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Urban Development Department, Govt. Of Bihar, Patna
2. The Joint Secretary, Urban Development Department, Govt. Of Bihar, Patna
3. The Deputy Secretary, Cum Director Urban Development And Housing Department, Govt. Of Bihar, Patna
4. The Under Secretary, Urban Development Department, Govt. Of Bihar, Patna
5. The Commissioner, Patna Division, Patna
6. The Chief Executive Officer, Nagar Panchayat Rajgir, Rajgir, Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S. K. Ghose, Sr. Advocate.
Mr. Giridhar Gopal Tiwary, Advocate.

For the Respondent/s : Mr. Parijat Saurav, AC to AAG 10

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 01-08-2016

Heard learned counsel for the petitioner and learned counsel for the State.

In the present writ petition, petitioner is seeking relief for payment of arrears of salary, current salary which has been withheld since November, 1995.

Petitioner was appointed on the post of Peon in the office of Town Planning Authority, Rajgir by the Commissioner, Patna Division, Patna and accordingly he started discharging the duty to the satisfaction of all concerned Officers. The Secretary-cum-



Executive Offierr, Rajgir Town Planning Authority vide memo no.131 dated 19.3.1990 directed for payment of revised salary to the petitioner along with another employee, namely, Anil Kumar. The Commissioner, Patna vide memo no.640 dated 4.10.1994 directed for payment of regular salary including all benefits to the petitioner along with another employees Anil Kumar, clerk with effect from November, 1992. Accordingly petitioner was getting his salary and other allowances up to November, 1995. Thereafter, there was some official correspondence with the Commissioner of Patna Division and Urban Development Department, Bihar, Patna whereupon the petitioner started getting fixed salary. Similar treatment was also given to Anil Kumar situated identically, moved this Court vide C.W.J.C. No.549 of 2005 making a prayer that he is entitled to revised scale of pay, this Court after considering the case held that there was no need of approval for appointment from the Government, as his appointment does not suffer from any infirmity, direction was given to the Chief Executive Officer, Rajgir Nagar Panchayat to grant relief of revision of salary. It will be relevant to quote relevant portion of the aforesaid judgment:

“This writ petition is allowed with a clear direction upon respondent no.7 that they have to work out the liabilities of payment of salary of the petitioner on the post of clerk based on the

appointment letter issued in Annexure-12 and his regularisation letter contained in Annexure-2 on the pay scale given to him at the relevant time. He may also be entitled to further revisions which may have been made in this regard from time to time based on the recommendations of pay revision committees. The obligation would be upon respondent no.7 to work out the outstanding dues for payment of salary from November, 1995 till date and whatever is required to be done will have to be done within a reasonable time frame”.

Rajgir Town Planning Authority has now become a Nagar Panchayat since 2007.

Counter affidavit which has been filed by Rajgir Nagar Panchayat indicates that petitioner has been discharging the duty accordingly and Nagar Panchayat has not disputed the claim of the petitioner of his entitlement of revision of salary whereas petitioner has been getting fixed salary.

Learned counsel for the State has very fairly accepted that present case is by and large covered by the order passed by this Court in C.W.J.C. 549 of 2005. In that case also identical issue was raised, the Court has arrived to a conclusion as appointment was legal does not suffer from any wrong is entitled to revised scale of pay . Counsel for the State though opposed the prayer of the petitioner but in view of the order passed by this Court in C.W.J.C. No.549 of 2005 he failed to substantiate his defence.

In the present case there is no dispute that petitioner was appointed by the proper authority and appointment of petitioner cannot be faulted. In this view of the matter, petitioner is also entitled to the same relief as has been given to Anil Kumar in pursuance of C.W.J.C. No.549 of 2005. It is apparently clear from order dated 16.10.2012 (Annexure-6) the benefit has been extended to Anil Kumar in pursuance of the order passed by this Court.

In this view of the matter, this Court directs the Nagar Panchayat, Rajgir to extend the benefit of revived scale of pay to the petitioner as has been given to Anil Kumar within a period of three months from the date of receipt/Production of a copy of this order. Accordingly the petitioner is entitled to the revised scale of pay and consequential benefits.

With the aforesaid observation this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.8.2016
Transmission Date	NA