

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21105 of 2011

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Bhawesh Kumar s/o Late Jagat Narain Singh Resident Of Tarari, P.O. Tarari, Via
Konch, P.S. Tarari, District-Gaya.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Secretary, Registration, Excise And Prohibition Department, Bihar, Patna.
3. The Excise Commissioner, Bihar, Registration And Excise Department, Vikash
Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Khurshid Alam

For the Respondent/s : AC to AAG 2

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 18-05-2016

Heard Mr. Md. Khurshid Alam, learned counsel for the
petitioner and learned AC to AAG No. 2.

The petitioner, has approached this court invoking its writ
jurisdiction under Article 226 of the Constitution of India, with a
prayer for grant of the following reliefs:-

***“a. For payment of salary of the post of Excise
Sub Inspector for the period 06.06.89 to 20.10.2004
during which the petitioner discharged the duty and
function of higher post of Excise Sub Inspector but
was paid the salary of lower post of Assistant
Excise Sub Inspector .***

***b. For grant of 2nd A.C.P. benefits after
completion of 24 years of service with all the
consequential benefits.”***

It is the case of the petitioner that he was appointed as
Assistant Sub Inspector Of Excise in the year 1978, and thereafter



even though he was eligible for being considered for promotion as Sub Inspector Of Excise his case was not considered, though there was sanctioned post and vacancy. Instead of considering the case for promotion of the petitioner to the post of Sub Inspector Of Excise, by an order contained in Memo No. 2694 dated 6th June 1989 the petitioner along with other sixteen persons were asked to discharge the duty of Sub Inspector Of Excise (Memo No. 2694 Annexure - '4' to the writ petition). The petitioner thereafter started to discharge the function of Sub Inspector Of Excise to the satisfaction of the Department. Finally, in the year 2004 the petitioner along with others were promoted as Sub Inspector Of Excise in the pay scale of Rs. 4000 – 6000/-. However, since the petitioner was not paid pay scale of Sub Inspector Of Excise even though he was discharging the duty of Sub Inspector Of Excise in view of Annexure - '4' i.e. order dated 6.6.1989, the petitioner filed a detailed representation before the Commissioner, Excise with a prayer to pay the difference of salary. The representation filed by the petitioner was un-noticed and finally, petitioner superannuated as Sub Inspector Of Excise with effect from 31.1.2010. Learned counsel for the petitioner submits that even thereafter the petitioner filed representations for both the reliefs i.e. for payment of difference of salary of Sub Inspector of Excise from 1989 to 2004 and for granting benefit under



2nd A.C.P. but since the grievances of the petitioner was never considered and decided in favour of the petitioner, the petitioner was finally constrained to approach this court by filing the present writ petition. Learned counsel for the petitioner at the very outset has placed reliance on an un-reported order dated 18.4.2008 passed in **CWJC No. 905 of 2000 (Narsingh Pd. Choudhary vs. The State of Bihar & Ors.)**. He submits that in identical situation Sri Narsingh Pd. Choudhary, who was Sub Inspector of Excise was given charge of Inspector Of Excise with effect from 4.4.1989 and he continued. He was given the charge of Inspector of Excise from 4.4.1989 to 5.6.1995. Subsequently he approached this Court for claiming promotion and all the benefit as Inspector of Excise from the date on which he was asked to discharge the duty of Inspector, Excise. A bench of this court allowed the writ petition relying on a judgment of this court reported in **2001 (1) PLJR 241 (Jamal Ahmad vs. The Administrator, Patna Municipal Corporation & Ors.)**. Learned counsel for the petitioner has further placed reliance on a single bench judgment of this court reported in **1995 (1) PLJR 362 (Dr. Sachita Kumar Sinha versus The State of Bihar and others)**. He has specifically referred to paragraph no. 3 of the said judgment and relied on **(1998) 5 SCC 87 (SECRETARY- CUM- CHIEF ENGINEER, CHANDIGARH versus HARI OM SHARMA AND**



OTHERS). He submits that once the petitioner though was Assistant Sub Inspector Of Excise was asked to discharge the duty of Sub Inspector, Excise even on officiating basis, the petitioner was entitled at least to get salary for the said post. On the aforesaid ground a prayer has been made to direct the respondents to make payment of differential amount of salary as Sub Inspector, Excise from 6.6.1989 to 20.10.2004 after deducting the salary which has already been paid to the petitioner as Assistant Sub Inspector, Excise.

In the writ petition counter affidavit and supplementary counter affidavit has been filed on behalf of the respondent no. 3. So far as second relief i.e. grant of benefit of 2nd A.C.P. is concerned, by filing counter affidavit the respondents have accepted that 2nd A.C.P. has already been granted to the petitioner. So far as first claim is concerned, respondents have claimed that along with the petitioner number of other persons were asked to discharge the duty of Sub Inspector Of Excise but same order was purely an ad-hoc arrangement and in such a situation petitioner may not be entitled to claim salary. Learned state counsel further submits that it is not the case of the petitioner that any other person similarly situated to the petitioner or even junior to the petitioner has been granted such benefit.

Learned counsel for the state has placed reliance on an

order passed in respect of one Sri Bharat Mishra and submits that in his case also the said benefit was not granted. On the aforesaid ground a prayer has been made to reject the present petition.

Besides hearing, I have perused the material available on record. Fact remains that it has not been disputed by the respondents that petitioner has not discharged the function of Sub Inspector Of Excise while the petitioner was continuing as Assistant Sub Inspector, Excise. Regarding the claim that during the period petitioner was asked to discharge the function of Sub Inspector of Excise though there were vacancies but since dispute regarding bifurcation in between the State of Bihar and Jharkhand was there no final decision could be taken. However, it has not been disputed that during the said period the petitioner was entitled to be considered for promotion as Sub Inspector. In any event it is not a disputed fact that petitioner has functioned as Sub Inspector, Excise for the period as claimed i.e. 6.6.1989 to 20.10.2004. Once the petitioner was asked to discharge the duty of Sub Inspector Of Excise certainly he was entitled to get at least pay scale of the Sub Inspector of Excise during the period while he was exercising the duty as Sub Inspector of Excise. The Apex Court in (1998) 5 SCC 87 in paragraph no. 6 has already observed that **“.....If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled**

to salary of that post.....” Keeping in view the fact that petitioner during the said period has discharged the duty of Sub Inspector Of Excise he is entitled to claim salary for the said period. Accordingly, the writ petition is allowed with a direction to pay the difference of salary as Sub Inspector Of Excise for the period between 6.6.1989 to 20.10.2004 after adjusting the salary, which has already been paid to the petitioner as Assistant Sub Inspector of Excise. Keeping in view the fact that relief regarding A.C.P. has already been granted, there is no need to pass any separate order. All the formalities are required to be completed within a period of three months from the date of receipt / production of a copy of this order.

It is made clear that within the aforesaid time entire due salary must be paid to the petitioner.

The writ petition is allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	21-05-2016
Transmission Date	N.A.