

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1415 of 2011

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Narbdeshwar Prasad, aged about 61 years, S/o- Late Akhileshwar Pd., R/o Mithapur, 4th House, East of Devi Asthan, Near Dayanand Kanya Vidyalaya, P.S. Jakkampur, in the town and District of Patna.

.... Petitioner

Versus

1. The State of Bihar, through the Secretary, Water Resources Deptt. Bihar, Sinchai Bhawan, Harding Road, Patna
2. The Under Secretary, Water Resources Deptt. Bihar, Sinchai Bhawan Harding Road, Patna
3. The Chief Engineer, (Mechanical) Water Resources Deptt. Bihar, Barrack No. 10, Old Secretariat, Patna
4. The Superintending Engineer, Irrigation Mechanical Circle, Mithapur, Patna
5. The Superintending Engineer, Irrigation Mechanical Circle, Ratwara, Sinchai Colony, Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Pradeep Kumar

For the Respondent/s : Mr. S.K.Mandal Sc-24

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 05-05-2016

Heard Sri Pradeep Kumar, learned counsel for the
petitioner and Sri S.K.Mandal, learned Standing Counsel – 24.

2. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has mainly prayed for quashing of an order, contained in letter no. 377 dated 20-02-2006 (**Annexure – 12** to the writ petition) whereby the pay-scale of the petitioner was reduced to Rs. 4000/- to 6000/- with effect from 01-01-1996, whereas, the petitioner was drawing the pay-scale of Rs. 5000/- to 8000/-. The petitioner has also made a prayer for granting

consequential benefit.

3. It has been pleaded that the petitioner was appointed as Correspondence Clerk in the year 1972. He got 1st time bound promotion as Junior Selection Grade after completion of 10 years and he was promoted in the Junior Selection Grade-cum-Head Clerk with effect from 23-11-1993. Subsequently, the pay was fixed by the Finance Department in the scale of Rs. 4600/- to 7000/- with effect from 01-01-1996. Petitioner's pay-scale was revised on the basis of report of Fitment Committee in the pay-scale of Rs. 5000/- to 8000/-, vide letter dated 09-05-2005 with effect from 01-01-1996. The petitioner has claimed that suddenly the respondent no. 5/Superintending Engineer by the impugned order reduced the pay-scale of the petitioner with retrospective effect i.e. from 01-01-1998. The said order was passed in purported step for maintaining consistency in the procedure.

4. Learned counsel for the petitioner at the time of hearing by way of referring to **Annexure 12A** to the writ petition i.e. Memo no. 376 dated 01-02-2006 submits that in case of one Sri Prabhu Dayal Singh, an order was passed for reducing his pay-scale and in view of decision taken in case of Sri Prabhu Dayal Singh, the impugned order i.e. order in letter no. 377 dated 20-02-2006, was issued whereby pay-scale of petitioner was reduced. He further



referred to **Annexure – 13** to the writ petition and submits that subsequently, in view of interference by the Hon'ble Lokayukta, the earlier order reducing pay-scale of Sri Prabhu Dayal Singh was withdrawn, vide letter no. 2069 dated 20-07-2007 (Annexure – 13 to the writ petition). Immediately thereafter, the petitioner filed representation before the Superintending Engineer/respondent no. 5 for passing similar order, however; on the representation of the petitioner, no decision was taken. In the meanwhile, the petitioner superannuated w.e.f. 31st January, 2009. The petitioner thereafter tried to get information regarding the fate of his representation, however; no information was provided to the petitioner and thereafter, he was constrained to approach this Court by filing the present writ petition.

5. Learned counsel for the petitioner highlights that even though order in respect of Sri Prabhu Dayal Singh reducing pay-scale was set aside, no step has been taken to cancel the Annexure – 12, which has been issued in the similar circumstances. He further submits that the order impugned is liable to be set aside on the ground that said order was issued without any notice to the petitioner. Meaning thereby that the order impugned was completely in contravention of principle of natural justice.

6. In this case, counter affidavit has been filed on behalf of respondent no. 5, however; on being asked by the Court to

distinguish the case of the petitioner with the case of Sri Prabhu Dayal Singh, in whose favour Annexure – 13 was issued withdrawing the cancellation order, Sri Mandal, learned Standing Counsel - 24 was not in a position to distinguish the same. He accepts that petitioner's case stands on similar footing.

7. Besides hearing learned counsel for the parties, I have also perused the material on record. On perusal of Annexure 12, 12A and 13 to the writ petition, the Court is satisfied that petitioner deserves the same relief. Once taking the plea that in identical case, order was passed for reducing the pay-scale, the pay-scale of petitioner was reduced and order reducing the pay-scale of such person i.e. Sri Prabhu Dayal Singh was subsequently cancelled, there was no reason for respondent to sit over the matter in respect of the petitioner.

8. Accordingly, the order impugned is liable to be set aside on this score alone. Besides this, on perusal of Annexure – 12 i.e. impugned order, it is evident that before passing the order whereby the pay-scale of the petitioner was reduced with effect from 01-01-1998, no opportunity of hearing was provided to the petitioner and as such, the order impugned is liable to be set aside on this ground also that it was passed in violation of principle of natural justice.

9. Accordingly, the order impugned i.e. Annexure – 12 is,

hereby, set aside with a direction to the respondents to grant all consequential benefit to the petitioner. Since the petitioner has already superannuated, the respondents are directed to revise the pension of petitioner also, as if there was no order i.e. Annexure – 12 in existence.

10. 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.

11. With above observation and direction, the writ petition stands allowed.

(Rakesh Kumar, J.)

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