

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7231 of 2014

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Bhawesh Kumar Derhgawen, Retired Additional District & Sessions Judge, Son of
Late Bhuvneshwar Nath, Resident of M.I.G. 53, Hanuman Nagar, Patna – 800020.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Govt. of Bihar,
Main Secretariat, Patna.
4. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
5. The Accountant General (A & E), Bihar, Birchand Patel Marg, Patna.
6. The Registrar General, Hon'ble Patna High Court, Patna.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 12017 of 2014

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Sheo Narayan Gupta, retired Additional Judicial Commissioner, Ranchi, son of late
Babu Srinarayan Gupta, resident of H/7, Argora Housing Colony, Argora, Ranchi,
District-Ranchi (Jharkhand).

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Govt. of Bihar,
Main Secretariat, Patna.
4. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
5. The Accountant General (A & E), Bihar, Birchand Patel Marg, Patna.
6. The Registrar General, Hon'ble Patna High Court, Patna.

.... Respondent/s

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Appearance :

(In CWJC No.7231 of 2014)

For the Petitioner : Mr. Dhananjay Kumar, Advocate
Mr. Sunil Prasad, Advocate
For the Respondent Nos.1 to 4 : Mr. Subhash Pd. Singh, Advocate
For the respondent No.5 : Mr. Kumar Priya Ranjan, Advocate
For the Respondent No.6 : Mr. Mrigank Mauli, Advocate

(In CWJC No.12017 of 2014)

For the Petitioner : Mr. Dhananjay Kumar, Advocate
Mr. Sunil Prasad, Advocate
For the Respondent Nos.1 to 4 : Mr. Arvind Ujjwal, S.C.25
For the respondent No.5 : Mr. Kumar Priya Ranjan, Advocate
For the respondent No.6 : Mr. Piyush Lall, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE HEMANT GUPTA

C. A. V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 30-06-2016

This order shall dispose of CWJC No.7231 of 2014 and CWJC No.12017 of 2014, both raising identical questions of law and facts.

2. The petitioner, in CWJC No.7231 of 2014, retired on attaining the age of superannuation on 31st December, 1990, as Additional District & Sessions Judge being a member of the Bihar Superior Judicial Service. The petitioner, in CWJC No. 12017 of 2014, too, retired on attaining the age of superannuation on 31st of January, 1991, as Additional District & Sessions Judge being a member of the Bihar Superior Judicial Service. Both claim that they

were granted selection grade prior to attaining the age of superannuation, but their pension has been fixed at the entry level grade of the post of Additional District & Sessions Judge without giving benefit of the selection grade, which is illegal.

3. The petitioners rely upon the order passed by the Hon'ble Supreme Court in All India Judges' Association v. Union of India & Ors. reported as (2002) 4 SCC 247, which contemplates that pension shall be 50% of the minimum of the revised scale. The petitioners contend that the revised pay scale, in the selection grade, being Rs.18750-22850/-, the pension payable would be Rs.9375/- with effect from 01.01.1996. Since the pay scale has been revised, with effect from 01.01.2006, to Rs.57700-70290/-, the revised pension would be Rs.28850/-, i.e., 50% of the minimum of the revised pay scale as per Justice E. Padmanabhan Committee's report.

4. The petitioners rely upon an order passed by the Division Bench of this Court in CWJC No.12155 of 2006 (Md. Quamrul Hoda Vs. The State of Bihar & Ors.) decided on 11.09.2009, wherein the said petitioner, who attained the age of superannuation on 30th January, 1990, was ordered to be paid pension as per the revised pay scale with effect from 01.01.1996, although he had retired prior to 01.01.1996. For the said direction, the Division Bench relied upon the Resolution of the Government of

Bihar, dated 07.04.2005, which contemplates that the officers, who have attained the age of superannuation prior to 01.07.1996, they shall be paid pension not less than 50% of the revised salary payable to the equivalent rank.

5. We have heard learned counsel for the parties and find that the claims of the petitioners merit acceptance. Shetty Commission has recommended the pay scale with effect from 01.01.1996, but directed the same to be paid with effect from 01.07.1996. The selection grade, as per Shetty Commission, is Rs.18,750-22,850/-, which has been ordered to be given effect to by the Hon'ble Supreme Court in the judgment reported as All India Judges' Association's case (Supra). Justice Padmanabhan Committee's report deals with revision of pay scale with effect from 01.01.2006. The report contemplates pay scale of Rs.57700-70290/- to the officers holding selection grade. Thus, it is apparent that the benefit of the reports would be available to the officers, who attained the age of superannuation after 01.01.1996 or 01.01.2006.

6. The petitioners, in the present cases, have attained the age of superannuation prior to 01.01.1996. Therefore, the question, which is required to be examined, is whether the revision of pay scale and consequent pension would be admissible to the petitioners or not. The Division Bench, as referred to above, has extracted the Resolution, dated 04.07.2005, in its order, which



contemplates that the officers, who have attained the age of superannuation prior to 01.01.1996, shall also be granted 50% of the pension as per the revised pay scale with effect from 01.01.1996. Apart from the said Resolution, which has been made basis of the order passed by the Division Bench, reference may be made to the Resolution, dated 17.04.2012 (Annexure-18 appended to CWJC No.12017 of 2014), which contemplates that the officers, who have attained the age of superannuation prior to 01.01.2006, would be entitled to pension at the rate of 50% of the revised pay scale provided that the officer concerned has qualifying service of 33 years.

7. The stand of respondents, that Scale of Rs.18750-22850/- is not admissible to the petitioners, is not tenable for the reason that factually, the petitioners were in the selection grade, which is evident from the Notification issued by this Court on 2nd September, 1991, and 05th August, 1994, respectively. Once the petitioners were granted selection grade, the pension needs to be revised corresponding to the revised pay scale with effect from 01.01.1996 and later with effect from 01.01.2006. The resolution, dated 17.04.2012 (Annexure-18 referred to above), is categorical that an officer, who has retired prior to 01.01.2006, which would include even pre 01.01.1996 pensioners, entitled to pension, which shall not be less than 50% of the basic pay from which the official

has retired. Thus, even in view of such resolution, the petitioners are entitled to revision of pension from 01.01.1996 and 01.01.2006.

8. Keeping in view the reasoning recorded in the Md. Quamrul Hoda'case (supra) and the decision of the State Government to grant revised pension to even pre 01.01.2006 retiree, the present writ applications are allowed.

9. The respondents are directed to re-compute the pension payable to the petitioners, with effect from 01.01.1996, at the rate of 50% of the pay scale of Rs.18,750-22,850/-, i.e. the selection grade of the post of Additional District & Sessions Judge, and, then, further revise it to 50% of the pay scale of Rs.57,700-70,290/- with effect from 01.01.2006. Needful be done within four months from the date of receipt of the certified copy of this order.

(Hemant Gupta, J)

I. A. Ansari, ACJ : I agree.

(I. A. Ansari, ACJ)

Sunil/-

AFR/NAFR	
CAV DATE	22.06.2016
Uploading Date	01.07.2016
Transmission Date	