

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2033 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 21115 of 2013

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1. Narendra Kumar Dikshit, Son of Janardan Prasad Pandey, Resident of 'Aditya Sadan' Narendra Block, Mohalla- Indrapuri, Station Road, Barh, P.O.- Barh R.S., P.S.- Barh, District- Patna, Pin- 803214, at present posted at T.B.D.C. Agamkua.
 2. Md. Aslam, Son of Dr. Samsul Zoha, Mohalla- Kulsum Nagar (Banoulia Road), Post Biharsarif, P.S.- Biharsarif, Nalanda, at present posted, at T.B.D.C. Agamkuan, Patna.

..... Appellant/s
Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
2. The Director in Chief, Health Services, Government of Bihar, Patna.
3. The Director, Health Services, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.

..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Raj Nandan Prasad, Advocate
For the State/s : Mr. S.D. Yadav, AAG-IX
Mr. Sachindra Kumar Tiwari, AC to AAG-IX

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 27-01-2017

I.A. No. 8390 of 2016 & 248 of 2017

The application is for condonation of delay of 1 year
and 283 days in filing the Letters Patent Appeal.



2. For the reasons mentioned in the Interlocutory Applications, we are satisfied that the appellant has shown sufficient cause to seek condonation of delay in filing the present Letters Patent Appeal.

3. Consequently, Interlocutory Application Nos. 8390 of 2016 & 248 of 2017 are allowed and delay in filing the Letters Patent Appeal is condoned.

L.P.A. No. 2033 of 2016

The challenge in the present Letters Patent Appeals is to an order passed by the learned Single Bench on 8th of December, 2014 in C.W.J.C. No. 21115 of 2013 whereby, finding anomaly in the fixation of pay consequent to acceptance of recommendation of 5th Pay Revision Commission while granting revised pay scale to the appellants, the Court restricted the revised pay scale from the date of the order and declined to give past benefit. The relevant direction is as under :

“A direction is issued upon the respondent authorities, therefore, to provide the same pay scale and grade pay even now to the petitioners as that of BCG Technicians. The Court is not enthused to pass any order for granting any benefit of monetary kind or otherwise for the past by virtue of the order passed today but the benefit of parity with BCG Technicians will accrue from the date of this order and not create any other obligation or liability for the past upon the State.”



2. State has filed a counter affidavit in the Letters Patent Appeal. It has been stated that granting benefit of upgradation of pay scale with retrospective effect will create financial liability and that there is no illegality in the impugned order, therefore, the order does not warrant interference.

3. The learned Single Bench has found that the appellants are entitled to revised pay scale in accordance with the decision of the Fitment Appellate Committee which found the anomaly in the pay scales granted to the appellants. If it is a case of anomaly, then it will be required to be removed from the date anomaly arises. It is not a grant of new benefit which alone can accrue from the date of the order. The Supreme Court in a Judgment reported as Union of India v. Dineshan K.K., (2008) 1 SCC 586 that “anomaly” in the pay scales cannot be permitted to perpetuate apparent discriminatory differentiation in the pay scales. The Court held as under:-

“27. Thus, the short question requiring our consideration is whether having admitted in their affidavit referred to hereinabove, the “apparent disparity” and “anomaly” in the pay scales of Radio Mechanics, the administrative authorities, the petitioners herein, could be permitted to perpetuate apparent discriminatory differentiation in the pay scales because of the disparity in prerevised and revised scales of the personnel of Assam Rifles prior to the recommendations of the Fourth Pay Commission, irrespective of the identity of their powers, duties and responsibilities with other



paramilitary forces. In our considered opinion, in view of the total absence of any plea on the part of the Union of India that Radio Mechanics in other paramilitary forces were performing different or more onerous duties as compared to the Radio Mechanics in Assam Rifles, the impugned decision of the Government was clearly irrational and arbitrary and thus, violative of Article 14 of the Constitution.”

4. Thus, we find that when an employee is entitled to revision of pay in terms of the recommendation of the Pay Revision Commission, such benefit cannot be restricted only because of financial liability which will fall on the State, when the finding is of anomaly in fixation of pay scale.

5. Consequently, the Letters Patent Appeal is allowed. The judgment of the learned Single Judge is modified by deleting the paragraph extracted above.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.02.2017
Transmission Date	N.A.

