

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1283 of 2016

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Awadhesh Kumar Dubey Son of Late Raj Kumar Dubey, Resident of Village and Post- Bharauly, P.S.- Narahi, District -Balua (U.P), Presently posted as Assistant Teacher Indira High School, Central Jail Road, Buxar.

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Human Resource Development Department, Government of Bihar, Patna.
4. The Accountant General, Bihar, Patna.
5. The Finance Officer- cum- Secretary, Department of Finance, Government of Bihar, Patna.
6. The District Accounts Officer, Buxar.
7. The District Education Officer, Buxar.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Tej Bahadur Singh, Sr. Advocate
For the State	:	Mr. Chittaranjan Sinha, PAAG-2
		Mr. Sudish Kumar, AC to PAAG 2
For the Acct. General	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 30-08-2017

The appellant has filed the instant Letters Patent Appeal under Clause 10 of the Letters Patent of the Patna High Court Rules against the judgment dated 3.5.2016 passed in CWJC No. 5150 of 2014 whereby the writ petition filed by the appellant was dismissed by the Writ Court on the ground that Annexure-2 is not an option in terms of Form-D and obviously is



a creation as an afterthought to build a case for interference with the decision taken in the year 2002.

The writ petition was filed by the appellant challenging the correction in the pay scale of the appellant done by the District Accounts Officer on 26.10.2002. The Writ Court relying on the statement of the counsel for the State that Annexure-2 is not the option in Form-D and it is an afterthought to build a case after decision of revision of pay scale by the District Accounts Officer dated 26.10.2002, dismissed the writ petition.

In the Letters Patent Appeal, counsel for the appellant submitted that the Writ Court has committed error of record in ignoring Annexures 2,4 and 5 and dismissed the writ application on misconstruction of fact as well as law. This Court in order to examine the veracity of claim of the appellant vide order dated 30.3.2017 directed the respondents to produce the original Service Book of the appellant for perusal of the Court at the time of hearing. Today counsel for the respondents has placed the Service Book of the appellant, Awadhesh Kumar Dubey, Assistant Teacher +2 Indira High School, Chitravan, Buxar. From perusal of the Service Book we noticed that the pay scale of the appellant was fixed on the basis of his option as



per Form-D and his pay was fixed at Rs. 7,501/-. The said pay fixation was duly incorporated in the Service Book by the competent authority in terms of the Finance Department Resolution No. 660(2) dated 8.2.1999. However, in red ink certain corrections have been made without any endorsement as to who has done that correction in red ink in the Service Book and under whose authority the said correction was made. The original Service Book produced before us does not indicate the reason for correction or authority under whose direction the corrections were made in the Service Book.

Mr. Tej Bahadur Singh, learned senior counsel appearing on behalf of the appellant has drawn our attention to Annexure-2 of the writ application which is dated 13.3.1999 and the entries in Annexure-2 corresponds to the entries made in the original Service Book produced before us. He further submitted that this identical issue was raised before this court in CWJC No. 9120 of 2005 and vide order dated 10.3.2008, Annexure-5, a Single Bench of this Court on consideration of the entire scheme of pay fixation in terms of the Finance Department Resolution No. 660 dated 8.2.1999, has disposed of the writ application and held out that the petitioners of that case would be entitled for restoration of their pay scale as fixed earlier and also refund of



any amount, which has been recovered from their salary. The case of the appellant herein is identical to the case of **Sudama Pandey and others in CWJC No. 9120 of 2005**, but the Writ Court totally ignoring the aforesaid decision contained in Annexure-5 dismissed the writ petition.

Learned senior counsel for the appellant submits that no notice or opportunity of hearing was provided to the appellant before correcting the pay fixation adverse to the interest of the appellant and as such the action of the respondents in reducing the pay scale earlier fixed is violative of the principles of natural justice and fair play and as such unsustainable in the eye of law.

Counsel for the respondents submitted that the action of the respondents was belatedly challenged by the appellant and as such the appellant does not deserve any indulgence in view of the belated challenge in the writ petition.

The issue of reducing pay scale is a matter of recurring loss and as such it is continuous cause of action and on the ground of delay in such matter, an employee cannot be non-suited. It is now well settled that no order adversely affecting the advantage and benefit can be passed without compliance of principles of natural justice and fair play. The Apex Court way



back in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei & Ors.: AIR 1967 SC 1269 has held out that order for correction in the date of birth, adverse to the employee, cannot be passed without providing opportunity of hearing and as such the action of correcting the date of birth in the Service Book without notice and opportunity of hearing was held to be illegal. In the instant case the pay scale was modified adverse to the interest of the appellant without any notice or opportunity of hearing and as such it is violative of the principle of natural justice and fair play.

In view of the judgment of the Apex Court in Dr. (Miss) Binapani Dei (supra) and also in view of the Apex Court judgment in H. L. Trehan & Ors. Vs. Union of India & Ors.: 1989 SC 568 where the Apex Court in clear terms has held out that no advantage and benefit can be taken away without compliance of principles of natural justice.

Since the original Service Book was produced before us and we have the occasion to peruse the original Service Book, we are of the considered view that the action of the respondents in reducing the pay scale adverse to the interest of the appellant, was taken without any opportunity of hearing, the same is unsustainable as it visits civil and evil consequences.



Moreover, from perusal of the original Service Book we could not find any justification for reduction in the pay scale fixed by the competent authority on exercise of option by the appellant in Form-D. Moreover, there is no reference in the Service Book that under whose order or authority corrections were made in red ink as correction does not refer to any decision of the competent authority and thus we are of the considered view that the alteration in the Service Book adverse to the interest of the appellant was done without any reason assigned in the Service Book without disclosing the authority under which the corrections were made and the Service Book does not indicate that before making such corrections in the Service Book any notice was issued or opportunity of hearing was provided to the appellant.

In the aforesaid circumstances, we are constrained to hold that the action of the respondents in revising the pay scale adverse to the interest of the appellant is unsustainable in the eye of law and as such the action of the District Auditor dated 26.10.2002 is unsustainable and is accordingly quashed and the pay fixation of the appellant in terms of the Resolution No. 660 of the Finance Department dated 8.2.1999 is restored. The respondents are directed to restore all the benefits to the



appellant in terms of pay fixation as per the option exercised by the appellant in Form-D in terms of the resolution No. 660 of the Finance Department dated 8.2.1999 and grant the benefit of such restoration of pay scale in the matter of fixation of pension as the appellant has superannuated.

The appeal is thus allowed and the order of the learned Single Judge dated 3.5.2016 passed in CWJC No. 5150 of 2914 is set aside.

(Rajendra Menon, CJ)

S.Pandey/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
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