

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10241 of 2008

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Raghubansh Rai son of Late Kamladhari Rai, resident of Majhaul Khurd
P.O. + P.S. Desari in the district of Vaishali.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Minor Irrigation Department, Govt. of Bihar, Patna.
2. The Chief Engineer, Tubewell, Muzaffarpur.
3. The Executive Engineer, Tubewell Division, Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar
For the Respondent/s : AC to SC - 5

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 09-03-2017

Heard Sri Dinu Kumar, learned counsel for the petitioner
and learned A.C. to Standing Counsel – 5.

2. The petitioner, who superannuated with effect from 29-02-2008 as Driver Grade-I from the office of Executive Engineer, Tubewell Division, Muzaffarpur, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to grant following reliefs:-

- (i) For directing the respondents to fix the salary of the petitioner in the scale of the petitioner in the scale of Rs. 4,500 to Rs. 7,000/- which the Truck drivers, Special category has been provided with effect from 8th November 1996 pursuant to the notification No. 1468 dated 25th April 2007 (after amending the basic salary being paid to the petitioner in the scale of Rs. 3,050 to Rs. 4,590/-, issued under the signature of the Deputy



Secretary to the Government of Bihar,
Department of Personnel and Administrative
Reforms by the order of the Hon'ble Governor,
as contained in Annexure-1.

- (ii) Also for other consequential benefits for which the petitioner to which he is legally entitled.
- (iii) Also for direction to the respondents to make payment of arrears of salary and pension for which the petitioner is entitled after fixation of his salary in the basic scale of Rs. 4,500 to Rs. 7,000/- with effect from 8th November 1996.
- (iv) Also for directing the respondents to give benefit of Assured Career Progression for which petitioner is entitled in the eye of law after completion or more than 24 years of service on day of his superannuation i.e. 29th February 2008.
- (v) Also for direction to the respondents to make payment of 12 ½ per cent of interest per annum on the due amount of the petitioner, after fixation of his salary with effect from 8th November 1996.”

3. It has been pleaded in the writ petition that the petitioner was initially appointed on 13th June, 1973 as Truck-cum-Tractor Driver in the office of Executive Engineer, Tubewell Division, Gaya. In the said capacity, he was granted increment and also G.P.F. amount was deducted from his salary and functioning in different offices, finally he retired as Driver Grade-I from the office of Executive Engineer, Tubewell Division, Muzaffarpur. A plea has been



taken that in the year 2007, the Govt. of Bihar has come out with an amendment to Bihar Vehicle Driver (Recruitment and Service Conditions) Rules, 2005, which stipulated the pay-scale of Vehicle Driver Grade –I in the scale of Rs. 4500-7000 and said pay-scale was made applicable with effect from 08-11-1996. A plea has been taken that in view of amended rules, the petitioner filed representation for enhancing his pay-scale, however; without getting any enhanced pay-scale, the petitioner superannuated in the month of February, 2008. Even after retirement, he filed detailed representation for the relief, as indicated hereinabove. Since the demand of the petitioner was not taken notice by the respondents, the petitioner was constrained to approach this Court by filing the present writ petition, which was filed on 15-07-2008. In the writ petition, besides claiming for enhancement of pay-scale in view of amended rules, the petitioner has also claimed for grant of benefit under the provision of Bihar State Employees Service Conditions (“Assured Career Progression Scheme”) Rules, 2003.

4. Sri Dinu Kumar, learned counsel for the petitioner has argued that once the petitioner was functioning, even prior to the date of application of amended rules, as Driver Grade-I, in normal course, immediately after the amendment was introduced, it was duty on the part of the respondents to re-fix the pay-scale and enhance the same as



per statutory provision, which has not been done in the present case.

5. In this case, initially a counter affidavit was filed on behalf of respondent no. 2 & 3 on 4th July 2013 and in paragraph 5 A. of the counter affidavit, in specific term, it was stated that later on petitioner was again appointed as Truck Driver Grade-I on 04-01-1974 by the Executive Engineer, Tubewell Division, Gaya and finally, he superannuated from Tube-well Division, Muzaffarpur on 28-02-2008. Even regarding enhancement of the pay-scale, it has been reiterated in paragraph – 5 (B) of the counter affidavit that the pay-scale of Grade-I, as per amended rules, was fixed to Rs. 4500-7000. Regarding the claim of A.C.P., it has been admitted that the petitioner was granted 1st and 2nd A.C.P. in the scale of Rs. 4000-6000 and Rs. 4500-7000 w.e.f. 09-08-1999. Regarding the claim of the petitioner for grant of pay-scale of Rs. 4500-7000, in paragraph 6 (iv), it has been indicated that ***“As far as granting of pay-scale Rs. 4500-7000 from dated 08-11-96 is concerned it will be considered after finalization of the seniority list”***. Thereafter, in this case, 1st supplementary counter affidavit was filed on behalf of same respondents, wherein, it has been indicated that from 01-11-2014, the existence of Tubewell Division ended and it was merged into Minor Irrigation Department, Muzaffarpur, vide Minor Water Resources Department Office Order No. 250 dated 18-10-2014. However, it was



indicated that fresh seniority list of the employees is required to be prepared. Again, on 8th February, 2016, a 2nd supplementary counter affidavit was filed on behalf of respondent no. 2 & 3 and in its paragraph 6 it has been stated *“that as per service book of the petitioner, he was appointed as Truck-cum-Tractor Driver in the work charged establishment in the pay scale of Rs.-180-2-190-3-238-4-242 vide T.O. no. 441 dated 13.07.1973. Thereafter he was re-appointed provisionally as Truck Driver in the work charged establishment vide T.O. no. 9 dated 04.01.1974 and was sanctioned higher pay scale of Rs.- 240-6-300 E.B 8-396/-. The said fact was entered in his service book by the Executive Engineer, Tube Well Drilling Division, Gaya on 06.08.1979. But after about 10 years, the Executive Engineer, Tube Well Drilling Division, Gaya entered in his service book on 31.01.1989 that he is appointed as a Truck Driver Grade I in the scale of Rs.-240-6-300 E.B 8-396/- with effect from 06.07.1973 vide T.O. no. 09 dated 04.01.1974. It appears that the said Executive Engineer made such entry to meet out the objection raised by the District Accounts Officer with respect to grant of higher pay scale to the petitioner.”*

6. Learned A.C. to Standing Counsel – 5 tried to persuade the Court that the petitioner was incorrectly granted the status of Truck Driver Grade-I and he tried to persuade the Court that this was



done by the Executive Engineer, since the District Accounts Officer had made certain objections.

7. Ofcourse, in the counter affidavit, there is no such averment as to whether in the service book of the petitioner by committing any interpolation the word “Driver Grade-I” was recorded, but the learned State counsel, by way of referring to the copy of service book, tried to persuade the Court that it was a case of interpolation in the service book. In absence of any such pleading to this effect, in any of the counter affidavits filed on behalf of respondents, the Court is of the opinion that such submission of learned State counsel is required to be noticed only for its rejection. Accordingly, there is no necessity to examine the correctness of the entry in the service book. The fact remains that by exercising power under Article 309 of the Constitution of India, the amendment in the rule was made and pay-scale of Driver Grade-I was enhanced as Rs. 4500-7000, which was made applicable w.e.f. 08-11-1996. Once, by statutory provision, the pay-scale of Driver Grade-I was fixed and the fact that on the date from which the amendment was made applicable the petitioner was already functioning as Driver Grade-I, there was no reason for the respondents to deny the pay-scale of the petitioner, as per statutory provision i.e. Rs. 4500-7000 w.e.f. 08-11-1996. Regarding the claim of A.C.P., in the counter affidavit, it has been



accepted that 1st and 2nd A.C.P. have been granted to the petitioner.

8. Learned counsel for the petitioner submits that the said A.C.P. was to be considered on the basis of enhanced pay-scale of the petitioner and as such, while allowing the prayer of the petitioner for granting pay-scale, as per amended rules, the respondents are also required to re-examine and re-fix the benefit of 1st and 2nd A.C.P., as per enhanced pay-scale.

9. In view of facts and circumstances, particularly the fact that petitioner was continuing as Grade-1 Driver, even on the date from which, the amended rule was made applicable, certainly the petitioner is entitled to get the pay-scale fixed as per the amended rules.

10. Accordingly, the writ petition is allowed with a direction to consider the case of the petitioner for fixing his pay-scale in the light of amended rules i.e. **Annexure – 1** to the writ petition and grant all consequential benefit. It is directed to complete all formalities within a period of three months from the date of receipt/production of a copy of this order.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

