

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10795 of 2011

=====

Rajdeo Chaudhary son of Sri Shiv Pujan Chaudhary, R/o Village-Umeshbad,
P.O-Baidrabad, District- Gaya, At Present Working As Divisional Assistant
Patna Division, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Joint Secretary, Finance Department,
Government of Bihar, Patna.
2. The Principal Secretary, Environment and Forest Department Bihar,
Patna.
3. The Deputy Secretary, Environment and Forest Department, Bihar,
Patna.
4. The Director, Ecological and Environment Department, Government of
Bihar, Patna.
5. The Principal Chief Conservator of Forest Patna, Bihar.
6. Regional Chief Conservator of Forest Patna, Bihar,
7. Forest Conservator, Patna Circle, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	: Mr. Bankey Bihari Singh, Advocate
	: Mr. Manoj Kumar, Advocate
	: Mr. Sanjay Kuamr, Advocate
	: Mr. Shailendra Prasad, Advocate
For the Respondent-State	: Mr. Anirudh Kumar Singh, A.C. to G.P.-25

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-05-2017

Leave is granted to the petitioner to mark the Annexure-
14 series individually during course of the day.

Heard Mr. Bankey Bihari Singh, learned counsel
appearing for the petitioner and Mr. Anirudh Kumar Singh,
Assisting Counsel to G.P.-25 for the State.

With the consent of the parties, this writ petition has
been heard with a view to its final disposal at the stage of admission



itself.

The petitioner has prayed for quashing the order bearing no.22/09-630 dated 9.3.2011 of the Joint Secretary, Government of Bihar impugned at Annexure-14/B to the writ petition and also seeks a direction for issuance of a writ in the nature of mandamus commanding the respondents to fix the pay scale of the petitioner as sanctioned to other upper grade assistant(s).

Facts of the case briefly stated is that the petitioner was appointed as Draftsman in the Forest Department in the pay scale of Rs. 680-965/- on temporary basis. A copy of the appointment order dated 06.07.1987 is annexed at Annexure-1 to the writ petition. By passage of time, certain posts, available in the Forest Department, were found to be of not much use which included the post of a Draftsman and thus, a recommendation was made by the Regional Chief Conservator of Forest, Patna to the Principal Chief Conservator of Forest, Patna for conversion of the post of Draftsman as Assistant. Annexure-3 to the writ petition, is a letter of the Regional Chief Conservator of Forest addressed to the Principal Chief Conservator of Forest would show that the pay scale of the Draftsman as well as of the Circle Assistant is the same and at the relevant point of time, the scale available for the post was Rs. 4000-6000/- in terms of the Finance Department's resolution



No. 660F-2 dated 08.08.1999, which was enforced with effect from 01.01.1996.

In the circumstances, the recommendation for absorption of the petitioner against the post of Circle Assistant was reiterated and accepted vide Order No. 38 dated 03.06.2005, placed at Annexure-4 to the writ petition, in the pay scale of Rs. 4000-6000/- under Rule 56(A)(2) of the Bihar Service Code. Vide resolution of the Finance Department bearing Memo No. 7872 dated 26.10.2007, the pay scale of Upper Grade Assistant was revised to Rs. 5000-8000/- with effect from 01.01.1996 but was made effective to only those Assistants, who were appointed prior to 20.12.2000. A copy of the resolution is placed at Annexure-5 to writ petition. Since the revision was not extended to the petitioner, he represented to the Principal Chief Conservator of Forest, Bihar, Patna vide Annexure-6. Annexures-7 to 12 are intra-departmental correspondences within the Forest Department practically accepting the claim advanced by the petitioner for grant of revised pay scale of Rs. 5000-8000/- as extended to the other Assistants with effect from 01.01.1996. An opinion was taken from the Finance Department, which is placed at Annexure-14/C and it is in reference to the said opinion that the Deputy Secretary, Environment and Forest Department, Government of Bihar, vide his letter bearing



No. 2338 dated 11.03.2011, has rejected the claim of the petitioner for grant of pay scale of Rs. 5000-8000/- w.e.f. 01.01.1996 as extended to the other Assistants, inter alia, on grounds that the appointment of the petitioner against the post was subsequent to 20.12.2000, which is the cut off date in terms of the resolution No. 7872 dated 26.10.2007, placed at Annexure-5 to the writ petition. Being aggrieved, the petitioner is before this Court.

I have heard Mr. Bankey Bihari Singh, learned counsel appearing for the petitioner on merits of the case as well as Mr. Anirudh Kumar Singh, learned State counsel, who represents not only the Forest Department but also the Finance Department.

It is the contention of learned counsel appearing for the petitioner that there cannot be an artificial classification by the respondents to deprive the petitioner of the pay scale especially where the pay scale of the Draftsman and that of the Assistants was the same and thus has been granted by the respondents vide Annexure-3. According to learned counsel the benefit extended to Assistants for revision of pay scale w.e.f. 01.01.1996 should be equally extended to the petitioner. Per contra, it is the argument of Mr. Anirudh Kumar Singh, learned counsel for the State in reference to paragraphs 9 and 10 of the counter affidavit filed by the Finance Department, that undisputedly the petitioner held the post



of Draftsman and was absorbed against the post of Assistant but only on 03.06.2005 and since the Finance Department's resolution bearing No. 7872 dated 26.10.2007 has extended the benefits of revision of pay scale only to such of the Assistants who were appointed prior to 20.12.2000, the petitioner having been appointed subsequent to the said cut off date, is not entitled to the revised pay scale and is entitled to the pay scale of Rs. 4000-6000.

I have heard learned counsel appearing for the parties and perused the records.

There is no dispute on facts rather the only dispute, in the present case, is whether the revision of pay scale under the resolution of the Finance Department bearing No.7872 dated 26.10.2007 can be interpreted literally to extend the benefits of revision with effect from 01.01.1996 exclusively to such of the Assistants, who were appointed prior to 21.12.2000, or is extendable even to those who were appointed subsequent thereto.

It is not in dispute that the pay scale of Draftsman and that of Assistants was the same which is confirmed from the recommendation made in favour of the petitioner, present at Annexure-3, and in fact, it is for this reason that a recommendation was made for his absorption against the post of Assistant following which the exercise was completed vide order bearing Memo No.



1158 dated 03.06.2005, whereby the petitioner was absorbed against the post of Circle Assistant in the then pay scale of Rs. 4000-6000/-. The Finance Department's resolution bearing No. 7872 dated 26.10.2007 simply extends the benefits of revision of pay scale to Assistant Grade-II to Rs. 5000-8000/- with effect from 01.01.1996 but limits it to all such Assistants appointed prior to 20.12.2000. In other words, the pay scale of Assistants underwent a change and was enhanced to Rs. 5000-8000/- vide Finance Department's resolution dated 26.10.2007 but its retrospectivity was extended to only those of the Assistants, who were appointed prior to 20.12.2000 who were entitled to its revision with effect from 01.01.1996.

In my considered opinion the resolution does not create any class amongst the class of Assistants nor does it deprive such Assistants who occupied the post with effect from 20.12.2000 any of the benefits. Since the vires of the said resolution is not put to challenge before this Court, I would not be entering into the merits of the classification nor am I required to examine why a class was created by the Finance Department, of Assistants, appointed prior to 20.12.2000. In fact even if, the Finance Department has chosen in its wisdom to extend the benefit of revision of pay scale with effect from 01.01.1996 to those Assistants appointed prior to 20.12.2000,



the resolution in no manner, deprives such scale to the Assistants occupying the post on or after 20.12.2000. On a purposeful construction, the effect of the resolution dated 26.10.2007 is that even if the benefit of revised pay Scale of Rs. 5000-8000/- was extended to such Assistants who were appointed prior to 20.12.2000 for drawing arrears with effect from 01.01.1996, its prospectivity could not be denied to those Assistants appointed to the post after the cut off date i.e. 20.12.2000. In fact any attempt by the Finance Department to deprive the Assistants occupying the post with effect from 21.12.2000 to the benefit of a revised pay scale of Rs. 5000 -8000/- would be creating an artificial class within the class of Assistant and would be hit by the equality clause mandated under Article 14 of the Constitution.

In fact, the opinion of the Finance Department relied upon by the Forest Department to deprive the petitioner of his claim of pay revision practically supports the case of the petitioner when it simply proceeds to opine that the petitioner would not be entitled to the retrospective benefits of the resolution. Obviously, the petitioner having been absorbed against the post of Assistant on 03.06.2005, he cannot claim its benefit prior to the said date. More so, because no similar revision took place in so far as the pay scale of the Draftsman is concerned. Since the petitioner held the post of



a Draftsman until his absorption on the post of Assistant on 03.06.2005, he can not claim any benefit of pay revision for the period prior thereto because he never held the post of Assistant prior to 03.06.2005. But having held as such there is nothing either in the resolution bearing No. 7872 dated 26.10.2007 which deprives the petitioner to the benefit of the revised pay scale with effect from the day he was absorbed against the post of Assistant from 03.06.2005 because w.e.f. 01.01.1996 the pay scale admissible to Assistant stood revised to Rs. 5000-8000/-. The attempt of the respondents to create a class amongst the class of Assistants by treating those appointed prior to 20.12.2000, a separate class and entitled to scale of Rs. 4000-6000/- while those appointed subsequent to 20.12.2000 drawing salary in the pay scale of Rs.5,000-8000/-, is patently discriminatory and hit by Article 14 of the Constitution of India.

For the reasons so discussed, the order bearing No. 22/09-630 dated 09.03.2011 issued by the Joint Secretary, Government of Bihar, impugned at Annexure-14/B cannot be upheld and is, accordingly, quashed and set aside.

The petitioner is held entitled to the revised pay scale of Rs. 5000-8000 admissible to the Assistant in terms of the resolution dated 26.10.2007 w.e.f. his absorption against the post i.e.



03.06.2005.

Let the arrears be accordingly calculated and be paid to the petitioner within a period of three months from the date of receipt/production of a copy of this judgment.

The writ petition is allowed.

Let a writ of mandamus issue accordingly.

(Jyoti Saran, J.)

Brajesh/-

NAFR/AFR	A.F.R.
Uploading Date	04.07.2017
Transmission Date	NA

