

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12657 of 2007

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Vivek Kumar, son of Late Braj Kishore Prasad, resident of P.W.D., Quarter No. 14, Police Colony, near Marwari Pathsala, Rajendra Prasad Road, P.O.- Head Post Office, Bhagalpur, P.S. Kotwali District Bhagalpur At present posted as Lower Division Clerk in the office of Superintending Engineer, Building Circle, Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Bhagalpur
2. The Collector, Munger
3. The Superintending Engineer, Building circle, Building Construction and Housing Department, Bhagalpur
4. The Treasury Officer, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Diwakar Upadhyaya

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 16-01-2017

Today again, on call, none appeared on behalf of the State.

On last date i.e. on 13.1.2017 also there was non- appearance on behalf of the State. Heard Sri Diwakar Upadhyaya, learned counsel for the petitioner. Keeping in view the fact that the present writ petition was filed in the year 2007 it would be difficult to further defer the matter. Before filing of the present writ petition it was



already served in the office of Advocate General and thereafter, in this case one counter affidavit was filed on behalf of the Respondent No. 4 i.e. Treasury Officer, Bhagalpur. In the present writ petition the petitioner has assailed Annexure –‘1’ which is an order contained in Memo No. 560 dated 4.9.2001 issued under the signature of Superintending Engineer, Building Circle, Building Construction Department, Bhagalpur. By the said order pay -scale of the petitioner which was Rs. 4000 –100- 6000/- was suddenly reduced to Rs. 3050-75-3950-80- 4590/- and it was further directed to recover the excess paid amount from the salary of the petitioner in installments.

Sri Diwakar Upadhyaya, learned counsel for the petitioner by way of referring to the facts disclosed in the writ petition submits that the petitioner’s father was Clerk in Building Circle, Munger and he died in harness on 28.3.1994. Since he was the only bread earner of the family, the petitioner applied for being appointed on compassionate ground. His case was considered and District Compassionate Appointment Committee in its meeting dated 10.6.2000 recommended for appointing the petitioner. However, since some error had occurred in the recommendation in respect of father’s name of the petitioner it was subsequently rectified and finally appointment letter was issued on 24.1.2001 in favour of the petitioner for Class III post as Lower Divisional Clerk in the pay scale of Rs.



4000 – 100-6000/-.

It was submitted by learned counsel for the petitioner that thereafter the petitioner joined and started to draw salary in the scale as was indicated in the appointment letter. However, suddenly the Superintending Engineer issued the impugned order on 4.9.2001 and reduced the pay- scale of the petitioner from Rs. 4000 – 100-6000 /- to Rs. 3050 –75-3950-80- 4590/-. It has been emphatically argued that before issuance of Annexure – ‘1’ the petitioner was not even issued show- cause notice and without following the principle of natural justice the said order was passed. It was submitted by learned counsel for the petitioner that it is true that after the year 2000 the post of Lower Division Clerk and Upper Division Clerk was merged and thereafter some decision was taken regarding fixation of the pay-scale. As per the new Rule the appointment of Clerk was to be made in the pay scale of Rs. 3050 – 75-3950-80-4590 /-. He submits that it appears that in view of subsequent development the Respondent /Superintending Engineer had issued Annexure – ‘1’. He submits that in the present case fact remains that appointment process was already initiated in the year 2000. In the month of June , 2000 petitioner’s name was recommended by the District Compassionate Appointment Committee but due to laches on the part of the Respondents appointment letter was issued in the month of January,



2001. He submits that the issue regarding fixation of pay -scale in such situation has already been set at rest in number of judgments of this Court. He further submits that at least in one case i.e. CWJC No. 8909 of 2003 (Annexure –‘3’ to the present writ petition) almost similar situation arose and this Court had quashed the order of recovery. According to learned counsel for the petitioner the petitioner was rightly fixed pay scale of Rs. 4000-100-6000/-. The order impugned is liable to be set aside both on the ground that it was erroneous as well as on the ground that the order impugned was passed in complete violation of the principle of natural justice. He further submits that it is not the case of the Respondent that the pay-scale of petitioner was fixed on the basis of misrepresentation or fraud committed by the petitioner. In this case petitioner has filed supplementary affidavit and vide supplementary affidavit he has brought on record a communication contained in Memo No. 55 dated 6.2.2002 issued by the Office of the Superintending Engineer which makes it clear that after issuance of the impugned order total amount of Rs. 10003/- has been recovered from the salary of the petitioner.

Besides hearing learned counsel for the petitioner I have also perused the materials available on record. In this case counter affidavit on behalf of the Respondent No. 4 /Treasury Officer, Bhagalpur has been filed. However, the counter affidavit does not



deal with the stand taken in the present writ petition. I have perused the entire material. It is a fact that after the death of the father of the petitioner the petitioner's case on compassionate ground was considered by the District Compassionate Appointment Committee which in the month of June, 2000 itself had recommended for appointing the petitioner. It hardly matters that thereafter appointment letter was issued in the month of January, 2001. But fact remains that entire selection process of the petitioner was initiated in the year 2000 and as such, pay- scale which was indicated in the appointment letter of the petitioner was correct. Moreover, the impugned order admittedly was issued without any show-cause notice to the petitioner nor the stand taken by the petitioner that the said order was issued without any notice to the petitioner has been disputed.

In view of the facts and circumstances, the order impugned i.e. Annexure 1 to the writ petition is set aside and Respondents are directed to fix the pay- scale of the petitioner as was fixed in view of the appointment letter vide Annexure –'2' to the present writ petition and calculate the difference of salary and pay the same to the petitioner within a period of three months from the date of receipt/ production of a copy of this order. Simultaneously, the Respondents are directed to refund the recovered amount i.e. Rs. 10003/- to the petitioner within the aforesaid time. It is made clear that if within the



aforesaid time entire process is not completed, the petitioner shall be entitled to get interest on all the aforesaid amounts at the simple rate of 6% per annum. In the event of payment of interest due to laches on the part of the Officer / employee concerned, the said interest amount is directed to be recovered from the pocket of the concerned Officer / employee.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18-01-2017
Transmission Date	NA

