

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3265 of 2007

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Renuka Singh, wife of Harendra Kumar Singh, Resident of Village- Brahimpur-75,
P.S.- Mashrak, District- Saran, at present Assistant Teacher, Middle School,
Nargada, Danapur-1, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Primary Education, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna
4. The District Superintendent of Education, Patna
5. The Regional Education Officer, Danapur, Patna
6. The D.D.O., Middle School Nargada, Danapur, Patna
7. The Headmaster, Middle School, Nargada, Danapur, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Harendra Kumar Singh, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 28-03-2017

Contending that the rule for pay fixation introduced by the department with effect from 01.01.1996 after coming into force the 5th Pay Commission Recommendation is *ultra vires* of the Constitution of India inasmuch as it creates a discrimination between the employees who underwent Family Planning Operation prior to 01.01.1996 and subsequent to 01.01.1996 in the matter of grant of special increment this writ petition has been filed in the year 2007 challenging the pay fixation rule and consequently during the pendency of the writ petition challenge is also made to certain



recovery effected in the matter.

2. Facts in brief go to show that petitioner was appointed as a Primary Teacher on 10.05.1988 by the District Superintendent of Education, Saran. Petitioner seems to have undergone a Family Planning Operation and, therefore, special increment in accordance to scheme that was in vogue was granted to the petitioner with effect from 10.05.1995. Petitioner was drawing pay in the scale of Rs. 1200-30-2040/- and the special increment at the rate of Rs. 30/- was sanctioned to her by the competent authority. However, when the 5th Pay Commission Recommendation was introduced with effect from 01.01.1996 retrospectively after its acceptance in the year 1999 petitioner's pay was fixed in the revised pay-scale of Rs. 4500-125-7000/- and the benefit of special increment on account of undergoing Family Planning Operation according to the petitioner is being denied.

3. It is the case of the petitioner that with effect from 01.01.1996 Rs. 125/- is recommended as special allowance for undergoing Family Planning Operation but this amount is payable only to such employees who undergo the operation after 01.01.1996 and not to persons like the petitioner who have already undergone the benefit. *Inter alia* contending that in denying the benefit to the petitioner the advance special increment after 01.01.1996 the pay



fixation rule is discriminatory in nature the writ petition has been filed and learned counsel appearing for the petitioner taking us through various aspects of the matter tried to demonstrate that petitioner was receiving an annual increment as special increment for having undergone the Family Planning Operation but after 01.01.1996 it is being denied to the petitioner and the enhanced increment of Rs. 125/- is not being granted to the petitioner. It is stated that by virtue of the Family Planning Operation undergone by the petitioner in the year 1995 a vested right to receive the benefit has accrued to the petitioner and this right cannot be taken away in the manner done, accordingly, placing reliance on the following two judgments **Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others- (1997) 6 SCC 623** and **State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors.- 2015 (1) PLJR 297** an argument was advanced before us to say that retrospective amendment taking away accrued or vested right of a Government employee is invalid. That apart it is argued that after the 5th Pay Commission recommendation was implemented on 01.01.1996 the District Superintendent of Education, Saran continued to pay the benefit of advance increment to the petitioner but the same has been cancelled and recovery ordered on 28.01.2010 which is said to be illegal and, therefore, challenge is also made to the said order.



Various circulars with regard to grant of Family Planning Operation benefit and other documents were referred to say that the rule denying the benefit of special increment to the petitioner is *ultra vires* of the Constitution.

4. Respondents have filed a counter affidavit and it is pointed out that when the 5th Pay Commission Recommendation were implemented with effect from 01.01.1996 the special pay and increment drawn by the petitioner for the Family Planning Operation undertaken merger with the pay on re-fixation and once the special increment was merged with the pay and the petitioner was granted pay in the higher scale on such consideration the contention of the petitioner is not correct. It is stated that prior to 01.01.1996 petitioner was drawing pay at Rs. 1380/- and after granting one increment pay of the petitioner was fixed at Rs. 1410/- and treating her pay to be Rs. 1410/- in the revised pay-scale her pay has been fixed in the grade Rs. 4500-7,000/- even though her pay comes to Rs. 4402/- it has been placed in the scale of Rs. 4500-7,000/-. It is, therefore, contended that in the pay-fixation done no error has been committed but after such pay fixation as the special increment was incorrectly granted to the petitioner on 28.01.2010 the District Superintendent of Education directed for recovery of the amount.

5. We have heard learned counsel for the parties at



length and we find that in the matter of granting benefit of one increment for undergoing sterilization operation the earlier circular which was in force was of the year 1977 and after 01.01.1996 when the Pay Commission's recommendation was implemented a special pay of Rs. 125/- was recommended. However, as far as the petitioner is concerned, she continued to get the additional amount of Rs. 30/- per month as special increment but when the revision of pay took place, the increment was merged in her pay and by treating her pay to be Rs. 1410/- and after granting her all allowances her pay was fixed at Rs. 4402/- but she was granted the replacement scale of Rs. 4500-7,000/-. That being the factual position, it is a case where in the matter of payment of special increment the petitioner has received the same which merged with her pay and thereafter she got the benefit of fixation of pay in a higher pay-scale due to merger of this increment. That being the position, the employees who were fixed in the basic of the pay after pay revision and who underwent Family Planning Operation after 01.01.1996 were granted the special increment of Rs. 125/- because that pay was not fixed in the manner done in the case of the petitioner. The policy adopted and the system followed as indicated hereinabove in the matter of adopting the principle of merger of special increment with the pay and thereafter fixing the pay in the higher pay-scale on revision to employees who have undergone



the Family Planning Operation prior to 01.01.1996 and the formula followed for granting the revised increment as special allowance to persons who underwent the Family Planning Operation after 01.01.1996 is a reasonable and permissible classification. If the petitioner's contention is accepted, it would amount to giving her double benefit inasmuch as she would receive pay in her pay-scale after revision on merger of her increment with her pay and thereafter she will again get the benefit of Rs. 125/- as special increment, this is not permissible. The employees who receive the benefit of increment prior to 01.01.1996 and those who got the advantage of merger of their increment in their pay scale and thereafter fixation of their pay in a higher pay-scale after revision of pay form two different class. Therefore, we see no error or unconstitutionality or discrimination in the matter as canvassed by the petitioner. The right vested in nature which accrued to the petitioner by virtue of having undergone the Family Planning Operation and the increment which was granted to her continued to be paid to her in the form of its merger in the pay-scale after revision and grant of benefit of fixation in an appropriate higher pay-scale after such merger. That being the factual position as is made out from the counter affidavits and the supplementary affidavits filed on record particularly the pay fixation chart of the petitioner filed along with the supplementary counter affidavit of the



department, we see nothing wrong in the pay fixation done warranting reconsideration. Accordingly, we find no merit in the contentions advanced by learned counsel for the petitioner in this regard. There is no statutory violation, breach or discrimination in the procedure followed or the rule for revision and fixation of pay, particularly in the matter of granting special pay or increment for undergoing Family Planning Operation. The procedure followed and the circulars issued in this regard are in accordance to the requirement of law. They are neither discriminatory or in violation to any statutory provision, rule or regulation. Accordingly, we find no merit in the contentions advanced by the petitioner. However, inspite of such revision and pay fixation the department continued to grant the benefit of advance increment to the petitioner till it was withdrawn by order passed on 28.01.2010. Once there was no misrepresentation or fraud played by the petitioner and it was the department itself which granted the benefit to the petitioner without any overt act on the part of the petitioner, the recovery of this excess amount paid cannot be permitted in view of the law laid down by the Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (Whitewasher)- (2014) 8 SCC 883**. To that effect, the benefit of quashing the recovery order against the petitioner has to be granted and, accordingly, the order passed by the Superintendent of



Education, Patna directing for recovery of the increment already paid to the petitioner is quashed. The recovery shall not be effected from the petitioner. However, the pay fixation done is approved. The petition stands allowed to the extent indicated hereinabove and disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	04.04.2017
Transmission Date	

