

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1508 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 17829 of 2011**

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Dr. Subarn Shekhar Jha, Son of Late Sridhar Jha, Resident of Mohallah- Rajkumar ganj, P.S-Sadar, District-Darbhangha

.... Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Health, Government of Bihar, Patna
2. Deputy Secretary, Department of Health, Government of Bihar Patna
3. Under Secretary, Department of Health and Family Welfare, Government of Bihar Patna
4. Treasury Officer, Darbhanga.
5. Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shiv Kumar, Advocate
For the State : Mr. Kunal Tiwary, A.C. to G.A. 2
For Accountant General : Mr. Ranjan Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 03-08-2017

Seeking exception to an order dated 18.04.2012 passed by the learned Writ Court in C.W.J.C. No. 17829 of 2011 denying arrears of pay-scale to the appellant after he was granted a higher pay-scale with effect from 01.01.1998 till his retirement on 01.02.2001 and consequently challenging the order passed by the learned Writ Court refusing this benefit to the appellant, this appeal has been filed under Clause 10 of the Letters Patent.

2. Appellant was working in the Health Department and



when higher scale of pay in the grade of Rs. 14300-18300/- was not granted to him, he challenged the same in C.W.J.C. No. 15170 of 2009. In the said writ petition the State Government came out with a plea that the appellant has been visited with a punishment of withholding of 5 per cent of pension by an order passed in the year 2005 and, therefore, the benefit has not been granted to him. The learned Writ Court in C.W.J.C. No. 15170 of 2009 found that the appellant was entitled for higher pay-scale with effect from 01.01.1998 and the punishment imposed in the year 2005 of withholding 5 per cent of the pension after his retirement on 01.02.2001 cannot be a ground for denying him higher pay-scale and therefore, directed for reconsideration of the matter. The case was reconsidered and appellant was granted the higher pay-scale in the grade of Rs. 14300-18300/- with effect from 01.01.1998 but the arrears was not granted to him for the period 01.01.1998 to 01.02.2001, that is the date of superannuation, on the ground that he shall only be entitled to notional promotion and the actual benefit shall not be granted to him.

3. Claiming the actual benefit, the writ petition in question was filed and the Writ Court simply held that apart from the fact that in the earlier writ petition there was no direction to give arrears of salary as the appellant was punished, it was not appropriate



to grant him arrears of salary as in granting notional benefit the department has not considered any mistake.

4. Having heard learned counsel for the parties, we find that while doing so, the learned Writ Court has failed to appreciate the legal position, as has been laid down by the Supreme Court in the case of **State of Kerala & Ors. Vs. E.K. Bhaskaran Pillai- (2007) 6 SCC 524** and the earlier judgment of the Supreme Court in the case of **Union of India and Anr. Vs. Tarsem Lal & Ors.- A.I.R. 2007 Supreme Court 259** wherein the principle laid down is that if promotion is denied to an employee on account of fault or mistake not attributed to the employee or any reason which is not attributable to the employee concerned, the normal rule is that promotion has to be granted retrospectively with all consequential benefit. It is only when the promotion is delayed or denied on account of any act of commission or omission attributable to the employee concerned that actual monetary benefit can be denied to the appellant. This is the principle followed by a Division Bench of this Court also in the case of **The State of Bihar & Ors. Vs. Madan Bihari Singh- 2009 (4) PLJR 776.**

5. In the present case, the promotion/higher pay-scale was denied to the appellant with effect from 01.01.1998 on the assumption that he is not entitled for the same because of the



punishment imposed upon him in the year 2005 i.e. after his retirement. This could not be a ground for denying arrears of salary to the appellant on grant of higher pay-scale and keeping in view the law as discussed hereinabove, we allow this appeal, quash the order dated 18.04.2012 passed by the Writ Court and direct that appellant shall be granted the higher pay-scale of Rs. 14300-18300/- retrospectively with effect from 01.01.1998 with all consequential monetary benefits accrued to him from the said date.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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