

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9870 of 2009**

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Rajendra Prasad, Son of late Dip Narain Singh, resident of Mohalla  
Chandpur, PS Jakkanpur, District Patna

... .. Petitioner/s

Versus

- 1.The State Of Bihar through Secretary, Human Resources Development  
Department, Govt. of Bihar, Patna
2. Patna University through the Registrar, Patna University, Patna
3. Vice Chancellor, Patna University, Patna

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. K.M.Joseph, Advocate

For the Patna University : Mr. Digvijay Singh with Mr. B J Jha, Advocates

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**  
**ORAL JUDGMENT**

**Date : 22-11-2018**

Heard Mr. K M Joseph, learned counsel appearing for  
the petitioner and learned counsel representing the respondent  
University.

The instant writ application has been filed by the  
petitioner for a direction to quash the order dated 19.03.2009  
passed by respondent no.3 - the Vice-Chancellor, Patna University  
rejecting the claim of the petitioner. The petitioner claims that he



was appointed on 11.01.1975 as Overseer in pay scale of Rs.200-380 which was revised by the State Government with effect from 19.05.1984. Thereafter, the Additional Secretary, Government of Bihar in the Finance Department enhanced the pay scale of Assistant and Junior Engineers of the Secretariat and fixed at Rs.785-1210.

It is the further case of the petitioner that Vice-Chancellor of the University has granted the pay scale of Overseer/Junior Engineer at par with that of the Secretariat. Designation of the post of the petitioner as Overseer was subsequently changed as Junior Engineer vide resolution no. 5023-28 dated 19.03.1986. The petitioner retired in the year 2002. In the meanwhile, pay scale of the University have been revised pursuant to the recommendation of the 5<sup>th</sup> Pay Revision Committee. Although pay scale of Junior Engineers was revised but the salary of the petitioner was reduced and fixed at lower pay scale. The petitioner aggrieved by the aforesaid decision of reducing the pay scale had approached this Court in CWJC No. 10822 of 2000 for re-fixation of his pay scale which was disposed of by order dated 21.02.2008 with a direction to the respondents to pass reasoned order considering the representation of the petitioner. On 19.03.2009 the Vice Chancellor of the University rejected the



representation of the petitioner affirming the decision fixing the pay scale of the petitioner at Rs.1400-2300/-. The petitioner has filed the present writ application against the decision of the Vice Chancellor of the University dated 19.03.2009.

On behalf of the respondent University counter affidavit has been filed. In the counter affidavit stand has been taken that pay scale of the petitioner was fixed as per his entitlement determined by the State Government. In particular, they have objected to the claim of the petitioner on the ground that the petitioner has not submitted a diploma certificate as Junior Engineer/Overseer which was the required qualification essential for grant of enhanced pay scale. In the counter affidavit it was also highlighted that the petitioner during the pendency of the writ petition has also approached the Human Rights Commission, Bihar, and the Chairperson of the Commission has passed the following order:-

*“This matter was heard in presence of the applicant Rajendra Prasad and Registrar, Patna University Shri Vibhash Kumar Yadav.*

*The complaint relates to retiral dues of the applicant. He retired on the post of Overseer on 30.09.2002. According to him, he is entitled to the benefits as per the scale of Rs.5000-8000. Indeed, the University had acceded to his request and paid him*



*salary accordingly. But the audit raised objection to the effect that scale of Rs.5000-8000 is applicable only to diploma holders. Applicant not being a diploma holder, is not entitled to scale.*

*The matter seems to have travelled to the High Court but no finding one way or the other was recorded on the point. As the things stand on date, the University has made reference to the State Government. It is the stand of the University that the applicant's claim can be reworked out/revised depending on the decision of the State Government.*

*The Commission finds the stand of the University to be reasonable. If it is clear that the University on its own cannot allow the benefits in the scale of Rs.5000-8000 to the applicant in view of the audit objection, and unless and until a favourable decision is taken by the State Government or the High Court, the applicant cannot claim the scale.*

*In the above view of the matter, the Commission would find it difficult to grant any relief to the applicant.*

*File is closed.*

*Copy of this order may be sent to the applicant and Registrar, Patna University for information/record."*

Mr. Joseph, learned counsel representing the petitioner in reply to the counter affidavit has submitted with reference to rejoinder that the petitioner has undergone training at Industrial



Training Institute, Munger and had appeared and passed the Trade Test of Fitter Trade and was awarded Trade Certificate as Fitter. He also referred to various experiences acquired by the petitioner and submitted that the petitioner has necessary alternative qualification for grant of promotion as Junior Engineer. He also referred to the Advertisement published on 25.12.1974 calling for applications from interested persons for appointment as Mechanical Overseer. The petitioner having required qualification of Matriculation and a Trade Certificate with ten years experience applied for the post and was selected and appointed to the post of Mechanical Overseer. It is also submitted with reference to the decision of the Apex Court in the case of *State of Bihar vs. Sunny Prakash [(2013) 3 SCC 559]* wherein the Apex Court noted that the pay anomaly of the University Engineers and Junior Engineers was required to be addressed in terms of the understanding between the Federation of the Non-teaching staff of the University and Colleges and the State Government. He submitted that the Apex Court has held out that the agreement or understanding in between the State Government and the Federation is binding and the State has to implement the understanding. Respondents cannot disown the understanding saying that the decision was not as per



the mandatory requirement of Article 166 of the Constitution of India.

Considering the totality of the facts situation, particularly the fact that the petitioner superannuated on 30.09.2002, the Court directs the respondents to consider the case of the petitioner objectively and if the petitioner is found to be eligible for grant of pay scale of Overseer/Junior Engineer, he will be granted the benefit of pay scale admissible to Overseer/Junior Engineer. The respondents are also under obligation to see that if pay anomaly exists then they have to take steps for removal of pay anomaly in the light of the judgment of the Apex Court in the case of ***Sunny Prakash*** (supra). if the respondents have not already resolved the anomaly they have to work out solution and remove anomaly at the earliest.

In the process, the University has to first decide the entitlement of the petitioner with reference to his qualification and experience whether he is entitled to the status of Overseer/Junior Engineer and once it is determined the University is required to approach the State Government for release of adequate fund for grant of monetary benefits after removing anomaly in the pay scale of Junior Engineer as indicated in the order of the Apex Court in the case of ***Sunny Prakash*** (supra).



Necessary decision on the part of the University shall be taken within three months and thereafter the State Government s required to do the needful within a maximum period of further two months.

The entire exercise in this regard must be completed within the time frame indicated above and the monetary benefits must reach to the petitioner with the same time frame.

With the aforesaid, the writ application stands disposed of.

**(Anil Kumar Upadhyay, J)**

mrl./-

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