

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3092 of 2011

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Prabhat Kumar Sinha Son Of Late Madan Prasad Sinha Resident Of Mohalla
Kilburn Colony Road No. 09, P.S. Doranda P.O. Hinoo District Ranchi

.... Petitioner

Versus

1. The State Of Bihar
2. The Chief Secretary, Government Of Bihar, Patna-1
3. Principal Secretary, General Administrative Department, Government Of Bihar, Patna
4. The Principal Secretary, Department Of Panchayat Raj, Bihar, Government Of Bihar, Patna-1
5. The Secretary Rural Development Department, Bihar, Government Of Bihar, Patna-1
6. The Director, Department Of Panchayat Raj, Bihar, Government Of Bihar, Patna -1
7. The District Magistrate, Nawada, Bihar
8. The Block Development Officer, Rajouli, District- Nawada

.... Respondents

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Appearance :

For the Petitioner : Mr. Vivekanand Vivek, Advocate
Mr. Rangnath Pandey, Advocate
For the Respondents : Mr. Anil Kumar, AC to GP-20

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 04-01-2018

Heard learned counsel for the petitioner as well
as learned counsel for the State.

2. Although in the writ application a number of
reliefs have been prayed for but when the matter was taken
up for final disposal, learned counsel for the petitioner has
prayed for reliefs as under : -

I. The petitioner be paid the arrears of salary
taking the pay scale of Rs. 860 – 1360/- as per
the direction of the writ court vide its order



dated 16th December, 1997 passed in CWJC No. 2450/1995 (Annexure-1 to the writ application).

II. The deductions made and deposited in his contributory provident fund account during the period 22.12.1988 to 19.05.2000 be transferred to his GPF account or be refunded to him in accordance with law.

III. Since as per the direction of the writ court in CWJC No. 2450/1995 the petitioner will rank senior to the persons whose positions were lower than the petitioner in the merit list prepared in pursuance to First Graduate Standard Competitive Examination as also the petitioner will be entitled for seniority over those appointed after First Graduate Standard Competitive Examination, the seniority list as contained in Annexure-4 placing him at serial no. 168 be quashed and cancelled.

3. Learned counsel for the petitioner submits that the order passed in the earlier round of proceeding in CWJC No. 2450/1995 (Annexure-1) would show that the petitioner was selected pursuant to the First Graduate



Standard Competitive Examination held by the then Bihar State Subordinate Selection Board vide advertisement no. 1/1981. He had secured 165 marks and the first result of selected candidates was published on 19th March, 1985, second was published in October, 1986 and the third result was published in May, 1988. The candidates who had obtained lower marks than the petitioner were selected and appointed against one or other graduate standard posts including the post of Industry Extension Officer in the then pay scale of Rs. 850 – 1360/-, but the petitioner, despite having obtained better marks, was not given appointment, therefore, he had to move this Court in CWJC No. 3970/1988.

4. During the pendency of the said writ application, on statement made by the respondents that the name of the petitioner has already been recommended for appointment to the post of Industry Extension Officer, the said writ application was held infructuous. Later on, the petitioner was appointed in the District Rural Development Authority on the post of Extension Officer (Industry and Commerce) in the lower pay scale of Rs. 785 - 1210/-. He Joined the said post with protest and moved this Court in



another writ application being CWJC No. 7521/1989. The petitioner withdrew the writ application to represent his case before the appropriate authority, representations were made on several dates, but subsequently when no action was taken, CWJC No. 2450/1995 was filed which was disposed of by a reasoned judgment and order dated 16th December, 1997. The operative part of the order as contained in paragraph Nos. 11, 12 & 13 are reproduced hereunder : -

“11. Apart from the aforesaid fact it is submitted by the respondents that persons having lower marks than the petitioner have been appointed in one or other department of the State of Bihar and the name of the petitioner was recommended by Sub-Ordinate Service Selection Board vide letter No. 19th of August 1988 for appointment to the post of Industry Extension Officer which had a higher unrevised scale of Rs. 850-1360/-. Similarly statement was also made by the respondents in the counter affidavit filed in C.W.J.C. No. 3970/88 when this court declared the writ petition infructuous, taking into note the aforesaid stand of the respondents.

12. In the aforesaid circumstances the respondents cannot discriminate the petitioner and are duty bound to provide the petitioner with the department to the post of Industry Extension Officer and/or any equivalent post having unrevised scale of Rs. 850-1360/-.

13. Accordingly the writ petition is allowed with a direction to the respondents to provide the



petitioner with the order of appointment to the graduate standard post of Industry Extension Officer or any equivalent post in the then scale of Rs. 850-1360/- in any one or other department of the State of Bihar. The appointment is to be made from prospective date, but pay of the petitioner be fixed at a stage as if he was appointed to the said post by earlier order dated 23rd of December 1988. The petitioner will be also entitled for arrears of salary on that basis to be paid within a period of six months. So far as the seniority is concerned, the seniority of the petitioner is to be determined on the basis of his position in merit list. Thus he will rank senior to the persons whose positions were lower than the petitioner in the merit list prepared in pursuance to First Graduate Standard Competitive Examination. The petitioner will be also entitled for seniority over those appointed after first Graduate Standard Examination.”

5. Learned counsel submits that despite there being a clear finding, as regards entitlement of the petitioner and his seniority, the State authorities are not allowing him the benefits which have accrued pursuant to the judgment of this Court. He further points out that while the seniority of the petitioner should be at serial no. 80(ka), in Annexure-4, he has been placed at serial no. 168 in utter violation of the entitlement of the petitioner which has been established by



the judgment of this Court as contained in Annexure-1 to the writ application.

6. Learned counsel is, however, unable to show any statement either in the writ application or in any other pleadings of the petitioner that the petitioner has ever represented to the authorities of the State against the seniority published vide Annexure-4 to the writ application.

7. It is also one of the grievances of the petitioner that the amount deducted and deposited in the CPF account during the period 22.12.1988 to 19.05.2000 has not been transferred to his GPF account till date nor the said amount is otherwise refunded to the petitioner in accordance with law. Further, he has not been allowed the differences of the salary for the said period.

8. On the other hand, learned counsel representing the State submits that in the counter affidavit filed on behalf of the Panchayati Raj Department, Bihar, Patna (respondent nos. 4 & 6), it is specifically stated that the seniority of the petitioner has changed and the petitioner figures at serial no. 168 in the list of 232 candidates who were allotted to Bihar Cadre on the post of Gram Panchayat Supervisor. With this change in the seniority position, his



position in the seniority in the list of deputation to the post of Block Development Officer (in short the 'B.D.O.') of the Rural Development Department, Govt. of Bihar, has also changed and the petitioner stands at serial no. 18.

9. It is further stated that the seniority of the petitioner should be treated as his appointment on the said post on 23.12.1986, and accordingly his seniority was fixed at serial no. 80(*ka*) among 328 candidates of First Graduate Level Examination, but now it has changed for the reasons stated in the counter affidavit.

10. Regarding the deductions made in the CPF account, it is stated in paragraph 13 of the counter affidavit that the B.D.O. Rajauli, Nawada being the controlling officer of the petitioner was required in law to deposit the deductions in the GPF account of the petitioner, and therefore he is answerable to this Court with regard to the alleged non-deposit of the GPF and CPF contribution in his account.

11. Regarding the differences of the due salary for the period 23.12.1988 to 19.05.2000, the counter affidavit states that a direction in this regard has already been issued by the Hon'ble Court in C.W.J.C. No.



2450/1995 for payment of salary and deputation allowance to the petitioner when he was deputed in D.R.D.O., Hazaribagh. It is explained that the claim of the petitioner pertains to the Government of Jharkhand, therefore a request has been made to the Director, Panchayati Raj Department, Government of Jharkhand vide letter no. 669 dated 03.02.2015 by the Panchayati Raj Department, Government of Bihar to communicate as to whether the same had been paid/remitted in the account of the petitioner, and if not, the Government of Jharkhand has been requested to fix and calculate the arrear or differences of salary etc. and made available the same to the department after due certification from the disbursing authority so that the process for payment of the lawful differences of the petitioner could be made.

12. At this stage, learned counsel for the petitioner submits that as regards liability to pay the differences of salary, the State of Bihar is taking a misconceived plea inasmuch as the arrear of salary arising out of the differences between the two pay scales, as per direction of the writ court in C.W.J.C. No. 2450/1995 pertains to the period 23.12.1988 to 19.05.2000, and



therefore, it is the State of Bihar who will be liable to pay the amount, but on this pretext the State of Bihar is shirking its liability and the petitioner is deprived of the fruits of the judgment of the Court for over 20 years by now.

CONSIDERATION

13. Having heard learned counsel for the parties and upon perusal of the records, this Court is of the opinion that the liabilities on account of deductions and the deposits in the CPF account for the period 22.12.1988 to 19.05.2000 and then the differences of salary by virtue of the judgment of this Court are not in dispute. The State of Jharkhand was carved out from the State of Bihar by virtue of coming into force of the Bihar Reorganization Act, 2000 with effect from midnight of 14.11.2000, and therefore, the liabilities which arose by virtue of the services rendered by the petitioner in the erstwhile State of Bihar during the period 22.12.1988 to 19.05.2000 is the liability of the State of Bihar and the petitioner cannot be allowed to suffer on the pretext of shifting of burden of the liability to pay as is being claimed by the Panchayati Raj Department in its counter affidavit.

14. In the opinion of this Court, the State of



Bihar and the B.D.O., Rajauli, Nawada being it's employee would be liable to do the needful within a period of three months from today to ensure transfer of the CPF amount for the period 22.12.1988 to 19.05.2000 as also the State of Bihar through its concerned Department shall ensure payment of the differences of salary for the aforesaid period which has already been crystallized in the judgment of the writ court in C.W.J.C. No. 2450/1995.

15. Since the petitioner has been deprived of the arrear of salary despite there being an order of the Writ court way back in the year 1995, the prayer of the petitioner to grant him a reasonable interest is worth consideration and this Court would direct the authorities to pay interest @ 6.5% per annum on the amount due to the petitioner for the period three months after the date of the judgment of the writ court till the date of payment.

16. So far as the claim of the petitioner as respect his seniority is concerned, the petitioner is unable to show that he has made any representation against the seniority published vide Annexure-4 to the writ application whereunder he has been placed at serial no. 168. No documentary evidence has been enclosed to the writ



application that he has made any representation against the same. Moreover, the persons, who are likely to be affected if the seniority list is disturbed by this court, are not parties to the present writ application, and therefore, this Court would not be willing to consider the challenge made by the petitioner to the seniority list as contained in Annexure-4 to the writ application. The petitioner will have liberty to make representation in this regard to the competent authority, if not already made, and shall pursue the same with the competent authority who will be obliged to consider the same and pass a reasoned order after hearing all concerned who are likely to be affected by the order. Such consideration must be given within a period of four months from the date of receipt/production of a copy of this order.

17. This Writ application is, accordingly, disposed of.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.01.2018
Transmission Date	NA

