

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24896 of 2013

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Ramjee Singh, S/O Late Rajeshwari Singh, Resident Of Village & P.O-
Sadanandpur, Police Station- Balia, District- Begusarai, Retired While Working As
An Assistant Teacher From Govt., Middle School- Iniyar, Anchal- Begusarai,
District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
4. The Deputy Secretary, Finance (Pay Fixation) Department, Government of Bihar, Patna.
5. The Director, Primary Education, Bihar, Patna.
6. The Regional Deputy Director of Education, Munger, Division, Munger.
7. The District Magistrate, Begusarai.
8. The Deputy Development Commissioner- Cum- Chairman, District Education Establishment Committee, Begusarai.
9. The District Education Officer, Begusarai.
10. The District Programme Officer (Establishment), Begusarai.
11. The District Treasury Officer, Begusarai.
12. The District Accounts Officer, Begusarai.
13. The Headmaster, Govt. of Middle School- Iniyar, Anchal Begusarai, District- Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra, Advocate
For the Respondent/s : Mr. Dhurjati Kr. Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date: 17-09-2018

Heard learned counsel for the petitioner and State.

2. The issue as to application of Memo No. 1819 dated 23.11.2009 was challenged in C.W.J.C. No. 14295 of 2009 and a Co-ordinate Bench of this Court by order dated 03.02.2010 has directed the respondents to fix the pay scale.

3. Considering the aforesaid, the present writ



application is disposed of with a direction to the respondents to consider the case of the petitioner for pay fixation in the light of decision passed in C.W.J.C. No. 14295 of 2009.

4. Learned counsel appearing on behalf of the respondents has drawn the attention of this Court to Annexure-2 to contend that the benefit is available to the Teachers appointed up to 1986 and the petitioner was appointed subsequently and as such he was not entitled to this benefit.

5. This issue was adjudicated by this Court in C.W.J.C. No. 8333 of 1999 (Shiva Kant Jha Vs. The State of Bihar & Ors.) and vide order dated 29.07.2004, the Court on consideration of the resolution dated 18.12.1999 has held out as follows:

According to this clause the persons who have been appointed on or after 1st January, 1986 but before issue of the orders i.e. 18.12.1989 it would be deemed that their appointments have been made in the revised scale subject to the provisions made in subsequent paragraphs of the said Resolution. Schedule-III is in relation to fixation of pay in the revised scale. It says that fixation of pay of Government servants both gazetted and non-gazetted, who were in services on 01.01.1986 shall be made in the revised scale of pay at a stage to be determined in accordance with Schedule-III. Clause 1 says that the present emoluments will be worked out as on 1st January, 1986 and will include (1) the



basic pay on 01.01.1986 and (2) D.A./ad-hoc D.A. admissible at index average 608. Paragraph 2 says that to the present emoluments will be added a sum equivalent to 35% of the basic pay in the existing scale subject to a minimum of Rs. 175 and maximum of Rs. 700. According to paragraph-3, the total of present emoluments and the 'additional sum' will be called 'Pre-Fixation Emoluments'. Paragraph 4 says that the 'Pre-Fixation Emoluments' will be fitted in the revised scale of pay as provided in paragraph-4. From Annexure-3 it would appear that the petitioner was appointed in the scale of Rs. 730-1080; on the date of his fixation of the pay, his D.A. as admissible on 01.01.1986 on 608 points index average was 394.20. Adding the above two, his salary was Rs. 1124.20. This would be the 'present emoluments' to which additional sum' at 35% is to be added which would come down to 255.50. The petitioner's total emoluments for the purposes of pay fixation would be Rs. 1379.70, the round of which would be Rs. 1380. To this the benefit of three increments is to be added in accordance with paragraph 6 of Schedule-III of the said resolution. Paragraph 6 says that after fixation of pay in the revised scale with effect from 01.01.1986, to this is to be added the benefit of three increments. Paragraph-6 says that after fixation of pay in the revised scale with effect from 1.1.1986 three increments will be allowed to the Intermediate untrained/Intermediate



trained/ Graduate untrained teachers who get their pay fixed in the scale of Rs. 1200-2040 in revised scales. Each increment would be Rs. 30 as is clear from Schedule-I. To the total amount of Rs. 1380 three increments of Rs. 30 each totaling to Rs. 90 is to be added and the salary of the petitioner would be Rs. 1470 as on 20.4.1988. If that could be the calculations in accordance with the Resolution and it was so fixed by the Headmaster on 15.03.1990 and an entry to that effect was made in Annexure-4 under the signatures of the Headmaster then there was no scope for the District Accounts Officer to hold that the petitioner's salary on 01.01.1986 would be zero, therefore, on application of the revised pay scale from Rs. 730-1080 to Rs. 1200-2040 the petitioner would be fixed at the minimum of Rs. 1200 and would be entitled to the benefit of three increments i.e. Rs 90 only.

In the opinion of this Court a fair understanding of the Resolution of the Government and its proper application would show that petitioner's pay fixed in Annexure-3 was in accordance with the Resolution and there was no violation of any clause or any paragraph of the Schedules annexed or appended to the said Resolution. The endorsements made in the service book of the petitioner under the signatures of the District Accounts Officer are quashed. It is further directed that the recovery ordered by the District Accounts Officer shall



not be made from the salary of the petitioner.

The petition is allowed.

6. In view of the aforesaid discussion, the Court does not find any substance in the contention of the respondents. It is accordingly, rejected. The writ application is allowed.

7. The respondents are hereby directed to fix the pay scale of the petitioner in the light of decision passed in C.W.J.C. No. 14295 of 2009 and grant all consequential benefits within a period of four months from the date of receipt/production of a copy of this order.

8. In view of the above, Annexures-14 and 15 to the writ application shall not be given effect.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.09.2018
Transmission Date	

