

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15236 of 2008

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Shree Ram Singh, S/o Late Anirudh Singh, At + P.O. Barkagaon, P.S. Bhagwanpur,
Dist. Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner and Secretary to Government, Water Resources Department, Sinchai Bhavan, Patna.
3. The Finance Commissioner and Secretary to Government of Bihar, Old Secretariat, Patna.
4. The Superintending Engineer, Irrigation, Mechanical Circle, Mithapur, Patna.
5. The Executive Engineer, (Mechanical), Sinchai Mechanical Division, Bhitari Bandh, Karanchatt Camp Indra Puri, Rohtas (Sasaram).
6. The District Accounts Officer, Rohtas (Sasaram).
7. The Accountant General (A & G) Bihar, Birchand Patel Marg, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ritesh Kumar No.1, Adv.
Mr. Sanjeet Kumar Singh, Adv.

For the Respondent/s : Mr. Nirbhay Prashant, AC to SC-17
For the A.G. : Mr. Arun Kumar Arun, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 05-01-2018

Heard learned counsel for the petitioner and counsel for
the State as also counsel for the Accountant General.

In this case, the petitioner has raised a grievance that he
was granted pay-scale of Rs. 4000-6000/- as a Driver Grade 2 but the
later on illegally the pay-scale was reduced to 3000-4550/-. As per
petitioner, in view of the fitment committee report, his pay-scale
could not have been reduced. The petitioner was appointed as a Work
Charge Employee on the post of Jeep Driver. While working as a



Work Charge Employee as driver in the pay-scale of Rs. 85-130/- and that pay-scale was revised to pay-scale of Rs. 205-284/- with effect from 1.1.1971 and his pay was fixed in the aforesaid pay-scale of Rs. 205-284/- as on 1.1.1971. Later on, he was regularized in service with effect from 1.4.1977. The petitioner was promoted as Driver Grade-2 in the scale of Rs. 240-396/- with effect from 1.6.1978 and later on his pay-scale was revised for Rs. 535-765/- with effect from 1.4.1981 on the basis of 4th Pay Revision Committee. The petitioner was granted time bound promotion in the scale of Rs. 580-860/- with effect from 1.6.1988 by the competent authority i.e. Superintending Engineer of Durgawati Construction Circle, Bhitari Bandh and the pay-scale was revised to Rs. 1200-1800/- with effect from 1.1.1986. Later on, the pay-scale of the petitioner was revised from 1200-1800/- to Rs. 1320-2040/- with effect from 1.1.1986. The 5th Pay Commission Report of the Central Government was accepted by the State Government and the Fitment Committee was constituted for fitting the pay-scale of different grades of employees and the Fitment Committee recommended the pay-scale of Rs. 1320-2040/- to be substituted to the pay-scale of Rs. 4000-6000/- on which the scale of the petitioner was fixed. Later on, it transpired that it was a wrong fixation of pay and, accordingly, it was withdrawn and his pay-scale was reduced to Rs. 3050-4590/-. The petitioner approached to this Court in CWJC



No. 11752 of 2004 which was disposed of vide order dated 1.8.2006 (Annexure-18) and a direction was given to the petitioner to file a representation and in turn the Principal Secretaries of Finance Department and Irrigation Department were to pass detailed order and on the basis of the direction of this Court, the order impugned has been passed by the Principal Secretary, Finance Department dated 5.1.2007 (Annexure-9) wherein he has found that his pay-scale was wrongly fixed as Rs. 4000-6000/- whereas the pay-scale ought to have been Rs. 3050-4590/-. As the Fitment Committee has fixed the pay-scale of Driver at Rs. 3050-4590/- and the Principal Secretary, Water Resources Department has also passed the order dated 10.4.2007 reiterated the order that has been passed by the Principal Secretary, Finance Department.

In the present case, the question would be as to whether the petitioner was fitted in the pay-scale of Rs. 3050-4590/- is correct or he should have been fitted in the pay-scale of Rs. 4000-6000/-. The 5th Pay-Commission Report of the Union of India has given three grades to the driver, one is Rs. 950-1500/- (ordinary grade), second is Rs. 1320-2040 (Grade II) and the third one is Rs. 1400-2300 (Grade I) but, the Fitment Committee has fixed the single pay-scale of Rs. 3050-4590/- to both light vehicle driver and heavy vehicle driver. When there is a one pay-scale for both, then it is very difficult for this



Court to grant pay scale which has not been provided by the Fitment Committee.

Learned counsel for the petitioner has brought to the notice of this Court that the Government has found error in the fixation of pay-scale and, accordingly, they have provided the pay-scale of Grade II of Rs. 4000-6000/- but, it appears that it is completely a new rule has been framed by the Government for drivers and whoever has entered into service in terms of this rule will be granted the pay-scale provided under the Rule, not to those persons who have already superannuated from service. It is not the case of the petitioner that other persons were granted the scale of Rs. 4000-6000/- and he has been discriminated in any manner but his plea is confined to that as he was granted the time bound scale and corresponding pay-scale of Rs. 4000-6000/-, so reduction is not permissible but after the 5th Pay Commission Report, the concept of time bound promotion has been withdrawn and, later on, it was replaced by the assured career progradation scheme and pay-scale has been fixed at need based post. Admittedly, the petitioner was truck driver and there is also no dispute that single pay-scale has been recommended and fixation of pay is an exercise of expert committee, this Court does not have such expertise to fix the pay-scale of driver because the scales are fixed looking to the nature of work, load factor and other different incidental matter.



In that view of the matter, this Court does not find any error in the order passed by the Principal Secretary while fixing the pay-scale of the petitioner at Rs. 3050-4090/-. Any entry in the service in terms of 2005 Rule will not have any relevance or have any assistance to the case of the petitioner.

Learned counsel for the petitioner has raised a point that he has not granted the benefit of second A.C.P. The State has not denied the fact that second A.C.P. has not been granted to the petitioner but only one A.C.P. has been granted. Admittedly, the petitioner has neither been granted the benefit of second A.C.P. nor he has been paid any single farthing under the pensionary benefit.

In that view of the matter, le the State must extend the benefit of second A.C.P. to the petitioner within a period of four weeks from the date of receipt/production of a copy of this order and will also release the retrial benefit along with 9% simple interest over the same within a period of eight weeks from the date of receipt/production of a copy of this order. If the Government fails to release the retirement benefit as aforesaid, he will be entitled to compound interest at the rate of 18%.

Any extra payment made to the petitioner will not be realized from the petitioner while granting the pensionary benefit to the petitioner. It will be relevant to place reliance on two judgments in



the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer)* reported in 2014 (4) PLJR SC 36 and in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.* reported in 2015 (1) PLJR SC 261.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2018
Transmission Date	NA

