

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5479 of 2000

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Gupteshwar Ojha, son of Shri Baij Nath Ojha, Resident of New Alakapuri,
Gardanibag, Post Office Anishabad, District- Patna.

... .. Petitioners

Versus

1. The State of Bihar.
2. Agricultural Production Commissioner, Department of Agriculture,
Government of Bihar, Patna.
3. The Director, Horticulture, Government of Bihar, Patna.
4. Finance Commissioner-cum-secretary, Department of Finance, Government
of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Singh, Adv.
For the Respondent/s : Mr. Arun Kumar Bhagat, A.C to AAG-12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT

Date : 23-08-2018

Heard Mr. Ranjan Kumar Singh, learned counsel for the
petitioner and Mr. Arun Kumar Bhagat, learned AC to AAG-12 for
the State.

The writ petition was filed by the petitioner praying for
a direction to the respondents to pay him arrears of salary
including 20% of the pay of the post on which the petitioner has
discharged his duties, as well, to refix the pension and other retiral
benefits on the basis of the said pay scale.

Pleadings on record would confirm that the petitioner
was appointed as a Junior Horticulture Inspector in the Department
of Agriculture, Government of Bihar in November, 1957 pursuant



where to he joined on 15.11.1957 after completion of training. The petitioner was promoted to the post of Seed Certification Supervisor through notification dated 31.07.1971 and was given time bound promotion. It is the case of the petitioner that while he was working as Assistant Horticulture Extension Officer that vide notification dated 03.06.1982, the petitioner was transferred as Project Officer, Lichi at Muzaffarpur, which post according to the petitioner is a Class II post in the Bihar Agriculture Service. The statement of the petitioner at paragraph 6 of the writ petition mentions that 28 other persons were transferred as such.

According to the petitioner, he took charge of the post on 27.06.1982 and continued on the said post when by another notification dated 13.08.1983 he was transferred as Assistant Vegetable Development Officer, Muzaffarpur in his own pay scale where he took charge on 01.09.1983. As per the statement of the petitioner, he officiated on a higher post from 27.06.1982 to 01.09.1983.

It is further the case of the petitioner that vide notification bearing No. 11295 dated 23.09.1985 out of the 29 officers who were asked to discharge duties on the higher post, 23 were promoted to Class II leaving out 6 including the petitioner. It is his case that he kept on representing but to no avail for neither



the respondents paid him officiating pay of higher post nor granted him promotion. It is the case of the petitioner that while he was working as Assistant Vegetable Development Officer, Muzaffarpur in his own scale that he was transferred as District Horticulture Officer, Muzaffarpur again in his own scale vide notification dated 29.06.1990 from which post he superannuated with effect from 30.09.1993.

The pleadings on record as per the admission of the petitioner himself, would confirm that though the petitioner has discharged duties of higher post of Project Officer, Lichi with effect from 27.06.1982 until 01.09.1983 and for which he prays for 20 % officiating pay, he was subsequently transferred to the post of Assistant Vegetable Development Officer, Muzaffarpur, in his own pay scale. It is also the statement of the petitioner that he was again transferred to the post of District Horticulture Officer, Muzaffarpur vide notification No.6430 dated 29.06.1990 on which post he took charge on 01.07.1990 and superannuated on 30.09.1993 but as per his own admission this transfer was on his own scale. The petitioner having superannuated on 30.09.1993 it is after a lapse of 7 years that he has chosen to move this Court.

The writ petition was admitted for hearing vide order passed on 31.03.2006 and though was taken up on different



occasion but for the purpose of final disposal it is heard today and in between the petitioner chose to modify his relief by seeking a direction in the nature of mandamus to the respondents to grant him promotion on the Class II post in the pay scale of Rs. 2200-4000 with effect from 10.08.1985, by filing Interlocutory Application No. 10315 of 2010. However, a coordinate bench vide order passed on 12.08.2015 has been pleased to reject the prayer for such amendment.

I have heard learned counsel for the parties and I have perused the records.

In so far as the claim of the petitioner for payment of 20% of the basic pay for the period the petitioner has officiated on a higher Class II post of Project Officer is concerned, Mr. Ranjan Kumar Singh has invited the attention of this Court to a notification dated 04.02.2010 at Annexure-14 of the Interlocutory Application to submit that in a similar situation, 2 officers of the Agriculture Department namely, Chandrama Singh and Srikanth Yadav have been allowed 20% of the basic pay as officiating pay on higher post albeit pursuant to an order passed in C.W.J.C. No. 253 of 2001. It is noted from the notification relied upon that these 2 Officers were granted promotion retrospectively with effect from 01.02.1990 by the said notification dated 04.02.2010 and have also



been allowed officiating pay of 20 % of the basic pay for period they had discharged duties on higher post until the date of regular promotion. This Court also notices, the counter affidavit filed on behalf of the Horticulture Department to the Interlocutory Application and the Deputy Director Horticulture while filing the counter affidavit on behalf of the Director has conveniently omitted to offer any comment on this aspect of the matter which is pleaded at paragraph 8 of the Interlocutory Application.

In so far as the promotion of this petitioner to the Class II post is concerned, it is fairly admitted at para 15 of the counter affidavit that the name of the petitioner was recommended for promotion to the scale of Rs. 2200-4000 by the Departmental Promotional Committee pursuant to the decision taken in its meeting held on 30.03.2000 and a proposal to such effect was forwarded for promotion with effect from 01.10.1992 to the Finance Department who objected to such recommendation because the petitioner had superannuated before the meeting of the Departmental Promotional Committee took place.

Having heard learned counsel for the parties and in view of the position reflecting from the notification bearing No. 659 dated 04.02.2010 of the Agriculture Department enclosed at Annexure- 14 to the Interlocutory Application whereby not only



the benefit of officiating pay as claimed by this petitioner, has been given to the 2 Officers of the Department rather they have also been given regular promotion even after their superannuation, the denial of the said benefits to the petitioner is patently arbitrary and discriminatory. The Department having allowed the same benefits to others, their decision in refusing officiating pay to the petitioner for the period he has discharged duties of a higher post i.e on 27.06.1982 until 01.09.1983 is discriminatory and the action of the Finance Department to refuse promotion to the petitioner to Class II post with effect from 01.10.1992 despite recommendation by the Departmental Promotional Committee, on grounds that he has since superannuated is an arbitrary decision considering that the Finance Department has given its approval to the identical case of 2 other officers of the said department namely, Chandrama Singh and Srikant Yadav as confirmed from the Annexure-14 referred to above.

In the circumstances so discussed, the respondents i.e. the respondent Nos. 2 to 4 are directed to consider the prayer of the petitioner for payment of 20 % of the basic pay as an officiating pay for having served on a Class II post for period 27.06.1982 to 01.09.1983 and consider his case for promotion with effect from 01.10.1992 as per the recommendation made by the



Departmental Promotional Committee bearing in mind their own decision in the case of two similarly superannuated officers as present in the notification No. 659 dated 04.02.2010 at Annexure-14 of the Interlocutory Application.

Let such decision be taken within 3 months from the date of receipt /production of a copy of this judgment.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

Bibhash/Ranveer

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.09.2018
Transmission Date	NA

