

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17342 of 2017

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Tetar Das, Son of Rup Lal Das, Resident of Village- Sandalpur, Post- Mahendru, Police Station- Sultanganj, District- Patna, Pin- 800006.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary, Social Welfare Department, Government of Bihar, New Building, By the side of Sichai Bhawan, No.2, Old Secretariat, Patna.
3. Director, Social Security and Disability Directorate, Social Welfare Department, Government of Bihar, New Punaichak, (Near Apna Ghar), Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar
		Mr. Virendra Kuar
For the Respondent/s	:	Mr. Md.Raishul Haque -Sc10

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 14-03-2018 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

Vide order dated 26. 09. 2016 this court has issued
specific direction in CWJC No. 12453 of 2013 the following
terms:-

**“The respondent authority is required to
not only to verify the service book but also to
decide enhancement of pay scale vide letter dated
28.11.1990 was by way of promotion or
upgradation of scale of pay and also examine
whether such benefit has been conferred to others.
Let the respondent authority examine the case in
the above observation and pass an order in
accordance with law.**

With this direction, the writ petition is



allowed. The respondent authority will pass a fresh order in accordance with law within three months from the date of receipt/production of a copy of this order”.

Notwithstanding the specific direction issued by this court dated 26.9.2016 the respondents have not answered the issue formulated by the Writ Court in C.W.J.C. No. 12453 of 2013 vide order dated 26.9.2016 the case of the petitioner was rejected but the respondents have not answered whether the enhancement of pay-scale was by way of promotion or upgradation of scale of pay.

In view of the above, when the respondents in the impugned order has not answered the issue formulated by this court in C.W.J.C. No. 12453 of 2013 and rejected the claim of the petitioner, this court is left with no option but to quash order contained in Annexure-11 dated 5.5.2017. Respondents are directed to examine afresh the case of the petitioner and similarly circumstanced others in the light of the decision dated 26.9.2016 in C.W.J.C. No. 24531 of 2013 which is binding between the parties on account of attaining finality. The court does not find any merit in the submission of the counsel for the State that although the impugned order does not answer the issue formulated by this court but that can be inferred from the



materials available in the counter affidavit and other contemporaneous documents. Law in this regard is well settled that public order cannot be supplemented by way of counter affidavit. Reference in this connection may be made to the Constitution Bench judgment of the Apex Court in the case of **Mahendra Singh Gill & Anr. vs. The State Election Commission reported in 1978 AIR 851.**

Accordingly, the matter is remitted back to the Director, Social Welfare Department to decide afresh in the light of the order of this court passed in C.W.J.C. 12431 of 2013 dated 26.9.2016 and final decision in this regard may be taken by the respondents within a period of sixty days from the date of receipt/production of a copy of this order.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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