IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 13930 of 2011

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Dr. Rajeshwar Prasad Yadav Son of Late Deo Nandan Prasad Yadav, Permanent R/O Village- Aran, P.S.- Bihra, District- Saharsa, At Presetn Residing At Plot No. 865, Deo Puri (Nandan Puri), P.S.- Shastri Nagar, District- Patna, Retired Joint Director, Department of Animal Husbandry, Government of Bihar, Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
3. The Principal Secretary, Department of Animal Husbandry & Fisheries Resources, Government of Bihar, Patna.
4. The Director, Animal Husbandry, Government of Bihar, Patna.
5. The Accountant General, Bihar, Patna.
6. The Assistant Accountant General, Bihar, Patna.
7. The Senior Accounts Officer, Office of Accountant General, Bihar, Patna.
8. The Treasury Officer, Patna.
9. The Sub Treasury Officer, Vikash Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mritunjay Kumar, Advocate
For the State	:	Mr. Ajit Kumar, G.A. 9
For the A.G.	:	Mr. Jitendra Kumar Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 28-06-2018

Heard learned counsel for the petitioner; State and Accountant General.

2. The petitioner has moved the Court for the following relief:

> *"That this application is being preferred for issuance of appropriate writ /writs, order/ orders, direction / directions for quashing the Pension payment Order No. 271099 P1 dated 16.03.2011 issued under the signature of Assistant Accountant General (Respondent No. 6) whereby the Petitioner's Pension has been reduced to Rs. 14531/- in pay band from Rs. 23,050/- in pay band*

with effect from 01.04.2007 and Treasury Officer (Respondent No. 8) has been directed to make necessary amendments in earlier Pension Payment Order No. 271099 and pay the amount as revised thereafter adjusting all the amount previously paid on the said Pension Payment Order, in consequent thereof the Respondents be directed to continue payment of Pension to the Petitioner as he was being paid in pursuant to the Pension Payment Order No. 271099 with effect from 01.04.2007 i.e. Rs. 23,050/- per month and its consequential benefits for which the petitioner may be found entitled in the eyes of law."

3. The petitioner was initially appointed on 09.07.1960 under the State Government and thereafter on 01.05.1977, he was appointed on a cadre post and also got the due promotions. By a common order dated 09.01.1996, the petitioner, along with others, was granted Selection Grade promotion in the scale of Rs. 4100-5300/- w.e.f. 01.11.1994. Thereafter, he superannuated on 31.01.1997 and also got his terminal dues based on the Last Pay Certificate in terms of the pay scale of Rs. 4100-5300. The controversy started in the year 1999, when the State Government in the Finance Department under Resolution No. 660 dated 08.02.1999, revised the scale of pay of State Government employees. In terms of the Clause 11 thereof, besides other things, the State Government took a decision that all Time Bound Promotions and Selection Grades were to be abolished and benefits given would be restricted till 31st December, 1995. This led the authorities to the revising pay

scale of the petitioner notionally and then held him entitled to lesser pension which has been assailed in the present writ application.

4. Learned counsel for the petitioner submitted that once he has been given regular promotion in the selection grade w.e.f. 01.11.1994, by order dated 09.01.1996, any decision of the State Government of the year 1999 could not have any adverse effect retrospectively, moreso in view of the petitioner having already superannuated on 31.01.1997.

5. Learned counsel for the State submitted that in view of the stipulation in the aforesaid resolution of the State Government dated 08.02.1999, the authorities are bound to comply with the terms and accordingly such reduction has been made in the case of the petitioner.

6. Learned counsel for the Accountant General submitted that they have only acted upon the advice of the State Government.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the action of the authorities cannot be sustained in law.

8. On a categorical query of the Court to learned counsel for the State as to what was the reason for such reduction, the categorical answer is that it is in terms of Clause 11 of the aforesaid resolution of the State dated 08.02.1999. Thus, the Court would

consider the said Clause itself which reads as under:

> *"11. The State Government have decided to abolish the existing facilities of Time Bound Promotions and Selection Grades, discussed in paras 10 and 12 of F.D. Resolution no. 6021 dt. 18th December, 1989 and they shall cease to be applicable with effect from 1st January, 1996 and thereafter in the existing pay scales. If any such promotion, however, is due under the Rules before 1st January, 1996, it shall be given and the payment of arrears in the existing scale shall be made only upto 31st December, 1995 after which the promotion would be deemed to have been automatically terminated. While fixing pay in the revised scales, such promotions given after 31st December, 1995 will not be taken into consideration. If such promotions have been given after 31st December, 1995 then the question of adjustment of such additional emoluments obtained in the process, will be decided after the Fitment Committee submits its recommendations on promotion Policy. Promotion to any vacancy of a post identified as need based post would be admissible. The procedure for identification of such need based posts has been set out in paragraph 12."(emphasized by the Court)*

9. For considering the above resolution, in the context of the present case, the portion which has been emphasized by the Court is only relevant. The Court finds that the provision for restricting the benefits till 31st December, 1995, after which the promotion would be deemed to have been automatically terminated, is clearly restricted to any such promotion which was due under the Rules before 1st January, 1996, i.e., to say under the Time Bound Promotion and Selection Grade, which were to be given and payment

of arrears to be made only up to 31st December, 1995, after which the promotion would be deemed to have been automatically terminated. Such automatic deemed termination, in the considered opinion of the Court, is restricted to only such promotions which were due under the earlier Time Bound Promotion and Selection Grade but had not yet been granted to a person on the date of issuance of resolution i.e. 08.02.1999. Thus, the Court has no hesitation to hold that such stipulation would have no effect on transactions already completed, which in the present case was 01.11.1994/ 09.01.1996, both dates being much prior to 08.02.1999.

10. For the reasons aforesaid, the writ petition succeeds. The impugned order stands set aside. The petitioner is held entitled to payment of his retiral benefits, including pension, on the basis of last pay drawn by him in the scale of Rs. 4100-5300. Any arrear be paid within two months from the date of production of a copy of this order before the respondent no. 4. Thereafter, the petitioner shall get his regular pension in terms of this order. The order of recovery also, as a consequence, stands set aside. It goes without saying, that based on his entitlement to the scale of Rs. 4100-5300, at the time of his superannuation, all due and admissible revision, as on date, shall be granted to the petitioner.

11. In the meantime, the authority shall take immediate

steps for sending necessary sanction order to the Accountant General, who in turn, shall issue the required authority slip at the earliest.

(Ahsanuddin Amanullah, J.)

P. Kumar

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