

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.5571 of 2013

In

Civil Writ Jurisdiction Case No. 9176 of 1997

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Awadh Bihari Tiwari Son Of Late Shree Kumar Tiwari Resident of Village-
Mahuli, P.S.- Ishuapur, District- Saran (Chapra)

.... Petitioner

Versus

1. The State Of Bihar
2. Mr. Chanchal Kumar, I.A.S., presently posted As Principal Secretary,
Art, Youth And Culture Department, Government of Bihar, Patna
3. Brigadier, K.P. Chand, presently posted as Deputy Director General,
N.C.C. Directorate, C.D.A. Building, Rajendra Path, Patna
4. Colonel Dipendra Sarin, presently posted as Group Commander,
N.C.C. Group Headquarter, Bhagalpur
5. Colonel Tarun Chhiber, presently posted as Commanding Officer, 35-
Bihar Battalion, N.C.C., Patna
6. Colonel R.D. Talukdar, Officiating Group Commander, N.C.C. Group
Headquarter, Muzaffarpur
7. Colonel R.D. Talukdar, presently posted as Commanding Officer, 32-
Bihar Battalion N.C.C., Muzaffarpur
8. Rajeshwar Prasad, presently posted as Accountant in the Office of the
Commanding Officer, 32- Bihar Battalion N.C.C., Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Advocate

For the Opposite Party/s : Mr. Prabhakar Jha, GP-27

Mr. Mukund Mohan Jha, AC to GP-27

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN

PRASAD

ORAL ORDER

23 26-10-2018

This contempt application has been preferred alleging willful disobedience of the order dated 24th April, 2013 passed in C.W.J.C. No. 9176 of 1997. At this stage, it is an admitted position that the order of the learned writ Court has been substantially complied with. The dispute, if any, has remained for consideration is with regard to the grant of grade pay to the



petitioner. While the petitioner is claiming that by virtue of getting the pay scale of Rs. 2750-4400 on account of grant of 1st ACP w.e.f. 10.02.2004, he would be entitled to get grade pay of Rs. 2400/- w.e.f. 01.01.2006 notionally and its actual benefit with effect from 01.01.2009, the contention of the State is that the petitioner is claiming that benefit by misconstruing the circular bearing No. 3972 dated 12.05.2016 and Letter No. 7577 dated 23.09.2016. It is the contention of the State that the in the year 1995 the petitioner was in the pay scale of Rs. 800-15-1010-20-1150 and he was getting Rs.845/-. Referring to Annexure-H to the second supplementary show cause, it has been contented on behalf of the State that by virtue of provision as contained in Clause (iii) of Paragraph-6 of the said resolution, since the petitioner was already getting benefit of the pay scale of Rs. 2750-4400 from before the cut-off date and had taken the benefit of the same, he is rightly being paid the grade pay of Rs.1900/-. It has been further pointed out from the third supplementary show cause filed on behalf of opposite party no. 7 that in the light of the Letter No. 3972 dated 12.05.2016 an explanation has also been given vide Letter No. 7577 dated 23.09.2016 and it has been clarified and has rightly been done so showing that the revised scale of pay of the petitioner w.e.f. 01. 01.2006 in pay band of Rs. 5200-20200 would



be in Grade pay of Rs. 1800/- and his 1st ACP would stand converted in MACP on 01.01.2009 in grade of Rs. 1900/-. It has been pointed out that the petitioner is now getting his 2nd MACP since 10.02.2012 in the pay band of Rs. 5200-20200/- in Grade Pay of Rs. 2000.

In course of argument learned counsel representing the petitioner has drawn the attention of this Court towards Annexure-7 to the application. With reference to Annexure-7 (Paragraph-5 and 7) learned counsel has contended that a bare reading of Paragraph-5 of Annexure-7 would show that once the petitioner has been placed in pay scale of Rs. 2750-4000 w.e.f. 01.01.2009, he will be under the grade pay of Rs.2400/-.

Having heard learned counsel for the parties at length, this Court finds that at this stage the order of the learned writ Court has been substantially complied with. So far as the issue of payability of grade pay is concerned, there are certain contentions which are required to be adjudicated. The kind of submissions which have been advanced at the bar made this Court to believe that it is not a case of willful disobedience or disregard to the order of the learned writ Court. Such contentious issues require adjudication and any attempt by this Court to do so sitting in its contempt jurisdiction would not be desirable.



In the opinion of this Court, the contempt application cannot proceed. It is dropped accordingly, but with liberty to the petitioner to raise this issue and get it adjudicated in an appropriate jurisdiction and in an appropriate application.

This application stands disposed off, accordingly.

(Rajeev Ranjan Prasad, J)

Arvind/Ved/-

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