

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19103 of 2016

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Dhruv Narayan Tiwary Son of Late Braj Nath Tiwary Resident of village -
Kampura, P.O. Karnpura, P.S. Gautam Budha Nagar (Tarwara), District - Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director of Health, Deshi Chikitsa, Patna.
3. The Finance Commissioner, Government of Bihar, Department of Finance,
Patna.
4. The Additional Secretary, Government of Bihar Finance Department, Patna.
5. The Deputy Secretary, Health, Medical and Family Welfare Department,
Government of Bihar, Patna.
6. The Deputy Secretary, Government of Bihar, Department of Finance (Vaiyaktik
Dawa Koshang), Patna.
7. The District Medical Officer, Deshi Chikitsa, District Singhbhum (West
Champaran).
8. The State of Jharkhand through Finance Commissioner, State of Jharkhand,
Ranchi.
9. The Director of Health, Deshi Chikitsa, State of Jharkhand, Ranchi.
10. The Accountant General, Bihar at Patna.
11. The District Treasury Officer, Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kamala Kant Tiwary with Mr. Bhuneshwar Pandey, Advocates
For the State (Res. 1 to 5)	:	Mr. Chitranjan Sinha, PAAG 2
For State of Jharkhand	:	Mr. Dhrub Mukherjee, Sr. Advocate
For the Accountant General	:	Mr. Satyendra Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 18-08-2018



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

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

“(I) To be pleased to fix the amount of permanent pension of the petitioner which the petitioner is entitled to after fixation of pay scale as per Rs. 2200-4000 since 01.03.1993.

(II) To be pleased to pay the entire amount of arrears of pension and full pension as per new pay scale of the petitioner, whereas only the provisional pension of 90% has been paid to the petitioner. The provisional Pension is being paid to the petitioner @ Rs. 1661/- from the date of his retirement.

(III) To be pleased to pay the amount of gratuity of the petitioner due before the Respondents.

(IV) To be pleased to pay the differences of salary since 1.3.1989 to 31.3.1993 for which the petitioner is found entitled to.

(V) To be pleased to pay the amount of earned leave of 240 days of the petitioner.

(VI) To be pleased to direct the respondents Authority to exempt the petitioner from the departmental Hindi noting and drafting examination as per Govt. circular No. 12-R-1-5040-73K-11925 dated 21.6.78 attaining the age of above 50 years which benefit has been given to



the similarly situated person of the department namely Shri Sant Prasad Tripathi and to fix the pay scale of the petitioner and paid the dues accordingly.

(VII) To be pleased to grant statutory as well as penal interest over the entire dues of the petitioner and may be pleased to grant any other relief or reliefs for which the petitioner is found entitled to.”

3. The petitioner had earlier moved the Court in C.W.J.C. No. 419 of 1997 followed by M.J.C. No. 220 of 1999 and thereafter again in C.W.J.C. No. 15797 of 2007 for the relief sought for in the present case. However, by order dated 25.08.2014 in C.W.J.C. No. 15797 of 2007, the Court had categorically dismissed the writ application seeking the relief that he may be allowed to draw a sum of Rs. 3500/- as salary holding that the last pay drawn would be Rs. 2900/- and not Rs. 3500/- and also noting that authorisation and revision of pension had been done accordingly and nothing more was required to be done. It was also observed that if any *bona fide* claim remains, the petitioner was free to demand the same before the Competent Authority. Thus, as far as the claim for pay of Rs. 3500/- is concerned, the matter had been considered and rejected by the Court under order dated 25.08.2014 in C.W.J.C. No. 15797 of 2007. However, the Court finds that in the present writ petition also, the



entire basis of the claim of the petitioner is on his pay being considered to be Rs. 3500/- and thereafter for his pensionary benefits to be calculated. This is clear from the statement made in paragraph no. 9 of the writ application, which reads as under:

“That the petitioner states that page no. 24 of his service book dated 14.10.1985 shows that his basic pay was Rs. 1600 from 20-08-1985. It further shows that according to revised scale the petitioner is entitled to Rs. 3125/- as basic pay on 20.08.1988 which was approved by the District Medical Officer. Since 1.1.1986 petitioner got the scale of pay of Rs. 2900/- which was increased @3500/- since 31.3.1993, which is apparent from the service book of the petitioner but the respondents denied the same pay scale of Rs. 3500/- and wrongly stated in the Counter affidavit and supplementary counter affidavit in C.W.J.C. No. 15797/07 which was decided by this Hon’ble Court vide order dated- 25.08.2014. Due to mistake on the part of petitioner’s lawyer reply/rejoinder to the counter affidavit and supplementary counter affidavit has not been filed and the earlier writ application was disposed of only on the assertion/statement of the respondents although actually part payment has only been made to the petitioner and rest amount is due before the Department. It is stated and submitted that the petitioner is entitled to the scale of pay of Rs. 2200-4000/- since 1.3.1993. It is



evident from letter no. 300 dated 2/4/1998 issued by the Finance Department, Government of Bihar, at Patna.”

4. Further, from the counter affidavit filed on behalf of the State of Jharkhand, it transpires that the petitioner has been filing representation before the authorities as late as in the year 2015 for making payment on the basis of treating his basic pay as Rs. 3500/-.

5. The Court finds such conduct of the petitioner to be lacking *bona fide* and also contemptuous, inasmuch as, a claim, which has been rejected by a judicial order, is still being raised before the authorities after the decision of the Court.

6. At this juncture, learned counsel for the petitioner submitted that he may be permitted to withdraw the writ petition.

7. In view thereof, the writ petition stands dismissed as withdrawn.

8. However, the Court would only indicate that in terms of the orders passed by the authorities themselves relating to payment to be made to the petitioner on the basis of his pay being Rs. 2900/-, if anything further remains to be paid, as appears from the counter affidavits filed on behalf of the respondents, the same be paid to him latest within two months from today.

(Ahsanuddin Amanullah, J)

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