

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22405 of 2014

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Dinesh Prasad Sinha. Son of Late Bhagwan Singh, Acting Headmaster, Sanskrit Middle School, Masaurhi, Police Station - Masaurhi, District - Patna (now retired), at present Residing at village - Rarha (Rastrapati Nagar), Police Station - Masaurhi, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through its Principal Secretary Department of Education, New Secretariat, Vikas Bhawan, Patna.
2. The Principal Secretary, Department of Education, New Secretariat, Vikas Bhawan, Patna.
3. The Director (Primary Education) Department of Education, New Secretariat, Vikas Bhawan, Patna.
4. The Regional Deputy Director of Education, Patna Division, Patna.
5. The District Education Officer, Patna.
6. The District Account Officer, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bijay Kumar Pandey, Advocate
For the Respondent/s	:	Mr. Nishant Kumar Jha, AC to SC-28

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 09-10-2018 Similar matter has been considered and decided by a Co-ordinate Bench this Court vide order dated 29.7.2004 in CWJC No. 8333 of 1999 (Shiva Kant Jha Vs. The State of Bihar & Ors.). The relevant part of the order is quoted below for ready reference:-

“According to this clause the persons who have been appointed on or after 1st January, 1986 but before issue of the orders i.e. 18.12.1989 it would be deemed that their appointments have been made in the revised scale subject to the provisions made in subsequent paragraphs of the said Resolution. Schedule-III is in relation to fixation of pay in the revised scale. It says that fixation of pay of Government servants both gazetted and non-gazetted, who were in services on



1.1.1986 shall be made in the revised scale of pay at a stage to be determined in accordance with Schedule-III. Clause 1 says that the present emoluments will be worked out as on 1st January, 1986 and will include (1) the basic pay on 1.1.1986 and (2) D.A./ ad – hoc D.A. admissible at index average 608. Paragraph 2 says that to the present emoluments will be added a sum equivalent to 35% of the basic pay in the existing scale subject to a minimum of Rs. 175 and maximum of Rs. 700. According to paragraph-3, the total of present emoluments and the additional sum will be called 'Pre-Fixation Emoluments'. Paragraph 4 says that the 'Pre-Fixation Emoluments' will be fitted in the revised scale of pay as provided in paragraph-4. From Annexure-3 it would appear that the petitioner was appointed in the scale of Rs. 730-1080; on the date of his fixation of the pay, his D.A. as admissible on 1.1.1986 on 608 points index average was 394.20. Adding the above two, his salary was Rs. 1124.20. This would be the 'present emoluments' to which 'additional sum' at 35% is to be added which would come down to 255.50. The petitioner's total emoluments for the purposes of pay fixation would be Rs. 1379.70 the round of which would be Rs. 1380. To this the benefit of three increments is to be added in accordance with paragraph 6 of Schedule-III of the said Resolution. Paragraph-6 says that after fixation of pay in the revised scale with effect from 1.1.1986, to this is to



be added the benefit of three increments. Paragraph-6 says that after fixation of pay in the revised scale with effect from 1.1.1986 three increments will be allowed to the Intermediate untrained/Intermediate trained/ Graduate untrained teachers who get their pay fixed in the scale of Rs. 1200-2040 in revised scales. Each increment would be Rs. 30 as is clear from Schedule -1. To the total amount of Rs. 1380 three increments of Rs. 30 each totaling to Rs. 90 is to be added and the salary of the petitioner would be Rs. 1470 as on 20.04.1988. If that could be the calculations in accordance with the Resolution and it was so fixed by the Headmaster on 15.03.1990 and an entry to that effect was made in Annexure-4 under the signatures of the Headmaster then there was no scope for the District Accounts Officer to hold that the petitioner's salary on 1.1.1986 would be zero, therefore, on application of the revised pay scales from Rs. 730-1080 to Rs. 1200-2040 the petitioner would be fixed at the minimum of Rs. 1200 and would be entitled to the benefit of three increments i.e Rs. 90 only.

In the opinion of this Court of fair understanding of the Resolution of the Government and its proper application would show that petitioner's pay fixed in Annexure-3 was in accordance with the Resolution and there was no violation of any clause of any paragraph of the Schedules annexed or appended to the said



Resolution. The endorsements made in the service book of the petitioner under the signatures of the District Accounts Officer are quashed. It is further directed that the recovery ordered by the District Accounts Officer shall not be made from the Salary of the petitioner.”

In view of the above, this writ petition is also disposed of with a direction to the respondents to consider the claim of the petitioner and pass appropriate order at the earliest preferably within a maximum period of four months from the date of receipt/production of a copy of this order and grant similar benefit of senior scale to the petitioner like similarly circumstanced others have been granted. .

(Anil Kumar Upadhyay, J)

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