

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13099 of 2010

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Pandey Venkatesh Prasad Sinha, S/o-Late Pandey Bhairav Prasad, resident of village- Matukpur, P.S. Barhara, Distt.- Bhojpur, at present posted as Child Development Project Officer, Digghal Bank, P.S. Digghal Bank, District-Kishanganj

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of Social Welfare, Government of Bihar, Patna
2. Principal Secretary, Department of Social Welfare, Government of Bihar, Patna
3. Director, I.C.D.S. Directorate. Department of Social Welfare, Government of Bihar, Patna

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Banwari Sharma, Advocate Mr. Shiv Kumar, Advocate Mr. Sahjanand Sharma, Advocate
For the Respondent/s	:	Mr. Anil Kumar Singh, G.P.-26

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 14-05-2018

Heard learned counsel for the petitioner and learned counsel for the State.

2. In the present case, the petitioner is seeking relief of grant of pay scale of Rs.8,000-13,500/- and claimed that he has wrongly been placed in the pay scale of Rs.6500-10,500/-, claiming the pay scale at par with the Block Development Officer in the State.

3. The petitioner had applied against the vacancy published for the 30th Combined Competitive Examination



conducted by the Bihar Public Service Commission (hereinafter mentioned as “B.P.S.C.”) having committed error in not recommending the name of petitioner although the persons securing lesser marks than to the petitioner got appointed and the petitioner has been left out, compelling the petitioner to approach this Court in C.W.J.C. No.494 of 1984, which was disposed of on 11.07.1987. Against relief granted to the petitioner, the B.P.S.C. filed a Special Leave Petition bearing S.L.P. No.13679 of 1987 before the Hon’ble Supreme Court, was disposed of vide order dated 28.09.1988 in favour of the petitioner. On account of judicial interference, the name of the petitioner was recommended and accordingly, the petitioner having been appointed on the post of Child Development Project Officer in Welfare Department, accordingly, appointment letter dated 22.06.1989 was issued by the Personnel and Administrative Reforms Department, Government of Bihar. In the appointment letter, it has been mentioned that the inter se seniority of the persons appointed by the said letter shall be the same as per the merit list prepared with respect to merit of other persons who are appointed on 13.09.1985, meaning thereby, the seniority of the petitioner will be based upon ranking in the seniority list will be the same as of



others who were in the merit list prepared on 13.09.1985.

4. The petitioner has earlier moved before this Court in C.W.J.C. No.11167 of 2001, wherein claim has been made by the petitioner that he should be given the pay and other allowances with effect from the date the persons securing lesser marks were granted. This Court in operating part of the order has held that if a person securing higher marks in a competitive examination is wrongly denied appointment, the litigation even if decided in favour of such person is bound to take time but for such delay the person concerned cannot be penalized. His pay must be notionally fixed at par with those who secured lesser marks but were appointed earlier. In the matter of such notional pay fixation the basic pay as well as increments and other emoluments must also be kept in mind. The pay of the petitioner, was accordingly, fixed in terms of the order passed by the aforesaid judgment.

5. Again the dispute arose with respect to rejection of the claim of the petitioner for the relief arising from the letter no.4098 dated 16.04.1998, by which the claim of the petitioner to grant a particular pay scale was rejected. The petitioner challenged the action by filing writ petition vide C.W.J.C. No. 5143 of 1998, disposed of on 09.02.2015. The Court has



recorded the earlier events and also taken cognizance of the order passed in earlier proceeding i.e. C.W.J.C. No.11167 of 2001. In that case, the relief was sought for to grant the benefit of assured Career Progression to the petitioner with effect from 27.07.1985. After due deliberation, the Court has found that he cannot be deprived the benefit of Assured Career Progression and accordingly, direction was given to grant the benefit of Assured Career Progression and he should be given all consequential relief and the pensionary benefit.

6. In the present case, the petitioner is claiming the pay scale of Rs.8,000-13,500/- at par with persons who are juniors to him in the merit list have been appointed as Block Development Officer, but on account of his success in the judicial proceeding in stead of absorbing as Block Development Officer, he was made as Child Development Project Officer and further stated that his pay scale will always be at par with the juniors and whatever the relief has been given to them cannot be denied as denial of the same will be arbitrary and discriminatory exercise of power and that fact was taken into consideration in earlier two proceedings and accordingly, the Court has issued direction from time to time.

7. Here in the present case also, the petitioner cannot



be deprived of the scale what has been granted to the juniors and there is no denial that juniors who were appointed as Block Development Officer. First time scale was recommended for Rs.6,500-10,500/- but later on, it was enhanced to Rs.8,000-13,500/- but the scale of the petitioner has not been enhanced.

8. Learned counsel for the State submits that the action cannot be said to be bad as he is holding the post of Child Development Project Officer and the pay scale of Child Development Project Officer is Rs.6,500-10,500/-.

9. Having considered the rival contentions of the parties, the State has not taken into consideration the fact that other Child Development Project Officers were not engaged or appointed alike with the petitioner as the petitioner has entered into the service through 30th Combined Competitive Examination, conducted by the B.P.S.C. and the persons who were juniors to the petitioner were appointed and the petitioner was left out, but on intervention of this Court the State authorities were compelled to take the service of the petitioner and instead of appointing as Block Development Officer, the petitioner has been appointed as Child Development Project Officer, and as such, the petitioner cannot be deprived for the laches committed by the State. Further, the petitioner is a



different class to those of other Child Development Project Officers as their entry is not through the B.P.S.C. but through another source. So, the petitioner cannot be deprived of the scale as that has been given to other juniors in the merit list.

10. Accordingly, this Court directs the respondents to provide the pay scale of Rs.8,000-13,500/- to the petitioner without unnecessary delay keeping in mind the fact that in earlier two proceedings their stand has not been accepted by this Court and the Court had arrived to a conclusion that petitioner will be treated at par with his junior, and as such, he should be given the benefit of pay scale of Rs.8,000-13,500/- preferably within three months from the date of receipt/production of this order.

11. With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	06.06.2018
Transmission Date	N/A.

