

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.368 of 2017

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Praveen Kumar Mishra, son of Paras Nath Mishra, Bhagwati Bhawan, A/14, Road
No.1 Sanjay Gandhi Nagar, Hanuman Nagar, Patna 26

.... Petitioner

Versus

1. The State of Bihar through the Finance Secretary, Govt. of Bihar, Old Secretariat, Bailey Road, Patna
2. The Secretary, SC/ST Welfare Department, Govt. of Bihar
3. The Addl. Secretary to Govt. of Bihar, Patna SC/ST Welfare Department, Patna
4. The Director SC/ST Welfare Department, Patna
5. The District Welfare Officer, Gaya, Gaya Collectorate, Gaya
6. The District Welfare Officer, Bhojpur, Ara
7. The Block Development Officer, Neemchak, Bathani, District Gaya
8. The Accountant General, Bihar, Birchand Patel Pah, Patna
9. The Director, General Provident Fund Directorate, Bihar, Patna
10. The Deputy Director, Provident Fund Directorate, Finance Department, Patna Bhawan, Patna
11. The District Provident Fund Officer, Bhojpur, Ara

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajiv Roy, Adv.

For the Respondent/s : Mr. Krishna Kant Singh, AC to SC10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-01-2018

Heard Mr. Rajiv Roy, learned counsel appearing for the petitioner and Mr. Krishna Kant Singh, learned AC to SC-10, for the State.

The writ petition was originally filed for a direction to the respondents to pay the petitioner his regular salary together with arrears after granting him benefit of Assured Career Progression.

While the writ petition is pending that the nature of grievance has undergone a change and an interlocutory application is so filed bearing I.A.No. 9231/2017 enclosing an order dated



11.1.2017 of the Deputy Secretary, impugned at Annexure 18 to the interlocutory application, whereby the claim of the petitioner for pay protection under Rule 78 of the Bihar Service Code has been rejected. Annexure 19 is a letter dated 11.8.2017 of the Joint Secretary, whereby the review application filed by the petitioner has been directed to be put up for consideration in the light of the order to be passed in the present proceedings.

The grievance of the petitioner as it presently stands is that either he should have been granted benefit of pay protection under Rule 78(a)(i) of the Bihar Service Code or his claim should have been rejected within a reasonable time to enable him to revert back to his service in the Central Industrial Security Force.

The facts leading to the writ petition in brief is that the petitioner was appointed with the Central Industrial Security Force under the Ministry of Home Affairs on 13.12.2002 on the post of Sub Inspector in the scale of Rs.5500-9000. His services were confirmed in December, 2004. In January, 2006 the salary of the petitioner was revised in terms of 6th Pay Revision in the pay band of Rs.9300-34800 (Grade pay of Rs.4200/-). In July, 2010 certain posts were advertised by the Bihar Staff Selection Commission through Advertisement No. 110/2010. The petitioner applied against one of such post. While the selection remained pending that the petitioner was promoted to the



post of Inspector/ Executive, CISF. The result of the selection was declared by the Bihar Staff Selection Commission on 19.2.2013. The petitioner was declared successful and called for counseling on 27.2.2013 and for documentation on 6.4.2013. The petitioner was asked to submit a No Objection Certificate from his employer i.e. Central Industrial Security Force and it is stated that on such production the petitioner was appointed as District Welfare Officer on which post he joined on 29.9.2014 on being relieved from his previous service on 27.9.2014. Since the salary was irregular that the petitioner after representing before the authorities moved this Court through this writ petition. At that stage there was no claim raised by the petitioner for pay protection under Rule 78 of the Bihar Service Code.

The records would transpire that it is after a lapse of almost two years since appointment of the petitioner vide Annexure 1 in the year 2014 that he raised an issue of pay protection on 2.5.2016 vide Annexure 10 and which has been rejected vide order dated 11.1.2017 enclosed at Annexure 'E' to the counter affidavit. On such rejection that an interlocutory application was filed by the petitioner bearing I.A.No. 9231/2017 to question this order dated 11.1.2017 impugned at Annexure 18 to the interlocutory application.

It is the argument of Mr. Roy in reference to Annexure 13



which is a letter of the Under Secretary, SC and ST Welfare Department, Govt. of Bihar dated 8.9.2015 to submit that the representation of the petitioner was under active consideration for pay protection under Rule 78(a)(i) of the Bihar Service Code and it is delayed action by the respondents to refuse the prayer for pay protection after a long lapse on 11.1.2017 which has prejudiced the claim of the petitioner to revert back to the service of Central Industrial Security Force. According to Mr. Roy, either the petitioner should have been provided with the pay protection under Rule 78(a)(i) of the Bihar Service Code or his application should have been disposed of expeditiously so that the petitioner could have a choice to revert back to his previous employment.

Mr. K.K.Singh, learned State Counsel contesting the claim has referred to Rule 2 of the Bihar Service Code to submit that the provisions apply only to a Government servant in employment of the State Govt. of Bihar and thus it is on complete misconception that the petitioner has relied upon Rule 78 of the Code to claim such relief after a lapse of two years of his appointment.

I have heard learned counsel for the parties and have perused the records.

The very fact that this writ petition having been filed after almost a lapse of three years of appointment of the petitioner in the



year 2014, yet no issue was raised by the petitioner to claim pay protection is a reflection of seriousness with which he has pursued his cause. There is nothing on record to demonstrate that any claim was raised by the petitioner at the time of his appointment or that he was given any assurance on protection. In fact since his appointment in the year 2014 until filing of the representation on 2.5.2016 when for the first time the petitioner raised the claim of pay protection, no objection was raised by him. Even if the grievance so raised by the petitioner was being considered by the Department as reflected from the letter dated 8.9.2015 of the Under Secretary, there in fact was never any confusion on the fate of the claim so raised in view of the provisions underlying Rule 2 read with Rule 78 of the Bihar Service Code which is self eloquent that the privilege is limited to the State Government employees. Even otherwise if the petitioner was drawing a higher salary with the CISF, there was no occasion for him to choose an appointment which was in a lower pay scale. The petitioner having applied with open eyes and joined the post without any objection, the delayed action is not by the department, rather it is by the petitioner himself in raising an issue of pay protection after two years of his appointment which should have been raised on the very threshold when the appointment was offered to him and when the matter would have been sorted out. The claim of the petitioner thus is



neither sustainable on merits nor on his delayed action and has been rightly rejected vide order dated 11.1.2017 impugned at Annexure 18 to the interlocutory application.

It is not in dispute that the petitioner presently is drawing his salary regularly and thus, the grievance originally raised in the writ petition has been taken care of and in so far as the issue raised in the interlocutory application is concerned, it is not worth any indulgence.

The writ petition and the interlocutory application are accordingly disposed of.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.01.2018
Transmission Date	NA

