IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9782 of 2018

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Arjun Kumar S/o Sri Rajendra Kumar R/o, village Gautam Nagar, Ward No.11 South West of Income Tax Office. P.O.P.S.District-Saharsa.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Finance Commissioner, Bihar, Patna.
3. Principal Secretary, Human Resources, Bihar, Patna.
4. Accountant General, Bihar Beer Chand Patel Marg, Patna.
5. Director, Primary Education, Bihar, Patna
6. Collector, Saharsa.
7. Deputy Development Commissioner, Saharsa.
8. District Accounts Officer, Saharsa.
9. District Programme Officer Estb. Educaton, Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mallika Mazumdar, Advocate
For the Respondent/s	:	Mr. Madhukar Mishra, A.C. to S.C. 16
For the A.G. Bihar	:	Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

2 11-07-2019 Heard learned counsel for the petitioner, learned counsel appearing on behalf of the State as well as learned counsel appearing for the Accountant General, Bihar.

The petitioner has approached this Court aggrieved by the fixation made by the Accountant General vide order dated 03.11.2018.

Learned counsel appearing on behalf of the Accountant General in paragraph 10 of the counter affidavit, has stated as follows:

> "10. That any reply of the department has not been received by the answering respondent yet. Further, the District Programme Officer (Estd.) Saharsa has been requested vide letter No. -pen-12-425-426 dated 18.06.2018 under the intimation of petitioner to review the case in light of this writ petition and send the service book along with proper sanction order, if pensionary benefits are required to be revised by answering respondent."

Today counter affidavit on behalf of the District Programme Officer has been filed. The counter affidavit of the District Programme Officer is acknowledgement of arbitrariness on the part of the Accountant General in the matter of fixation of the entitlement of the petitioner. Paragraphs 7 and 8 of the counter affidavit filed today is quoted hereinunder:

> "7. That while observation of pay Fixation done by DDO-cum-Head Master, Aadarsh Awasiya Middle School, Shiksha Sangh, Saharsa and countersigned by the then D.P.O. (Estt.), Saharsa, the respondetn no. 4 (A.G. Bihar, Patna) observed that a benefit of a sum of Rs. 175/- under fundamental rule 22(1) A(1) has been given to the petitioner which is not applicable as per annexure-4 and the A.G. Bihar, Patna deducting Rs. 175/- from fixed pay contained in Annexure 2 to this writ petition.
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> 8. That it is a fact that in same the case of Pratap Narayan Singh, the A.G. admitted and accepted the benefit of Rs. 175/- under Fundamental rule 22 (1) A(1) and in the case of the petitioner it is refused. Thus it is an act of arbitrariness."

From the counter affidavit of the District Programme

Officer it is admitted that the case of the petitioner is similar to that of the Pratap Narayan Singh. Accountant General had admitted the benefit to the other under fundamental Rule of 22 (1)(A)(1), whereas in the case of the petitioner, the same benefit was refused. Thus, it is an act of arbitrariness. Once it is admitted by the respondent District Programme Officer, it shall be obligation of the Account General to make necessary correction and take steps for revised pension of the petitioner accordingly.

In view of the stand taken by the District Programme Officer indicated hereinabove the letter dated 31.01.2018 cannot sustain. It is, accordingly, quashed.

The present writ petition is disposed of with a direction to the respondents to grant benefit of Rule 22 (1)(A)(1) of Fundamental Rule and issue appropriate order of revised pension extending the benefit of the fundamental rules to the petitioner. Necessary corrective decision may be taken by the Accountant General within a maximum period of 30 days from the date of receipt/production of a copy of this order.

With the aforesaid, the present writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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