IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2978 of 2016

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Sheo Nandan Prasad Sinha, son of Late Bishwambhar Prasad Sinha, resident of C/33, A.G. Colony, P.O. Ashiyana Nagar, P.S. Shastri Nagar, District- Patna

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna
2. The Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Patna
3. The Principal Secretary, Finance Department, Government of Bihar, Patna
4. The Nagar Ayukt, Municipal Corporation, Muzaffarpur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajan Kr. Dubey, Advocate
For the State	:	Mr.Vivek Prasad, GP-18
For Respondent No. 4	:	Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 26-08-2019

This writ application has been filed seeking direction to the respondents, particularly, respondent no. 4, the Municipal Corporation, Muzaffarpur to pay to the petitioner, difference of pay by calculating his salary in the pay-scale of Rs. 14,300-400-18,300/- from 01.04.1997 to 31.12.2000. During the said period, the petitioner, an employee under the office of the Accountant General (AU)-1, Bihar, Patna, was on deputation in Muzaffarpur Regional Development Authority (MRDA) on the post of Budget Officer cum Chief Accounts Officer. He had joined the post on deputation on 08.11.1996.

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2. The facts of the case are not at all in dispute. The terms of deputation were indicated in the office order dated 24.02.1997 issued by the office of the Accountant General(AU)-1, Bihar to the effect that the period of deputation of the petitioner will be for one year, which may be extended on mutual consent for further period subject to prevailing terms and conditions of the Central Government. It was further indicated that during the deputation, the petitioner will be entitled to the grade-pay and allowances including deputation (duty) allowances at the rate admissible under relevant order of the Government of India issued from time to time or the pay-scale of the post under the foreign employer, which he would opt.

3. Appendix-V of the Fundamental Rules deals with deputation within India, Clause-4 whereof allows a deputationist to exercise an option to draw either the pay in the scale of pay of deputation/ foreign service post or his basic pay in the parent cadre plus deputation (duty) allowance thereon and personal pay if any. Clause-4.2 of Appendix-V requires that the borrowing authority should obtain the option of the employee within one month from the date of his joining the ex-cadre post unless the employee has himself furnished the option. Clause-4.3 makes it clear that option once exercised shall be final. It, however, provides certain

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circumstances when an employee can revise his option, one of which is as under :-

> *"(C) When the scale of pay of the parent post on the basis of which his emoluments are regulated during deputation/foreign service or in the ex-cadre post held by the employee on deputation/ foreign service is revised either prospectively or from a retrospective date."*

4. This is not in dispute that after his joining the petitioner opted to stay in the prescribed scale of Budget Officer cum Chief Accounts Officer, Muzaffarpur Regional Development Authority, Muzaffarpur. After recommendations of 5th Pay Commission came into effect from 01.04.1997, as the Central Government employees were getting higher salary, he opted to draw his salary as per pay slip issued by the Accountant General, Bihar from October 1997 till 29.12.2000.

5. After 6th revised pay-scale for the State Government employees came into effect from 01.01.1996 with its financial benefits from 01.04.1997, the petitioner started claiming salary in the scale of Rs. 14300-400-18300/-.

6. It is noticeable that the petitioner claimed the said scale after the Full Board of the authority in its meeting dated 14.07.2000 had decided to allow the employees of the MRDA the

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benefits of 6th Pay Revision to the employees of the State Government of Bihar.

7. There are two crucial aspects. Firstly, that admittedly the said decision of the authority required approval by the Public Enterprises Bureau of the State Government of Bihar and secondly, such approval was not granted by the Public enterprises Bureau at any point of time.

8. There is specific averment made in paragraph 10 of the counter affidavit filed on behalf of the Municipal Corporation, Muzaffarpur, which is admittedly the successor body of MRDA, that the scale, which the petitioner is claiming, was never admissible to the Budget Officers or Chief Accounts Officers posted in various departments of the State Government in the resolution of the Finance Department issued vide Memo No. 3M-2-5-VE.PU.-01/99-660/(F/2) dated 08.02.1999.

8. This specific statement made in the counter affidavit has not been denied by the petitioner in his rejoinder. Learned counsel for the petitioner, has, however, submitted that the petitioner's claim is based on the decision of the Full Board of the MRDA and, therefore, he was entitled to higher scale of pay than what he was allowed when he was on deputation.

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9. In the background of the specific stand taken on behalf of the Corporation that the scale of pay, which the petitioner is claiming, was not admissible under the 6th Pay Revision of the State Government and was not available against the post of Budget Officer/ Chief Accountants Officer, the relief, which the petitioner is claiming, cannot be granted.

10. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.09.2019
Transmission Date	NA

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