

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 12859 of 2014

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Ravindra Prasad Yadav, Son of Swaminath Chaudhary, Resident of Village-
Arar More, P.S.- Gopalganj, District- Gopalganj

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department having his office at Vikas Bhavan, P.S.- Sachivalaya, District- Patna
2. The Director (Administration) cum Additional Secretary, having his office at Vikas Bhavan, P.S.- Sachivalaya, District- Patna
3. The Principal Secretary, Finance, Govt. of Bihar, having his office at Old Secretariat, P.S.- Sachivalaya, District- Patna
4. The Director, State Council of Education, Research and Training, having his office at Mahendru, P.S.- Sultanganj, District- Patna

... .. Respondent/s

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For the Petitioner/s	:	M/s Mukeshwar Dayal, Vikas Mohan, Advocates
For the Respondent/s	:	Mr Rishi Raj Sinha, SC XIX
		Mr Akhilesh Kr Sinha, AC to SC XIX

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 02-07-2019

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

2 Short submission made by the petitioner's counsel is that earlier the petitioner was serving the College Service Commission (for brevity, the *Commission*) on Grade III post since 1995. Upon dissolution of the Commission, it is his submission that under the terms of absorption contained in Resolution dated 21.07.2011 issued by the Human Resources Development Department, he was entitled to be absorbed in the services of the State Government by giving him the benefit of pay protection.



Petitioner has, thereafter, made his claim for pay protection before the authorities. Claim of the petitioner has been rejected by assigning a reason that upon dissolution of the Commission, he was absorbed against a Grade IV post. Therefore, he has not been given the due replacement scale for his earlier scale of Rs 825 -1,200/-.

3 Reasons assigned in the order issued by the Director (Administration) -cum- Additional Secretary is based on the fact that absorption of the petitioner is on Grade IV post, though in the Commission earlier, he had served on Grade III post. The stand of the respondents, as evident from the order dated 07.05.2014, is misconceived and untenable in the eyes of law.

4 If the petitioner had been absorbed on a Grade III post then the question of pay protection would not have arisen. In view of his absorption on Grade IV post, petitioner, as per Resolution dated 21.07.2011, would be entitled to pay protection. Order dated 07.05.2014, therefore, prima facie appears to be unsustainable in the eyes of law. Merely because the fact that the petitioner has been absorbed on the post of Karamshala Pal, a Grade IV post, he cannot be deprived of the pay protection as per Resolution dated 21.07.2011. Order dated 07.05.2014 does not assign a reason that the Resolution dated 21.07.2011 is not



applicable to the petitioner. Only on the basis that he has been absorbed on a Grade IV post, his claim for the higher scale has been rejected ignoring the petitioner's entitlement to pay protection as per Clause 11 of the Resolution dated 21.07.2011.

5 Order dated 07.05.2014 issued by the Director (Administration) -cum- Additional Secretary, therefore, is unsustainable. The order is hereby quashed.

6 Matter is remitted to the Director (Administration) -cum- Additional Secretary (respondent No 2).

7 Respondent No 2 should reconsider the claim of the petitioner having regard to the Resolution dated 21.07.2011 and his claim for pay protection in terms of the said Resolution. Respondents should pass a reasoned and speaking order in accordance with law as per the petitioner's entitlement within three months from the date of receipt/production of a copy of this order.

8 If dues are found admissible, the same shall be paid to the petitioner within the same time.

9 Writ petition stands disposed of.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.07.2019
Transmission Date	NA

