

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21584 of 2011

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PARAS NATH THAKUR S/O Late Chandradhari Thakur Resident Of Village
Nizayazipur, P.O Gangauli, P.S- Simari, District- Buxar, Presently Posted As
Assistnat Teacher, Diyara High School, Karnampur, Sahpur, Bhojpur.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Human Resources Development Department,
Govt. Of Bihar, Patna.
2. The Director, Secondary Education, Human Resources Development
Department, Govt. Of Bihar, Budh Marg, Patna.
3. The Accountant General, Government Of Bihar, Patna.
4. The Finance Officer-Cum-Secretary, Department Of Finance, Government
Of Bihar, Patna.
5. The District Accounts Officer, Bhojpur At Ara.
6. District Education Officer, Bhojpur, At Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Advocate Mr.Brisketu Sharan Pandey, Advocate
For the State	:	Mr.Raghwendra Kumar, SC 22
For the Acct. General	:	Mrs. Namrata Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

6 01-07-2019 The issue raised in the present writ petition is no

more res integra. A Division Bench of this Court in LPA No.

1283 of 2016 has occasion to examine the issue at length and

allowed the appeal filed by the appellant Awadhesh Kumar

Dubey on consideration of the entire scheme. The relevant part

of the judgment dated 30.8.2017 is quoted below for ready

reference.

“The issue of reducing pay scale is a matter
of recurring loss and as such it is continuous



cause of action and on the ground of delay in such matter, an employee cannot be non-suited. It is now well settled that no order adversely affecting the advantage and benefit can be passed without compliance of principles of natural justice and fair play. The Apex Court way back in the case of State of OrissaJ Vs. Dr. (Miss) Binapani Dei & Ors.: AIR 1967 SC 1269 has held out that order for correction in the date of birth, adverse to the employee, cannot be passed without providing opportunity of hearing and as such the action of correcting the date of birth in the Service Book without notice and opportunity of hearing was held to be illegal. In the instant case the pay scale was modified adverse to the interest of the appellant without any notice or opportunity of hearing and as such it is violative of the principle of natural justice and fair play.

In view of the judgment of the Apex Court in Dr. (Miss) Binapani Dei (supra) and also in view of the Apex Court judgment in H. L. Trehan & Ors. Vs. Union of India & Ors.: 1989 SC 568 where the Apex Court in clear terms has held out that no advantage and benefit can be taken away without compliance of principles of natural justice.

Since the original Service Book was produced before us and we have the occasion



to peruse the original Service Book, we are of the considered view that the action of the respondents in reducing the pay scale adverse to the interest of the appellant, was taken without any opportunity of hearing, the same is unsustainable as it visits civil and evil consequences. Moreover, from perusal of the original Service Book we could not find any justification for reduction in the pay scale fixed by the competent authority on exercise of option by the appellant in Form-D. Moreover, there is no reference in the Service Book that under whose order or authority corrections were made in red ink as correction does not refer to any decision of the competent authority and thus we are of the considered view that the alteration in the Service Book adverse to the interest of the appellant was done without any reason assigned in the Service Book without disclosing the authority under which the corrections were made and the Service Book does not indicate that before making such corrections in the Service Book any notice was issued or opportunity of hearing was provided to the appellant.

In the aforesaid circumstances, we are constrained to hold that the action of the respondents in revising the pay scale adverse to the interest of the appellant is



unsustainable in the eye of law and as such the action of the District Auditor dated 26.10.2002 is unsustainable and is accordingly quashed and the pay fixation of the appellant in terms of the Resolution No. 660 of the Finance Department dated 8.2.1999 is restored. The respondents are directed to restore all the benefits to the appellant in terms of pay fixation as per the option exercised by the appellant in Form- D in terms of the resolution No. 660 of the Finance Department dated 8.2.1999 and grant the benefit of such restoration of pay scale in the matter of fixation of pension as the appellant has superannuated.”

Considering the discussions of the LPA Court in LPA No. 1283 of 2016, the writ petition is allowed. The respondents have to take corrective measures in view of the discussions above within a period of two months from the date of receipt/production of a copy of this order.

With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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