

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 852 of 2004

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Salimuddin, Son of Late Abdul Rehman Resident of Mohalla- Muslimnagar, Daltonganj, P.S.- Palamu (Jharkhand). At present posted as Personal Assistant in the State Consumer Disputes Redressal Commission, Bihar, Patna, 3rd Floor, Biscomaun Bhawan, Gandhi Maidan, District/Town- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary Department of Finance, Government of Bihar, Patna.
2. The Commissioner-cum-Secretary, Department of Finance, Government of Bihar, Patna.
3. The Secretary, Food, Supply and Commerce Department, New Secretariat, Patna.
4. The Deputy Secretary, Food, Supply and Commerce Department, New Secretariat, Patna.
5. The Secretary, State Consumer Disputes Redressal Commission, 3rd Floor, Biscomaun Bhawan, Gandhi Maidan, Patna.
6. The Treasury Officer, Sinchai Bhawan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : M/s Manoj Kr, Promod Kr Chakravali, Advocates
For the Respondent/s : Mr S S P Yadav, SC XIV

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 16-08-2019

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

2 The short issue raised by the learned counsel for the petitioner in the instant proceedings is that the petitioner be granted the replacement scale as per the recommendations of the Sixth Pay Revision Committee for the scale of Rs 1,500 – 2,750/-



which the petitioner was getting at the time of his initial appointment on Grade III post under order dated 31.03.1997 (Annexure 4).

3 Brief background is that when the State Government was required to implement the Consumer Protection Programme, District as well as State Consumer Forums were to be established. The petitioner, who, at that point of time, was serving at Bihar State Food and Civil Supplies Corporation (for brevity, the Corporation) was requisitioned to facilitate the functioning of the forums/commissions. Petitioner was appointed as Personal Assistant (for brevity, PA) in the State Consumer Protection Commission. The terms and conditions of appointment contained in Annexure 4 are that the petitioner was being appointed on a Grade III post as PA in the pay scale of Rs 1,500 – 2750/-. The scale was fixed having regard to the stipulation in the appointment order that the petitioner would not be in any manner deprived of the pay determined and granted to him by the Corporation where he was earlier serving. There is a specific stipulation that upon successful completion of probation for one year, services of the petitioner would be confirmed. There are some other requirements in the appointment letter such as passing of the Accounts Examination conducted by the Board of Revenue within 1-2 years



of his appointment. The terms and conditions of his appointment by Annexure 4 clearly contemplate that the petitioner was placed in the pay scale of Rs 1,500 – 2,750/- and, thereafter, for all purposes, was to be treated as State Government employee. It is, therefore, implicit that he would also be required to the replacement scale/revised scale for the pay scale of Rs 1,500 – 2,750/- which he was granted at his initial appointment.

4 Learned counsel for the State has submitted that the petitioner is not entitled to the relief prayed for in the instant writ proceedings in view of the Full Bench judgment in the case of Harishankar Prasad -Versus – State of Bihar & Others in CWJC No 13495 of 2008. The judgment of the Full Bench is annexed to the counter affidavit which was recently filed in the instant proceedings. On going through the judgment of the Full Bench, learned counsel for the State is not in a position to point out that the petitioners, whose case fell for consideration before the Full Bench, were appointed in the State Government services with terms and conditions, similar to that contained in Annexure 4 whereby the petitioner was appointed. The facts, in the matter decided by the Full Bench, were totally different. In fact, Full Bench has taken notice of the fact that the petitioners, whose claim was being considered, had been appointed in the State service on



sympathetic consideration as the Corporation was facing closure. The petitioners, whose claim was considered by the Full Bench, had also given some kind of undertaking. The special circumstances, in which they were absorbed in the State service from the Corporation, was taken note of to hold that they would get their pension and pensionary benefits on a pro rata basis considering the services rendered by them with the State Government. Services rendered by the petitioners in the erstwhile Corporation was excluded having regard to the special sympathetic considerations forming the basis of the appointment of petitioners therein.

5 The fact as regards terms and conditions of appointment of the petitioner in the instant case is totally different, as taken note of herein above. Petitioner's counsel has referred to decision of this Court in the case of Shankar Prasad -Versus- State of Bihar & Others as well as decision in the case of Shiv Kumar Prasad -Versus- State of Bihar & Others in CWJC No 12883 of 1999 and MJC No 3912 of 2000 respectively. He submits that both the said persons had been appointed with similar terms and conditions as the petitioner and were, thus, granted the due replacement scale as per Sixth Pay Revision Committee's Recommendation for the scale of Rs 1,500 – 2,750/-, i e, Rs 5,500



– 9,000/-. Claim of the petitioner was required to be considered in this background in light of the decision dated 01.08.2003 of this Court in the earlier writ proceedings arising out of CWJC No 5884 of 2003 filed by the petitioner (Annexure 13).

6 There is a clear decision of this Court in the case of the petitioner also which binds the State Government to the extent that the petitioner was to make his claim on basis of benefits granted to Shankar Prasad (petitioner of CWJC No 12883 of 1999. The order passed in purported compliance of said order dated 10.12.2003, however, does not take into consideration the fact that Shankar Prasad has been granted the due replacement scale of Rs 5,500 – 9,000/- let alone, whether the petitioner was entitled to similar benefit or not. The order dated 10.12.2003, therefore, is not sustainable in the eyes of law.

7 In the circumstances, this Court would hold that the consideration made by the impugned order dated 10.12.2003 is not just and legal and the same is quashed.

8 Authorities should reconsider the petitioner's claim for grant of the replacement scale for the pay scale of Rs 1,500 – 2,750/- as per recommendations of the Sixth Pay Revision Committee and grant the benefit arising therefrom to the petitioner in terms of the earlier order passed in CWJC No 5884 of 2003



within a period of three months from the date of receipt/production
of a copy of this order.

9 Writ petition stands allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.09.2019
Transmission Date	NA

