

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 15234 of 2011

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BRAJ KISHOR PRASAD S/O Late Bhagwat Sahai R/O Village- Manjhos,
Police Station - Makhdumpur, District - Jehanabad, At Present R/O Mohalla-
West Gandhi Maidan, Narma Niwas, Court Area, Jehanabad, Police Station
and District - Jehanabad

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Principal Secretary Department Of General Administration, Bihar, Patna
3. The Commissioner, Magadh Division, Gaya
4. The District Magistrate, Arwal
5. The Establishment Deputy Collector, Arwal
6. The Sub-Divisional Officer, Arwal

... .. Respondent/s

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For the Petitioner/s	:	M/s Bindhyachal Singh, Umesh Kr, Advocates
For the Respondent/s	:	Mr Kunal Tiwary, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 26-08-2019

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

2 Writ petition has been filed by the petitioner claiming the pay and emoluments for the post of Private Secretary to the District Magistrate in view of the fact that he has functioned on the said post till his retirement. The petitioner has also claimed for grant of pay scale of Private Assistant to the District Magistrate, Arwal, i e, Rs 5,500 – 9,000/- since 11.07.2003 claiming that the petitioner has worked against the said post till his posting as Private Assistant to the District Magistrate on 27.05.2005.

3 Petitioner's counsel submits that on a conjoint reading of Rules 58 and 103 of the Bihar Service Code and in view



of decision of this Court in the case of Dr Sachita Kumar Sinha -Versus- State of Bihar & Others, 1995 (1) PLJR 362, which has been followed and affirmed in various cases, the petitioner would be entitled to the pay and emoluments attached to the higher post on which he had discharged duties for a long time.

4 State, in the counter affidavit, has taken a stand that, as per the provisions, the post of Private Assistant to the Collector was to be filled up by an officer in the rank of Deputy Collector. The petitioner was, admittedly, a Ministerial Staff who had been posted temporarily to discharge the functions on account of the post of the Private Assistant lying vacant. The petitioner was not qualified to hold the post and, therefore, cannot claim the pay and benefits attached to the said post. The other aspect of the matter is that in terms of the order dated 27.05.2005, the petitioner is entitled to 20% additional pay as per provisions contained in Rule 103 of the Bihar Service Code.

5 The fact that the petitioner was not qualified and that he was not a Deputy Collector, however, has not been denied or disputed. In view of basic qualification lacking to the petitioner, at best, the petitioner can claim 20% additional pay in terms of the decision pursuant to which he has been posted as Private Assistant to the Collector. The said decision has never been recalled or



withdrawn and admitted position is that petitioner has all along discharged the duties on the post of Private Assistant to the Collector.

6 Stand of the respondents that since such posting was without approval of respondent No 3 cannot be made the basis to deprive the petitioner of 20% additional pay on which representation he has worked on the post of Private Assistant. Such action of the respondent-State in taking work by holding out a broad representation and denying benefit on account of such decision cannot be countenanced.

7 Writ petition is, therefore, disposed of with a direction to the respondent-authorities to pay the petitioner 20% additional pay in light of the decision pursuant to which he was posted as Private Assistant to the Collector.

8 Let the dues on this account be paid to the petitioner expeditiously without any undue delay, preferably within a period of three months from the date of receipt/production of a copy of this order.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.08.2019
Transmission Date	NA

