IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18233 of 2016

==

Shobhit Rai, S/O Late Rambaran Rai, Resident of Mohalla- Yadav Nagar Bhagwanpur Rewa Road, P.O.- Dhagwanpur, P.S.- Sadar, District-Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Road Construction Department, Bihar, Patna.
3. The Engineer-in-Chief, R.C. Department, Bihar, Patna.
4. The Chief Engineer, R.C. Department, C.D.O., Bihar, Patna.
5. The Superintendent Engineer, G.W.D. Manorma Bhawan, Boring Road, Patna.
6. The Executive Engineer, Gramin Works Department, Regional Laboratory, Muzaffarpur.
7. The Accountant General, Bihar, Patna.
8. The Assistant Account Officer, Pen-3, Office of A.G. Bihar, Patna.

... ... Respondent/s

==

Appearance :
For the Petitioner/s : Mr.Abhoy Kumar Kashyap, Advocate
For the Respondent/s : Mr.U. S. S. Singh- GP19

==

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 02-05-2019

Heard learned counsel for the petitioner, the State as well as the Accountant General.

The petitioner was superannuated on 31.10.2003 while working on the post of Research Assistant. His grievance is for after superannuation, his pension and other retiral dues have not been properly fixed. The pension and the other retiral dues should have been fixed on the basis of last drawn pay within ten months of the retirement, but it has been fixed and paid in the reduced scale.

Petitioner's case is that he was appointed in Government service as Laboratory Assistant on 28.10.1965. He passed the departmental examination of Hindi and noting and drafting and also got two time bound promotions, his pay was, accordingly, fixed in the scale and was given increments from time to time. He was promoted to the post of Research Assistant and his pay was duly fixed in the scale of Rs. 5000-150-8000, and the same was confirmed by order dated 25.05.2015. The petitioner was getting Rs. 7425/- before his superannuation.

The Executive Officer on the basis of average of the last 10 months pay drawn recommended for fixation of pension at Rs.3713/- per month. The letter dated 20.11.2015 of the Executive Engineer addressed to the Accountant General. The Accountant General, Office in stead of fixing pension at Rs.3713/- fixed the same at Rs. 3149/- per month vide office order dated 06.08.2018 (Annexure-B of the supplementary counter affidavit filed by the Accountant General).

A counter affidavit has been filed by the Accountant General office and an attempt has been made in paragraphs 5 to 7 to explain the fixation of pension at Rs. 3149/-. It is stated in the said paragraph that on examination of pension case for the period of 16.12.1999 to 30.10.2003 done by the department, was found to be wrong. However, no reason has been assigned as to how the earlier fixation of pay made by the department was not correct.

Counsel for the petitioner submitted that the Accountant General office in fact erred in not taking into account of RPP (Reducible Personal Pay) while calculating the last pay drawn which led to the difference in the last pay.

It appears that earlier also a similar issue came for consideration of this Court in the case of **Binod Kumar Srivastava Vs. State of Bihar and others (C.W.J.C. No. 5964 of 2005)** disposed of on 28.01.2006. The petitioner of the case was promoted to the post of Research Assistant with effect from 16.12.1999, the date on which the petitioner (of instant case) too was promoted in the same rank. The department on the basis of average of the last ten months pay recommended for fixation of his pension at Rs. 3475/- per month. Accountant General, Patna issued pension order dated 25.08.2004 by which his pension was fixed at Rs.3132/- per month in place of Rs.

3475/-. The Accountant General, Bihar took stand in the writ petition that the petitioner's pay fixation as Research Assistant with effect form 16.12.1999 has not been done correctly. It was stated that fixation of his pay after his promotion should have been done without including RPP in terms of Finance Department's letter no. 1336 dated 03.03.2001. The Court vide order dated 28.01.2006 rejected the plea of the Accountant General office, Bihar on the ground that Finance Department's Notification No. PC-01/99-11556 dated 22.12.1999 was not taken into consideration. This circular of the Finance Department lays down that under Rule 126A of the Bihar Pension Rules emoluments which are to be considered for the purposes of fixation of pension includes the amount of RPP and dearness allowance as well as last pay drawn for ten months before superannuation. The Court as such quashed the pension fixed by the A.G. office and remanded the matter for fresh fixation in accordance with law. Pursuant to the direction of this Court, the A.G. office revised the pension at Rs. 3475/- as recommended by the department. Order passed in the aforesaid case would fully apply in the instant case.

In the similar another two cases, C.W.J.C. No. 18370 of 2009 (**Singhasan Singh vs. State of Bihar and others)** disposed of on 26.06.2013 and C.W.J.C. No. 14287 of 2008 **(Akhileshwar Prasad vs. State of Bihar and others)** disposed of on 10.07.2014, same issue has been dealt with in the aforesaid case.

Accordingly, I direct the Accountant General Office to fix the pension of the petitioner without excluding the RPP in view of the decision of this Court in the case of **Binod Kumar Srivastava (supra)**.

The writ petition stands disposed of in the aforesaid terms.

(Anjani Kumar Sharan, J)

Nasimul/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03-05-2019
Transmission Date	N/A