

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.532 of 2014

In

Civil Writ Jurisdiction Case No.9726 of 2012

Dr. Sudhir Kumar Thakur, Son of Late Vishwanath Thakur, Resident of Village Singhwara, P.S. Singhwara District Darbhanga, Presently Residing At Flat No. 75, Regency Gardens, New Patliputra Colony, P.S. Patliputra Town and District Patna (Retired OSD cum Under Secretary Civil Aviation Department govt. of Bihar, Patna).

... .. Appellant/s

Versus

1. The State Of Bihar through the Chief Secretary Govt. Of Bihar, Patna
2. The Principal Secretary, Finance Department, Govt. Of Bihar, Patna
3. The Principal Secretary, Civil Aviation Department, Govt. Of Bihar, Patna
4. The Deputy Secretary, Finance Department Govt. Of Bihar, Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dr. Mayanand Jha, Adv
For the Respondent/s : Ms. Binita Singh, (SC-28)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 01-12-2020

Aggrieved by judgment and order dated 11.02.2014 passed in C.W.J.C. No. 9726 of 2012 passed by learned Single Judge of this Hon'ble Court dismissing the writ petition appellant/petitioner has preferred this L.P.A. for setting aside the order passed by the learned Single Judge and allowing his writ petition.

Briefly stated the facts of the case is that appellant/petitioner was initially appointed in the Bihar Flying



Club as an administrative officer having special qualification of 2 years experience in aviation on 06.08.1971. At that time Bihar Flying Club was a private institution and same was taken over by Government of Bihar along with its assets and liabilities on 06.02.1974. The officers and staffs of the Flying Club were given the same pay scale and allowances as paid to the government employees vide notification dated 20.09.1979.

The pay scale of the administrative officer of the Bihar Flying Club was fixed as Rs. 890-1,415/- vide letter dated 16.11.1981 w.e.f. 1974 and said pay-scale was revised in the pay-scale of Rs. 1,350-2,000/- w.e.f. 01.04.1981 vide notification dated 30.12.1981. Appellant/petitioner was granted 1st time bound promotion w.e.f. 06.01.1981 vide notification dated 06.10.1988 in the pay scale of Rs. 1,575-2,300/- .

Appellant/petitioner was thereafter deputed in Bihar State Food and Civil Supplies Corporation Ltd. in the pay-scale of Rs. 1,575-2,300/- and continued there till 30.06.1996 and was repatriated to his parent department on 01.07.1996. However, post of administrative officer was not vacant as such appellant/petitioner was designated as Officer on Special duty in the pay-scale of Rs. 3,000/- 4,500/-.

Appellant/petitioner challenged his pay-scale of Rs.



3,000/- 4,500/- and claimed pay- scale of 3,700-5,000/- as same was replacement scale of Rs, 1,575 – 2,300/- by filing a writ petition being C.W.J.C. No. 7719 of 1996 however it was dismissed by order dated 30.04.1998 holding that appellant/petitioner was entitled to pay-scale of Rs. 3,000/- 4,500/-. Appellant/petitioner preferred L.P.A. being L.P.A. No. 700 of 1988 against order dated 30.04.1998 but during pendency of L.P.A. the pay scale of appellant/petitioner was modified as Rs. 3,700-5,000/- as such appellant/petitioner withdrew his L.P.A.

Government of Bihar revised the pay-scale of its employees w.e.f. 01.01.1996 vide resolution dated 08.02.1999. Fitment Committee fixed the pay scale of O.S.D. as Rs. 10,000/- 15,200/- on 30.08.1999 which was replacement scale of Rs. 3,000- 4,500. The replacement scale of Rs. 3,700- 5,000/- was fixed as Rs. 12,000-16,500/-.

Appellant/petitioner was treated as administrative officer in basic grade of Rs. 8,000- 13,500/- ignoring the fact that appellant/petitioner was designated as O.S.D. in the pay-scale of Rs. 3,000-4,500/- and subsequently modified by the Government as Rs. 3,700- 5,000/- replacement scale of which was Rs 10,000-15,200/- and Rs. 12,000-16,500 and same was



never rescinded however in the A.C.P. scheme 2003 appellant/petitioner was granted two A.C.Ps. in the scale of Rs. 10,000-15,200/- and 12,000-16,500/- and same was challenged by the appellant/petitioner by filing I.A. in C.W.J.C. No. 13916 of 2004 as the time bound promotion granted prior to 1996 is not to be counted for grant of promotion under A.C.P. scheme 2003 and C.W.J.C. No. 13916 of 2004 was allowed and by order dated 18.09.2008 the respondent authorities were directed to grant two A.C.Ps. after considering petitioner in the scale of Rs. 12,000-16,500/-.

State of Bihar filed L.P.A. being L.P.A. No. 961 of 2009 against the order dated 18.09.2008 passed in C.W.J.C. No. 13916 of 2004 and the L.P.A. court stayed the order passed by the writ court and directed respondent authorities for payment of retirement dues to the appellant/petitioner in the light of order passed in C.W.J.C. No. 7719 of 1996 i.e. in the pay-scale of Rs. 3,000-4,500/- and L.P.A. was disposed of with a observation that if respondent authorities wanted to reduce the pay-scale of petitioner from Rs. 12,000-16,500/- to Rs. 10,000-15,200- the same can be done after providing opportunity of hearing to the appellant/petitioner.

The respondent Finance Secretary in view of liberty



granted by the L.P.A. Court passed order dated 16.02.2012 rejecting the claim of petitioner for grant of A.C.P. after treating him in the pay-scale of Rs. 12,000-16,500/- and treated him in the scale of Rs. 8,000-13,500/-.

Appellant/petitioner challenged said decision of the Finance Secretary by filing C.W.J.C No. 9721 of 2012 which was dismissed by learned Single Judge by impugned order.

Heard counsel for the appellant/petitioner as well counsel for the State.

It is an admitted fact that appellant/petitioner was granted pay-scale of Rs. 3,000- 4,500/- and said pay scale of appellant/petitioner was never disputed or challenged by the State Authorities. He filed C.W.J.C No. 7719 of 1996 for grant of higher pay-scale of Rs. 3,700-5,000/- which was rejected by this Hon'ble Court by order dated 30.04.1998 and L.P.A. No. 700 of 1998 was preferred by appellant/petitioner and during pendency of which the pay-scale of appellant/petitioner was revised as Rs. 3,700-5,000/- and since grievance of the appellant/petitioner was redressed he withdrew his L.P.A. and such entry was made in his service book.

Pay scale of the State government employees was revised w.e.f. 01.01.1996 by resolution dated 08.02.1999 and



Fitment Committee fixed the pay scale of O.S.D as Rs. 10,000-15,200/- on 30.08.1999 which is replacement scale of Rs. 3,000-4,500/- and appellant/petitioner filed representation before the Fitment Appellate Committee for grant of higher pay-scale as he was getting pay-scale of Rs. 3,700-5,000/- replacement scale of which is Rs. 12,000-16,500/- however his representation was rejected by Fitment Appellate Committee, as such, as per report of Fitment Appellate Committee as well as notification issued by the State Government, appellant/petitioner was at least entitled for pay-scale of Rs. 10,000-15,200/- and reducing the pay-scale of appellant/petitioner much after his retirement in the pay-scale of Rs. 8,000-13,500/- was beyond the scope of lis to be decided by the Finance Secretary pursuant to liberty granted by the L.P.A. Court.

The dispute of pay-scale was confined to whether petitioner is entitled for the pay-scale of Rs. 10,000-15,200/- or 12,000-16,500/- and Finance Secretary travelled beyond the purview of lis holding that appellant/petitioner was entitled for pay-scale of Rs. 8,000-13,500/- which was neither the case of the appellant/petitioner nor the respondent State.

The relevant paragraph of the order dated 27.07.2011 passed by the Division Bench in L.P.A. No. 969 of 2009 (arising



out of C.W.J.C. No. 13916 of 2004) which granted liberty to appellant/State of Bihar to decide the lis between the parties reads as under:-

“The main grievance of the respondent in the writ petition was with regard to lowering his pay-scale from 12,000/- to 16,500/- to 10,000/- to 15,200/- by the government holding that the post of O.S.D. -cum-ex officio Under Secretary which the respondent was holding was not included in the revision of pay-scale.

Under the above circumstances, without going into the merits of the case and also eligibility of the respondent to hold the post of O.S.D.-cum-Ex Officio Under Secretary, we are of the opinion that it would suffice if the state is directed to issue a prior notice to the respondent with regard to the reduction of his pay-scale from Rs. 10,000/- to 15,200/- in spite of 12,000/- to 16,500/- and the respondent is also entitled to file his objection and the same shall be decided by the appropriate authority in accordance with law.”

For the reasons as stated above L.P.A. is allowed and the judgment and order dated 11.02.2014 passed in C.W.J.C. No. 9726 of 2012 is set aside and respondent State of Bihar is directed to treat appellant/petitioner in the pay-scale of Rs. 10,000-15,200/- w.e.f 01.01.1996 and thereafter grant two



A.C.Ps. w.e.f. 09.08.1998 and accordingly determined his post
retiral dues.

The L.P.A. is accordingly disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/-

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

