

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17443 of 2015

1. The Union of India through the D.G. Department of Post and Secretary, Ministry of Communication and IT, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar, Patna
3. The Postmaster General, North Region, Muzaffarpur
4. The Director of Accounts (Postal), Patna
5. The Supdt., R.M.S. 'U' Div., Muzaffarpur

... .. Petitioner/s

Versus

Mahesh Chand Rai, son of Late Ram Sagar Rai, resident of village-Sahwajpur, P.O.- Bishunpura, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satyarat Verma (CGC)
For the Respondent/s	:	Mr. Chakrapani, Advocate
		Mr. Dipak Kumar, Advocate
		Mr. Sanjay Kumar Singh, Advocate
		Mr. Madhuresh Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 23-01-2020

Heard learned counsel for the petitioners and learned
counsel for the sole respondent.

2. A short issue has been raised with regard to increment of arrears of salary with effect from 01.02.2005 to 31.12.2005 while discharging the duty as S.A.H.S.G.1 in the Postal Department. The respondent Mahesh Chand Rai was appointed as Sorting Assistant in R.M.S., Patna on 01.09.1956. He was granted Time Bound Promotion on 30.11.1983. After



completion of 26 years of service, he became eligible to the benefit under the B.C.R. Scheme, but he was not granted the financial benefit under that scheme on account of pendency of the departmental proceeding. After completion of the departmental proceeding vide order dated 22.01.2001, the punishment with stoppage of two increments with cumulative effect for two years was awarded. Apart from the aforesaid case, two more charge sheets were served upon the respondent which continued but ultimately, it was dropped vide order dated 31.06.2003.

Mr. Rai has filed this application on 01.03.2004 for grant of the financial benefit under the B.C.R. (Biennial Cadre Review) Scheme. On consideration, the department has granted the financial benefit vide order dated 15.09.2004 with effect from 01.07.2003. The respondent along with others were directed to discharge the duty as S.A.H.S.G.1 post with effect from 01.02.2005, but on his own pay scale and ultimately, he has superannuated from service with effect from 31.12.2005. After long delay of eight years, he approached the Tribunal with a limitation petition to grant the benefit of the post, which he discharged from 01.02.2005 till the date of his superannuation as S.A.H.S.G.1.



3. The Tribunal placing reliance on the judgment of **Secretary-cum-Chief Engineer vs. Hari Om Sharma** reported in **2008(5) SCC 87** directed to make payment of difference of salary to the respondent. The learned counsel for the petitioners has submitted that the basis on which the respondent was granted benefit placing reliance on **Hari Om Sharma's** case has been distinguished by the Hon'ble Supreme Court in the case of **A. Francis vs. Management of Metropolitan Transport Corporation Limited, Tamil Nadu** reported in **(2014) 13 SCC 283** and refused to grant the relief to the employee.

4. Learned counsel for the respondent has brought to the notice the another judgment reported in **State of Punjab vs. B.K. Dhir** reported in **(2017) 9 SCC 337** in that case, **A. Francis** case was also under consideration along with judgment of **State of Punjab and another vs. Dharampal** reported in **(2017) 9 SCC 395** and has held that so far the **A. Francis** case is concerned, it would rest on its own fact and has approved the ratio laid down in **Hari Om Sharma's** case.

5. In such view of the matter, the submission of Union of India is completely misplaced and cannot be accepted as the person who has discharged the duty of higher responsibility, merely because the said letter stipulates the



Respondent would discharge in its own pay scale cannot be deprived of the benefit of higher responsibility as the employer, which is Union of India, has high bargaining power and employees had no alternative but to accept the order of the authority concerned otherwise he would have been liable to another departmental proceeding. So in such circumstances, the respondent cannot be deprived higher salary otherwise it amounts to violating the Articles 21 and 23 of the Constitution of India.

6. In such view of the matter, we do not find any merit in the present application. Accordingly, the same is dismissed.

(Shivaji Pandey, J)

(Anjani Kumar Sharan, J)

Nasimul/-

AFR/NAFR	N/A
CAV DATE	N/A
Uploading Date	28-01-2020
Transmission Date	

