

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3323 of 2019

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Ram Nawmi Sharma son of Late Gaya Prasad, resident of Ayachi Gram,
M.I.T. P.S. Muzaffarpur, District- Muzaffarpur, the retired Accountant,
Women's College, Samastipur, District- Samastipur.

... .. Petitioner

Versus

1. The State of Bihar and Ors through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director Higher Education, Education Department, Government of Bihar, Patna.
4. The Vice Chancellor L.N. Mithila University, Darbhanga
5. The Registrar, L. N. Mithila University, Darbhanga.
6. The Finance Officer, L. N. Mithila Univeristy, Darbhanga.
7. The Principal, Womens College, Samastipur District- Samastipur.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr.Vijay Kumar Singh
	:	Mr.Satish Kumar
For the Respondents	:	Mr.Shashi Shekhar Tiwary

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 05-07-2021

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. In order to appreciate the context in which the petitioner has filed the present writ application seeking relief in the main application as well as by way of amendment in relief through I.A. No. 01 of 2021, it would be appropriate to take note of certain facts emerging from the pleadings on record which are not in dispute and are just for adjudication.



3. The petitioner was appointed as an Upper Division Clerk on 20.08.1973 and as an Accountant on 01.01.1983 in Women's College, Samastipur District, which is presently a constituent unit of L.N. Mithila University, Darbhanga. On attaining the age of superannuation, he retired w.e.f. 31.12.2011.

4. The Education Department, Government of Bihar vide G.O. dated 25.02.1987 had declared non-teaching staff of the Universities and constituent Colleges equivalent to government staff. It appears that in protest against non-fulfillment of certain demands regarding claim of the non-teaching employees of the Universities in the State of Bihar, a Federation of associations of employees of constituent Colleges of the Universities had gone on strike. The dispute, however, was resolved with an agreement reached between the Federation of associations and the State Government, which was communicated to all the Vice Chancellors of the Universities of the State for necessary action. For non-implementation of the said agreement, the non-teaching employees again resorted to strike whereafter an understanding was arrived at between the Federation and the Government of Bihar. As the agreement was not being implemented, the employees again went on strike on 01.07.2007, which led to complete disruption of educational activities in the Colleges and the Universities of Bihar.



A meeting was subsequently held between the representatives of the Federation and the Government of Bihar and an agreement/understanding was again arrived at on 17.07.2007 and a proceeding was accordingly drawn on 18.07.2007. Items 3, 4 and 5 of the said understanding are relevant for the present adjudication, which read as under:-

3. Facility of ACP may be given to the employees.

4. Head Assistant and Accountant of the Colleges may be designated as Section Officer at the departmental level.

5. Pay scale of Rs.5500-9000 may be granted to the Assistants of Colleges and university.

5. Non-implementation of the agreement/understanding arrived at on 18.07.2007 was not being implemented by the authorities which resulted into yet another indefinite strike of non-teaching staff of the Universities. Complaining continuous disruption of teaching work in the Colleges and the Universities in the State of Bihar, a student namely, Sunny Prakash addressed a letter to Hon'ble the Chief Justice of this Court with a request to intervene to end the strike in public interest. The letter was treated as a Public Interest Litigation by this Court giving rise to C.W.J.C. No. 10870 of 2008. A Division Bench of this Court in case of ***State of Bihar and Another v. Sunny Prakash and Others*** passed



an interim order dated 07.08.2008 directing the Chief Secretary, Government of Bihar to ensure that the commitment given by the State Government to Bihar State University and College Employees Federation was honored and implemented within one month from the date of the said order. The State of Bihar preferred Special Leave Petition registered as SLP (C) No. 22617 of 2008 before the Supreme Court which gave rise to Civil Appeal No. 516 of 2013 in case of ***State of Bihar and Another v. Sunny Prakash and Others***. The Supreme Court upon examining various aspects of the issues involved disposed of the said Civil Appeal No. 516 of 2013 reported in **(2013) 3 SCC 559** with following observation and direction:-

“21. In the case on hand, we have already demonstrated various communications issued by the Government for implementation of the earlier decision. In such circumstance, we have no reason to reject those communications sent by the higher level officers of the State Government.

22. Inasmuch as all the persons who were competent to represent were the parties to the said agreement referred to above and after making such commitment by the State Government, as rightly observed by the High Court, we are also of the view that the same has to be honored without any exception. By the impugned order, the High Court



has not only directed the State Government to implement the commitment given by it having been reduced into writing on 18.07.2007, honoured by the State Government itself in subsequent

letters/correspondences but also directed the Federation to call off the strike immediately in the interest of the student community.

23. We also make it clear that though the High Court termed the impugned order as interim in nature, considering the fact that the writ petition came to be filed by a student in the interest of the student community by writing a letter which was treated as a PIL, no further order need be passed in the said writ petition, namely, CWJC No. 10870 of 2008 pending on the file of the High Court at Patna and it stands closed.

24. In view of our conclusion, we direct the State of Bihar to implement the impugned order of the High Court dated 07.08.2008 within a period of three months from the date of receipt of copy of this judgment. The appeal filed by the State of Bihar is dismissed with the above direction. There will be no order as to costs."

6. It is the petitioner's case that the terms of the agreement arrived at between the Federation of the associations of the non-teaching employees of the Universities in the State of Bihar and other functionaries has the seal of Supreme Court in its



decision in case of ***Sunny Prakash*** (supra) item 4 of which specifically mentions that Head Assistant and Accountant of the Colleges may be designated as Section Officer at the departmental level. It is the petitioner's case that in terms of the said agreement/understanding Assistants of the Colleges and the Universities are entitled to pay-scale of Rs. 5500-9000 and, therefore, in no circumstance, Head Assistant and Accountant of the Colleges, who were to be designated as Section Officer at departmental level could be held to be entitled to less pay-scale than Rs.5000-8000 w.e.f. 01.01.1996. This is to be noted that the University had found the petitioner entitled to pay-scale of Rs.5500-9000 w.e.f. 01.01.1996 which has been reduced to Rs.5000-8000 by the Pay Verification Cell of the State of Bihar. This is the background in which the present writ application has been filed asserting that the petitioner was rightly granted pay-scale of Rs.5500-9000 by the University w.e.f. 01.01.1996 and pay-scale of Rs.10,000-15,200 w.e.f. 09.08.1999 consequent upon grant of second ACP, pay-scale Rs.15,600-39,100 Grade Pay of Rs.6600/- w.e.f. 01.01.2006 as also MACP in the same scale w.e.f. 01.01.2009. The petitioner is claiming determination of his retiral benefits in terms of the pension, gratuity and cash equivalent to unutilized earned leave etc. accordingly.



7. In the Counter affidavit filed on behalf of the State of Bihar, it has been stated that pay-scale of Accountant has been revised as Rs.5000-8000/- w.e.f. 01.04.1996 and Rs.9300-34,800 with Grade Pay of Rs.4200/- w.e.f. 01.01.2006. The peculiar statements made in paragraph 6 of the said counter affidavit, that needs to be noted, which appears to be the main justification and logic offered by the State Government for denying the claim of the petitioner of grant of pay-scale Rs.5500-9000, which reads as under:-

“That at this stage, it is important to mention here that pay scale of Accountant was not subject matter of Sunny Prakash case as evident from paragraph 6 of the judgment passed by Hon’ble Supreme Court in Civil Appeal No. 516 of 2013 (Annexure-8 to the rejoinder filed by the petitioner). In this connection it is also stated here that for non compliance of order passed in Civil Appeal No. 516 of 2013, contempt petition No. (C) 262 of 2013 was filed before Hon’ble Supreme Court which was dropped after compliance of the order.”

8. In the second supplementary counter affidavit filed on behalf of the State of Bihar, the respondents have brought on record a letter issued by Education Department, Government of Bihar vide letter no. 1213 dated 27.06.2014 whereby a decision



has been taken to designate Head Clerk and Accountant/Head Clerk (Accountants) as Section Officer w.e.f. 01.04.2007 under the pay structure sanctioned vide letter no. 2693 dated 27.08.2010 with a rider that they shall not be entitled to pay-scale equivalent to Section Officer of the State Government Secretariat. It is the case of the respondents State of Bihar that the said decision has been taken in compliance of the Supreme Court's direction in case of **Sunny Prakash** (supra). The said communication issued vide Memo No. 1213 dated 27.06.2014 is being put to challenge by seeking amendment in the writ application through I.A. No. 01 of 2021 on the basis that it is contrary to the Supreme Court's decision in case of **Sunny Prakash** (supra). It has been stated in I.A. No. 01 of 2021 that in terms of the Supreme Court's decision in case of **Sunny Prakash** (supra) Head Assistant/Accountant are equivalent posts and since Assistants have been granted pay-scale of Rs.5000-Rs.9000, Head Assistant/Accountant are entitled to higher pay-scale than the Assistants but the respondents have granted lower pay-scale to the Accountant even after their re-designation as Section Officer, though the pay-scale of Section Officer is Rs.6500-10500. It has also been stated in the I.A. No. 01 of 2021 that the petitioner is claiming pay-scale of Rs.5500-9000



only which is admissible to an Assistant, which is being arbitrarily denied by the respondents.

9. In the third supplementary counter affidavit filed on behalf of the State of Bihar, it has been stated inter alia that the directions issued in case of **Sunny Prakash** (supra) has been fully complied with by granting pay-scale of Rs.5500-9000 w.e.f. 01.01.1996 to the Assistants in the Colleges and the Universities. It has been stated that different pay-scale has, however, been granted to other non-teaching employees including Accountants and the post of Assistant is not the same and similar to the post of Accountant and Head Accountant. Referring to letter no. 1972 dated 12.10.2004 issued by the Higher Education Department, Government of Bihar, it has been stated in the third supplementary counter affidavit that Head Accountant/Accountant were granted pay-scales of Rs.5000-8000 being the replacement scale of Rs.1500-2750 whereas the Assistants have been granted pay-scale of Rs.4000-6000 which was the replacement scale of Rs.1500-2750/1400-2300.

10. Thus, it is own case of the respondents State of Bihar that the Head Accountant/Accountant were placed in higher scale than that of Assistants in terms of the resolution as contained in Memo No. 1972 dated 12.10.2004. It is thus an admitted fact that



the Accountants were entitled to higher pay-scale than that of the Assistants.

11. In view of the admitted facts, as noted above, a question has arisen, as to whether, the petitioner who was admittedly working as an accountant can be placed in a pay-scale lower than that of the Assistant? Can it be said that in terms of the understanding between the Federation and the Authorities dated 18.07.2007, the Accountants can be placed in lower scale than that of Assistants because in the said understanding pay-scale of Assistants as Rs.5500-9000 only was mentioned.

12. From the factual matrix of the case, as noted above, it can be easily noticed that it is not the case of the State of Bihar that the petitioner did not fulfill the qualification of the post of Accountant in a College. It is their own decision as contained in letter no. 1213 dated 27.06.2014 whereby the post of Head Clerk and Accountant/Head Clerk (Accountant) has been re-designated as Section Officer w.e.f. 01.04.2007, under the pay structure sanctioned vide letter no. 2693 dated 27.08.2010. No plea has been taken on behalf of the State of Bihar nor the same could have been taken by any stretch of imagination that the post of Section Officer is inferior to the post of Assistants. The State Government in the said letter dated 27.06.2014 has, however, mentioned that



they shall not be entitled to pay scale equivalent to Section Officer of the Secretariat. This Court is totally at a loss to comprehend the stand taken on behalf of the State Government of Bihar on the basis of the said communication dated 27.06.2014 that persons holding the re-designated post of Section Officer shall be entitled to lower pay-scale than the one granted to the post of Assistants. In the agreement arrived at between the Federation and the State Government, it was agreed upon that the post of Head Assistant and Accountant of the Colleges should be designated as Section Officer at the departmental level. It was also agreed that pay-scale of Rs.5500-9000 should be granted to the Assistants of the Colleges and the University. Will it be permissible for the respondents to grant lower pay-scale to the persons, who were holding the post of Head Assistants and Accountant upon their re-designation as Section Officer than the same granted to the Assistants of the Colleges and Universities?

13. The answer would be in negative. In my opinion, the stand taken on behalf of the State Government is wholly illogical, completely arbitrary and discriminatory. To say that issuance of the letter dated 27.06.2014 by re-designating the post of Head Clerk and Accountant as Section Officer w.e.f. 01.04.2007 and placing the said post below Assistants for the purpose of fixation



of pay is compliance of the Supreme Court's decision in case of ***Sunny Prakash*** (supra) is totally misleading and it is an eyewash performance. The only justification given in the counter affidavit filed on behalf of the State Government of Bihar that the agreement between the Federation and the Authorities did not stipulate any particular pay-scale for Accountant which was to be re-designated as Section Officer shall carry less pay-scale than that of the Assistants is, in the Court's opinion, is too flimsy to merit any consideration.

14. The averments made in the third supplementary counter affidavit have been taken note of hereinabove, paragraph 9 of which clearly demonstrates that the Head Accountant/Accountant were getting higher pay-scale of Rs.5000-8000 as on 01.01.1996 than the Assistants, who were granted pay-scale of Rs.4000-6000. It is their own case that in the light of the Supreme Court's decision in case of ***Sunny Prakash*** (supra) the pay-scale of Assistants was revised and fixed at Rs. 5500-9000, pay-scale of Accountants despite their re-designation as Section Officer remained the same as Rs. 5000-8000 since the same was not subject matter in case of ***Sunny Prakash*** (supra). If the stand of the State Government is to be accepted, persons holding the



post of Assistant will be in higher pay-scale than that of the Section Officers.

15. In the Court's opinion, no institution particularly a State within the meaning of Article 12 of the Constitution of India could have acted so mindlessly and defended its action so shamelessly, as has been done in the present case by the State Government of Bihar. Instead of correcting their own deeds, they selected to defend their action, which is arbitrary and glaring example of discriminatory treatment on the face of it. In the Court's opinion, the stand of the State Government that the post of Accountant in a College despite having been re-designated as Section Officer in the light of the Supreme Court's decision in case of ***Sunny Prakash*** (supra) shall carry less pay-scale than that of Assistants, in Court's opinion, is patently irrational and unjust. Merely because there was no reference relating to pay-scale to be granted to Accountants upon their re-designation as Section Officers, they could be placed in lower pay-scale than that of the Assistants is based apparently on irrelevant consideration. In no circumstance, a State within the meaning of Article 12 of the Constitution of India can be permitted to pay a section of its employees less than those who are lower in rank. The counter affidavit is conspicuously silent on the aspect, as to how, the post



which came to be re-designated as Section Officer by the State Government by virtue of Supreme Court's decision can carry less pay-scale than that of the Assistants. Such action of fixation of pay-scale, in my opinion, is discriminatory and palpably arbitrary.

16. Hierarchy of service is one of the important factors for determining pay-scale, which a post should carry. A post, which was carrying higher pay-scale and was re-designated as Section Officer in the light of the decision in case of ***Sunny Prakash*** (supra) cannot be placed in a pay-scale less than that of Assistant, in view of the foregoing discussions. The action of the respondents is in utter violation of Articles 14 and 16 of the Constitution of India. The impugned action is arbitrarily illegal, capricious and unsustainable.

17. Since the petitioner has confined his relief to grant of scale of Rs. 5500-9000 as on 01.01.1996 as has been found to be admissible by the respondents for the post of Assistant, the Court directs the respondents to calculate the petitioner's entitlements accordingly treating his pay-scale as on 01.01.1996 as Rs. 5500-9000. The respondents are directed to calculate the differential amount against various heads, consequent upon grant of pay-scale of Rs.5500-9000 and ensure that all the payment are made to the



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

18. This writ application is allowed with a cost of Rs. 20,000/-, in the facts and circumstances, as noted above, payable to the petitioner by respondent no. 2 within a period of two months from today.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	N/A
CAV DATE	N/A
Uploading Date	06.07.2021
Transmission Date	N/A

