

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.325 of 2020
In
Civil Writ Jurisdiction Case No.13930 of 2011

1. The State of Bihar.
2. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
3. The Principal Secretary, Department of Animal Husbandry and Fisheries Resources, Government of Bihar, Patna.
4. The Director, Animal Husbandry, Govt. of Bihar, Patna.
5. The Treasury Officer, Patna.
6. The Sub Treasury Officer, Vikash Bhawan, Patna.

... .. Appellant/s

Versus

1. Dr. Rajeshwar Prasad Yadav S/o Late DeoNandan Prasad Yadav, permanent R/o Village - Aram, P.S. Bihra, District - Saharsa at present residing at Plot No. 865, Deopuri (NandanPuri), P.S.- Shastrinagar, District - Patna, retired Joint Director, Department of Animal Husbandry, Govt. of Bihar, Patna.
2. The Accountant General, Bihar, Patna.
3. The Assistant Accountant General, Bihar, Patna.
4. The Senior Accounts Officer, office of Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajit Kumar, Advocate
For the Respondent/s	:	Mr. Mritunjay Kumar, Advocate
		Mr. Girish Panday, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 22-09-2021

I.A. No. 02 of 2021

Heard learned counsel for the parties.

This interlocutory application has been filed for
condonation of delay of 2 years and 79 days in filing the present

appeal.

Sufficient reason has been shown to condone the delay in filing appeal, accordingly the interlocutory application is allowed and the delay in filing this appeal is condoned.

I.A. No. 02 of 2021 is disposed of.

L.P.A. No. 325 of 2020

Heard learned counsel for the parties.

Being aggrieved by judgement and order dated 28.06.2018 passed in C.W.J.C. No. 13930 of 2011 passed by learned Single Judge of this Hon'ble Court, allowing the writ petition, State of Bihar has preferred this L.P.A.

Writ petitioner retired from his service on 31.01.1997 in the pay scale of Rs.3700-5000 replacement scale of which from 1.1.1996 was Rs.10000-15200/- and on the day of his retirement, he was in super time scale of Rs. 4100-5300. State Government issued resolution no. 660 dated 08.02.1999 for revision of pay scale of State Government employees from 01.01.1996 and abolished the existing facility of time bound promotion and selection grade w.e.f. 01.01.1996. In the resolution, it has categorically been mentioned that if such promotion is due before 01.01.1996, it shall be given and the

payment of arrears in existing scale shall be made only upto 31.12.1995 after which the promotion would be deemed to have been automatically terminated, while fixing pay in the revised scale, such promotions given after 31.12.1995 will not be taken into consideration.

Finance Department issued resolution no. 11556 dated 22.12.1999 for revising the pension of pensioner, who retired on and after 01.01.1996.

The resolution also provided that regular promotion against any vacancy of a post identified as need based post would be admissible. The need based post was to be identified by the department concerned with the concurrence of Finance Department. After identification of need based post in the promotional scale, the Cadre Controlling Authority would take up the seniority list of the employees and the pay scales of need based post would be assigned to the employees in order of seniority, irrespective of the post, they may be holding by virtue of time bound or selection grade promotion.

Petitioner filed an application before the A.G., Bihar, on 14.03.2001 for revising his pension in the new pay scale of Rs. 10000-15200, accordingly, his pension was revised as Rs. 6271/- per month from 01.04.1997 vide memo no. 3009 dated

10.07.2001 by A.G., Bihar and revised pay scale of which from 01.04.2007 is pay band P.B.- 3+grade pay 660.

Department of Animal Husbandry and Fisheries issued notification no. 3990 dated 01.09.2003 whereby pay scale of Rs. 12000-16500 was granted to the petitioner against the need based post and thereafter petitioner filed a petition before A.G., Bihar on 21.10.2003 for revising his pension in pay scale of Rs. 12000-16500 and accordingly, A.G., Bihar revised his pension as Rs. 6428/- w.e.f. 01.04.1997 vide authority letter dated 18.12.2003 and replacement scale of Rs. 12000-16500 from 01.04.2007 is pay band 3+grade pay 7600 and petitioner was getting of Rs.23,050/- in pay band 4 with effect from 1.4.2007.

It is stated on behalf of appellant that notification no. 3990 dated 01.09.2003 was issued without consultation and concurrence of the Finance Department and was cancelled vide notification no. 2467 dated 07.06.2004 and copy of which was sent to A.G., Bihar as well as writ petitioner.

Need Based Promotional Posts were identified afresh with the concurrence of the Finance Department and the writ petitioner was granted pay scale of Rs. 10000-15200 w.e.f. 01.01.1996 vide memo no. 1502 dated 04.04.2006, as such, writ

petitioner is entitled for revision of his pension w.e.f. 01.04.1997 in the new pay scale of Rs. 10000-15200 and revised scale of which from 01.04.2007 is pay band P.B.- 3+grade pay 660 and his pension would be Rs.14,531/- and he was wrongly granted revised pay scale of Rs. 12000-16500 from 1.1.1996 and revised pay scale of which from 01.04.2007 is pay band 3+grade pay 7600 and he was getting pension of Rs.23,050/- due to said mistake which was subsequently rectified by impugned order as challenged before the Writ Court, by which, his pension was reduced from Rs.23,050/- to Rs.14,531/- and order of recovery was made.

It is an admitted position that petitioner was granted pay scale of Rs. 12000-16500 which is the pay scale of need based post, for which petitioner was found entitled and subsequently said promotion was withdrawn and it was found that petitioner is entitled to the scale of Rs. 10000-15200 and same being passed without any notice to petitioner was in violation of principles of natural justice. As writ petitioner retired on 31.01.1997 and was getting pension as per revised pay scale / revised pension and there was no misrepresentation or suppression of facts by the petitioner and same being reduced without any notice to petitioner, as such, said reduction of

pension as well as order of recovery was rightly set aside by the learned writ court.

This Court does not find any error or illegality in the order passed by the learned Single Judge and since petitioner has retired way back on 31.01.1997, this Court is not inclined to grant any liberty to the State for re-fixation of pay scale / pension to the petitioner as per his entitlement at this stage.

Accordingly, LPA is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.11.2021
Transmission Date	NA