

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4706 of 2018

Nirmal Kumar

... .. Petitioner/s

Versus

The State Of Bihar and Ors

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Awadhesh Kumar Singh, Adv.
For the Respondent/s : Mr.Kumar Alok Sc-7

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

4 25-07-2022

The petitioner by way of this writ petition prays

as under:

“i. Issuance of a direction, order or writ including a writ in the nature of writ of certiorari for setting aside the letter no. 3002 dated 18th December 17 (Annexure-6) issued by Special Secretary Department of Science and Technology, Bihar, respondent no. 2 whereby and whereunder direction has been given for adjustment of non compoundable Ph.D increments, which was given to the petitioner in the year 2011.

ii. Issuance of a direction, order or writ including writ in the nature of mandamus

commanding the authorities in the Science and Technology department as well as concerned authorities to extending similar consequential benefits those were also given non compoundable Ph.D increments similar to the petitioner.

iii. Any other relief/ reliefs that the petitioner may be found entitled to in the facts and circumstances of the present case.”

It is submitted that the decision was taken by the department to grant two advance increments to a Ph.D holder on 30th December, 2003. The reservation of 2003 was acted upon and as the petitioner had done his Ph.D from IIT Delhi, the Principal MIT sends requisition to the Accountant General, Bihar on 7th July, 2008 for releasing two advance increments. Accordingly, the AG Bihar revise the pay-scale of the petitioner and by granting two increments with effect from 2006 to those Professors who had obtained Ph.D degree in the respected subjects in terms of the finance resolution dated 11.08.2011. It is stated that the petitioner was promoted as Professor on 01.01.2009. It is further stated that the A.I.C.T.E. also clarified that the grant of advance increments would be from the date of

issuance of the notification that is from 2006 vide its clarification dated 4th January, 2016. The increments which have been granted are to be treated as non-compoundable. Accordingly, the pay was to be revised for the petitioner. However, his grievance is that instead of revising the pay, recovery has been directed to be made. The respondents have filed their reply and stated that the advance increment in terms of the resolution dated 30th December, 2003 was for advance increment alone and not for additional increment and advance is always adjustable. It is further stated that the Principal could not have sent the requisition for granting the advance increment and the same could have only been granted after the respondent department had sanctioned it.

I have considered the submissions and reflected to the counter affidavit and the contents of the writ petition. The petitioner was granted the advance increments at the stage when he was a lecturer, the advance increments are to be paid at the stage when a person gets the benefit of lecturers selection grade. Once he becomes an Associate Professor since the Ph.D qualification is an essential qualification, he would not be granted the advance increment in that said pay-scale and that is how the advance increments are treated to be non-

compoundable.

Meaning thereby, after a person starts getting pay-scale in the grade pay of Associate Professor and thereafter the grade pay of Professor, the advance increments are not admissible.

Keeping in view thereto, the clarification issued by the notification dated 4th January, 2016 is required to be understood. Thus, the advance increments granted to the petitioner in 2006 cannot be objected. However, once he shifts to the pay-scale/ grade pay of Associate Professor and above, the advance increments are inadmissible. However, upon shifting/ promoting to the post of Associate Professor and thereafter, to the post of Professor, he would be entitled for revision of pay along with increments which is available on promotion, the pay fixation was required to be done accordingly. But the order impugned dated 18.12.2017 does not consider the said aspect and it only directs for making recovery of increments granted to the petitioner.

The order, therefore, is not sustainable in view of the notification dated 4th January, 2016 is accordingly quashed. However, the respondents would now revise the salary of the petitioner in the aforesaid terms and strictly in accordance with

the notification dated 4th January, 2016. Thus, the advance increments added to his salary in 2006 shall remain continued till he was promoted as an Associate Professor and thereafter, he would get the increment of promotion only.

With the above observations, the writ petition is allowed to the aforesaid context.

The exercise in this regard shall be conducted positively now within a period of three months.

(Sanjeev Prakash Sharma, J)

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Item No. 350

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