IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9156 of 2021

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Vinay Kumar Srivastava Son of Late Dr. Shaligram Srivastava, Resident of Village- Barawan, P.O.- Barawan, P.S.- Mirganj, District- Jaunpur, Uttar Pradesh- 222143.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Secretary, Law Department, Government of Bihar, Patna.
5. The Honble High Court of Judicature at Patna, through the learned Registrar General.
6. The Learned Registrar General, Honble High Court of Judicature at Patna.
7. The Accountant General, Mahalekhakar Bhawan, Veerchand Patel Path, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Adv.
For the State	:	Mr. Suman Kumar Jha, Adv.
For the Respondent No. 5	:	Mr. Satyabir Bharti, Adv.
For the Respondent No. 7	:	Mr. Rajnandan Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 02-03-2023

1. Heard Mr. Kumar Kaushik, the learned Advocate for the petitioner and Mr. Satyabir Bharti, the learned Advocate for the respondent / High Court of Judicature at Patna. The State is represented by Mr.

Suman Kumar Jha, the learned Advocate. Mr. Rajnandan Prasad, the learned Advocate represents, the Accountant General.

2. The issue raised by the petitioner in the present writ petition is whether he is entitled to notional addition of increments in his pay during the period of his suspension, which was not held to be under duty and the petitioner was only admitted to subsistence allowance when eventually he was compulsorily retired.

3. The contention of the petitioner is that even if only subsistence allowance was payable to the petitioner during the period of his suspension, for counting of pension, the increments accrued to him during the period of suspension be added notionally or else there would be a cumulative effect of such non addition of increments which again would form a major punishment and in that case, the petitioner would suffer a double whammy.

4. To state the facts for appreciating the

contention of the petitioner, he was subjected to a departmental proceeding in which, he was given a punishment of compulsory retirement. The period of his suspension was held to be not on duty and, therefore, only subsistence allowance was made admissible to him.

5. The challenge to the order of punishment before the High Court and the Supreme Court by the petitioner, failed.

6. The pension of the petitioner was fixed in the year 2014 on the basis of his last drawn pay at Rs. 43,690/-. The pensionable amount was, therefore, calculated at Rs. 15,292/-. The period of suspension was not taken into account by the office of the Accountant General while fixing the afore-noted quantum of pension of the petitioner.

7. About seven months thereafter, the pension amount of the petitioner was further hiked at Rs. 21,845/- as it constituted 50% of the last salary drawn by the petitioner by taking into account the period

of service even during the suspension. This reduction was on the basis of a resolution of the Finance Department of the Govt. dated 11.02.2019, which has been brought on record by way of Annexure – 9B. This reduction was again by virtue of a resolution modifying the earlier resolution dated referred to above dated 11.02.2019.

8. This reduction in pension was challenged by the petitioner before this Court vide C.W.J.C. No. 9002/2021, wherein, on consideration of materials on record, a Division Bench of this Court was of the view that the ends of justice would be met by granting liberty to the petitioner to file a fresh representation before Principal Secretary, Finance Department, Govt. of Bihar, Patna for redressal of his grievances within a stipulated period of time. The reduction of the pension was primarily challenged on the interpretation of the clarificatory circular as also that before reduction, no notice was given to the petitioner.

9. The order of reduction of pension has not yet been revised and the last of the P.P.O. received by the petitioner contains a stipulation that any excess payment given to him, shall be recovered without stating as to by which mode; either by adjustment in the pensionable amount or asking the petitioner to pay such amount.

10. Be that as it may, in the present writ petition, it has been urged on behalf of the petitioner that since he has been inflicted with a punishment of compulsory retirement and during the period of suspension, only subsistence allowance has been made available to him, he cannot be denied of the increments in his pay, which may have accrued during the period of suspension, more so when the period spent during suspension was taken into account for calculating the pensionable amount due to the petitioner.

11. Mr. Kaushik, the learned Advocate for the petitioner submits that the continuity of his service

remains. During the period of suspension, he was only debarred from officiating. Thus, even if such period is not held to be spent on duty, it has to have only financial connotation of not being paid his salary but if pension has to be calculated, it must take into account the increments which would have been otherwise received by him, had he not been suspended. Not doing so, would be subjecting the petitioner to another punishment which is not the mandate of the Disciplinary Authority.

12. As opposed to the aforesaid contention, Mr. Satyabir Bharti, the learned Advocate for the respondent / Patna High Court, has drawn the attention of this Court to a judgment of the Supreme Court in State of **Punjab vs. Jaswant Singh Kanwar; 2014 (13) SCC 22**, wherein, it has been explained that the dictionary meaning of suspension is to debar an officer usually for a time, from any privilege, the execution of an office work or from the enjoyment of an income. It is temporary deprivation of office privilege. By reason of

suspension, the powers, functions and privileges remain in abeyance but one continues to be subjected to same discipline and penalties and to the same authorities. It was thus explained that this definition of suspension leaves no room for doubt that during the period of suspension, all the benefits including that of increments attached to the office would remain suspended unless and otherwise, the period of suspension is held to be spent as a period spent on duty. In the context of the increment also, the Supreme Court has gone on to state that, it amounts to increase or addition on a fixed scale. It is a regular increase in salary on such a scale. An increment is an incidence of employment and an employee gets the increment by working for the full year and drawing full salary. During the period of suspension, the contract of service remains suspended. The order of suspension during the departmental enquiry has the effect of temporarily suspending the relationship between the master and the servant with the consequence that the servant is not bound to render service and, therefore, he, an employee, is not entitled to increments during this period which is not taken as a period spent on duty.

13. In the above noted case, the respondent was saddled with a major penalty of stoppage of two increments with cumulative effect and the period of his suspension for about five years, was taken as leave of the kind due to him. On challenge before the High Court of Punjab, the punishment inflicted upon the respondent was but modified and it was directed that he would be entitled to increments which would have accrued to him during the period of his suspension.

14. This dilution of the rigors of the punishment was challenged by the State of Punjab before the Supreme Court, wherein, the afore-noted explanation was given for finding such dilution of the punishment by the High Court of Punjab in favour of the

respondent to be incorrect.

15. The argument of the learned counsel for the petitioner that if the period of suspension has been counted for the purposes of adding up the pensionable amount, there is no way in which the increments earned by him could have been left out, is thus not acceptable. Even otherwise, Rule 156 of the Bihar Pension Rules, 1950 provides that the term “average emoluments” means the average calculated upon the last one year of service. It further stipulates that if during the last three years of his service, a Govt. servant has been absent from duty on leave with leave salary, or having been suspended, has been re-instated without forfeiture of service, his emolument for the purpose of ascertaining the average, should be taken at what they should have been, had he not been absent from duty or suspended, provided always (A) that except as provided in Clause- 2(A), his pension must not be increased on account of increase in pay not actually

drawn and (B) that a Govt. servant will not during the leave be allowed to count as emoluments the additional pay for officiating, which he would have been entitled to so count under 155(F), had he remained on duty if another Govt. servant has been appointed to officiate on the same post during the period of such leave.

16. Thus, the claim of the petitioner that the increments accrued to him during the period of his suspension be added up for calculating his pensionable amount, cannot be countenanced.

17. For the reasons afore-stated, we dismiss this writ petition.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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AFR/NAFR	AFR
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